



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.6.

7/20/2021

Subject:

Approval, Re: Caretaker Services Contract (District 2)

Fiscal Impact:

There is no fiscal impact

Dept/Office:

Parks and Recreation

Requested Action:

It is requested the Board of County Commissioners approve the selection and award a Caretaker Services Contract to Tim Herbener at McLarty Park, Rockledge, FL. It is further requested the Board of County Commissioners authorize the Parks and Recreation Director to execute the contract, execute subsequent renewals and future amendments to incorporate standard contract clauses upon County Attorney and Risk Management approval.

Summary Explanation and Background:

The Parks and Recreation Department has historically utilized caretakers residing at parks to provide security services. On April 1, 2021 a press release was published and invited interested individuals to apply to provide caretaker services at McLarty Park located at 790 Barton Boulevard in Rockledge. One response was received.

Caretakers at parks are responsible for keeping order in the Park through direct contact with patrons and notifying Law Enforcement and/or the Parks and Recreation Department staff as necessary. Caretakers report potentially hazardous conditions, safety risks and accidents or incidents. Caretakers assist the Department with opening and closing of parks.

Mr. Herbener, the current caretaker, applied, was interviewed and is being recommended. He will provide and reside in his personally owned manufactured home at McLarty Park and will be responsible for the payment of utilities. The initial term of the contract is two years with the option to renew for an additional two-year term and a subsequent one-year term.

The Caretaker Services Contract has been reviewed and approved by Risk Management and the County Attorney's Office.

Brevard County Policy BCC-76 directs the Department to recommend selection of a Caretaker by requesting Board action to execute a contract with the best qualified applicant.

Clerk to the Board Instructions:

Please contact Melissa at Melissa.Renninger@brevardfl.gov <mailto:Melissa.Renninger@brevardfl.gov> or telephone 321-633-2046 when Contract is available for pickup.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 21, 2021

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director Attn: Melissa Renninger

RE: Item F.6., Approval for Caretaker Services Contract

The Board of County Commissioners, in regular session on July 20, 2021, approved the selection and awarded a Caretaker Services Contract to Tim Herbener at McLarty Park, Rockledge; and authorized the Parks and Recreation Director to execute the Contract, execute subsequent renewals and future amendments to incorporate standard contract clauses upon County Attorney and Risk Management approval. Enclosed is the executed Contract.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADÓFF, CLERK

Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Manager
County Attorney



Brevard County
Parks and Recreation Department



Caretaker Services Contract

Tim Herbener

McLarty Park
790 Barton Avenue, Rockledge, Florida 32955

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Caretaker Services Contract



This Contract, is made by and between the **Board of County Commissioner of Brevard County, Florida**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **Tim Herbener** (hereinafter referred to as "Caretaker").

Whereas, the County provides parks, preserves, playgrounds, recreation areas, and other recreation facilities and programs pursuant to Section 125.01(1)(f), Florida Statutes; and

Whereas, the Board of County Commissioners recognizes the need for caretaker services in order to provide for the safety and security of the parks and recreation facilities owned, leased and operated by the County; and

Whereas, the County desires to engage the services of the Caretaker for the purpose of providing security services at **McLarty Park, 790 Barton Avenue, Rockledge, Florida 32955** (hereinafter referred to as the "Park") a County public park; and

Whereas, it is the County's desire to serve the public in accordance with this Contract and under the regulations of the County.

Witnesseth:

Now Therefore, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

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

Section 1 - Property.

The Caretaker hereby agrees to provide security services at the Park. In exchange for the security services provided by Caretaker, the County agrees to permit Caretaker to place a modular home and allow use of the surrounding premises (hereinafter referred to as "Residence" and described in **Exhibit "A"**). Caretaker shall obtain prior written permission from County prior to permitting any additional occupants to occupy the Residence. Failure of the Caretaker to comply with this Section may result in the County terminating this Contract at the County's option.

The Caretaker shall ensure that the Park be available at all times for the use by the general public in accordance with Park and Recreation Department Policies and Procedures. This Contract permits the Caretaker to use the Residence and the premises during the term of this Contract but does not act to convey any ownership or easement rights in favor of the Caretaker or others.

Section 2 - Term.

This Contract shall be effective from the date of the last signature for a period of two years. It is hereby mutually agreed and understood that the Caretaker may request renewal of this Contract for an additional two-year term and a subsequent renewal for an additional one-year term by submitting a written request received at least ninety days prior to the date of termination of the current Contract. The Parks and Recreation Department Director (herein referred to as the "Director") shall be authorized to execute any renewals. The Caretaker agrees they shall not be entitled to any renewal and agrees they shall not be entitled to any monies or damages should the Parks and Recreation Director, designee or County decide not to renew this Contract.

