



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9.

2/9/2021

Subject:

Approval, Re: Property Access License Contract with Jesse O. Duenas-Fay Lake Wilderness Park (District 1)

Fiscal Impact:

There is no fiscal impact

Dept/Office:

Parks and Recreation Department

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Parks and Recreation Director to execute a Property Access License Contract and any renewals with Jesse O. Duenas.

Summary Explanation and Background:

Fay Lake Wilderness Park is located at 6300 Fay Boulevard in Port St. John, FL. Mr. Duenas owns property located at 6030 Baltimore Avenue which abuts the fire road of the Park.

The Property Access License Contract will grant temporary access to Mr. Duenas to remove an existing storage unit and replace it with a new unit on his property. The existing fire road at the Park can be used for this access.

The term of the Property Access License Contract is three months with two renewal options of three months but not to exceed nine months.

Clerk to the Board Instructions:

Please send the Clerk to the Board Memo to Parks and Recreation Administration 321-633-2046

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor:		2. Amount:	
3. Fund/Account #:		4. Department Name:	
5. Contract Description:			
6. Contract Monitor:		8. Contract Type:	
7. Dept/Office Director:			
9. Type of Procurement:			

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

Purchasing

Risk Management

County Attorney

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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



February 10, 2021

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.9., Property Access License Contract with Jesse O. Duenas for Fay Lake Wilderness Park

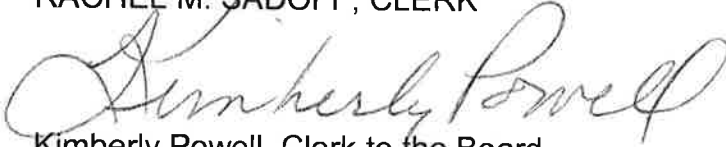
The Board of County Commissioners, in regular session on February 9, 2021, approved and authorized you to execute the Property Access License Contract and any renewals with Jesse O. Duenas for the Fay Lake Wilderness Park.

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

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds



Brevard County
Parks and Recreation Department



Property Access

License Contract

Jesse O. Duenas

Fay Lake Wilderness Park
6300 Fay Boulevard, Cocoa, Florida 32927

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Property Access License Contract



This Contract, made by and between the **Board of County Commissioners of Brevard County, Florida**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **Jesse O. Duenas** hereinafter referred to as "Licensee".

Witnesseth

Whereas, the County is the owner, lessee, or authorized administrator of certain real property located in Brevard County, Florida, commonly known as **Fay Lake Wilderness Park**, located at 6300 Fay Boulevard, Cocoa, Florida 32927 hereinafter referred to as "Park" (attached hereto as Exhibit A) and

Whereas, the Licensee is the owner of certain real property located at 6030 Baltimore Avenue, Cocoa, Florida 32927 hereinafter referred to as "Property" (attached hereto as Exhibit B); and

Whereas, the Licensee has expressed a need for temporary access to the Park; and

Whereas, a fire line exists at the Park which allows Licensee access to the Property.

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

Recitals. The foregoing recitals are true and are incorporated herein by reference.

Section 1. License.

The County hereby grants a temporary, non-exclusive, personal and revocable License to the Licensee at the Park solely for the purpose of allowing Licensee ingress and egress to the Property by use of the fire line for the term of this Contract. This License shall not be interpreted or construed as granting the right to the ingress, egress, or use of the fire line by any other person, third party, or property owner other than Licensee, except for invited guests of the Licensee. Licensee shall be present at any and at all times 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. This Contract does not operate or confer on, or vest in, the Licensee any title, interest or estate in the Park. This License may be revoked at any time.

Section 2. Term.

This Contract shall be effective from the date of the last signature for a period of three months. Licensee may request an extension of this Contract for an additional three-month term and two

subsequent extensions for additional three-month terms upon written notice to the County received at least thirty days prior to the date of termination of the current term.

Section 3. Americans with Disabilities Act Compliance.

The County and Licensee shall conform to current requirements of the Americans with Disabilities Act in the performance of this Contract, and shall not cause or place on the Park any condition causing the Park to become non-compliant. The parties shall work together to remedy any known violations of the Americans with Disabilities Act that may occur.

Section 4. Alterations, Changes, and Additions.

No structural changes, alteration or additions shall be made by the Licensee to the Park without the prior written consent of the county.

Section 5. Assignment.

This Contract may not be assigned, transferred, conveyed or devised to any other person, corporation, partnership or other entity.

Section 6. 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.

Section 7. Construction of Contract.

The parties hereby acknowledge that they have fully reviewed this Contract and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

Section 8. Counterparts.

This Contract 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 e-mail and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original Contract bearing actual original signatures and initials within a reasonable period of time following the execution of this contract.

Section 9. Entire Contract.

This Contract shall constitute the entire Contract between the Parties with respect to the matters addressed herein and supersedes any prior Contracts or understandings. Any prior understanding or representation of any kind, relating to the matters addressed herein, preceding the date of this Contract shall not be binding upon either party and is expressly terminated by the execution of this Contract.

