

AGENDA	
Section	Consent
Item No.	II B 3

Meeting Date
August 22, 2017



AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Amendment to Agreement RE: MB Dogs, Inc., d/b/a Billies
DEPT/OFFICE:	Community Services Group / Parks and Recreation Department

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Amendment.

Summary Explanation & Background:

On October 12, 2010 the Board of County Commissioners approved an Agreement with MB Dogs, Inc., d/b/a Billies to provide concession services at Spessard Holland North Park. The Agreement was for a period of five (5) years with an option of two (2) additional terms of thirty-six (36) months each based on mutual agreement by the parties.

The concessionaire has successfully completed his initial five (5) year term and is currently in the first thirty-six (36) month renewal which is due to expire on May 26, 2019. He has expressed his desire, based on personal reasons, to discontinue operations.

Approval of the Amendment to authorize assignment of the Agreement will allow a new vendor be reassigned to this agreement for the remainder of the current term and with mutual agreement for the second thirty-six (36) month renewal. The Parks and Recreation Director shall use due diligence in reviewing all potential assignees prior to approval of any assignment by the concessionaire.

The Amendment also includes updated standard contract language for three (3) additional provisions – Right to Audit, Public Records and Background Screening. The remainder of the terms and conditions of the contract will remain the same.

The Fiscal Impact will result in revenue in the amount of \$89,360 to South Area Parks Operation.

Contact: Greg Minor, 255-4400
greg.minor@brevardfl.gov

Clerk to the Board Instructions:

Exhibits Attached

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager, John Denninghoff	Mary Ellen. Donner, Parks & Recreation Director MaryEllen.Donner@brevardfl.gov; 633-2046
Frank Abbate, County Manager	Interim Assistant County Manager Jim Liesenfelt	<i>Mary Ellen Donner</i>



file

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 23, 2017

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director Attn: Greg Minor

RE: Item II.B.3., Amendment to Agreement with MB Dogs, Inc. d/b/a Billies to Reassign New Vendor to Provide Concession Services at Spessard Holland North Park

The Board of County Commissioners, in regular session on August 22, 2017, executed Amendment to Agreement with MB Dogs, Inc. d/b/a Billies, to reassign new vendor to provide concession services at Spessard Holland North Park. Enclosed is the executed Amendment.

Upon execution by MB Dogs, Inc. d/b/a Billies, please return a fully-executed Amendment to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration
Finance
Budget



AMENDMENT TO AGREEMENT

THIS AGREEMENT made and entered into this 22nd day of August, 2017 by and between **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as the "County," and **MB DOGS, INC. D/B/A BILLIES**, (hereinafter referred to as "Concessionaire").

WITNESSETH:

WHEREAS, the parties hereto have previously entered into an Agreement on February 9, 2011, and;

WHEREAS, said Agreement was renewed on April 11, 2016, under Contract No. 1593 ("Agreement"); and

WHEREAS, the parties hereto agree to amend Agreement as provided for herein;
NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree, as follows:

1. The section titled, "Assignment," shall be amended to read as follows:

Concessionaire may not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the Parks and Recreation Director. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

2. The section titled "Operation and Maintenance", specifically section a., shall be amended to read as follows:

Ensure that the Concessionaire's employees, contractors, subcontractors, agents, representatives and volunteers and other persons providing services at the Park are screened at a High Level (Level I). The Concessionaire shall be responsible for, and pay the cost of, having background screening checks performed on all of the Concessionaire's employees, contractors, subcontractors, agents, representatives and volunteers.

The Concessionaire shall not allow any employees, contractors, subcontractors, agents, representatives or volunteers to work unsupervised with at risk populations prior to such person successfully completing a High Level (Level I) background screening. The Concessionaire shall be responsible for

providing all needed personal identifying information necessary to perform the background screening(s) required to the Department for review/approval and further action by the Director or designee.

The Director may deny the Concessionaire the ability to utilize a staff member, volunteer or any other person providing a service at the Park based on the results of the background screening, at the Director's discretion. The Director shall abide by Brevard County's policy, attached hereto as **Exhibit "A"** to the Agreement on background screening in determining if a person shall be disqualified from working/volunteering at the Complex.

