

Meeting Date
1-27-15



AGENDA	
Section	Consent
Item No.	II.B.3

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Festival License Agreement for 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 License Agreement for Wickham Park with Runaway Country, LLC.

Summary Explanation & Background:

Gary McCann, Executive Director for Runaway Country LLC, has operated an annual multi-day Music Festival at Wickham Park since 2011. The 5th annual Festival dates for 2015 are March 20-22, with preparation scheduled for March 2-18, and clean-up scheduled for March 23-27. Runaway Country is the nation's first major touring event of each new year, focusing on major country music artists. The Festival was conceived and developed as a Brevard County tourism attraction and draws fans from 39 states, 10 countries and virtually every zip code in Florida. It is also recognized as the Southeast's largest gathering of country music stars in any one location. The attendance and the estimated Brevard County economic impact have grown from 12,000/\$1.9 million in 2011 to 35,000/\$5.8 million in 2014. South Area Parks Operations has received the following revenue from previous Runaway Country Festivals: 2011/\$28,000, 2012/\$32,500, 2013/\$35,000, and 2014/\$37,500.

The Festival License Agreement for Wickham Park stipulates: the dates and area of use of the park, payment to the County, duties of both Runaway and the County, Indemnification and Insurance requirements, and other standard County contract clauses.

Approval by the Board and 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: South Area Parks Operations will receive \$38,750 in revenue to be used toward operation, maintenance, and/or improvements at Wickham Park.

Clerk to the Board Instructions:

Exhibits Attached: Festival License Agreement for Wickham Park, Exhibit A, Exhibit B

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 <i>Venetta Valdengo</i>	Jack Masson 633-2046 Jack.Masson@brevardparks.com <i>Jack Masson</i>					



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

Telephone: (321) 637-2001
Fax: (321) 264-6972

January 28, 2015

MEMORANDUM

TO: Jack Masson, Parks and Recreation Director

RE: Item II.B.3., Festival License Agreement with Runaway Country, LLC, for Music Festival at Wickham Park

The Board of County Commissioners, in regular session on January 27, 2015, executed Festival License Agreement for Wickham Park with Runaway Country, LLC. Enclosed is the original License Agreement.

Upon execution by Runaway Country, LLC, and Frese, Hansen, Anderson, Anderson, Hueston & Whitehead, P.A., please return the original 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 Etheridge, Deputy Clerk

/kg

Encl. (1)

cc: Contracts Administration
Finance
Budget

213 Originals To: South
cc: File

RECEIVED

FEB 4 2015

PARKS&RECS-ADMIN
FEB32015AM8:53

FESTIVAL LICENSE AGREEMENT for Wickham Park

THIS FESTIVAL LICENSE AGREEMENT (this "Agreement"), is made and entered into this 27 day of January, 2015, 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") (Hereinafter individually referred to as a "Party," and collectively as the "Parties").

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 **Exhibit "A"** attached hereto and incorporated herein by this reference; and

WHEREAS, Runaway's operation of the Festival will mutually benefit the Parties and the residents and 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 hereof and shall continue for a period of one (1) year thereafter.
2. **Use of Park**: The County hereby grants to Runaway the right and license to occupy and use the Park to operate the Festival during the dates specified in **Exhibit "B"** attached hereto and incorporated herein by this reference, (the "Festival Dates"), subject to the terms and conditions set forth in this Agreement. Runaway shall not make any unlawful, immoral, improper, or offensive use of the Park nor allow the Park to be utilized for any purpose other than as set forth in this Agreement.

(a) Campers who reside in the Park for at least thirty (30) consecutive days prior to the commencement of the Festival Dates, and who are utilizing one (1) of the forty-five (45) full hook-up campsites within the three (3) campground areas (known as A, B and C), are permitted to remain at the abovementioned campground areas through the Festival Dates, subject to their payment of the regular campsite rental rates to the County.

(b) If any of the aforementioned forty-five (45) full hook-up campsites that are reserved by the County shall become available prior to or during the Festival Dates, Runaway shall have the first option of purchasing such sites at the regular daily rates charged by the County.