Section 10. E-Verify.

- A.** The County shall not enter into, or renew, a contract for goods or services with a Licensee that is not enrolled in E-Verify. Any Licensee providing goods or services to the County shall be contractually required to utilize E-Verify to confirm the employment eligibility of any employee hired during the contract term.
- B.** The County shall verify the Licensee's participation in E-verify Program by confirming their enrollment on the Department of Homeland Security E-verify Website. Licensee's whose participation cannot be verified on the Department of Homeland Security's E-verify Website shall provide acceptable evidence of their enrollment prior to award and the execution of a contract. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- C.** The Licensee shall expressly require any subcontractor performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- D.** The Licensee must meet this requirement, unless:
 - 1.) the contract is solely for goods-based procurement where no services are provided; or
 - 2.) where the requirement is waived by the Board of County Commissioners;
 - 3.) the contract is being executed with a Sole Proprietor who does not hire employees and therefore not required to file a Department of Homeland Security Form I-9 (which is the necessary document used for performing an E-Verify search); or
 - 4.) the contract is being executed with a company based outside of the United States of America and does not have a corporation or office located within the United States of America and does not employ any United States of America citizens.
- E.** The Licensee's compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.

Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

Section 11. Florida Public Records Law.

Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Licensee of the request and the Licensee shall provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the County can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. The Licensee may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated below.

If Licensee fails to provide the requested public records to the County within a reasonable time, the Licensee may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties pursuant to Section 119.10, Florida Statutes. Licensee's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Licensee claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information.

Should the County face any legal action to enforce inspection or production of the records within the Licensee's possession and control, the Licensee agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Licensee shall hire and compensate attorneys to represent the Licensee and County in defending such action. The Licensee shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

If the Licensee has questions regarding the application of Chapter 119, Florida Statutes, to the Licensee's duty to provide Public Records relating to this contract, contact the custodian of Public Records: Misty Adams, Administrative Assistant, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940; Email the Records Custodian; (321) 633-2046.

Section 12. Governing Law.

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.

Section 13. Illegal, Unlawful or Improper Use.

The Licensee 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 that hereinabove set forth. Failure of the Licensee to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Contract.

Section 14. Indemnification and Insurance.

The Licensee and their contractor(s) shall indemnify and hold harmless the County, and its agents, officers, and employees from any and all liability, claims, damages, losses, and expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of, connected with or resulting from the Licensee or Licensee's employees, Licensees contractor(s) and subcontractors, agents, representatives or volunteer's use, occupation, management or control of the Park or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Licensee or their contractor(s),

or anyone acting directly or indirectly for the Licensee, or anyone for show acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder. Licensee 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 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. Licensee acknowledges 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 Contract.

The Licensee or their contractor(s) agree that they will, at their own expense, defend any and all actions, suits or proceedings which may be brought against the County arising from the Licensee's or their contractor(s) activities and 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 Contract for this indemnification and hold harmless provision.

The Licensee or their contractor(s) agree to provide and maintain at all times during the term of this Contract, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Licensee or their contractor(s) against any and all claims, demands, and causes of action whatsoever for injuries received and damage to property and any improvements thereon by the Licensee. Such policies of insurance shall insure that either the Licensee or their contractor(s) provide coverage in the amount of not less than One Million Dollars per occurrence to cover any and all claims and costs arising in connection with any and all liability claims arising in connection with any particular accident or occurrence, and fire damage liability coverage with limits sufficient to provide for the replacement cost of any structure damaged due to fire. Said insurance policies shall provide that Brevard County Board of County Commissioners is named as an additional insured and shall be entitled to thirty-day prior notice of any changes or cancellation in said policies.

The Licensee shall notify the County immediately in writing and by phone or email of any potentially hazardous condition existing on or about the premises utilized in conjunction of said activities. The Licensee or their contractor(s) shall provide the described insurance on policies and with insurers acceptable to the County. These insurance requirements shall not relieve or limit the liability of the Licensee. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Licensee or their contractor(s) interests or liabilities, but are merely minimums. A certificate of insurance indicating that the Licensee or their contractor(s) have coverage in accordance with the requirements of this Contract and shall be furnished by the Licensee to North Area Parks Operations, 475 North Williams Avenue, Titusville, Florida 32796 prior to execution of this Contract.

Section 15. Interest in the Property.

This Contract is the grant of a personal right to the Licensee. This Contract shall not be construed to create any real property interest in the County's Property.

Section 16. 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 Park, including the fire line, and shall have no duty to keep the Park in a condition passable by the Licensee. Licensee shall not undertake any maintenance or improvement of the Park without the expressed written permission of the County, which permission may be withheld at the County's sole discretion. Licensee shall have the right, after obtaining written approval from the County, to maintain but not improve the fire line. Maintenance includes trimming of trees and brush that restrict travel along the fire line and removal of the tire ruts and tire tracks so as to keep the fire line in condition to support travel on it. No maintenance may be conducted outside the boundaries of the fire line.

Section 17. Modification.