Upon completion of the initial background screening, a re-screening at the same Level will occur at a minimum of every five (5) years.

High Level (Level 1) Background screening includes the following:

- Clerk E-Facts – www.brevardclerk.us
- Fingerprinting (FDLE and National FBI Criminal check through VECHS)
- Department of Juvenile Justice check on individuals under the age of 18 when applicable and allowed in lieu of fingerprinting
- National Sex Offender Public Website – www.nsopw.gov
- Reference Checks
- Prior employment check
- Education/Licensing verification (case-by-case)
- Driver's license check (case-by-case)
- Drug Testing (case-by-case)

3. The section titled "Accounting Procedures and Reports", shall be amended to read as follows:

Right to Audit Records.

All sales shall be registered on a cash register. Daily cash register tapes shall be dated and kept as a permanent record. The cash register shall be the responsibility of the Concessionaire. The County shall inspect and approve the cash register for accountability purposes. Concessionaire shall cooperate with and provide the County, or its duly authorized representative, with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.

In the performance of this Agreement, the Concessionaire shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Concessionaire in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County. The Concessionaire shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, 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 Concessionaire by the County in connection with this Agreement 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 County and its auditors shall be entitled to audit the books and records of the Concessionaire to the extent that such books and records relate to the performance of this Agreement. If accounting discrepancies are found, the cost of any such audit shall be borne by the Concessionaire.

The Concessionaire 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 Agreement and following termination of the Agreement if the Instructor does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, the Concessionaire may transfer, at no cost to the County, all public records in possession of the Concessionaire. If the Concessionaire transfers all public records to the County upon termination of the Agreement, the Instructor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

4. The section titled "Audit", shall be amended to read as follows:

Florida Public Records Law. Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Concessionaire of the request and the Contractor must provide the records to the county or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so the County can comply with the requirements of Sections 119.07. The Concessionaire 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 bellows.

If the Concessionaire fails to provide the requested public records to the County within a reasonable time, the Concessionaire may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. The Concessionaire's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.

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

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS – Melissa Renninger at (321) 633-2046 or at melissa.renninger@brevardfl.gov.

5. All terms and conditions of the Agreement which is incorporated herein and reflected in **Exhibit A**, not inconsistent with the provisions of the Amendment to the Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first above written.

ATTEST:



Scott Ellis, Clerk of Court

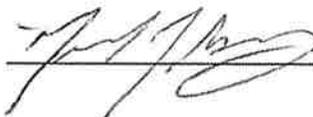
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Curt Smith, Chair

As approved by the Board on August 22, 2017.

WITNESS:

 (B. + L.)

MB DOGS, INC. D/B/A BILLIES

By:  Date: 8-30-2017

Bruce Black, President

Reviewed for Legal Form and Content



Assistant County Attorney

Exhibit A

AGREEMENT

THIS AGREEMENT made and entered into this 9th day of February, 2011, by and between MB DOGS, INC. d/b/a BILLIES, hereinafter referred to as "Concessionaire," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision to the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the County operates a recreational complex known as Spessard Holland North Beach Park, hereinafter referred to as the "Park", for the purpose of providing beach access for the general public; and

WHEREAS, the County has negotiated with Concessionaire for the operation of a Food and Beverage concession located at Spessard Holland North Beach Park; and

WHEREAS, operation of said Concession will mutually benefit the parties and the residents of Brevard County, Florida; and

WHEREAS, the County may provide parks, preserves, recreation areas, and other recreational facilities pursuant to provisions of Section 125.01 (1) (f), Florida Statutes.

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

1. **TERM AND RENEWAL.** The Concessionaire is hereby authorized to operate a Food and Beverage Concession located at Spessard Holland North Beach Park, a public beach park, hereinafter referred to as "Concession", for the period of five (5) years, commencing upon the date the certificate of occupancy is issued for the Concession. The County shall have the option to renew this Agreement for two (2) additional terms of thirty-six (36) months each based on mutual agreement by the parties, upon request of the Concessionaire received ninety (90) days prior to termination of the current term. Additionally this Agreement may be renewed, under the terms described within, by the County Manager or designee if specifically delegated this authority by the Board of County Commissioners.
2. **PAYMENTS.** Concessionaire shall pay monthly payments to the Board of County Commissioners of Brevard County, Florida, on the first (1st) day of each month to the South Area Operations Manager as follows. Payment shall commence on day the certification of occupancy is issued, with the first month's rent prorated.
 - a. There shall be two rental periods, adjusted seasonally. The months of April - October shall be defined as "Summer Season" and the months of November - March shall be defined as "Winter Season." The Concessionaire shall pay the County as follows:

Summer Season Rate: \$1,565/month Winter Season Rate: \$1,165/month
 - b. The Concessionaire, in transmitting payments to the County hereunder, shall make all checks payable to Brevard County Board of County Commissioners, in care of South Area Parks Operations Manager, 1515 Sarno Road, Building B, 2nd Floor, Melbourne Florida 32935.
3. **ACCOUNTING PROCEDURES AND REPORTS.** All sales shall be registered on a cash register. Daily cash register tapes shall be dated and kept as a permanent record. The cash register shall be the responsibility of the Concessionaire. The County shall inspect and approve the cash register for accountability purposes. Concessionaire shall cooperate with and provide the County, or its duly authorized representative, with any additional information or reports

concerning its activities, income, revenues, expenses, and disbursements when so requested. The Concessionaire shall keep and maintain accurate books of account for this operation, in compliance with current general accounting standards.

4. **AUDIT.** Daily cash register receipts and books of account shall be available for inspection by the Parks and Recreation Director, or his designee, upon request with three (3) days notice. All transactions of the Concessionaire shall be subject to audit at any time. The County and its auditors shall be entitled to audit the books and records of the Concessionaire to the extent that such books and records relate to the performance of this Agreement. The Concessionaire shall maintain such records and accounts, including property, personnel, and financial records, as are deemed necessary by the County and its auditors to insure proper accounting for all funds. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Concessionaire for a period of three (3) years from the date of final payment under this Agreement, unless a shorter period is otherwise authorized in writing. If accounting discrepancies are found, the cost of any such audit shall be borne by the Concessionaire. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provision of the Florida Public Records Act, Chapter 119, Florida Statutes. Sales tax reports made to the State of Florida will be provided to the County as prepared upon request.

All records or documents created by Concessionaire, or provided to Concessionaire by the County in connection with the activities or services provided by Concessionaire under the terms of this Agreement are public records and Concessionaire agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

5. **COPYRIGHT.** No reports, data, programs or other material produced, in whole or in part for the benefit and use of the County, under this Agreement, shall be subject to copyright by Concessionaire in the United States or any other Country.

6. **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.

7. **OPERATION AND MAINTENANCE.** Concessionaire shall furnish the following merchandise and services at Spessard Holland North Beach Park for the needs and convenience of the public.

The Concessionaire shall:

- a. Hire personnel of high moral character who are personable and who meet the criteria of Department of Health for personal hygiene and practices as related to food handling. Concession staff shall maintain good public relations as relates to a family-oriented atmosphere for the public, Brevard County and the Concessionaire. The highest level of customer relations shall be in effect. The Concessionaire and all employees will be subject to a Level III Background Check, at the Concessionaire's expense, per Brevard County AO-26 "Background Investigation Checks", Attachment "A" attached hereto and made a part hereof by this reference, and Brevard County Parks and Recreation Procedure PRD-4, Attachment "B", attached hereto and made a part hereof by this reference. A copy of background investigation checks shall be provided to the South Area Parks Operations Manager.