Section 3 – Fees and Utilities.

As part of this Contract, Caretaker shall pay costs of all public utility charges, including, but not limited to, electric, gas, water, sanitary sewer, and garbage collection which is provided to the Residence and Park by the County, City or any other public agency or public utility.

Section 4 - Americans with Disabilities Act Compliance.

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

Section 5 - Assignment for Occupation by Other Persons.

Caretaker agrees not to assign this Contract, any part thereof, or any right or privilege connected therewith, without first obtaining the County's written consent, which consent the County may withhold in its sole discretion. The Director shall be authorized to execute any assignments on behalf of the County. Caretaker's unauthorized assignment or license to occupy shall be void, and shall terminate the Contract at the County's option.

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 - Background Investigation Check.

The Caretaker and all individuals over the age of 18 years permitted by the County to reside at the Residence shall be screened at a High Level (Level One). The Caretaker shall be responsible for, and pay the cost of, having background investigation checks performed on the Caretaker and all individuals permitted by the County to residence at the Residence.

Neither the Caretaker nor any individuals permitted by the County to reside at the Residence shall work unsupervised with at risk populations prior to successfully completing a High Level (Level One) background investigation check.

The Director may deny the Caretaker and/or any individuals the ability to reside at the Park based on the results of the background screening, at the Director's discretion. The Director shall

abide by Brevard County's current policy for Background Investigation Checks, in determining if a person shall be disqualified from residing at the Park.

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

High Level (Level One) Background Investigation Check includes the following:

- A. Brevard County Clerk of Courts, Brevard Electronic Court Application
- B. Fingerprinting (Florida Department of Law Enforcement and National Federal Bureau of Investigations Criminal check through Volunteer & Employee Criminal History System)
- C. Department of Juvenile Justice check on individuals under the age of 18 when applicable and allowed in lieu of fingerprinting
- D. National Sex Offender Public Website
- E. Reference Checks
- F. Prior employment check
- G. Education/Licensing verification (case-by-case)
- H. Driver's license check (case-by-case)
- I. Drug Testing (case-by-case).

Section 8 - 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 9 - County's Right of Entry for Inspection and Maintenance.

The County reserves the right to at reasonable times to inspect the Park, to perform required maintenance and repair, or to make additions or alteration to any part of the Park, and Caretaker agrees to permit the County to do so. The County may, in connection with such alterations, additions, or repairs, erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment without incurring liability to Caretaker for disturbance of quiet enjoyment of the Residence or Park, or loss of occupation thereof, unless done so in an unreasonable, willful, or negligent manner.

Section 10 - Default and Termination.

The occurrence of one or more of the following events shall constitute a default by the Caretaker under this Contract:

- A. Failure of the Caretaker to observe or perform any covenant, obligation or condition of this Contract, where such failure shall continue after written notice thereof from the County to the Caretaker. If the nature of the default is such that more than fifteen days are reasonably required for its cure, then the Caretaker shall not be deemed to be in default if the Caretaker shall commence such cure within said fifteen-day period and thereafter diligently prosecute such cure to completion, which completion shall not occur no later than thirty days from the

date of such notice from the County.

- B.** Three or more violations of any local, state or federal law, code or ordinance within a calendar year period of time.
- C.** Any waiver by the County of a breach of covenant of this Contract by the Caretaker shall not be construed as a waiver of subsequent breach of the same covenant. No breach for a covenant of this Contract shall be deemed to have been waived by the County unless the waiver is in writing signed by the County.
- D.** Upon occurrence of one or more of the foregoing events of default, the Parks and Recreation Director, or designee, as hereby specifically delegated this authority by the Board of County Commissioners of Brevard County, Florida, may elect to terminate this Contract.
- E.** The County shall in no event be charged with default in any of its obligations hereunder unless and until the County shall have failed to perform contractual obligations thirty days after written notice to the County by the Caretaker specifically describing such failure. If the County fails to perform any of its contractual obligations under this Contract and such failure is not cured within thirty days (or such additional time as is reasonably required to correct any such default) of receipt of written notice of default, the Caretaker's sole legal remedy for said default is to, terminate this Contract upon written notice to the County.

Section 11 - Emergencies.

