



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.25.

7/6/2021

Subject:

Approval Re: Commercial Account Right of Entry Agreement by and between Brevard County Board of County Commissioners and Charter Communications Operating, LLC for the installation of Wi-Fi infrastructure at Howard E. Futch Memorial Park at Paradise Beach. (District 3)

Fiscal Impact:

None

Dept/Office:

Parks and Recreation

Requested Action:

It is requested that the Board of County Commissioners approve, accept, and authorize the Chair to execute the commercial account right of entry documents from Charter Communications Operating, LLC allowing for the installation of Wi-Fi infrastructure at Howard E. Futch Memorial Park at Paradise Beach. (District 3)

Summary Explanation and Background:

Charter Communications' request for right of entry at Howard E. Futch Memorial Park is on behalf of Parks and Recreation concessionaire Anthony Sargenti. Mr. Sargenti operates Paradise Treats food truck at Howard E. Futch Memorial Park. If approved, Charter Communications will be granted a 10-foot wide easement located in Government Lot 6, Section 24, Township 27 South, Range 37 East.

The easement will begin at the park's boundary, near Highway A1A, to a terminal concrete pole near Mr. Sargenti's food truck. Mr. Sargenti seeks to increase patronage and sales by offering Wi-Fi access to paying customers, establish a Wi-Fi-based security system, and establish Wi-Fi based payment opportunities for customers.

The cost of installing and operating Wi-Fi will be borne by Mr. Sargenti. Mr. Sargenti's contract with Parks and Recreation is due for renewal in January 2022 with options until 2025.

Clerk to the Board Instructions:

Please call Richard Tucci, South Area Parks Operations, at 321-255-4400 when executed Agreement is ready to be picked up.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 7, 2021

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.25., Approval of Commercial Account Right of Entry Agreement Between the Board of County Commissioners (BOCC) and Charter Communications Operating, LLC, for the Installation of Wi-Fi Infrastructure at Howard E. Futch Memorial Park at Paradise Beach

The Board of County Commissioners, in regular session on July 6, 2021, approved, accepted, and authorized the Chair to execute the Commercial Account Right of Entry Agreement from Charter Communications Operating, LLC, allowing for the installation of Wi-Fi infrastructure at Howard E. Futch Memorial Park at Paradise Beach. Enclosed is a fully-executed Agreement.

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

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (1)



COMMERCIAL ACCOUNT RIGHT OF ENTRY AGREEMENT

This Commercial Account Right of Entry Agreement (hereinafter the "Agreement") is by and between Brevard County Board of County Commissioners (hereinafter the "Owner"), with a mailing address of 2725 Judge Fran Jamieson Way, Building B, Suite 203, and owning real estate located at Howard E. Futch Memorial Park at Paradise Beach, 2301 Florida A1A, Melbourne, Florida 32903 (hereinafter the "Premises" as depicted in Exhibit A) and Charter Communications Operating, LLC on behalf of itself and its affiliates, (hereinafter collectively "Charter"), with a mailing address of 12405 Powercourt Drive, St. Louis, MO 63131, Attn: Commercial Contracts Management. This Agreement commences on the later of the execution dates set forth below the signatures (hereinafter the "Effective Date"). Charter and Owner may individually be referred to as a "Party" or collectively as the "Parties".

THE PARTIES AGREE AS FOLLOWS:

1. RIGHT OF ENTRY AND EQUIPMENT.

- a. In consideration of the mutual benefits and obligations set forth herein, Owner hereby grants to Charter a non-exclusive right of entry to the Premises and those buildings of Owner located on the Premises (See Exhibit A) (including building roof top(s)) ("Buildings") for the installation, attachment, maintenance, modification, inspection, relocation, repair, upgrade, replacement or removal of any equipment and facilities and other communications accessories, equipment, apparatus, fixtures, hardware, appliances, and appurtenances and any other associated equipment (collectively, "Equipment") to provide any of Charter's services (hereinafter the "Services") to any customers who can receive Services by such Equipment. Owner also hereby authorizes Charter to utilize those conduits and ducts of Owner that Owner may designate as available for Charter's use (collectively "Conduit").
- b. The rights herein granted to Charter shall include use of available power at the Premises, together with the right to access and use all i) risers in the Buildings, ii) Building entrance facilities, iii) Building utility entrance facilities, iv) utility closets in the Buildings, v) private rights-of-way, and vi) other areas on the Premises and Buildings as is reasonably required for the purpose set forth herein.
- c. All of the above grants and authorizations given by Owner are to the extent necessary or desirable for Charter to provide its Services to the Premises and shall extend to Charter's authorized agents.
- d. The Equipment is not, and shall not be deemed to be, affixed to or a fixture of the Premises. If requested by Owner, Charter shall provide to Owner the proposed route for installation of Equipment on the Premises. Charter shall install, operate and maintain the Equipment on the Premises at its own expense and in accordance with all applicable laws.

2. **OWNER REPRESENTATIONS.** Owner represents and warrants to Charter that Owner is the legal owner of the Premises, the Building(s) and Conduit (if applicable), and that no other person has any rights in the foregoing that conflict with Charter's rights under this Agreement. Owner recognizes Charter's right to have exclusive control over any Charter Installed Equipment, and Owner will not attach to or use, and will not knowingly allow a third party to attach to or use, Charter's Equipment for any purpose without Charter's prior written consent. In the event the Owner is not executing this Agreement, the undersigned person executing on behalf of Owner represents that the undersigned is Owner's authorized agent and has full authority to bind Owner to the terms and conditions of this Agreement.

3. **RESPONSIBILITY TO CONTACT PUBLIC UTILITIES.** As may be required by law, Charter or its contractors will contact and coordinate with local agencies to physically mark the location of all public utility lines (including, but not limited to, water, electric, phone and sewer lines) that are located in areas in which Charter intends to install the Equipment. Owner shall not interfere with the markings designating such locations until installation is complete. Charter shall be responsible for any damage to public utility lines that are located along the routes or in the location in which Charter installs any Equipment, to the extent such damage arises from Charter's installation activities.



4. **RESPONSIBILITY TO MARK PRIVATE UNDERGROUND LINES.** If Owner has private underground lines at the Premises that could impact Charter's installation of Equipment, including, but not limited to, sprinklers, sprinkler heads, drains, cables, pipes and wires (collectively "Impacted Private Lines") then both Parties shall, in advance of any underground construction performed by Charter, work together, to the best of their abilities, to research the existence of all Impacted Private Lines (hereinafter "Joint Effort"). In order to facilitate the Joint Effort, Owner provides below its authorized representative (with contact information) regarding the Joint Effort. (Please print clearly)

Name: _____

Address &/or email: _____

Phone: _____

After the Joint Effort, the following shall take place: (i) Charter will make a determination on the need to locate and mark Impacted Private Lines including, but not limited to, the methods and arrangements for same, and (ii) If deemed by Charter necessary to do so, a qualified Charter contractor shall locate (including verification of) and clearly mark all Impacted Private Lines to the extent required by Charter. In the event that Charter damages any clearly marked Impacted Private Lines along the routes or in the location in which Charter installs any Equipment, and only to the extent such damage(s) arise from Charter's Equipment installation activities on the Premises, then Charter shall promptly, within a reasonable period of time, repair said damage(s) to Owner's reasonable satisfaction, after receipt of written notice from Owner describing the scope and extent of such damage(s), which written notice, if needed, shall be provided to Charter no later than thirty (30) days after Charter's initial installation of Equipment.