- b. Keep buildings and immediate premises clean and orderly in accordance with the State of Florida Department of Business and Professional Regulation, the County Health Department and any applicable laws or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions maintained on the premises. Environmental Health inspections/reviews may be conducted.
- c. Provide all janitorial services and maintenance to the interior and exterior of the Concession, including rest rooms.
- d. Provide and adequately offer the public a satisfactory Concession operation consistent with good food and beverage business practices and management. The Concessionaire shall maintain a level of public relations and customer service that promotes a highly favorable atmosphere and respond to all customer complaints received by the Concessionaire, and/or the County.
- e. Keep the Concessionaire service and seating area, tables, chairs, counters, and floors, stain free and provide continuous removal of debris, rubbish or litter. All aspects of cleanliness in the Concessionaire's area of operations including food preparation, tables, chairs, walls, floors, and removal of all debris. There shall be full compliance with the State of Florida Department of Business and Professional Regulation, County Health Department and other applicable laws or ordinances. Final determination in this matter shall rest with the County.
- f. Keep all advertisements in the Concession area in good taste commensurate with acceptable family-oriented environments. Advertising, such as business cards and signs, of other businesses not related to the park Concession operation is prohibited.
- g. Explore various means of marketing with creative menu items, specials and promotions. The Concessionaire shall offer pre-prepared sandwiches and quick-prep food items that can be picked up by the public.
- h. Maintain a sufficient inventory of all menu items sufficient to satisfy the demands and needs of the public.
- i. Insure that the South Area Operations Manager is provided a current menu schedule documenting all fees and charges. All fees and charges shall be competitive in nature and will not exceed the average retail prices of the same or comparable items charged by commercial establishments within Brevard County, Florida, as determined in the sole discretion of the County.
- j. Secure and maintain all licenses and/or permits required and pay when due all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of this Agreement and to otherwise comply with all applicable laws, ordinances, rules, fire codes, regulations or policies established by the County or any local, state, or federal governmental unit or authority. Concessionaire shall provide written evidence to the South Area Operations Manager of current satisfactory health inspections at all times.
- k. Maintain a "Non-Smoking" policy within the service and seating areas.

- I. Cooperate fully with County officials in all matters relating to the Concession, the public, and the Park operations.
- m. The payment or repairs of all natural gas or equipment used in the operation of the services shall be provided by the Concessionaire, including the cost of natural or propane gas used for the operation of food service.
- n. Pay all utilities, including electrical, water and sewer services, for the Concession operation.
- o. Provide all electrical and plumbing associated with the Concession operation. Concessionaire will adhere to any and all electrical conservation policies established by the County. Telephone and internet are the Concessionaire's responsibility.
- p. Provide the security of the Concession area; all security and fire alarm monitoring; and Ansul inspections as required by the Fire Inspector.
- q. Provide appropriate trash containers for use in conjunction with the operation of the concession. The Concessionaire shall ensure that all trash and garbage is placed in the dumpster, and that the area around the dumpster does not become littered with the trash or garbage generated by the Concession's operations. Trash containers located in view of the public shall be kept clean and stain free.
- r. Install and maintain at its expense all required equipment, including refrigeration equipment, stoves, grills, deep fat fryers, microwave ovens, sinks (if applicable), garbage disposals, ice machines, and associated food and beverage preparation equipment as needed to operate this facility, including customer seating and tables. This is to include any required safety or fire prevention equipment necessary for proper operation. Where the facility is not ventilated to handle or accommodate deep fat fryers, it is the responsibility of the Concessionaire to provide for such ventilation.

Within thirty (30) days after execution of this Agreement, the South Area Operations Manager and Concessionaire shall agree upon an itemized list of fixtures, equipment, etc. to be located in the Concession area. The list will indicate which such items remain the property of the County and which such items may be removed by the Concessionaire at the end or termination of the agreement in accordance with the terms of paragraph 13. Prior to any items being added by the Concessionaire, the Concessionaire shall obtain the approval of the South Area Operations Manager, and the parties shall amend said itemized list. The South Area Operations Manager has the authority, in the interest of fairness, to allow the Concessionaire to remove items on the original or amended property list, which items are designated as the County's property. In the event the Concessionaire terminates or breaches the Agreement prior to its expiration date the Concessionaire shall be responsible for all costs incurred by the Concessionaire and the County as a result of that early termination or breach.

- s. Subject to the discretion of the South Area Operations Manager, the Concessionaire will operate pursuant to the following hours of operations: Winter Season – open 6:30 A.M., close 5:30 P.M. Summer Season – open 6:30 A.M., close 6:30 P.M. This schedule of hours of operation shall be in the best interests of meeting the needs of the public. The Concessionaire may request changes of this schedule, subject to the approval of the South Area Operations Manager. The Concessionaire shall post the schedule at all times in full view of the public.