3. **Payment:**

(a) Runaway shall pay to the County the sum of Thirty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$38,750.00) (the "License Fee") for the license to use the Park_during the Festival Dates. Runaway shall pay a portion of the License Fee as a deposit (the "Deposit") for the license granted herein, in the amount of Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00), which shall be due on execution hereof and be payable to the County in the care of the South Area Parks Operations Manager (the "Parks Manager"). The Deposit is non-refundable.

(b) In the event the Festival fails to occur as a result of the willful acts or omissions of Runaway, and notice of the nonoccurrence of the Festival is not received by the County on or before February 1, 2015, the County shall retain the Deposit and, in addition, Runaway shall pay to the County an early termination fee in the amount of Six Thousand Five Hundred and 00/100 Dollars (\$6,500) (the "Termination Fee"), and the Parties shall be relieved of any further liabilities or obligations hereunder. The remaining balance of the License Fee in the amount of Thirty-Five Thousand Two Hundred Fifty and 00/100 Dollars (\$35,250.00) and the Damage Deposit (as hereinafter provided) shall be due no later than March 25, 2015 and shall be payable to the County in the care of the Parks Manager.

(c) (i) Simultaneously with the payment of the remaining balance of the License Fee as provided in Subparagraph 3(b) hereinabove, Runaway shall pay to the law firm of Frese, Hansen, Anderson, Anderson, Heuston & Whitehead, P.A. (the "Escrow Agent"), the sum of Five Thousand and 00/100 Dollars (\$5,000.00) (the "Damage Deposit"). The Damage Deposit shall be held by the Escrow Agent in a non-interest bearing account and shall be used to secure Runaway's obligations hereunder and to reimburse the County for any damage to the County's property occurring as a result of the Festival. Payment and acceptance of the Damage Deposit by the County shall not constitute an agreement to limit damages to the amount of the Damage Deposit, and Runaway shall remain obligated to pay all damages incurred by the County regardless of whether they exceed the amount of the Damage Deposit. The portion of the Damage Deposit for which a claim has not been made by the County as of April 10, 2015, shall be refunded by the Escrow Agent to Runaway.

(ii) The Escrow Agent, by acceptance of the Damage Deposit, agrees to hold such funds and to distribute the same only in accordance with the terms and conditions of this Agreement. If any dispute or difference arises between the County and Runaway or if the Escrow Agent is in doubt as to

its duties or liabilities under the provisions of this Agreement, it shall deposit such funds in the Court Registry of the Circuit Court of Brevard County, Florida, pursuant to interpleader procedure, whereupon after notifying the Parties hereto of such action and paying all costs imposed by the Clerk as a result of such deposit, all liability on the part of the Escrow Agent shall terminate except to the extent of accounting for any monies theretofore delivered out of escrow.

(iii) The Parties agree that the status of Runaway's counsel as the Escrow Agent under this Agreement does not disqualify such law firm from representing Runaway in connection with this Agreement and in any dispute that may arise between the Parties concerning this Agreement, including, any dispute or controversy with respect to the Damage Deposit.

(d) Runaway's failure to adhere to the specified deadlines for clean-up of and property removal from the Park, will result in Runaway being charged a \$500 per day late fee until compliance is achieved. The late fee is intended to compensate the County for damages the County will sustain as a result of the failure of Runaway to complete all clean-up, to remove all property relating to the Festival, and to complete other miscellaneous tasks related thereto. This amount represents compensation for additional costs the County shall incur or suffer as a result of Runaway's failure to vacate the Park and otherwise comply with the terms of this Agreement by the deadline specified. Such costs 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 shifts, insurance, loss of revenue, etc. The late fee represents agreed upon liquidated damages and shall not be construed as a penalty on Runaway.