5. **INSURANCE.** Charter shall maintain, at Charter's sole cost and expense, (i) commercial general liability insurance including Property Damage, Bodily Injury and contractual liability insurance subject to standard insurance carrier exclusions, in the amount of \$2,000,000 each occurrence covering (a) to the extent caused by acts of Charter, damages to the Premises and (b) the operations of Charter at the Premises, (ii) Auto Liability, including Bodily Injury and property damage in the amount of \$1,000,000 each accident, and (iii) worker's compensation insurance to comply with the applicable laws of the State the Premises is located in.
6. **TERM.** The term of this Agreement commences on the Effective Date and shall remain in full force and effect until the later of: (i) the date that is five (5) years after the Effective Date, or (ii) the date that is 6 months after the date that Charter is no longer providing Services to any tenant of the Premises (the "Term"). Following the Term, Owner may terminate this Agreement upon 90 days advance written notice to Charter in the event Charter is no longer providing Services to any tenant of the Premises. Should any tenant of the Premises request Services during such 90-day termination notice period, the related notice of termination shall be deemed rescinded and thereafter null and void. Charter may, within 90 days of the expiration or termination of this Agreement, elect to remove Charter's Equipment or abandon in-place all or certain portions of Charter's Equipment at the Premises which, upon abandonment, shall be deemed the property of the Owner, with lien free title thereto passing immediately to Owner at no cost to Owner.
7. **ASSIGNMENT.** Charter, its successors or assigns, shall not assign any rights under this Contract nor allow same to be assigned by operation of law without express written approval of the Owner. Charter may not assign any Right to Entry, any part thereof, or any right or privilege connected therewith, or to allow any other individual, group, or Charter to occupy the Park or any part thereof without prior written consent from the Owner.
8. **LIMITATION OF LIABILITY.** CHARTER MAKES NO REPRESENTATIONS OR WARRANTIES—EXPRESS OR IMPLIED— REGARDING THE EQUIPMENT OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL CHARTER OR OWNER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.
9. **INDEMNIFICATION.** Each Party will indemnify, defend, and hold the other harmless from and against all liability, loss, costs, damages, (together with reasonable attorneys' fees associated therewith) arising out of any third party claims resulting from the negligence, willful misconduct of a Party, or breach of this Agreement (including but not limited to any representation or warranty hereunder). The Owner's indemnity and liability obligations hereunder shall be subject to Owner's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract 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. Nothing herein shall constitute a waiver of the Owner's sovereign immunity.



10. **JURY TRIAL WAIVER AND VENUE.** IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, THE PARTIES EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY. Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in court of competent jurisdiction in and for Brevard County, Florida.
11. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the Parties with respect to, and supersedes all prior agreements, promises and understandings, whether oral or written, with respect to, the subject matter contained herein. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both Parties.
12. **SEVERABILITY.** If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable term or provision had not been contained herein.
13. **NO WAIVER.** Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.
14. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.
15. **ATTORNEY'S FEES AND GOVERNING LAW.** 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. This Contract shall be deemed to have been executed and entered into within the State of Florida and this Contract, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
16. **TERMINATION.** This Contract may be terminated by either party upon sixty days written notice to the other party. Upon termination of this Contract, Charter shall have thirty days from the date of termination within which to remove any personal property or equipment from any Park. Any personal property or equipment not removed within said thirty-day period shall become the property of the Owner.

CHARTER: (type in Charter Legal Entity Name below)

By: Charter Communications, Inc., Its Manager

OverSigned for:

By: Amanda Pope

(Signature)

Printed Name: Amanda Pope

Title: Dir, Sales Business Accounts

Date: 6/2/2021

OWNER: (type in Owner/Legal Entity Name below)

Brevard County Board of County Commissioners

By:

(Signature)

Printed Name: Rita Pritchett

Title: Chair, Brevard County Board of County Commissioners

Date: 7/6/2021

ATTEST:

Rachel M. Sadoff, Clerk

"EXHIBIT A"

LEGAL DESCRIPTION

SHEET 1 OF 2

SECTION 24, TOWNSHIP 27 SOUTH, RANGE 37 EAST

NOT VALID WITHOUT THE SKETCH
ON SHEET 2 OF 2

PARENT PARCEL ID: 27-37-24-00-9

PURPOSE: UTILITY EASEMENT

LEGAL DESCRIPTION:

An easement 10.00 feet in width lying within Government Lot 6, Section 24, Township 27 South, Range 37 East, Brevard County, Florida, the centerline of said easement being more particularly described as follows:

Commence at the intersection of the South line of said Government Lot 6 with the Easterly right of way line of State Road A-1-A, said point also being the Northwest corner of Lot 1, Block 1, Ocean Shore Subdivision according to the Plat thereof as recorded in Plat Book 9, Page 6 of the Public Records of Brevard County, Florida; Thence N14°26'26"W along said Easterly right of way line a distance of 414.75 feet to the Point of Beginning of the centerline of the 10.00 foot easement described herein; Thence N77°47'22"E, along said centerline, a distance of 235.49 feet to the terminus of said centerline.

Easement is bound on the West by the Easterly right of way line of State Road A-1-A. Containing 2355 square feet, more or less.

SURVEYORS NOTES:

- 1.) BEARINGS BASED ON THE ASSUMPTION THAT THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD A-1-A BEARS N14°26'26"W. ALSO RELATIVE TO THE BREVARD COUNTY COASTAL CONSTRUCTION CONTROL LINE.



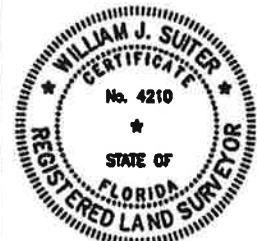
WSUITER@ATT.NET WJSUITER.COM

PREPARED FOR: BREVARD COUNTY BOARD
OF COUNTY COMMISSIONERS

WHEN PRINTED THIS DOCUMENT IS NOT CONSIDERED
SIGNED AND SEALED. THIS SURVEY IS ONLY VALID
WHEN THE SIGNATURE CAN BE VERIFIED ON THE
ELECTRONIC DOCUMENTS ONLY. THIS DOCUMENT
HAS BEEN DIGITALLY SIGNED AND SEALED.

PROFESSIONAL SURVEYOR AND MAPPER IN
RESPONSIBLE CHARGE
WILLIAM J. SUITER
FLORIDA CERTIFICATE NO. 4210
CERTIFICATE OF AUTHORIZATION #LB 5419

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SURVEYING, INC. ALL RIGHTS RESERVED



PREPARED BY: WILLIAM J. SUITER LAND SURVEYING, INC.