- t. Visit the site in the presence of the South Area Parks Operations Manager prior to execution of this Agreement in order to become familiar with the facility.
- u. Accept major credit and debit cards (VISA, Master Card, etc). The Concessionaire shall pay all costs associated with these forms of payment.
- v. Provide a cash bond in the amount of ONE THOUSAND DOLLARS (\$1,000.00), to be conditioned upon the faithful performance of all the provisions herein set forth. The cash bond shall be posted with the County at time of execution of this Agreement.

8. **COUNTY OBLIGATIONS.** The County shall:

- a. Provide for water and sewer services connections, lines and the like for the Concession. The Concessionaire will be responsible for payment of all utilities in connection with the Concession operation.
- b. Take appropriate measures to minimize damage when severe weather or other dangerous conditions are expected. Provide maintenance of the exterior of the facility and normal building maintenance of the facility not associated with the Concession.
- c. Provide the Concessionaire with copies of "Compliments, Concerns, Evaluation Cards" submitted by customers.
- d. Change existing locks and provide two set of keys to the Concessionaire.

9. **IMPROVEMENTS.** The Concessionaire agrees that all requests for improvements will be submitted, in writing, for prior approval, to the South Area Operations Manager, the Brevard County Zoning Division and if necessary, the Brevard County Community Health Service Division, or any other governmental agency whose approval is needed. Concessionaire agrees that any and all improvements once approved, will be at the expense of Concessionaire.

It is hereby mutually agreed and understood that all fixtures permanently attached to the rental property hereto shall likewise become and remain the property of the County. At the time that the County approves the improvements, the County and the Concessionaire shall agree as to whether the improvements are fixtures, which shall remain the County's property at the end of this Agreement, or any extension of it.

The Concessionaire shall ensure that any contractor which the Concessionaire may hire to perform any construction, renovation, or repairs to the facility, shall not be entitled to file any liens, mechanic's or otherwise, against the facility involved or any County property to secure the contractor's interests or payments. Any contract which the Concessionaire signs or executes with a contractor shall include a provision which requires the contractor to waive the right to file any such liens against County property and a provision which requires the contractor to include the same waiver by any subcontractor which the contractor may hire in an agreement/contract the contractor executes with the subcontractor.

10. **INDEMNIFICATION AND INSURANCE.** The Concessionaire shall indemnify and hold harmless the County from any and all liability claims, damages, losses, expenses, (including attorney's fees), proceedings, and causes of action of every kind and nature, arising out of or in connection with the use, occupation, management, or control of the Concession, or any

improvements thereon, or the furniture, furnishings, equipment and fixtures used in connection with the Concession. The Concessionaire shall, at its own expense, defend any and all actions, suits, or proceedings, which may be brought against the County in connection with the Concession. The Concessionaire shall satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceeding. The parties agree that specific consideration has been paid for this hold harmless/indemnification agreement.

The Concessionaire shall provide and maintain at all times during the term of this Agreement, without cost or expense to the County, general liability insurance insuring the County against any and all claims, demands, or causes of action for injuries received or damage to property relating to use, occupation, management or control of the Concession or improvement thereon in the amount of One Millions Dollars (\$1,000,000) per accident for bodily injury, One Million Dollars (\$1,000,000) product liability, One Million Dollars (\$1,000,000) property damage, and Two-Hundred Thousand Dollars (\$200,000) fire damage liability. Said insurance policies shall provide that the County shall be entitled to thirty (30) days prior written notice of any changes or cancellation in such policies.

The Concessionaire shall notify the County immediately, in writing, of any potentially hazardous condition existing on or about the Concession building.

A certificate of insurance indicating that the Concessionaire has coverage in accordance with the requirements of this Agreement shall be furnished by the Concessionaire to the South Area Operations Manager within ten (10) days from the date of the execution of this Agreement. The certificate shall name Brevard County as an additional insured.

All personal property housed or placed at the complex shall be at the risk of the Concessionaire, and the County shall not be liable for any loss or damage to the Concessionaire's personal property located therein for any cause whatsoever. Concessionaire agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on the operation of this facility to cover the Concessionaire's interest.

The Concessionaire shall provide and maintain all required worker's compensation insurance pursuant to the provisions of Chapter 440, Florida Statutes.

These insurance requirements shall not relieve or limit the liability of the Concessionaire. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Concessionaire's interests or liabilities, but are merely minimums.