4. **Duties of Runaway:** Runaway hereby agrees as follows:

(a) To meet with the appropriate governmental agencies and their representatives, including, the Park Supervisor, Park Superintendent, Area Manager, and City of Melbourne to discuss and obtain approval for all plans relating to operation of the Festival at the Park, including, temporary construction permits and approvals for set-up and clean-up of the Park.

(b) That equipment for the Festival shall not be placed on site at the Park before March 2, 2015.

(c) That on or before March 27, 2015, the Park shall be returned to substantially the same condition as found on March 1, 2015, ordinary wear and tear and items that do not unreasonably interfere with the public's use of the Park excepted.

(d) To adhere to all rules with respect to use of the Park, including, but not limited to, ensuring that the Festival's main stage music shall cease no later than 10:30 P.M.; and, that no amplified event music shall be played between the hours of 12:30 A.M. and 7:00 A.M. Runaway shall be responsible

for obtaining any and all required waivers from the City of Melbourne for the playing of amplified event music.

- (e) To keep the Park clean and free of litter and rubbish, and any obstacles on thoroughfares that are generated by the Festival.
- (f) To provide additional dumpsters as reasonably 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 use its best efforts to maintain good public relations, and to conduct the Festival in a manner which is courteous and fair to the public, and to be reasonably responsive to customer's requests and complaints.
- (i) To use the Park 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.
- (j) To use reasonable efforts to ensure that all Festival attendees adhere to all posted rules and regulations imposed on visitors to the Park.
- (k) To provide adequate security, police, and emergency medical services as it relates to the attendance reasonably expected at the Festival per the regulatory permit.
- (l) To make any improvements required for the Festival at its own expense and to obtain prior written approval for such improvements from of the Brevard County Parks and Recreation Director, or his designee, and all applicable regulatory agencies.
- (m) To reasonably cooperate with County officials in all matters relating to the Festival and use of the Park.

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

- (a) To provide Runaway, including its sponsors, employees, agents, suppliers and vendors, reasonable access to the Park from the dates of March 2 through March 18, 2015 as required for Festival set-up; and from the dates of March 23 through March 27, 2015 as reasonably required for break-down and clean-up.
- (b) To provide Runaway with such access to the Park from the dates of March 19 through March 22, 2015, so as to allow Runaway to check-in attendees and to conduct the Festival as provided herein.
- (c) To provide normally-scheduled maintenance and sufficient park ranger staff for the completion of routine County job functions at the Park.

- (d) To provide janitorial supplies and maintenance for Campgrounds A, B, and C restroom facilities.
- (e) To provide to Runaway a list of the forty-five (45) campsites that will be utilized by the County during the Festival Dates no later than March 1, 2015.
- (f) To appoint the Parks Manager to administer the County's interest in this Agreement.

6. **Indemnification and Insurance:**

(a) Runaway agrees that it will indemnify and hold harmless the County from any and all claims, damages, losses, expenses (including, reasonable attorney's fees and costs), 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 Runaway's use of the Park, its management or control of the Festival or any equipment used in connection therewith. Runaway agrees that 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; provided, that (i) the County gives Runaway prompt written notice of any such action or proceeding; (ii) Runaway is given sole control over the defense of any such action or proceeding at its own expense; (iii) the County provides reasonable assistance to Runaway in its conduct of any such defense; and (iv) the County does not enter into any settlement agreement with respect to such action or proceeding unless such settlement agreement is approved by Runaway in writing, or Runaway fails to defend such action or proceeding as required hereinabove. It is agreed by the Parties that specific consideration has been paid under this Agreement for this hold harmless provision.

(b) Runaway agrees to provide and maintain at all times during the Festival Dates, 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 causes of action whatsoever for injuries to persons and damage to property relating to its use or occupation of the Park, and its management or control of the Festival. Such policies of insurance shall insure Runaway in the amount of 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.

(c) A certificate of insurance indicating that Runaway has insurance coverage in accordance with the requirements of this Agreement shall be furnished by Runaway to the Parks Manager no later than three (3) days prior to Festival set-up date.

