



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.10.

5/5/2020

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### **Subject:**

Approval, Re: Temporary License Agreement for access across Environmentally Endangered Lands (EEL) Program managed lands at Sterling Forest Sanctuary-District 1

### **Fiscal Impact:**

No impact to General Revenue funds or EEL Program funds

### **Dept/Office:**

Parks and Recreation

### **Requested Action:**

It is requested that the Board of County Commissioners approve a temporary License Agreement that allows Robert and Charlene Melcher, 364 Newcastle Court, Titusville access to their property through the Environmentally Endangered Lands (EEL) Program managed Sterling Forest Sanctuary, 403 Loxley Court, Titusville. If it becomes necessary to extend the License Agreement, it is requested that County Manager, or designee, be authorized to sign additional extensions.

### **Summary Explanation and Background:**

Robert and Charlene Melcher own property that is adjacent to lands managed under the Environmentally Endangered Lands (EEL) Program known as Sterling Forest Sanctuary. The Melcher's are preparing to construct a pool in their backyard and their contractor needs temporary access during construction. There is an existing fire road on the Sanctuary that can be used for this access. The attached License Agreement would give them temporary access through the portion of Sterling Forest Sanctuary identified on Exhibit A of the Agreement, for a period of three (3) months. If additional time is necessary, it is requested that the County Manager be authorized to sign any extensions.

### **Clerk to the Board Instructions:**

Please return fully executed License Agreement to the Environmentally Endangered Lands (EEL) Program.



May 6, 2020

**MEMORANDUM**

**TO:** Mary Ellen Donner, Parks and Recreation Director

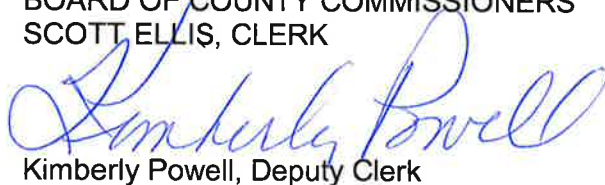
**RE:** Item F.10., Approval for Temporary License Agreement for Access Across Environmentally Endangered Lands (EEL) Program Managed Lands at Sterling Forest Sanctuary

The Board of County Commissioners, in regular session on May 5, 2020, approved a temporary License Agreement that allows Robert and Charlene Melcher, 364 Newcastle Court, Titusville access to their property through the EEL Program Managed Sterling Forest Sanctuary, 403 Loxley Court, Titusville; and authorized the County Manager, or his designee, to sign additional extensions. Enclosed is a fully-executed License Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

  
Kimberly Powell, Deputy Clerk

/sm

Encl. (1)

cc: County Manager  
Contracts Administration

## PROPERTY ACCESS LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** is hereby made and entered into the date of last signature below by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and Robert and Charlene Melcher, owners of 364 Newcastle Ct, Titusville, FL 32780 (hereinafter referred to as the "Licensees").

### WITNESSETH

**WHEREAS**, the County owns certain real property in Brevard County, Florida, as depicted and highlighted in green in Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter referred to as the "County's Property"); and

**WHEREAS**, the Licensees are the owners of certain property located at 364 Newcastle Ct, Titusville, FL 32780, as depicted and highlighted in red in Exhibit A (hereinafter referred to as the "Licensees' Property"), which is adjacent to the County's Property; and

**WHEREAS**, as highlighted in blue in Exhibit A, a fire line exists on the County's Property, which will allow Licensees the ability to enter and leave the rear of their property.

**NOW, THEREFORE**, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into and made part of this License Agreement by this reference.
2. Property. This License Agreement relates to the land owned by the County and identified in the legal description set forth in Exhibit "B" to this License Agreement, which is incorporated herein by this reference.
3. License. The County hereby grants the Licensees a non-exclusive, personal, and revocable license (hereinafter referred to as the "License") solely for the purpose of allowing Licensees ingress and egress to Licensees' Property by use of the fire line highlighted in blue in Exhibit A for the term of this License Agreement or once the pool at issue has been completed, whichever is first. This License shall not be interpreted or construed to grant any right of ingress over, egress over, or use of the fire line by any other person, third party, or property owner other than Licensees, except for invited guests of the Licensees. Licensees shall be present when any and all guests are accessing the fire line. This License shall not be construed or interpreted as granting or attempting to grant the Licensee ingress or egress across property owned by any other person or legal entity. The License Agreement does not operate to confer on, or vest in, the Licensees any title, interest, or estate in the County's Property.
4. Right of Access. The Licensees shall be entitled to enter the County's Property and use the fire line for such ingress and egress purposes in order to access Licensees' Property, subject to and in accordance with the County's rules and regulations governing such access, as

well as all applicable laws and regulations promulgated by the State of Florida or any other governmental entity. The County shall allow Licensees to utilize the fire line during the term of this License to access the rear of Licensees' Property. Neither the License nor the Licensees' use of the fire line shall constitute a basis for obtaining a building permit for the construction of any improvements on the Licensees' property. This License Agreement is intended solely to provide a revocable, personal privilege to enter and leave Licensees' Property, and in no way interferes with Licensees' right to apply for and acquire, if appropriate, a legal easement over the County's Property at some date in the future. In no way does this License Agreement extinguish any existing legal right Licensees currently have concerning access to their property.