11. **ASSIGNMENT.** Concessionaire, its assigns, or representative, shall not enter into any agreements with third parties to delegate any or all of the responsibilities or rights herein set forth without prior written approval of the South Area Operations Manager. Continuation of this Agreement is contingent on the continued management of the Concession by the named party. The County may terminate this Agreement, in its sole discretion, if there is a change in principal(s) of the corporation.

12. **INDEPENDENT CONTRACTOR.** The Concessionaire shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship of status. Nothing in this Agreement shall be, in any way, construed to constitute the Concessionaire, or any of its agents or employees, as the agent, employee or representative of the County.

13. **TERMINATION.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. When it is determined to be in the best interest of the County, the Parks and Recreation Department Director or his designee on behalf of the County, may terminate this Agreement upon written notice thereof being delivered by the Parks and Recreation Department Director, or his designee, to the Concessionaire. Upon termination of this Agreement, the Concessionaire shall have fifteen (15) days within which to remove his/her personal property from the Park. Any personal property not removed within said fifteen (15) day period shall become the property of the County.

14. **ATTORNEY'S FEES.** In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

15. **VENUE.** Venue for any legal action brought by any party to this Agreement to interpret, construe, or otherwise enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

16. **FORCE MAJEURE.** Neither party shall be responsible for damages or delays in performance caused by acts of God, strikes, lockouts or other events constituting force majeure beyond the reasonable control of the parties.

17. **GOVERNING LAW.** This Agreement shall be deemed to have been executed and entered into within 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.

18. **NOTICE.** Notice under this Agreement shall be given to the County by certified mail or hand delivery to the:

South Area Operations Manager
Brevard County Parks and Recreation
1515 Sarno Road B-2
Melbourne, Florida 32935

and notice shall be given to Concessionaire by certified mail or hand delivery to:

Bruce Black
405 Avenue A
Melbourne Beach, Florida 32951

19. **UNAUTHORIZED ALIEN WORKERS.** Brevard County will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. § 1324a(e) [§ 274A(e) of the Immigration and Nationality Act "INA"]. The County shall consider the employment by the Concessionaire of unauthorized aliens a violation of § 274A (e) of the INA. Such violation by the Concessionaire of the employment provisions contained in § 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the County.

20. **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,

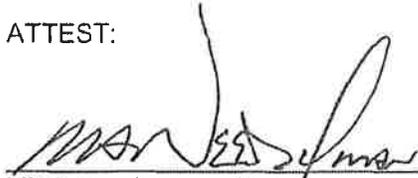
20. **PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the 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 the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

21. **MODIFICATION.** This Agreement embodies the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject hereof that are not contained herein. No modification of this Agreement shall be binding unless reduced to writing and signed by both parties.

22. **PAYMENT ADJUSTMENTS.** The Parks and Recreation Director may, for a period not to exceed six (6) months, negotiate a reduction in the monthly payment amounts due to the County when in his or her opinion unforeseen circumstances including major equipment breakdowns, and acts of Nature, warrant said reduction.

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

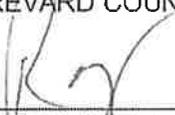
ATTEST:



Mitch Needelman, Clerk

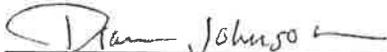
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____


Robin L. Fisher
Chairman
Brevard County Commission

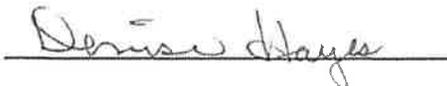
As Approved by Brevard County Commission: 10/12/10

Reviewed for legal form and content:



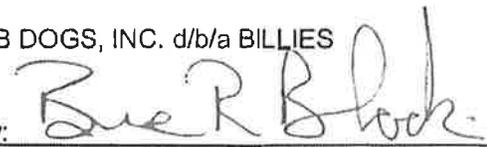
Assistant County Attorney

WITNESS:



MB DOGS, INC. d/b/a BILLIES

By: _____


Bruce Black, Owner
Date: JAN 28, 2011

ADMINISTRATIVE ORDER

TITLE: Background Investigation
Checks

NUMBER: AO - 26

CANCELS: August 4 2010

APPROVED: April 24, 2012

ORIGINATOR: Human Resources

REVIEW: April 24, 2015

I. PURPOSE AND SCOPE

To establish a consistent, county-wide procedure for conducting background investigation checks.

