



AGENDA REPORT
August 20, 2019

**Approval, Re: License Agreement-Chamberlain, Access across EEL
managed lands at Fox Lake Sanctuary**

SUBJECT:

**Approval, Re: License Agreement for access across Environmentally
Endangered Lands (EEL) Program managed lands at Fox Lake
Sanctuary – District 1**

FISCAL IMPACT:

There are no impacts to General Revenue Funds or EEL Program funds.

DEPT/OFFICE:

Parks and Recreation

REQUESTED ACTION:

It is requested that the Board of County Commissioners approve a License Agreement that allows Mr. Alex Chamberlain to access his property through the EEL Program managed Fox Lake Sanctuary.

SUMMARY EXPLANATION and BACKGROUND:

Mr. Chamberlain owns property that is adjacent to lands managed under the Environmentally Endangered Lands Program known as the Fox Lake Sanctuary. The Fox Lake Sanctuary is adjacent to Fox Lake Park. Mr. Chamberlain does not have legal access to his property and the License Agreement provides a mechanism for him to access his property through the Fox Lake Sanctuary via an existing fire line and trail.

This access currently provides the only physical access to Mr. Chamberlain's property. The License Agreement, in addition to providing access for Mr. Chamberlain, also ensures that the access is not detrimental to the ecological health of the sanctuary or restrictive to management operations. This access does not conflict with the proposed Management Plan for this site.

The License Agreement does not provide the legal access easement that would be required if Mr. Chamberlain wanted to obtain a building permit for his property. The License Agreement does not prevent Mr. Chamberlain from pursuing a formal ingress /

egress easement from the County in the future.

CLERK TO THE BOARD INSTRUCTIONS:

Please return Board Memo and executed License Agreement to the EEL Program.

ATTACHMENTS:

Description

- ▣ Chamberlain License Agreement
- ▣ Contract Review Approval AO29

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: CHAMBERLAIN, ALEX	
2. Fund/Account #: 1610 300114	3. Department Name: P&R-EEL Program
4. Contract Description: CHAMBERLAIN LICENSE AGREEMENT	
5. Contract Monitor: Jenny Warner	7. Contract Type:
6. Dept/Office Director: Mary Ellen Donner	USE AGREEMENT

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Warner, Jenny	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jenny Ashbury	08/07/2019
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	8.13.2019
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	8/7/19

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	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract 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 (Initial Contract Form with County Attorney/ Risk Management 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"/>



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

August 21, 2019

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.6., Approval for License Agreement Chamberlin, Access across EEL Managed Lands at Fox Lake Sanctuary

The Board of County Commissioners, in regular session on August 20, 2019, approved a Property Access License Agreement that allows Mr. Alex Chamberlain to access his property through the EEL Program managed Fox Lake Sanctuary. Enclosed is a fully-executed Property Access License Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: EEL Program Manager

PROPERTY ACCESS LICENSE AGREEMENT

THIS AGREEMENT is made this 20 day of August, 2019, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "County"), and ALEX CHAMBERLAIN (hereafter referred to as "Licensee").

WHEREAS, the County owns certain real property identified in Exhibit "A" to this Agreement, commonly known as Fox Lake Sanctuary (hereafter referred to as the "County's Property"); and

WHEREAS, Licensee is the owner of certain property identified in Exhibit "B" (hereafter referred to as the "Licensee's Property"), which is adjacent to and/or surrounded by the County's Property; and

WHEREAS, as highlighted in Exhibit "A", a trail (fire line) exists on the County's Property, which starts at the westernmost terminus of Fox Lake Road, runs west along the public right-of-way of the eastern boundary of the nature sanctuary, turns south along the fire line to the southern boundary of the nature sanctuary, turns west along the fire line to the Licensee's Property (hereafter referred to as the "TRAIL"); and

WHEREAS, Licensee has expressed an interest in use of the TRAIL identified in Exhibit "A" for access to Licensee's Property.

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. **Recitals.** The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by this reference.
2. **Property.** This Agreement relates to the land owned by the County and identified in the legal description set forth in Exhibit "B" to this Agreement, which is attached hereto and incorporated herein by this reference.
3. **License.** The County hereby grants the Licensee a non-exclusive and revocable license (hereafter referred to as the "License") solely for the purpose of allowing Licensee ingress and egress to Licensee's Property by use of the TRAIL highlighted in in red in Exhibit "A". This License shall not be interpreted or construed to grant any right of ingress over, egress over or use of the TRAIL by any other person, third party, or property owner other than the Licensee, unless a lease has been executed between the Licensee and a third party for use of Licensee's Property whereby the Licensee indemnifies the County from any and all claims relating to the use of the TRAIL. A written request can be made to the County seeking said individuals/entities be allowed to utilize the TRAIL, subject to the terms and conditions outlined herein and County staff review and approval. This Agreement shall extend to include the invited guests of the Licensee. Licensee agrees to restrict any and all guests to the terms of this Agreement. Licensee agrees to maintain strict control over the gate key (if applicable) and will explicitly not loan or give a key to any other person without written approval from County staff. 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.