ADDRESS: 1849 CANOVA STREET SE, PALM BAY, FLORIDA 32909

PHONE: (321) 728-0553

DATE: 3-24-2021

SECTION 24, TOWNSHIP 27 SOUTH, RANGE 37 EAST

DRAWING NO. 21-116

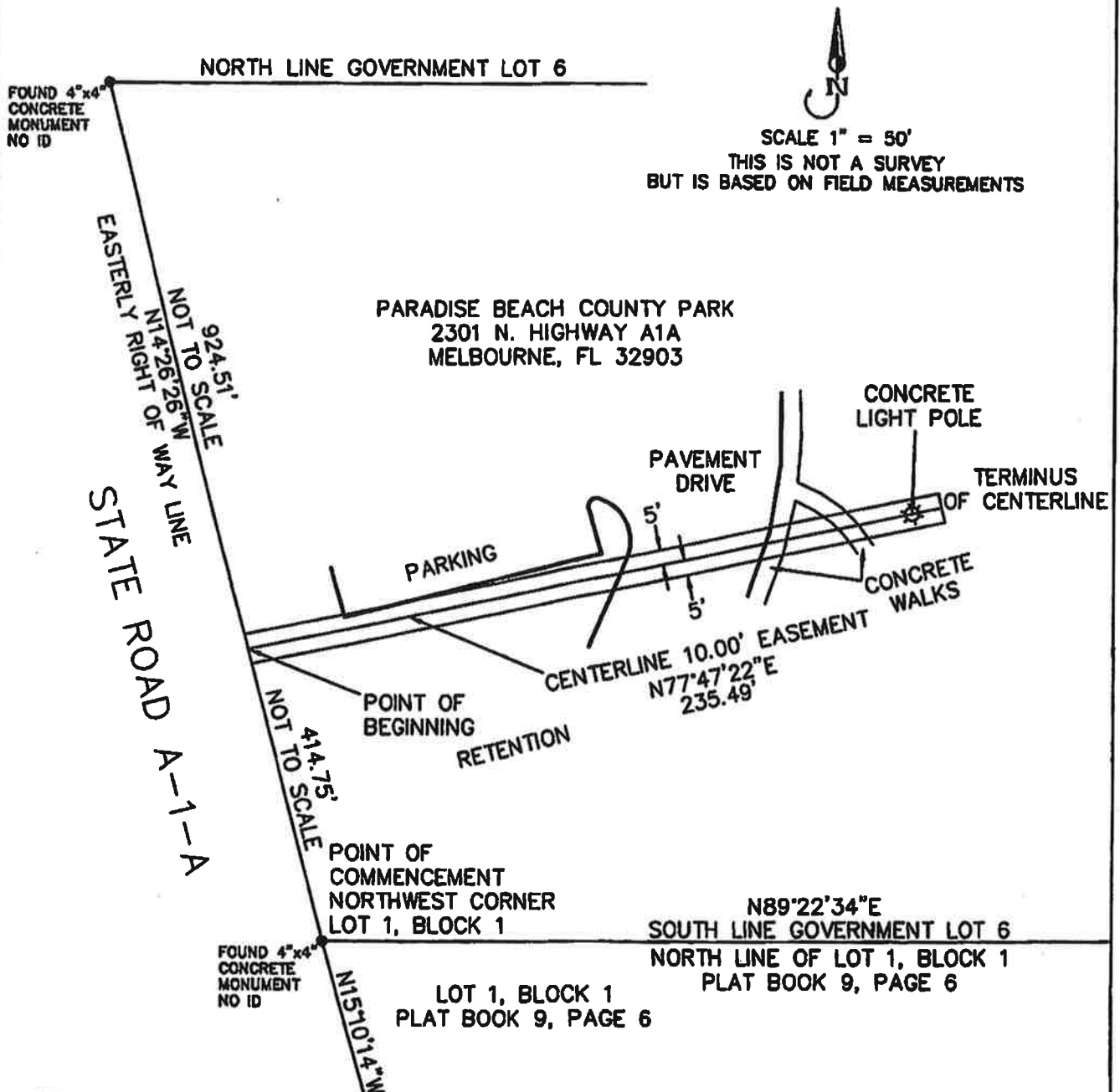
"EXHIBIT A"

SKETCH OF DESCRIPTION

SECTION 24, TOWNSHIP 27 SOUTH, RANGE 37 EAST

SHEET 2 OF 2

NOT VALID WITHOUT THE LEGAL
DESCRIPTION ON SHEET 1 OF 2



WJS WILLIAM J. SUITER
LAND SURVEYING, INC.

WSUITER@ATT.NET WJSUITER.COM

PROJECT NO.: 21-116

PREPARED BY: WILLIAM J. SUITER
LAND SURVEYING, INC.

SECTION 24, TOWNSHIP 27 SOUTH, RANGE 37 EAST

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Charter Communications Operating, LLC		2. Amount:
3. Fund/Account #: N/A	4. Department Name: Parks & Recreation	
5. Contract Description: Right of Entry and Easement Request - Howard Futch Memorial Park		
6. Contract Monitor: Steve Kimball		8. Contract Type: USE AGREEMENT <input type="button" value="v"/>
7. Dept/Office Director: Mary Ellen Donner		
9. Type of Procurement: Other <input type="button" value="v"/>		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Adams, MistyS

Digitally signed by Adams, MistyS
Date: 2021.04.16 12:07:42 -04'00'

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2021.04.16 12:28:30 -04'00'

County Attorney

☒
☐

Rogers, Robin

Digitally signed by Rogers, Robin
Date: 2021.06.10 11:04:47 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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