5. No Other Activity. The Licensees may not enter upon or engage in any other activity upon the County's Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the County's Property. Licensees are hereby granted access through the County's Property along the designated path identified in Exhibit A for ingress and egress purposes. Licensees further agree to close any gate(s) used by the Licensees to enter or exit the County's Property.

6. Authority; Maintenance. The County represents that it has the right to grant the license herein described. The County shall not bear any responsibility for the maintenance of the County's Property, including the fire line, and shall have no duty to keep the County's Property in a condition passable by Licensees. Licensees shall not undertake any maintenance or improvement of the County's Property without the expressed written permission of the County, which permission may be withheld in the County's sole discretion. Licensees shall have the right, after obtaining written approval from County staff, to maintain but not improve the fire line depicted on Exhibit A. Maintenance includes trimming of trees and brush that restrict travel along the fire line and removal of tire ruts and tire tracks so as to keep the fire line in a condition to support travel on it. No maintenance may be conducted outside the boundaries of the fire line.

7. Undue Waste. Licensees shall not commit undue waste to the County's Property and agree to restore any damage to the fire line that occurs as a result of or is associated with Licensees' use of the fire line to the satisfaction of the County.

8. Indemnification. Licensees shall indemnify and hold harmless the County, and its agents, officers, and employees, from and against any and all claims, losses, and expenses, including attorney's fees, arising out or resulting from the performance of the work outlined in this License Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Licensees, or anyone acting directly or indirectly for the Licensees, or anyone for whom acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder. Licensees shall be solely responsible for any liability, damages, costs, fines, and administrative or criminal enforcement actions resulting from their activities on the County's Property. Nothing contained herein shall be construed or interpreted as a waiver of the County's sovereign immunity protections or limitations on damages provided for in Section 768.28, Florida Statutes, as amended. Nothing in this Agreement is intended to inure

to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Licensees acknowledge specific consideration has been received for this hold harmless/indemnification provision. The duties and responsibilities established in this paragraph shall survive expiration or termination of this License Agreement.

9. Insurance. Licensees agree that they have or will have appropriate levels of insurance in force at all times and maintained during the term of this License Agreement to cover any claims, including those in Paragraph 8 hereto. Prior to any work being conducted, Licensees shall show proof to the County that they have been named as an additional insured on any insurance policy held by a contractor(s).

10. Term. The term of this License Agreement, and the rights granted herein, shall be effective upon the date of last signature below and shall continue for three (3) months or until the pool is complete whichever is sooner (hereinafter the "Term"). Licensees may request the County Manager, or designee, to grant up to three (3) additional extensions of three (3) months. Such requests must be made at least "twenty" days prior to expiration and such additional extensions shall terminate once the pool is completed this License may be revoked at an time.

11. Revocation. This License Agreement may be revoked or terminated by the County upon ten (10) days' written notice to the Licensees if the Licensees:

- a. Transfers ownership of all or any part of the Licensees' Property. In the event of transfer of ownership of all or any part of the Licensees' Property, Licensees agree to make a condition of the sale that the new owner applies thirty (30) days prior to the transfer of title to the County for a Property Access Management Agreement, which shall not be unreasonable withheld by the County. In the event the County has reason not to enter into an agreement with the new owner, the County will notify Licensees within this 30 day period of the reasons why a Property Access Management Agreement should not be issued to the prospective new owner;
- b. Obtains alternate access for ingress and egress to Licensees' Property;
- c. Violates any law, rule, regulation, or management plan applicable to the County's Property, as promulgated by the State of Florida, or any of its agencies; the County; or any other governmental agency with jurisdiction;
- d. Engages in any hunting activity on the County's Property;
- e. Discharges any firearms on or across any portion of the County's Property;
- f. Conducts any illegal or unauthorized activity on the County's Property;
- g. Enters upon or conducts activity upon the County Property for uses other than use of the fire line for ingress and/or egress during the Term of this License;
- h. Violates any term, provision, or condition of this License Agreement; or
- i. If, in the sole discretion of the County, Licensees' continued use of the County's Property for the specific purposes outlined herein interfere with the County's management of the Property. In such a case, the County has the discretion to provide alternate access for ingress and/or egress if possible.

