



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.14.

10/22/2019

Subject:

Permission to execute a license agreement for an approximately 100 x 350 ft.² parking area for special events and staff parking on Valkaria Airport property (non-operational)

Fiscal Impact:

Airport Revenue \$200/month plus any applicable taxes.

There is no impact to General Funds

Dept/Office:

Valkaria Airport

Requested Action:

It is requested the Board of County Commissioners grant permission and authorize the Chairman to execute a License Agreement for the purpose of an outside, open overflow parking area. In accordance with Florida Statute 125.35(1)(a), the Board of County Commissioners is expressly authorized to sell and convey any real or personal property and to lease real property belonging to the County, whenever the Board determines that it is to the best interest of the County to do so.

Summary Explanation and Background:

The property is owned by and located at Valkaria Airport. It is not on the Aircraft Operational Area of the Airport.

Interest has been expressed for utilization of this property to lease 100 x 350 ft.² staff parking overflow area on property immediately adjacent to "Up the Creek Farms", with a physical address of 3590 Valkaria Rd., Malabar, Fl. 32950. The 100 x 350 ft.² area is vacant airport property and the requested use is not expected to create a nuisance. In the short-term, the Department believes that some revenue can be derived from licensing the property for such use. The Parcel ID is a 100 x 350 ft.² portion of 29-38-17-00-253.

Attachments:

License Agreement and Property Photo

Clerk to the Board Instructions:

274



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

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Tammy.Rowe@brevardclerk.us

October 23, 2019

MEMORANDUM

TO: Steve Borowski, Valkaria Airport Manager

RE: Item F.14., Permission to Execute a License Agreement for an Approximately 100 X 350 Foot Parking Area for Special Events and Staff Parking on Valkaria Airport Property (Non-Operational)

The Board of County Commissioners, in regular session on October 22, 2019, granted permission and authorized the Chair to execute a License Agreement with Up the Creek Farms, LLC, for the purpose of an outside, open overflow parking area, in accordance with F.S. 125.35(1)(a)., which expressly authorizes the Board of County Commissioners to sell and convey any real or personal property and to lease real property belonging to the County, whenever the Board determines that it is in the best interest of the County to do so. Enclosed is an executed Agreement

Upon execution by all parties, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: Contracts Administration
Finance
Budget

LICENSE AGREEMENT

THIS AGREEMENT is dated this 1st day of November, 2019, BY and BETWEEN the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "Licensor") and Up the Creek Farms, LLC (collectively referred to as "Licensee")

WHEREAS, the Licensor is the owner, lessee or authorized administrator of certain real property located in Brevard County, Florida commonly known as the Valkaria Airport, 1 Pilots' Place, Malabar, FL 32950; and

WHEREAS, the Licensee desires to utilize a non-operational portion of the Valkaria Airport buffer area for the purpose hereinafter set forth; and

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. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.
2. License. The Licensor hereby grants the Licensee a non-exclusive, personal and revocable license (hereafter the "License") to use the area of the described in Exhibit "A", attached hereto and made a part hereof by this reference, hereinafter referred to as "Property," for the purpose of overflow staff parking for wedding receptions, subject to the following terms and conditions.
 - a. Use of the Property will be in accordance with this Agreement and all applicable laws, rules, regulations, policies and procedures, including but not limited to prescribed safety rules and regulations established by the Brevard County Solid Waste Management Department. The Licensor reserves the right to disapprove any and all activities held at the Property that may be in conflict with the Licensor's administrative policies or procedures and agrees to furnish the Licensee with a copy of such rules, regulations, policies and procedures and any amendments thereto. Furthermore, no activities shall interfere with or jeopardize the day-to-day operations at the Valkaria Airport or conflict with any Federal Aviation Administration (FAA) grant assurances and requirements.
 - b. The use of the Property shall be limited and related to overflow staff parking for the venues located at 3590 Valkaria Road, Malabar, FL 32950 and other uses necessary and incidental thereto as agreed to by all parties.
 - c. The Licensee will provide and administer adequate personnel to supervise all activities sponsored or sanctioned by the Licensee which take place at the Property. The Licensee may cause the manual removal of invasive plant species on the Property, with prior written approval from the Licensor's Airport Manager.
 - d. The Licensee will not store vehicles or other personal property on the Property and shall not allow overnight parking.
 - e. The Licensee shall not make any unlawful, immoral, improper or offensive use of the Property nor allow its employees, agents, invitees or guests to utilize said Property utilized for any purpose other than that hereinabove set forth. Failure of the Licensee to comply

with this provision shall be considered a material breach of the Agreement and subject same to immediate termination by the Licensor whereupon the Licensor shall be entitled to immediately reenter and retake possession of the Property and terminate the Agreement.

g. Under no circumstances shall Licensee alter the existing surface water flow through the site without proper approval by the Valkaria Airport Manager or designee, following appropriate permitting.

h. The Licensee agrees to keep the Property free and clear of any obstruction, rubbish and litter.

3. Fees and charges.

a. The Licensee shall pay the COUNTY a sum \$200.00 per month, plus any applicable taxes for use of the Property.

b. No fees or charges of any kind shall be levied by the Licensee for use of the Property except such fees and charges as are reasonable and necessary for the operation and maintenance of the facility and approved in advance by the Valkaria Airport Manager.