In the event of a declared state of emergency in Brevard County as declared by the Brevard County Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the Park, to use the facility to meet any emergency needs for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County. Caretaker will be provided as much notice as is practicable depending on how suddenly the need arises and shall be provided an estimate of how long the need will continue. The County shall not be responsible for any damages, including but not limited to, loss of property or income created by the use of the Park by agencies which support the emergency response and recovery such as the Red Cross, Federal Emergency Management Agency and others. The County and Caretaker shall work directly with such support agencies to recover the cost of restoration, lost equipment, and supplies used. During the period in which the County or other governmental or non-governmental agency occupies or manages the Park, Caretaker duties or obligations hereunder will be suspended. Any maintenance, damage, restoration, or repair to the Park necessitated during any suspension under this Contract will be the responsibility of and at the expense of the County. Repairs, rehabilitation, restoration or maintenance, the need for which arises as a result of such emergency suspension, shall all be diligently completed by the County, at the expense of the County. As used herein, an "emergency" will be defined as a period of civil unrest or riot, a period during which the military needs the Park for a period of time relating directly to defense of the nation and a likely attack of the nation, a period during which weather such as a hurricane or tornado is likely to cause damage to the community and the Park, is needed for public shelter, distribution of emergency supplies such as food or water, or other related event, or any other circumstance designated by the Brevard County Emergency Operations Center, "E.O.C." as an emergency.

Section 12 - E-Verify.

- A.** In accordance with Chapter 448.095, Florida Statutes, the Contractor shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract; and
- B.** The Contractor shall expressly require any subcontractors 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 term of this Contract; and
- C.** The Contractor agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.
- D.** 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.
- E.** A Contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the Contractor hires or employs a person who is not eligible for employment.

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

Section 13 - Entire Contract.

This Contract, together with any Exhibits, constitutes the entire Contract between the County and Caretaker and supersedes all prior written or oral understandings. This Contract and any Exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto.

Section 14 - 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 Caretaker of the request and the Caretaker 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 Caretaker 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 Caretaker fails to provide the requested public records to the County within a reasonable time, the Caretaker 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. Caretaker's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Caretaker 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 Caretaker's possession and control, the Caretaker agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Caretaker shall hire and compensate attorneys to represent the Caretaker and County in defending such action. The Caretaker 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 Caretaker has questions regarding the application of Chapter 119 Florida Statutes, to the Caretaker's duty to provide Public Records relating to this Contract, contact the Custodian of Public Records:

**Brevard County Parks and Recreation
Misty Adams, Administrative Assistant
2725 Judge Fran Jamieson Way, B203
Viera, Florida**

Email the Records Custodian

Phone: (321) 633-2046

Section 15 - 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. Despite the foregoing, Caretaker shall timely pay all rent due as otherwise provided herein.

Section 16 - 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 17 - Illegal, Unlawful, or Improper Use.

Caretaker shall make no unlawful, improper, immoral, or offensive use of the Residence and/or Park nor will the Caretaker use the Residence and/or Park or allow the use of the Residence and/or Park for any purpose other than that hereinabove set forth. Failure of Caretaker 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 Residence and terminate this Contract.

Section 18 - Improvements.

No structural changes, alterations or additions shall be made by Caretaker to the Residence or Park without the prior written consent of the County. Any such alterations, changes, or additions shall remain for the benefit of and become the property of the County. The plans and specifications for all improvements, structures, landscaping and facilities made by the Caretaker on the premises shall be submitted and approved by the County prior to the construction or installation of such improvement, structure, landscaping, or facility. It is hereby agreed and understood that any building or structure placed or constructed on the Residence and permanently attached thereto shall remain the property of the Caretaker upon the termination of this Contract. The Caretaker shall remove any buildings or structures placed or constructed by the Caretaker.

Section 19 - Indemnification.

Caretaker shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with the use, occupation, management or control of the Park or Residence or any improvements or any furniture, furnishings, equipment and fixtures utilized in connection with the Park or Residence by Caretaker unless such claims, damages, expenses, or losses are caused solely by acts of the County, its employees, or other persons not a party to this Contract acting on the County's request. Caretaker agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with Caretaker's use, occupation, management or control of said Park or Residence and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding. Nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions of Section 768.28, Florida Statute. It is agreed by the parties hereto that specific consideration has been paid under this Contract for this hold harmless provision.

Section 20 - Independent Contractor.

Caretaker shall perform the services under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to constitute Caretaker or any of its agents or employees to be the agent, employee or representative of the County.

Section 21 - Insurance.

