



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.15.

10/22/2019

Subject:

Approval, Re: License Agreement for access across Environmentally Endangered Lands (EEL) Program managed lands at Grant Flatwoods Sanctuary-District 3

Fiscal Impact:

There are no fiscal impacts to General Revenue Funds. There are no fiscal impacts to Environmentally Endangered Lands Program Funds.

Dept/Office:

Parks & Recreation/Environmentally Endangered Lands Program

Requested Action:

It is requested that the Board of County Commissioners approve a License Agreement that allows Mr. Briel to access his property through the EEL Program managed Grant Flatwoods Sanctuary.

Summary Explanation and Background:

Mr. Briel owns property that is adjacent to lands managed under the Environmentally Endangered Lands Program known as the Grant Flatwoods Sanctuary. Mr. Briel does not have physical access to his property and the License Agreement provides a mechanism for him to access his property through the Grant Flatwoods Sanctuary via the existing fire line and trail.

This access currently provides the only physical access to Mr. Briel's property. The License Agreement, in addition to providing access for Mr. Briel, 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. Briel wanted to obtain a building permit for his property. The License Agreement does not prevent Mr. Briel from pursuing a formal ingress/egress easement in the future.

Mr. Briel is an employee of the County. The County Attorney has reviewed the Agreement and is aware that it involves a County employee.

Clerk to the Board Instructions:

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

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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

| | |
|---------------------------------|----------------------------|
| 1. Contractor: | |
| 2. Fund/Account #: | 3. Department Name: |
| 4. Contract Description: | |
| 5. Contract Monitor: | 7. Contract Type: |
| 6. Dept/Office Director: | |

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

| <u>COUNTY OFFICE</u> | <u>APPROVAL</u> | | <u>SIGNATURE</u> | <u>DATE</u> |
|----------------------|-----------------|-----------|------------------|-------------|
| | <u>YES</u> | <u>NO</u> | | |
| User Agency | | | _____ | _____ |
| Risk Management | | | _____ | _____ |
| County Attorney | | | _____ | _____ |

SECTION III - REVIEW AND APPROVAL TO EXECUTE

| <u>COUNTY OFFICE</u> | <u>APPROVAL</u> | | <u>SIGNATURE</u> | <u>DATE</u> |
|----------------------|-----------------|-----------|---|-------------|
| | <u>YES</u> | <u>NO</u> | | |
| User Agency | | | Jenny Ashbury <small>Digital Signature: Jenny Ashbury DN: cn=Jenny Ashbury, o=Brevard County, ou=County Administration, email=jashbury@brevard.net, c=US Date: 2019.08.07 09:37:00-0400</small> | 08/07/2019 |
| Risk Management | | | _____ | _____ |
| County Attorney | | | Esse0550, Alexander <small>Digital Signature: Essee Alexander Date: 2019.08.09 09:05:34 -0400</small> | 08/09/2019 |

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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



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

October 23, 2019

M E M O R A N D U M

TO: Mike Knight, EEL Program Manager

RE: Item F.15., Approval of License Agreement for Access Across Environmentally Endangered Lands (EEL) Program Managed Lands at Grant Flatwoods Sanctuary

The Board of County Commissioners, in regular session on October 22, 2019, approved and authorized the Chair to execute a License Agreement that allows Jessie Briel to access his property through the EEL Program managed Grant Flatwoods Sanctuary. Enclosed is a fully-executed 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: Parks and Recreation Director

PROPERTY ACCESS LICENSE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2019, BY and BETWEEN the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "County") and Jesse Briel (hereafter referred to as "Licensee")

WHEREAS, the County owns and/or manages certain real property in Brevard County, Florida, as depicted in Exhibit "A", attached hereto and made a part of this Agreement by reference (hereafter referred to as the "Property"); and

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

WHEREAS, Licensee has expressed an interest in being able to access his privately owned property through the County owned Property by use of the right of way (hereafter referred to as the "R.O.W.") and access through County owned and/or managed parcels, as depicted in Exhibit "A".

NOW THEREFORE, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.

2. 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 (the "Property"), which "Exhibit B" is integral to and constitutes a part of this Agreement.

3. License. The County hereby grants the Licensee a non-exclusive, personal and revocable license (hereafter the "License") solely for the purpose of allowing Licensee ingress and egress to Licensee's Property by use of the trail highlighted in yellow on the aerial photograph attached as "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. This Property Access License Agreement shall extend to include invited guests of the licensee. Licensee shall accompany and be present with any and all guests that Licensee chooses to invite to the Licensee's property. 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 such key to any other person. 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 R.O.W. 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. County shall allow the Licensee access to the R.O.W., including any gate restricting access to the R.O.W. Neither this License nor the Licensee's use of the R.O.W. for ingress and egress to his lands shall constitute a basis for obtaining a building permit for the construction of any improvements on the Licensee's lands.

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 his 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 vehicle or car (no ATVs). 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 right to grant the license granted to the Licensee herein. The County shall not bear any responsibility for maintenance of the Property and shall have no duty to keep the Property 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 be withheld in the County's sole discretion. Licensee shall have the right, after obtaining written approval from the County's staff, to maintain but not improve the R.O.W. depicted on Exhibit A. Maintenance includes, trimming of trees and brush that restrict travel along the R.O.W. and removal of tire ruts and tire tracks so as to keep the R.O.W. in condition to travel on it. No maintenance may be conducted outside of the boundaries of the R.O.W.