4. **Right of Access.** The Licensee shall be entitled to enter the Property and use the TRAIL for such ingress and egress purposes, subject to and in accordance with the County's rules and regulations governing such access, as well as all applicable laws and regulations promulgated by the State of Florida or its agencies. The County shall allow the Licensee access to the TRAIL, including any gate restricting access to the TRAIL. Neither this License nor the Licensee's use of the TRAIL for ingress and egress to Licensee's Property shall constitute a basis for obtaining a building permit for the construction of any improvements on Licensee's Property. This Agreement is intended solely for the expedited resolution of ingress and egress to Licensee's Property, and in no way interferes with Licensee's right to apply for and acquire a legal easement over the Property at some date in the future. In no way does this Agreement extinguish any existing legal right Licensee currently has concerning access to Licensee's Property.

5. **No Other Activity.** The Licensee may not enter upon or engage in any other activity upon the Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the Property. Licensee is hereby granted access to Licensee's Property via motorized truck or car (No ATV's). Licensee further agrees to close any gate used by the Licensee to enter or exit the property.

6. **Authority; Maintenance.** The County represents that it has the authority to grant the license outlined herein. The County shall not bear any responsibility for maintenance of the TRAIL or Licensee's Property, and shall have no duty to keep the TRAIL in a condition passable by Licensee. Licensee shall not undertake any maintenance or improvement of the Property without the expressed written permission of the County, which permission may not be unreasonably withheld. Licensee shall have the right, after obtaining written approval from County staff, to maintain but not improve the TRAIL depicted on "Exhibit A". Maintenance includes, but is not limited to, trimming of trees and brush that restrict travel along the TRAIL and removal of tire ruts and tire tracks so as to keep the TRAIL in good condition to allow travel thereon. No maintenance may be conducted outside of the boundaries of the TRAIL. Licensee shall be responsible for any repairs that are deemed necessary by the County in order to return the TRAIL to its original state. All gate keys must be returned to the County upon termination of this Agreement.

7. **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 ten (10) years 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 term that the License is revoked for any of the reasons recited in Paragraph 8 below.

8. **Revocation.** This License may be revoked or terminated by the County before the expiration of the Term with thirty (30) days' written notice to the Licensee for convenience or if the Licensee:

- a. Transfers ownership of all or any part of Licensee's Property. In the event of transfer of ownership of all or any part of Licensee's Property, Licensee agrees to make a condition of the sale that the new owner applies 60 days prior to the transfer of title to the County for an access license, which shall not be unreasonably withheld by the County. In the event the County has reason not to enter into an agreement with the new owner, the County will notify Licensee

- within this 60 day period of the reasons why a Property Access Management Agreement should not be issued to the prospective new owner;
- b. Obtains alternate access for ingress and egress to Licensee's Property;
 - c. Violates any law, rule, regulation or management plan applicable to the Licensee, as promulgated by the State of Florida or any of its agencies; the County; or any other governmental agency with jurisdiction;
 - d. Engages in any hunting activity on the County's Property;
 - e. Discharges any firearms on or across any portion of the County's Property;
 - f. Conducts any illegal activity on the County's Property;
 - g. Enters upon or conducts activity upon the County's Property for uses other than use of the TRAIL for ingress and egress, unless such entry or activity is otherwise allowed under Paragraph 4 above;
 - h. Violates any term, provision or condition of this License Agreement; or,
 - i. If, in the sole discretion of the Board of County Commissioners, Licensee's continued use of the TRAIL for ingress or egress interferes with the County's management of the County's Property. If at the sole discretion of Board of County Commissioners, Licensee's continued use of this TRAIL for ingress and egress interferes with the County's management of the Property, alternate access for ingress and egress may be provided when agreeable to both parties.

9. **Indemnification.** Licensee agrees to indemnify, defend, and hold harmless the County, and its respective officers, directors, employees, and agents, from and against claims, liabilities, damages, and expenses, including, but not limited to, reasonable attorneys' fees, resulting from any and all claims arising out of this Agreement and the use of the TRAIL thereto. The County's liability obligations hereunder shall be subject to the common law 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 herein shall constitute a waiver of the County's sovereign immunity. Specific consideration has been given for this indemnification clause.

10. **No Recording.** This License shall not be recorded in the official records of Brevard County, Florida by either party.

11. **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 County's Property.

12. **Assignment.** This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity without prior written consent from the County.

13. **Acceptance.** This License Agreement constitutes the entire agreement between the County 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.