Caretaker agrees to provide and maintain at all times during the term of this Contract, without cost or expense to the County, policies of insurance covering premises liability, insuring the Caretaker against any and all claims, demands and causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management or control of the Residence and any improvements thereon including insurance for the contents of the Residence. Such policies shall be issued by insurance companies licensed and authorized under the laws of the State of Florida and in a form acceptable to the County, insuring the Caretaker in the amount of not less than \$100,000 to cover any and all liability claims arising in connection with any particular accident or occurrence. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the

Caretaker's interests or liabilities, but are merely minimums. These insurance requirements shall not relieve or limit the liability of the Caretaker. Such policies of insurance shall insure the Caretaker to cover any and all liability claims arising in connection with any particular accident or occurrence. Said General Liability Policies shall provide that the Brevard County Board of County Commissioners be added as an additional insured.

The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days prior to the effective date of said action. The Caretaker shall notify the County immediately in writing of any potentially hazardous condition existing on or about the Residence and Caretaker shall be responsible to repair and remove any hazardous condition. Failure of the Caretaker to comply with this Section may result in the County terminating this Contract at this County's option.

A certificate of insurance indicating that the Caretaker has coverage in accordance with the requirements of this Contract shall be furnished by the Caretaker to Brevard County Parks and Recreation Department, Central Area Parks Operations, 840 Forrest Avenue, Cocoa, Florida 32922.

Section 22 - No Use that Increases Insurance Risk.

Caretaker shall not use the Residence in any manner that will increase the risk covered by insurance on Residence, so as to increase the rate of insurance on the Residence, or to cause cancellation to any insurance policy covering the Residence. Caretaker further agrees not to keep at the Residence, or permit to be kept, used, or sold thereon, anything prohibited by the policy of fire insurance covering the Residence. Caretaker shall comply, at its own expense, with all requirements of insurers necessary to keep in force the fire and public liability insurance covering the Residence.

Section 23 - No Waiver of Covenants or Conditions.

The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance.

Section 24 - Notice.

Notice under this Contract shall be given to the County at Brevard County Parks and Recreation: Central Area Parks Operations, Terry Lane, Parks Operations Manager, 840 Forrest Avenue, Cocoa, Florida 32922. Notice shall be given to Caretaker by mailing written notice, postage prepaid to Tim Herbener, 790 Barton Avenue, Rockledge, Florida 32955. Unless otherwise specified herein, Notice shall be effective upon receipt or five days from mailing, whichever even occurs first.

Section 25 - Obligations of the Caretaker.

A. General:

- 1) Caretaker shall provide security services at the Park.
- 2) Caretaker shall notify the County at least one week in advance of Caretaker's absence from the Park which will interfere with the performance of this Contract.

- 3) Caretaker shall cooperate with the County during emergencies or at any time the County requests the assistance of the Caretaker.
- 4) Caretaker shall maintain a high level of public relations and customer service that promotes a highly favorable family-orientated atmosphere. Inquiries regarding scheduling of the Park shall be referred to the County.
- 5) Caretaker shall keep order in the Park by requesting any person violating any applicable law, rule or regulation to leave the Park. If a patron remains in the Park after such request the Caretaker shall immediately notify local law enforcement.
- 6) Caretaker shall immediately report to the County any potentially hazardous condition, irregularity constituting a safety or security risk, or any and all accident or incident requiring emergency response.
- 7) Caretaker shall immediately notify law enforcement and the County upon discovery of any unlawful activity at the Park.
- 8) Caretaker shall cooperate fully with County and City officials in all matters relating to the Residence and/or Park.
- 9) Caretaker shall abide by the following:
 - a) To the extent permitted by law the County prohibits the possession of weapons or firearms, as defined in Section 790.001, Florida Statutes, on County premises or properties.
 - b) The use of sustained flames is prohibited inside the Park.
 - c) The possession and/or use of fireworks is prohibited inside the Park.
 - d) Pets shall be secured on a leash at all times and feces disposed of promptly and properly. Pets are prohibited from sites managed by the Environmentally Endangered Lands Program.
 - e) Noise shall be kept within the bounds of moderation at all times.
 - f) Alcoholic beverages shall not be consumed outside of the Residence.
 - g) It is hereby specifically agreed and understood that the only use permitted for the Residence is as a personal residence for the Caretaker and his immediate family and any variance in such shall require written consent of the County.