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 current term that the License is revoked for any of the reasons recited in paragraph 8.

8. Revocation. This License may be revoked or terminated by the County before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee 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 a Property Access Management Agreement, 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 his Property;
- c. Violates any law, rule, regulation or management plan applicable to the Property, 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 if, in the sole discretion of the Board of County Commissioners, Licensee's continued use of the Property for ingress or egress interferes with the County's management of the 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, where existing and agreeable to both parties will be provided.

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 use of the County's Property therewith. 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.

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 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

COUNTY:
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: [Signature]
Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on: 10/22/19

Reviewed for legal form and content for the County

Assistant County Attorney

WITNESS:

LICENSEE:

STATE OF _____)

Date: _____

) ss.:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of _____, on behalf of the company. He/she is personally known to me and did not take an oath.

Notary Public

(NOTARY PUBLIC SEAL)

(Printed, Typed or Stamped Name of Notary Public)
Commission No.: _____
My Commission Expires: _____

Reviewed for legal form and content:

[Signature] 8/12/19

(Assistant) County Attorney

WITNESS:

LICENSEE:

Jessie Briel

STATE OF Florida)

Date: 4/22/19

) ss.:

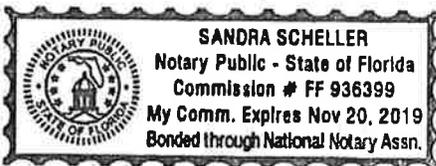
COUNTY OF Brevard)

The foregoing instrument was acknowledged before me this 6th day of Aug, 2018, by Jessie Briel as _____ of _____, on behalf of the company. she is personally known to me and did not take an oath.

Sandra Scheller

Notary Public

(NOTARY PUBLIC SEAL)



Sandra Scheller

(Printed, Typed or Stamped Name of

Notary Public)

Commission No.: 936399

My Commission Expires: 11-20-2019

Grant Flatwoods Access Map



Legend

- Approved Access Road
- Briel
- EEL Managed

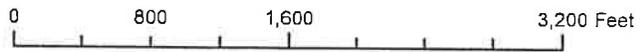


Exhibit B: Legal Description

EXHIBIT "A"

Parcel 1:

The East $\frac{1}{4}$ of Section 1, Township 30 South, Range 37 East, Brevard County, Florida.

Parcel 2:

The Northeast $\frac{1}{4}$ of Section 12, Township 30 South, Range 37 East, Brevard County, Florida, lying North of the centerline of the San Sebastian Drainage Canal.

Parcel 3:

All that part of Section 5, Township 30 South, Range 38 East, lying West and North of the following described line: Beginning at a concrete monument marking the Northeast corner of said Section 5, said point being the Point of Beginning of the following described line; thence run South $0^{\circ} 02' 45''$ West, a distance of 50 feet; thence run South $89^{\circ} 35' 43''$ West, a distance of 348.32 feet; thence run South $0^{\circ} 02' 45''$ West, a distance of 1,250.56 feet; thence run South $89^{\circ} 35' 53''$ West, a distance of 303.68 feet; thence run South $0^{\circ} 02' 45''$ West, a distance of 405.56 feet; thence run South $89^{\circ} 35' 43''$ West, a distance of 25.63 feet; thence run South $82^{\circ} 46' 01''$ West, a distance of 626.42 feet; thence run South $43^{\circ} 05' 05''$ West, a distance of 636.75 feet; thence run South $73^{\circ} 08' 55''$ West, a distance of 30.75 feet; thence run North $33^{\circ} 57' 15''$ West, a distance of 357.73 feet; thence run South $89^{\circ} 38' 29''$ West, a distance of 781.47 feet; thence run South $0^{\circ} 21' 31''$ East, a distance of 2,619.94 feet; thence run South $89^{\circ} 26' 1''$ West, a distance of 1,415.07 feet; thence run South $0^{\circ} 01' 12''$ West, a distance of 660.15 feet; thence run South $89^{\circ} 25' 17''$ West, a distance of 1,138.69 feet to the Westerly line of the South West $\frac{1}{4}$ of Section 5 and the terminus of the described line.

BOCM APPROVED
By LS Date 1.17.01

Parcel 4:

The West ½ of Section 6, Township 30 South, Range 38 East, Brevard County, Florida.

Parcel 5:

The North ½ of Section 7, Township 30 South, Range 38 East, lying North of the centerline of the San Sebastian Drainage Canal, LESS the East 50 feet thereof.

Exhibit A.tif 1700x2200 pixels

5/21/08 4:24 PM

**EXHIBIT "A"
LEGAL DESCRIPTION**

PARCEL ONE:

Southeast one-quarter of Section 12, except the West 18 acres; and the Northeast one-quarter of Section 13, except the West 37 acres, all in Township 30 South, Range 37 East, Brevard County, Florida, less and except the right-of-way for Micco Road.

PARCEL TWO:

North one-half of Section 18 North of FLEMING GRANT LINE; Southwest one-quarter of Section 8, North of FLEMING GRANT LINE; and the South one-half of Section 7, all in Township 30 South, Range 38 East, Brevard County, Florida, less and except the right-of-way for Micco Road.

PARCEL THREE:

The portion of the Northeast one-quarter of Section 12, Township 30 South, Range 37 East plus the North one-half of Section 7, Township 30 South, Range 38 East; plus the Northwest one-quarter of Section 8, Township 30 South, Range 38 East, Brevard County, Florida, lying South of the centerline of the San Sebastian Drainage Canal.