II. DEFINITIONS AND REFERENCES

- A. Applicant – An external applicant or volunteer being considered for a position or a current employee being considered for a position with a higher security level as the result of a promotion, transfer or demotion.
- B. At-Risk Population – Children, elderly, disabled, and those whom can not defend themselves. Example of settings in which individuals come into contact with at-risk populations include, but are not limited to:
- Daycare: senior citizen centers and community day programs for children.
 - Group Home: placements for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
 - Program activities involving children on school property.
 - Shelters: homeless, domestic violence or special needs emergency shelters.
 - Youth development programs.
 - Volunteer programs for the elderly or individuals with disabilities; such as, Meals on Wheels or other community/volunteer programs.
 - Library areas/programs designated for children.
 - Park areas/programs designated for children.
- C. Background Investigation Handbook – a handbook with detailed information about how to complete and interpret the background checks.
- D. Background Checklist – a form used to track the results of the background checks performed by the Department/Office.

AO-26: Background Investigation Checks

- E. Conviction – defined as a law violation where there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

NOTE: A "yes" answer to the question of law violation on the application will not automatically bar the applicant from employment. The nature, job-relatedness, severity and date of the offense in relation to the position for which they are applying will be considered.

- F. Recertification – Frequency which each Department/Office reinvestigates each employee's or volunteer's criminal history.

- G. **SECURITY LEVELS:**

High Level (Level I) – Applies to an employee or volunteer who has unsupervised access and/or contact with individuals identified as being in the at-risk population.

Moderate Level (Level II) – Applies to an employee or volunteer who has supervised access and/or contact with individuals identified as being in the at-risk population.

Low Level (Level III) – All other employees or volunteers who do not fit into the High or Moderate security levels.

- H. VECHS – an acronym for the Volunteer & Employee Criminal History System at the Florida Department of Law Enforcement (FDLE). The VECHS program agreement allows Brevard County to submit state and national checks for employees and volunteers, as needed.
- I. F.S. 112.011 – Felon; removal of disqualifications for employment, exceptions.
- J. F.S. 943.04351 – Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

III. RESPONSIBILITIES

- A. Each Department/Office Director shall establish a background investigation check procedure which ensures that the guidelines in this Administrative Order are met.
- B. Each Department/Office will utilize the guidelines in this Administrative Order or will adhere to statutory/contractual requirements, whichever is more stringent.

AO-26: Background Investigation Checks

- C. Each Department/Office shall be responsible for verifying that each applicant meets the requirements for the job, including educational and/or licensing verification, driver's license check.
- D. Each Department/Office shall be responsible for checking and documenting a total of three (3) of the applicant's employment and/or personal references. Document if the applicant has insufficient work history (i.e.; a student with no experience or someone returning to the workforce after a long absence) or is a volunteer. Due diligence must be used in obtaining these references, but if no response is received, documentation should be made of what efforts were made. Reference checks are not mandatory for those temporary employees hired on a seasonal basis.

The Background Investigation Handbook has detailed instructions and reference forms to be used in checking these references.

- E. Each Department/Office shall perform the required minimum criminal background investigation checks at the appropriate security level for applicants under final consideration and document the results on the Background Checklist, which shall be provided to the Office of Human Resources with the background documents.

1. High-Level Security Check (Level I):

- Fingerprints - submit fingerprints to FDLE under the VECHS agreement using digital fingerprint machine or using the fingerprint card provided for FDLE and National FBI criminal investigation check.
- Brevard County Clerk E-Facts – www.brevardclerk.us.

2. Moderate-Level Security Check (Level II):

- FDLE – <https://web.fdle.state.fl.us/search/app/default>
- Brevard County Clerk E-Facts – www.brevardclerk.us.
- National Sex Offender Public Website - www.nsopw.gov
- Out-of-State criminal checks based on past seven (7) years address history (on-line checks may be done, if available), or alternatively a national background check.