12. No Recording. This License Agreement shall not be recorded in the official records of Brevard County, Florida, by either party.
13. No Interest in the Property. This License Agreement is the grant of a personal right to the Licensees. This License shall not be construed to create any real property interest in the County's Property.
14. Assignment. The License Agreement may not be assigned, transferred, conveyed, or devised to any other person, corporation, partnership, or other entity.
15. Acceptance. This License Agreement constitutes the entire agreement between the County and the Licensees and supersedes all prior arrangements and understandings whether written or oral relative to the subject matter(s) thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.
16. Venue; Governing Law. Venue for any legal action brought by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.
17. Attorney's Fees. In the event of any legal action to enforce the terms of this License Agreement, each party shall bear its own attorney's fees and costs.
18. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this License Agreement and duly executed by the County Manager, or designee.
19. Severability. If any term, covenant, condition, or provision of this License Agreement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remained shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
20. Counterparts. This License Agreement may be execute din several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by facsimile machine and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this Agreement.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date of last signature below.

ATTEST

By:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:

Bryan Andrew Lober  
Bryan Lober, Chair

As approved by the Board on: 5/5/2020

WITNESS

Name

Signature

Date

LICENSEES

Name

Signature

Date

Name

Signature

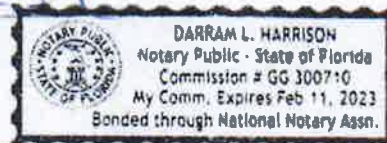
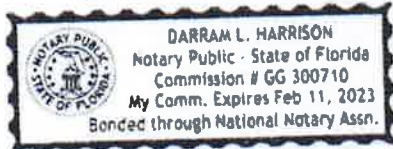
Date

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of April, 2020,  
by Robert E. Melcher & Charlene E. Melcher who is personally known to me or produced  
as identification

Notary Public

(NOTARY PUBLIC SEAL)



(Printed, Typed or Stamped Name of  
Notary Public)

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Reviewed for legal form and content for Brevard County

[Signature]



