

Deleted

Meeting Date
10-21-14



AGENDA	
Section	Consent
Item No.	II.6.1

**AGENDA REPORT**  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Festival Agreement for Wickham Park; Re: Runaway Country LLC – District 4
DEPT/OFFICE:	Parks and Recreation Department

Requested Action:

It is requested the Board approve and authorize the Chairman to execute a Festival Agreement for Wickham Park with Runaway Country LLC, upon final approval by the Assistant County Attorney and Risk Manager.

Summary Explanation & Background:

Beginning in 2011 and yearly thereafter, Gary McCann, Executive Director for Runaway Country LLC (Runaway), has operated a multi-day Runaway Country Music Festival at Wickham Park. The Festival dates for 2015 are March 20-22, with preparation March 2-19, and clean-up March 23-25.

The Festival Agreement for Wickham Park stipulates the use of the park by Runaway, payment to the County, duties of Runaway, duties of the County, Indemnification and Insurance, and other standard County contract clauses.

Authorization for the Chairman to execute a Festival Agreement for Wickham Park will permit Runaway Country LLC to operate the 2015 Festival with the County receiving \$38,750 in revenue. The Agreement has been approved by the Assistant County Attorney and Risk Manager.

FISCAL IMPACT: \$38,750 in revenue to the South Area Park Operations Wickham Park budget.

Clerk to the Board Instructions:

Exhibits Attached: Festival Agreement for Wickham Park

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott	Department Director / Extension						
Stockton Whitten	Assistant County Manager, Venetta Valdengo	Jack Masson 633-2046		Jack.Masson@brevardparks.com				

**FESTIVAL AGREEMENT  
for Wickham Park**

**DRAFT**

This AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "County"), and **Runaway Country, LLC**, a Florida Limited Liability Company, ("Runaway").

WITNESSETH:

WHEREAS, the County is the owner of certain real property located in Brevard County, Florida, commonly known as **Wickham Park** (the "Park") located at 2500 Parkway Drive, Melbourne, Florida; and

WHEREAS, the County may provide parks, preserves, playgrounds, recreation areas, and other recreation facilities and programs pursuant to Section 125.01(1)(f), Florida Statutes; and

WHEREAS, Runaway desires to operate a multi-day music Festival (the "Festival") within the Park, excepting the Ranger Station, Senior Center, Community Center, and those areas depicted in Attachment A; and

WHEREAS, operation of said Festival will mutually benefit the parties hereto and the residents/visitors of Brevard County, Florida.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Term: This Agreement shall be effective from the date of execution for a period of one (1) year.
2. Use of Park: The County hereby agrees to permit Runaway to operate a multi-day music Festival in the Park, subject to the terms of this Agreement. The Festival shall be limited solely to the dates in Attachment B. Runaway shall not make any unlawful, immoral, improper, or offensive use of the Park nor allow said Park to be utilized for any purpose other than set forth in this Agreement.
  - a. Campers staying in the Park for at least 30 consecutive days prior to the Festival, utilizing the 45 full hook-up campsites within the 3 Campground Areas (known as A, B & C), are permitted to remain at the abovementioned Campground areas through the Festival, subject to payment of the regular campsite rental rates to the County.
  - b. If any of the aforementioned 45 full hook-up campsites that are reserved by the County become available, Runaway has the option of purchasing the site(s) at regular daily rates.
  - c. No additional campsites are to be created within the parameters of Campgrounds A, B, or C by Runaway.

3. Payment:

a. Runaway shall pay to the County a sum \_\_\_\_\_ (\$\_\_\_\_\_) for use of the Park beginning on March 2 and ending on March 25, 2015 as detailed in Attachment "B". An initial payment in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), shall be due \_\_\_\_\_ and shall be payable to Brevard County Board of County Commissioners in the care of the South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, FL 32935. Remaining payment of \_\_\_\_\_ and refundable damages deposit in the amount of five thousand dollars (\$5,000) shall be due no later than March 9, 2015 prior to Festival camper check-in and shall be payable to Brevard County Board of County Commissioners in the care of the South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, FL 32935. The damages deposit is required to offset any costs incurred due to damage to County property during the Set Up, the Festival, and the Clean Up. This deposit shall not be considered a measure of the County's damages.