3. Low-Level Security Check (Level III):

- Brevard County Clerk E-Facts – www.brevardclerk.us.
- National Sex Offender Public Website - www.nsopw.gov
- Florida Department of Corrections – www.dc.state.fl.us.
- Out-of-Area criminal checks based on past two (2) years address history (on-line checks may be done, if available).

AO-26: Background Investigation Checks

- F. Applicants under final consideration for positions classified as high security level shall be subject to the following guidelines for criminal background checks.

Consistent with F.S. 112.011, a person shall not be disqualified from employment by the County solely because of a prior conviction for a crime. However, a person may be denied employment by the County by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

- 1. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to any high level security position, irregardless of when it occurred, and will disqualify an applicant from further consideration:**

- Child Abuse, Neglect or Abandonment
- Extortion
- Extreme Violence (Aggravated Assault/Aggravated Battery, Murder, Attempted Murder, Vehicular Homicide)
- False Imprisonment
- Hate Crime
- Indecent Exposure if Sexual in Nature
- Kidnapping
- Manslaughter
- Child Pornography
- Illegal Possession of Guns or Weapons
- Robbery
- Sale of Controlled Substance
- Sexual Offense (Lewd and Lascivious – Sexual Battery)
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

- 2. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to a high security level position if it occurred within five (5) years of the date of the background check, and will disqualify an applicant from further consideration:**

- Battery/Assault
- Domestic Violence
- Misdemeanor Drug and/or Paraphernalia
- Resisting Arrest with Violence
- Sale of Alcohol or Tobacco to a Minor
- Contributing to the Delinquency of a Minor

AO-26: Background Investigation Checks

- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

A prior conviction of one of the above criminal offenses, if a felony or first degree misdemeanor, that occurred beyond five (5) years of the date of the background check, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and the applicant is disqualified from further consideration.

- 3. A prior conviction for any of the following criminal offenses, if a felony or a first degree misdemeanor, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and if the applicant is disqualified from further consideration:**

- Disorderly Conduct/Trespassing
- Driving While Under the Influence (DUI), one incident only (more than one must show proof of rehabilitation)
- Petty Theft
- Worthless Checks
- Other Crimes
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

- G. When determining whether a prior criminal conviction for any of the criminal offenses listed in Section F above are directly related to a high, moderate or low level security position, an appointing authority shall take the following factors into consideration:**

- The classification of the crime as a felony or first degree misdemeanor.
- The relationship between the incident and the type of employment or service that the applicant will provide.
- The nature, severity, number, and consequences of the incidents disclosed.
- The amount of time elapsed since the incident(s) occurred.
- The applicant's efforts and success at rehabilitation.
- The age of the applicant at the time of the incident.

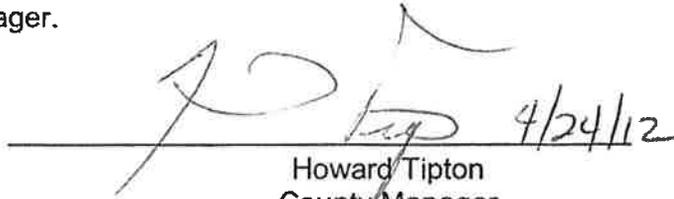
If there is any question about whether the criminal offense is directly related to the position, contact the County Attorney's Office.

- H. After the background investigation checks are satisfactorily completed, the Department/Office can initiate the request for the applicant to be hired to a paid position or coordinate a start date for a volunteer placement.**

AO-26: Background Investigation Checks

IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.

A handwritten signature in black ink, appearing to be 'HT', is written over a horizontal line. To the right of the signature, the date '4/24/12' is written in the same ink.

Howard Tipton
County Manager
Brevard County, Florida

Deborah Thomas

From: Renninger, Melissa L <melissa.renninger@brevardfl.gov>
Sent: Thursday, August 31, 2017 12:08 PM
To: Tammy Rowe; Deborah Thomas
Subject: Fully Executed Amendmend to Agreement
Attachments: Amendment to Agreement with MB Dogs.pdf

Please see attached.

Thank you,

Melissa Renninger

Administrative Assistant
Parks and Recreation Department
2725 Judge Fran Jamieson Way, Bldg B
Viera, FL 32940

Phone (321) 633-2046 (x32)

Email melissa.renninger@brevardfl.gov

Web www.brevardparks.com



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