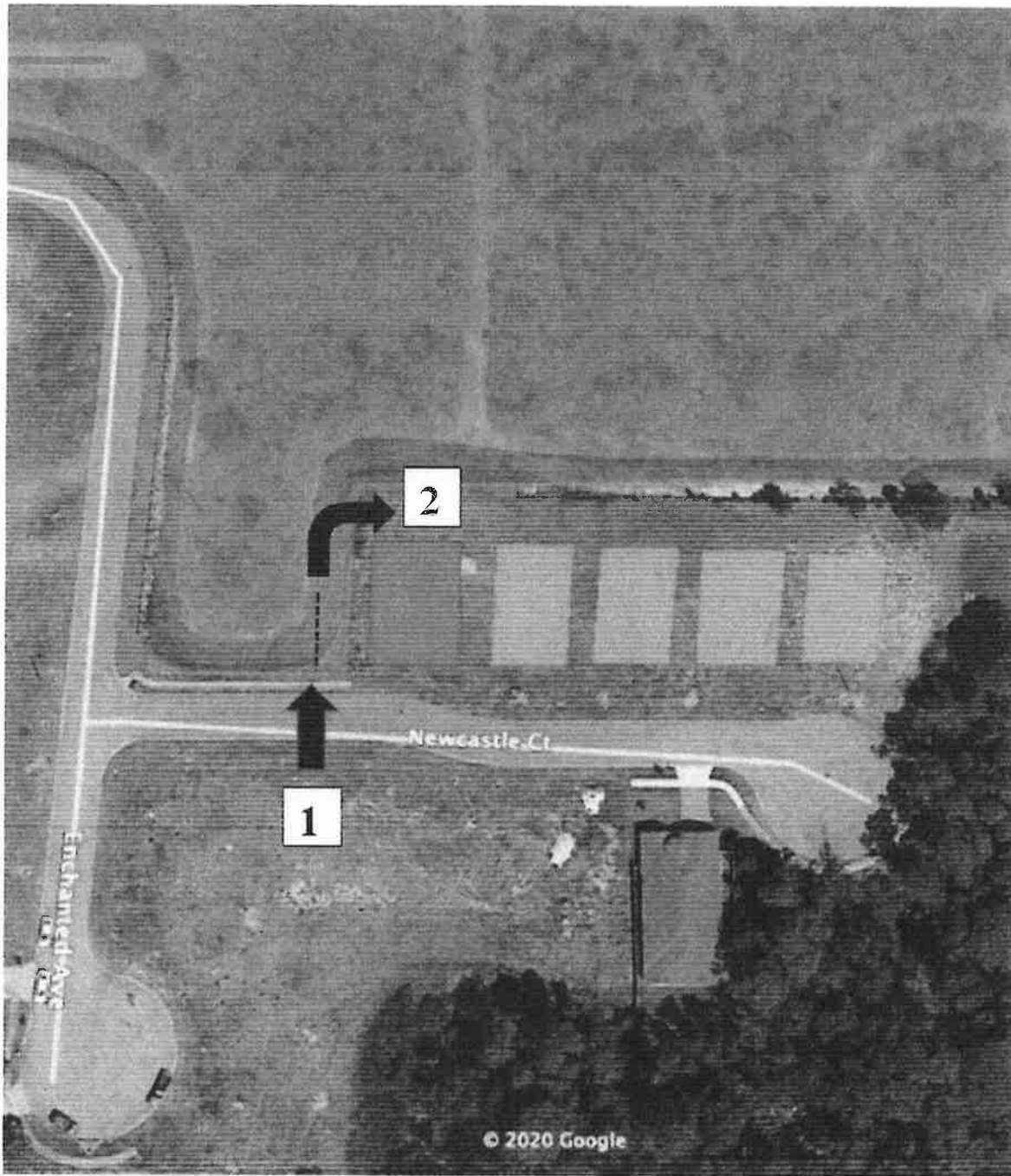


Exhibit A

- 1 Egress/Ingress from Newcastle Court to Firebreak
- 2 Egress/Ingress from Firebreak to homeowner property



**EXHIBIT "B"**

**STERLING FOREST**

**A SUBDIVISION LYING IN THE SECTION 27, TOWNSHIP 22 SOUTH,  
RANGE 35 EAST, CITY OF TITUSVILLE, COUNTY OF BREVARD, FLORIDA**

**LEGAL DESCRIPTION:**

A portion of lands described in O.R. Book 3183, Pages 706-707, of the Public Records of Brevard County, Florida, lying in Sections 26 and 27, Township 22 South, Range 35 East, of said Brevard County, being more particularly described as follows:

Beginning at the Southeast corner of said Section 21, said point being the POINT-OF-BEGINNING; thence North 89°39'09" West along the South line of said Section 27, a distance of 927.58 Feet to the East line of lands described in O.R. Book 1328, Page 286, of the said Public Records of Brevard County; thence North 00°20'51" East along said East line, a distance of 660.00 Feet to the North line of lands described in O.R. Book 1328, Page 328 of the said Public Records of Brevard County; thence North 89°39'09" West along the North line of said lands described in O.R. Book 1328, Page 286 and the North line of lands described in Deed Book 69, Page 216, Deed Book 79, Page 68 and O.R. Book 1033, Page 280, of the said Public Records of Brevard County, a distance of 1,262.74 Feet to the West line of said lands described in O.R. Book 1033, Page 280; thence South 00°20'51" West along said West line, a distance of 635.00 Feet to the North Right-of-way line of Little League Lane; thence North 89°39'09" West along said North Right-of-Way line, a distance of 440.00 Feet to the East Right-of-Way line of Sisson Road; thence North 00°01'14" West along said East Right-of-Way line, a distance of 1,296.16 Feet to the South Right-of-Way line of a 10 foot road Right-of-Way per Titusville Fruit and Farms Lands Co., according to the Plat thereof, as recorded in Plat Book 2, Page 29, of the said Public Records of Brevard County; thence South 89°39'10" East along the said South Right-of-Way line, a distance of 2,116.63 Feet; thence South 00°20'50" West, a distance of 841.66 Feet; thence South 89°32'34" East, a distance of 655.24 Feet; thence South 00°21'26" West, a distance of 478.49 Feet to the South line of said Section 26; thence North 89°32'34" West along said South line, a distance of 132.32 Feet to the POINT-OF-BEGINNING. Containing 51.881 Acres of land more or less.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b>	
<b>2. Fund/Account #:</b>	<b>3. Department Name:</b>
<b>4. Contract Description:</b>	
<b>5. Contract Monitor:</b>	<b>7. Contract Type:</b>
<b>6. Dept/Office Director:</b>	

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency				
Risk Management				
County Attorney				

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency				03/30/2020
Risk Management				03/30/2020
County Attorney				06/17/2019

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Date (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b>	
<b>2. Fund/Account #:</b>	<b>3. Department Name:</b>
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## SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

## SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<u>CM DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	
Department	
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Contact Name	
Cost Center, Fund, and G/L Account	
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Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Data (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	