b. Failure to adhere to the specified deadlines for clean-up and property removal, will result in Runaway being charged \$500 per day until compliance is achieved. This amount is the minimum measure of damages the County will sustain as a result of the failure of Runaway to complete all clean-up, remove all Festival property, and other miscellaneous tasks as required. This amount represents compensation for additional costs the County could incur or suffer caused by failure of Runaway to vacate County property by the deadline specified. Such costs could include, but are not limited to, additional inspections, additional security and safety measures, temporary facilities or structures, reduced employee efficiency, additional operating costs, employee overtime, split shift, insurance, loss of revenue, etc. In no way shall cost for liquidated damages be construed as a penalty on Runaway.

4. Duties of Runaway: Runaway agrees as follows:

a. To meet with Park Supervisor/Park Superintendent/Area Manager/City of Melbourne to discuss and obtain approval for all plans, including temporary construction, as it pertains to Set-Up, the Festival, and Clean-Up of Park.

b. Equipment may not be on site before March 2, 2015 day prior to the Festival camper check-in date.

c. On or before March 25, 2015, Park should be returned to the same condition as found on March 1, 2015.

d. Adhere to all Park rules, including but not limited to, Festival main stage music lasting no later than 10:30 P.M. No amplified event music shall be played between the hours of 12:00 A.M. and 7:00 A.M.

e. To keep the Park clean and free of litter, rubbish, or any obstacles that are generated by the Festival.

f. To provide additional dumpsters required to properly dispose of rubbish that is generated by the Festival.

g. To provide janitorial supplies and maintain all restroom facilities within the Park for the duration of the Festival, with the exception of Campgrounds A, B, and C.

h. To maintain good public relations, to conduct said Festival in a manner which is courteous and fair to the public, and to be responsive to customer's requests and complaints.

i. Runaway shall perform a minimum of a Level III Background Screening, as described in AO-26 Brevard County Administrative Order Background Investigation Checks as attached hereto as Attachment "C", on Runaway's employees, managers, assistants, instructors, vendors, volunteers and the like at no cost to the County.

j. Runaway's use of the Park will be in accordance with all applicable local, state and federal laws, rules, regulations, policies and procedures, including but not limited to policies, procedures and safety regulations established by the Brevard County Parks and Recreation.

k. Runaway and Festival attendees are to adhere to all rules and regulations imposed on Park patrons. See Attachment "D".

l. To provide adequate security, police, and emergency medical services (EMS) as it relates to reasonably expected attendance at the Festival per the regulatory permit.

m. Runaway agrees that any improvements shall be made at its expense and shall have the prior written approval of the Brevard County Parks and Recreation Director or designee and all regulatory agencies as applicable.

n. To cooperate fully with County officials in all matters relating to the Festival and the Park.

5. Duties of the County: The County agrees as follows:

a. To provide limited access to the Park from the dates of March 2 through March 18, 2015 for Festival Set-Up and March 23 through March 25, 2015 for break-down and clean-up.

b. To provide access to Wickham Park from the dates of March 19 through March 22, 2015 for Festival camper check-in and Festival.

- c. To provide normally-scheduled maintenance and park ranger staff to complete his/her routine job functions at the Park.
- d. To provide janitorial supplies and maintenance for Campgrounds A, B, and C restroom facilities.
- e. To provide a list of the 45 campsites that will be utilized by the County during the Festival no later than March 1, 2015.
- f. The South Area Parks Operations Manager shall administer the County's interest in said Festival.

6. Indemnification and Insurance: Runaway agrees that it will indemnify and hold harmless the County from any and all claims, damages, losses, expenses, including attorney's fees, and causes of action arising out of or in connection with this Agreement, including, but not limited to, claims arising out of or in conjunction with use, management, or control of the Festival or any equipment used in connection with the Festival. Runaway agrees it will, at its own expense, defend any and all actions, suits, or proceedings which may be brought against the County in connection with the Festival. Runaway agrees that it will satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision.