14. **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 a 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

15. **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 facsimile machine 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.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

ATTEST:

[Signature]
Scott Ellis, Clerk of Courts

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: [Signature]
Kristine Isnardi, Chair
As approved by the Board on: 8/20/19

Reviewed for legal form and content as approved by Brevard County Commission

[Signature] 6/4/19
Assistant County Attorney

WITNESS:

[Signature]
[Signature]

LICENSEE:

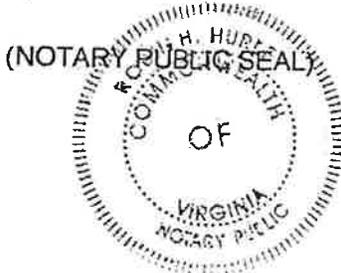
Alex S. Chamberlain

Date: 26 Jun 2019

STATE OF Virginia
COUNTY OF T. Crewell

The foregoing instrument was acknowledged before me this 26th day of June, 2019, by Alex S. Chamberlain, who is personally known to me or produced FL Driver's License #C516 0725 as identification.

[Signature]
Notary Public Expires 11-30-2020



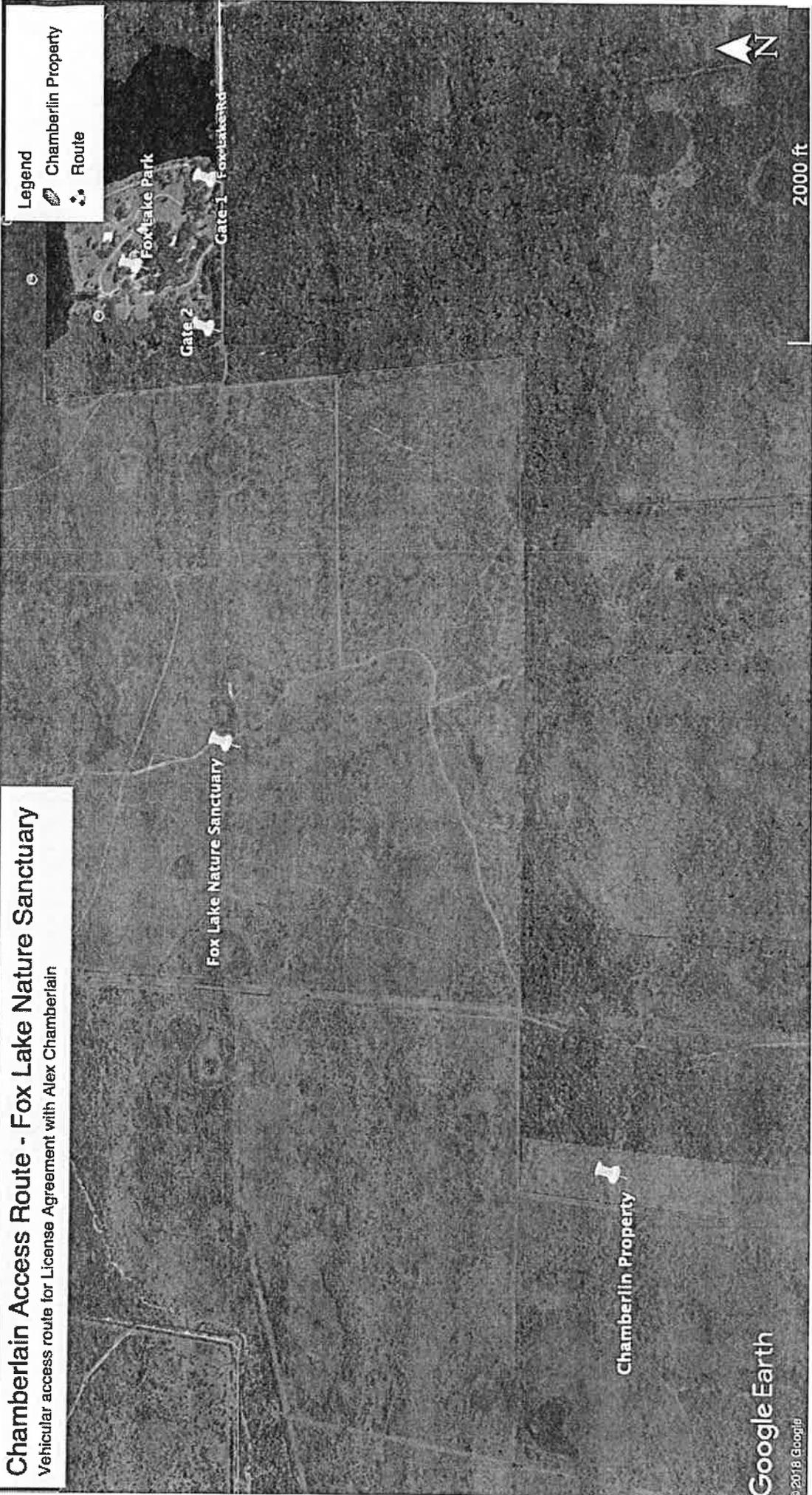
Robin H. Hurley
(Printed, Typed or Stamped Name of Notary Public)
Commission No.: 211156
My Commission Expires: 11-30-2020

Chamberlain Access Route - Fox Lake Nature Sanctuary

Vehicular access route for License Agreement with Alex Chamberlain

Legend

-  Chamberlain Property
-  Route



Fox Lake Park

Gate 2

Gate-1 Fox Lake Rd

Fox Lake Nature Sanctuary

Chamberlain Property

2000 ft

Google Earth

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