(d) Runaway shall require a certificate of insurance from all vendors operating at the Park during the Festival naming the County as an "additional insured." Such certificates shall be furnished by Runaway to the Parks Manager no later than three (3) days prior to Festival set-up date.

(e) All personal property housed or placed in the Park 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; other than the willful acts or omissions, or gross negligence of the County. 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, which consent shall not be unreasonably denied.

8. **Termination:** Either Party may immediately terminate this Agreement in the event that the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after written notice specifying the nature of such breach. Upon termination of this Agreement, Runaway shall have fifteen (15) days within which to remove any of its personal property located in the Park. Any such 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 specifically for the benefit and use of the County under this Agreement shall be subject to copyright by 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:** All notices required under this Agreement shall be given to the County and the Parks Manager in writing by mailing same, postage prepaid, to the **South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida 32935**, and all notices to Runaway

shall be given in writing by mailing same, 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 for damages, or to enforce or construe the terms of this Agreement, or a Party's rights or obligations hereunder, each Party in such action shall bear its own attorney's fees and costs.

13. **Unauthorized Alien Workers**: The 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 grounds for unilateral cancellation of this 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 by 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 County, the County retains the right, on written notice to Runaway, to immediately resume occupation, management, and maintenance of the Park, to use the Park 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 the Park 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; provided, however, that in doing so, the County shall not unreasonably interfere with the Festival and Runaway's use of the Park.

21. **Force Majeure.** A Party shall not be deemed to be in default of this Agreement if prevented from performing any obligation hereunder for any reason beyond its control, including, but not limited to, Acts of God, war, civil commotion, fire, flood or casualty, , materials or equipment, unforeseeable governmental regulations or restrictions, or unusually severe weather. In any such case, the Parties agree to negotiate in good faith with the goal of preserving this Agreement and the respective rights and obligations of the Parties hereunder, to the extent reasonably practicable. It is agreed that financial inability shall not be a matter beyond a Party's reasonable control.

22. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and there are no agreements or understandings between the Parties other than those set forth herein or executed simultaneously or in connection herewith.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

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

ATTEST:

Scott Ellis, Clerk

BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS:

Robin Fisher, Chairman

As Approved By The Board On 1-27-2015

WITNESS:

RUNAWAY COUNTRY, LLC:

By: _____
Gary McCann, Manager

Reviewed for legal form and content:

Assistant County Attorney

ESCROW AGENT'S ACCEPTANCE

The undersigned agrees to act as the Escrow Agent in accordance with the foregoing Agreement and acknowledges receipt of the Damage Deposit described hereinabove

Witness:

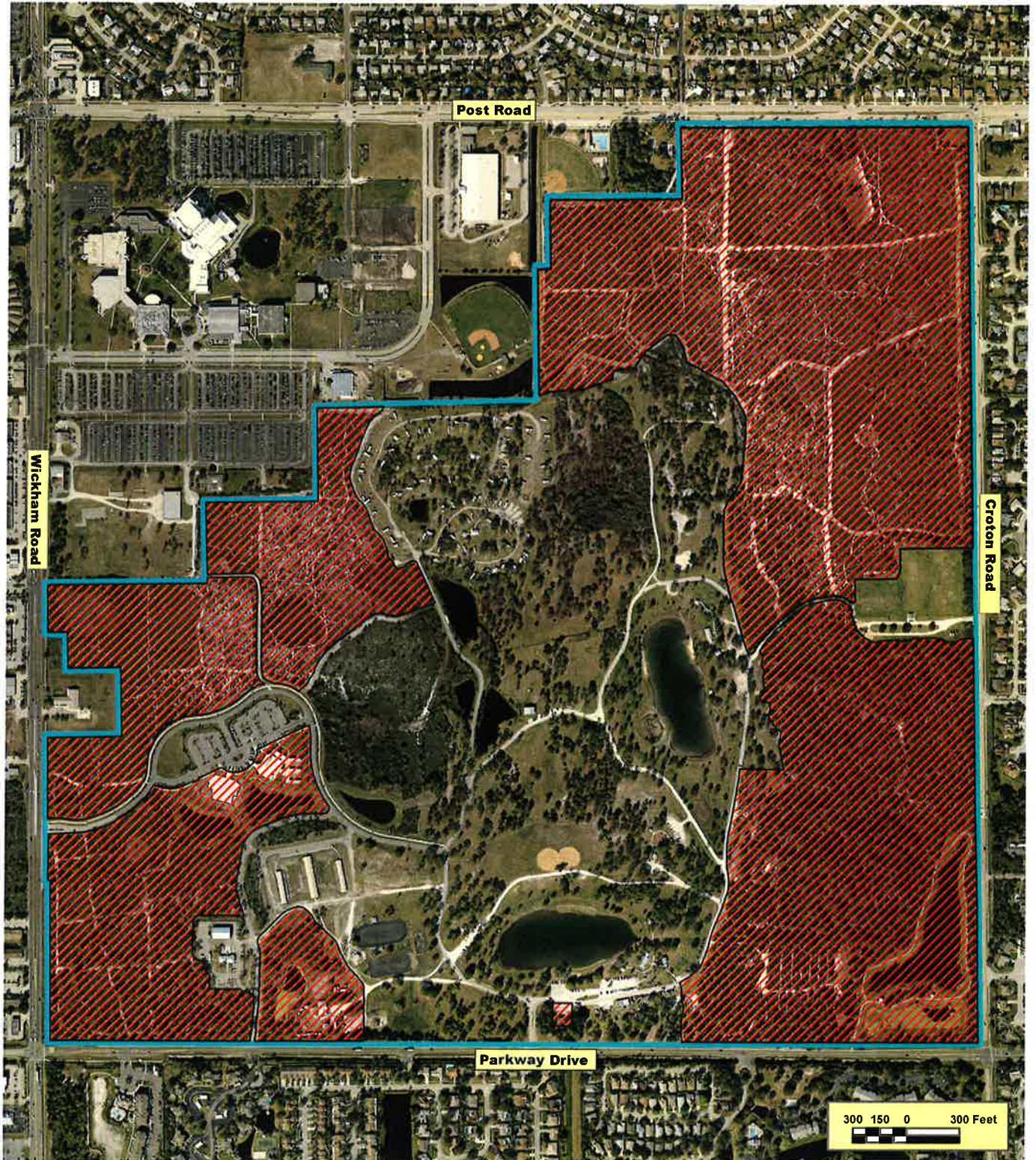
Print Name: Helen Seaman

Helen Seaman

FRESE, HANSEN, ANDERSON, ANDERSON,
HEUSTON & WHITEHEAD, P.A.

By: _____
J. Patrick Anderson, Vice President

EXHIBIT "A"



AREAS TO BE EXCLUDED FROM FESTIVAL

2013 Aerial

Wickham Park

BREVARD COUNTY PARKS & RECREATION



01/14/15

Exhibit B

Festival Dates

2015

Deposit: \$3,500.00

Insurance for Festival and all Vendors due: February 27, 2015

Damage Deposit and Remaining Balance Due: March 9, 2015

Festival Check-In Date: March 19, 2015 - March 22, 2015

Set-Up Dates: March 2, 2015 - March 18, 2015

Festival Dates: March 20, 2015 - March 22, 2015

Clean-Up Dates: March 23, 2015 - March 27, 2015

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Runaway Country, LLC	
2. Fund/Account #:	3. Division Name: Parks and Recreation Department -- South Area
4. Contract Description: Music Festival	
5. Contract Monitor: Helen Seaman	6. Mail Stop #: 82
7. Dept./Office Director: Jack Masson	8. Class Code:
ACTION DATE: <i>Upon Receipt</i>	ACTION REQUIREMENT: <i>Approval Signature</i>

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	<i>JM</i>	<i>1/14/15</i>
Risk Management	<input checked="" type="checkbox"/>	_____	<i>JLJ</i>	<i>1/14/2015</i>
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.*