Runaway agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring Runaway against any and all claims, demands, or clauses of action whatsoever for the injuries received and damage to property relating to the use, occupation, management or control of the Festival. Such policies of insurance shall insure Runaway in the amount not less than One Million Dollars (\$1,000,000.00) to cover any and all liability claims arising in connection with any particular accident or occurrence. Said insurance policies shall provide that the County shall be entitled to thirty (30) days prior notice of any changes or cancellations in said policies and shall name the County as an additional insured. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Runaway's interest or liabilities, but are merely minimums.

A certificate of insurance indicating that Runaway has coverage in accordance with the requirements of the Agreement shall be furnished by Runaway to the Brevard County Parks and Recreation, South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida 32935 ten (10) days prior to Festival set-up.

Runaway shall require certificate of insurances from all vendors naming Brevard County Board of County Commissioners as “additional insured.” These shall be furnished by Runaway to the Brevard County Parks and Recreation, South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida 32935 ten (10) days prior to Festival Set-Up.

All personal property housed or placed at the County facilities shall be at the risk of Runaway, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. Runaway agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover Runaway’s interest therein.

7. Assignment and Subletting: Runaway, its assigns or representatives shall not assign any portion of this Agreement nor allow same to be assigned without the express written approval of the County.

8. Termination: This Agreement may be terminated by either party upon one hundred and eighty (180) days written notice to the other party. Either Party may immediately terminate this Agreement in the event that the other Party materially breaches the Agreement and fails to cure such breach within thirty (30) days’ written notice. Upon termination of this Agreement, the Runaway shall have fifteen (15) days within which to remove any personal property. Any property not removed within said fifteen (15) period shall become the property of the County.

9. Copyright: No reports, data, programs or other materials produced in whole or in part for the benefit and use of the County under this Agreement shall be subject to copyright by the Runaway in the United States or any other country.

10. Music Performance: Runaway shall not use, play or perform copyrighted music without appropriate licensing or other permission. Runaway shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. Runaway agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.

11. Notice: Notice under this Agreement shall be given to the County by mailing written notice postage prepaid, to the **South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida 32935**, and notice shall be given to Runaway by mailing written notice, postage prepaid, to: **Runaway Country, LLC, PO Box 33848, Indialantic, FL 32903, (407) 461-0024**.

12. Attorney’s Fees: In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney’s fees and costs.

13. Unauthorized Alien Workers: Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act (INA)). The County shall consider the employment by Runaway of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by Runaway of the employment provisions contained in Section 274A (e) of the INA shall be ground for unilateral cancellation of the Agreement by the County.

14. Governing Law: This Agreement shall be deemed to have been executed and entered in the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

15. Venue: 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.

16. Public Entity Crimes: A Person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) month from the date of being placed on the convicted vendor list.

17. Modification: No modification of this Agreement shall be binding on the County or Runaway unless reduced to writing and signed by a duly authorized representative of the County and Runaway.

18. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

19. Emergencies: In the case of a declared emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.

20. Right of Entry: The County or its agents may enter in and on the premises at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals on the day and year first written above.

ATTEST:

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS:

\_\_\_\_\_  
Scott Ellis, Clerk  
Date:

\_\_\_\_\_  
Mary Bolin Lewis, Chairman  
Date:

WITNESS:

RUNAWAY:

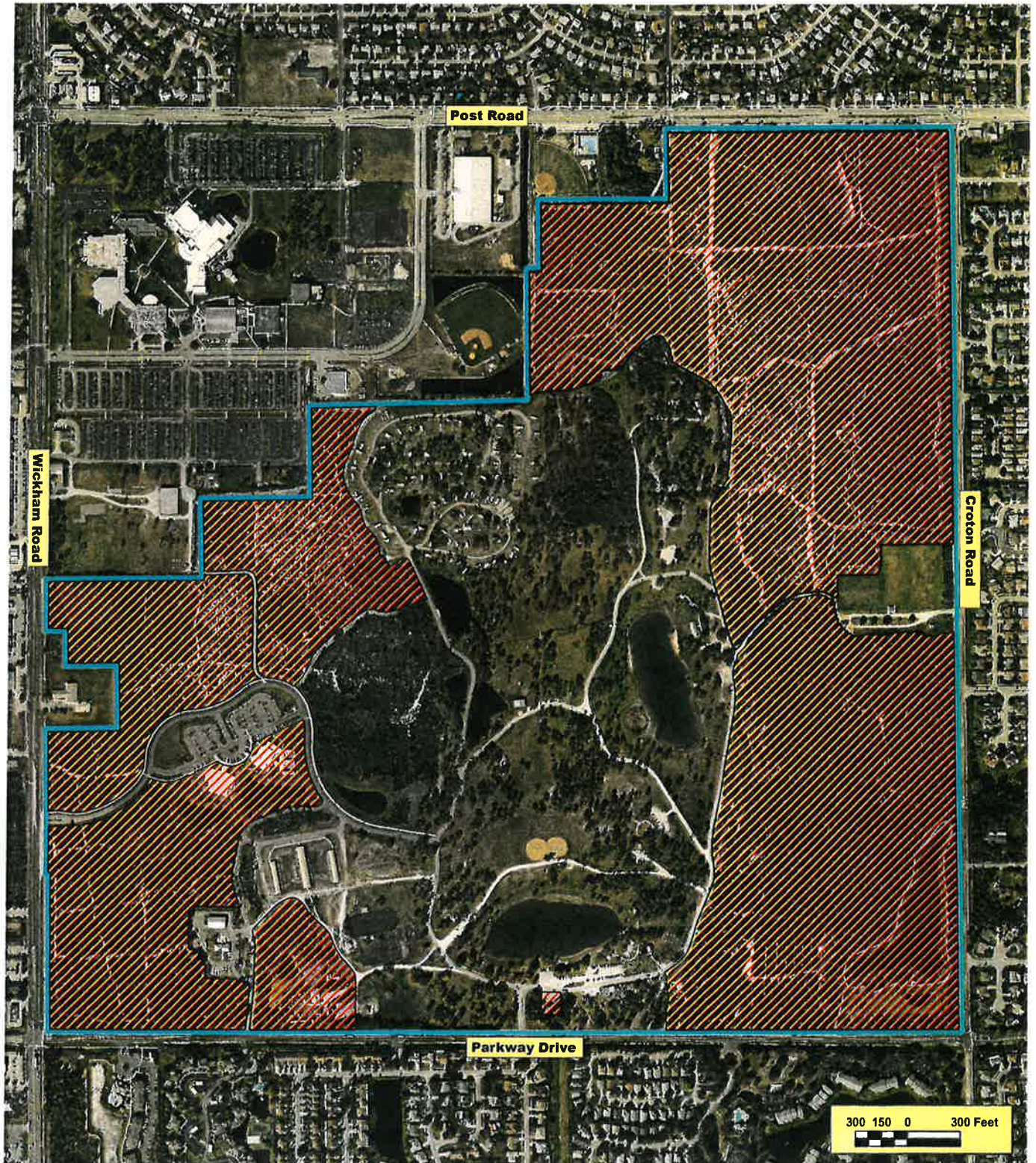
\_\_\_\_\_

\_\_\_\_\_  
Runaway Country, LLC  
Date:

Reviewed for legal form and content:

\_\_\_\_\_  
Assistant County Attorney  
Date:

# ATTACHMENT "A"



AREAS TO BE EXCLUDED FROM FESTIVAL

2013 Aerial

## Wickham Park

### BREVARD COUNTY PARKS & RECREATION



**Attachment "B"**

**FESTIVAL DATES**

**2015**

Deposit (10% of total payment) Due: September 1, 2014

Insurance for Festival and all Vendors Due: February 20, 2015

Damage Deposit and Remaining Balance Due: March 9, 2015

Festival Check In Date: March 19, 2015

Set-Up Dates: March 2-19, 2015

Festival Dates: March 20-22, 2015

Clean-Up Dates: March 23-25, 2015