4. Improvements. No improvements to the Property other than the mechanical removal of invasive vegetation, is permitted. The Licensee is responsible for securing all permits and licenses pursuant to this Agreement and to otherwise comply with all applicable laws, ordinances, rules, regulations and polices established by the Licensor and any local, state or federal government unit or authority which apply to the location of the Property. The Licensee shall ensure that no contractor which the Licensee may hire to perform any removal of invasive vegetation shall be entitled to file any liens, mechanics or otherwise, against the Property involved or Licensor's property to secure the contractor's interests or payments. Any contract which the Licensee signs or executes with a contractor shall include a provision in which the contractor waives the right to file any such liens and a provision which requires the contractor to include the same waiver by any subcontractors which the contractor may hire in the contract the contractor executes with the subcontractor. The Licensee will make all improvements at the expense of the Licensee and shall obtain prior approval of the Valkaria Airport Manager, and if deemed necessary, any jurisdictional agency prior to proceeding with the improvements.

Maintenance. The Licensee is responsible for keeping the Property clean, free of litter or rubbish, and free of any obstacles that are generated by the Licensee. The Licensee agrees return same to the Licensor upon termination or expiration in such condition, reasonable wear and tear expected.

5. Right of Entry by Licensor: The Licensor or its agents may at any time enter in and on the referenced Property for the purpose of inspection of same or performing such other duties as are required by the terms of this Agreement and the rules, regulations, ordinances and laws of any governmental body.
6. Indemnification: The Licensee shall indemnify and hold harmless the Licensor and its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the use, occupation, management or control of the Property or any improvements thereon or any personal property, equipment and fixtures utilized in connection with the

activities performed by the Licensee, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Licensee, or anyone directly or indirectly employed by the Licensee, a member or invitee of the Licensee, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by in part by a party indemnified hereunder. In any and all claims against the Licensor, or any of its agents or anyone directly or indirectly employed by the Licensee, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the Licensee, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration has been exchanged for this provision.

7. Insurance: The Licensee, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

a. General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to the Licensor, with combined single limits of not less than One Million Dollars (\$ 1,000,000) for Bodily Injury and Property Damage per occurrence and Fire damage liability insurance in the minimum amount of \$50,000 per occurrence.

b. Workers' Compensation Coverage: Full and complete Workers' Compensation coverage, as required by State of Florida law, shall be provided.

c. Insurance Certificates: The Licensee shall provide the Licensor with Certificate(s) of insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the Licensor. The certificates will be filed with the Valkaria Airport Manager: 1 Pilots' Place Malabar, FL 32950, prior to occupancy of the Property. Said liability policies shall provide that the Licensor be an additional insured. The Licensor shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days (30) prior to the effective date of said action.

All insurance policies shall be issued by responsible companies acceptable to the Licensor and licensed and authorized under the laws of the State of Florida.

8. Notice: Notice under this Agreement shall be given to the COUNTY by mailing written notice postage prepaid to:

Licensor:

Valkaria Airport Manager
1 Pilots' Place Malabar, FL 32950

Licensee:

9. The Licensee agrees to:

a. Be responsible for the payment of any sales tax that may be determined to be owed or incurred, now or in the future, as a result of the parties entering into this License.

- b. Be responsible for the Licensor's personal and/or real property taxes increase as a result of the Licensee's use of the Property, provided that the Licensor provide the Licensee with documentation supporting such increase and its cause, and provide the Licensee the opportunity to dispute same with the appropriate authorities.
 - c. Fully cooperate with the Licensor in all matters relating to operations at the Property.
- 10. Term. The term of this Agreement, and the rights granted herein, shall be effective upon the date of execution of this License by the parties and shall continue for a period of one (1) year thereafter ("the Term"). The term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term that the License is revoked for any of the reasons stated in paragraph 11.
- 11. Revocation. This License, or the rights granted to Licensee, may be revoked or terminated by the Licensor before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee if:
 - a. Licensee violates any law, rule or regulation applicable to the Property, as promulgated by the State of Florida or any of its agencies; the Licensor; or any other governmental agency with jurisdiction; or
 - b. Licensee conduct any illegal activity on the Licensor's Property; or
 - c. Licensee enters upon or conduct activity upon the Licensor's Property for uses other than use as described in this Agreement; or
 - d. Licensee violates any term, provision or condition of this Agreement; or
 - e. If, in the sole discretion of the Licensor, Licensee' continued use of the Property interferes with the Licensor's management of the Property.
- 12. No Recording. This License shall not be recorded in the official records of Brevard County, Florida by either party.
- 13. No Interest in the Property. This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the Licensor's Property.
- 14. Assignment. This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity.
- 15. Acceptance. This License Agreement constitutes the entire agreement between the Licensor and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters 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 and Governing Law. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in 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. Counterparts. This License Agreement may be executed in 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 email 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.
18. Attorney's Fees: In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.
19. Federal Tax ID Number: The Licensee shall provide to the Licensor its Federal Tax ID Number.
20. Audit: In the performance of this Agreement, the Licensee shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the Licensor and shall be retained by the Licensee for a period of five years (5) after termination of this Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, and Florida Statutes.
21. Severability: If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or enforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
22. Construction of Agreement: The parties hereby acknowledge that they fully reviewed this Agreement, its attachments, and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the last date written below. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

LICENSOR

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA





Scott Ellis, Clerk



Kristine Isnardi, Chair
As Approved by the Board on: 10/22/19

Date: 10/22/19

Reviewed for legal form and content:

Christine Valliere, Assistant, County Attorney

LICENSEE

Up the Creek Farms, LLC

By: _____

Print name: _____

Its: Managing Member

Date: _____

WITNESS

Print name

WITNESS

Print name

EXHIBIT A
PROPERTY OUTLINE



Airport Property of Interest (Outline in Yellow) Adjacent To Up the Creek Farms Property Line