No modification of this Contract shall be binding on the County or the Licensee unless reduced to writing and signed by a duly authorized representative of County and the Licensee.

Section 18. Notice.

Notice under this Contract shall be given to the County by mailing written notice postage prepaid, to: North Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32935 and notice shall be given to the Licensee by mailing written notice; postage prepaid, to Jesse O. Duenas, 6030 Baltimore Avenue, Cocoa, Florida 32927.

Section 19. Recording.

This Contract shall not be recorded in the official records of Brevard County, Florida, by either party.

Section 20. Revocation.

This Contract may be revoked or terminated by the County upon fifteen days written notice to the Licensee, upon one or more of the following occurrences:

- A. Licensee 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 Licensee's Property, Licensee agrees to make a condition of the sale that the new owner applies thirty days prior to the transfer of title to the County for a Property Access License Contract, which shall not be unreasonably withheld by the County. In the event the County has reason not to enter into a contract with the new owner, the County will notify Licensee within this thirty-day period of the reasons why a Property Access License Contract should not be issued to the prospective new owner.
- B. Licensee obtains alternate access for ingress and egress to Licensee's Property.
- C. Licensee 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. Licensee Engages in any hunting activity at the Park.
- E. Licensee discharges any firearms on or across any portion of the Park.
- F. Licensee conducts any illegal or unauthorized activity at the Park.
- G. Licensee enters upon or conducts activity at the Park for uses other than use of the fire line for ingress and/or egress during the term of this Contract.
- H. Licensee violates any term, provision, or condition of this License Agreement.

If, in the sole discretion of the County, Licensee's continued use of the Park for the specific purposes outlined herein interfere with the County's management of the Park; the County has the discretion to provide alternate access for ingress and/or egress if possible.

Section 22. Responsibility.

The Licensee shall be responsible for abiding by the terms of this Contract. The Area Manager shall be responsible for assuring the terms of this Contract are enforced.

Section 23. Right of Entry by County.

The County or its agents may at any time enter in and on the referenced Park for the purpose of inspection of same and performing such other duties as are required by the terms of this Contract and the rules, regulations, ordinances and laws of any government body.

Section 24. Right to Audit Records.

In the performance of this Contract, the Licensee shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Licensee in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Licensee shall retain all documents, books and records for a period of five years after termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and chapter 119, Florida Statutes. All records or documents created by or provided to the Licensee by the County in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County.

The Licensee shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the Licensee does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the Licensee may transfer, at no cost to the County, all public records in possession of the Licensee. If the Licensee transfers all public records to the County upon termination of the Contract, the Licensee shall destroy any duplicate public records that are

exempt or confidential and exempt from public records disclosure requirements.

Section 25. Severability.

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

Section 26. Statutes, Laws, Rules and Regulations.

The Licensee's use of the Park will be in accordance with all applicable laws, rules, regulations, policies and procedures approved by the Department and/or the County including but not limited to: Department Policy PRP-1 Prohibiting Smoking at Brevard County Youth Athletic Facilities, PRD-4 Background Screening for Volunteers and Contracted Services, and prescribed safety rules and regulations. The County reserves the right to disapprove any and all programs held at the Park, which may be in conflict with the Department's and/or the County's Policies and Administrative Orders, and agrees to furnish the Licensee with a copy of such rules, regulations, policies, procedures, and amendments.

It shall be the Licensee's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.

Section 27. Termination.

This Contract may be terminated by either party upon thirty days written notice to the other party. Upon termination of this Contract, the Licensee shall have fifteen 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 fifteen-day period shall become the property of the County.

Section 28. Venue.

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, and any trial shall be non-jury.

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

Reviewed for legal form and content:

**Board of County Commissioners
of Brevard County, Florida**

Robin Rogers 12/15/2020
Robin B. Rogers
Assistant County Attorney

By: _____
Mary Ellen Donner, Date
Parks and Recreation Department Director

Licensee:

By: Jesse O. Duenas 1/4/2021
Jesse O. Duenas Date

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or
☐ online notarization, this _____ by Jesse O. Duenas. He/she is personally known to me or
has produced D.L. as identification.

[Notary Seal]

Notary Public



Lisa Marie Calderon
Commission # GG050324
Expires: Feb. 21, 2021
Bonded thru Aaron Notary

Lisa Marie Calderon

Name typed, printed or stamped

My Commission Expires: 2/21/2021

Exhibit A



Fay Lake Wilderness Park outlined in red.

6030 Baltimore Avenue outlined in yellow.

Exhibit B

Port St. John Unit Five

A Subdivision of Portions of Sections 214~28 South Range 35 East

A Re-subdivision of Portions of Map of Delspine Plat Book 2, PAGE 2

Brevard County, Florida

23 3521 JN 168 4 6300 Baltimore Avenue, Port St. John

Parcel ID# 23-35-28-JN-00168.0-0004.00

Lot 4, Block 168, PORT ST. JOHN UNIT – FIVE, according to the plat thereof recorded at Plat Book 22, Pages 46 through 50, Public Records of Brevard County, Florida