B. Maintenance:

- 1) Caretaker shall keep the Residence and grounds clean and in a sanitary condition. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions of the Residence. Caretaker shall maintain County owned property located at the Residence in its present condition, ordinary wear and tear excepted.
- 2) Caretaker shall not hang laundry on the Residence.
- 3) Caretaker shall not perform Vehicle maintenance requiring disassembly.
- 4) Caretaker shall keep the yard free and clear of any obstructions, rubbish, or litter and maintained in an orderly and aesthetically pleasing manner equal to or higher than the quality of the Park.
- 5) Caretaker's décor of the Residence shall be in harmony with the Park.

- 6) Caretaker storage areas shall be fenced. Any and all fencing shall be approved by the County.

C. Park Responsibilities:

- 1) Caretaker shall open and close the Park in accordance with Department policy.
- 2) Caretaker shall lock and unlock facilities (i.e. restrooms) within the Park as required.

Section 26 - Obligations of the County:

- A. The County shall be responsible for keeping the parking area, sidewalks and areas within the Park in a clean, neat, and sanitary manner, and free of debris.
- B. Except as otherwise provided in the Contract, and except due to damage caused by Caretaker, its invitees, employees, or other persons associated with Caretaker, all roofing, roof drains, sewers, wastewater/sewer lines, structural outside walls, foundations, and structural portions of the Park shall be maintained, replaced and repaired by the County at its expense.

Section 27 - Partial Destruction of Premises.

Partial destruction of the Residence and/or Park shall not render this Contract void, or terminate it except as herein provided. If the Park is partially destroyed during the term of this Contract, County may endeavor to make repairs, providing the County has the fiscal means to do so, and when such repairs can be made in conformity with local, state, and federal laws and regulations, within ninety days of the partial destruction. If the repairs cannot be so made in ninety days and the County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Contract. If the Residence and/or Park is more than one-third destroyed, County or Caretaker may at its option terminate this Contract, giving ninety-day notice to the other party.

Section 28 – Personal Property.

All personal property housed or placed at the County facilities shall be housed or placed at the risk of Caretaker and Caretaker shall maintain the insurance as required under Section 21 hereinabove. The County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Caretaker agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the Residence or the contents of the Residence to cover the Caretaker's interest therein.

The Caretaker shall retain title to all personal property purchased by the Caretaker and placed at the Residence, unless otherwise agreed to by the parties. The Caretaker shall obtain approval from the Director prior to placing any personal property or equipment at the Park

Section 29 - Public Entity Crimes.

A person or affiliate who had been placed on the convicted Contractor 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 Contracts of real property to a public

entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six months from the date of being placed on the convicted vendor list.

Section 30 - Reverter and Right of Re-Entry and Repossession.

Notwithstanding any provisions of this Contract to the contrary, in the event that the Caretaker does not use or ceases to use pursuant to the requirements as set forth herein, the Contract shall immediately cease and the Caretaker shall thirty days from the date of termination within which to remove the Residence and/or any personal property from the Park.

Section 31 - Right to Audit Records.

In performance of this Contract, the Caretaker shall keep books, records, and account 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 Caretaker 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 Caretaker 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 Caretaker 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 Caretaker shall ensure the 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 Caretaker does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the Caretaker may transfer at no cost to the County, all public records in possession of the Caretaker. If the Caretaker transfers all public records to the County upon termination of the Contract, the Caretaker shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Section 32 - Severability.

If any provision of this Contract 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.

Section 33 - Statutes, Laws, Rules and Regulations.

The Caretaker's use of the Residence shall be in accordance with all applicable laws, rules, regulations, policies and procedures approved by the Department and/or the Brevard County Board of County Commissioners.

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

Section 34 - Surrender of Premises.

Caretaker shall surrender the Park to the County at the end of the Contract term in generally the same condition as when Caretaker took possession, allowing for county-approved changes and modifications agreed to by the parties over time, reasonable wear and tear, damages by acts of God, including fire and storm. The Caretaker shall have thirty days from the date of termination within which to remove the Residence and/or any Personal Property from the Park.

Section 35 – Termination for Convenience.

Either party may terminate this Contract for their own convenience upon providing sixty days written notice to the other party ("Termination Notice"). Caretaker shall remove the Residence and/or any personal property from the Residence and/or Park within sixty days after delivery of the Termination Notice. If Caretaker fails to remove the Residence and/or any personal property within said sixty-day period the Residence and/or any personal property shall become the property of the County and the County shall have the right to use or dispose of the Residence and/or any personal property in a manner as determined to by the County to be in the best interests of the County.

Section 36 - 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. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by Caretaker of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Contract by the County.

Section 37 - 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.

(remainder of page left intentionally blank)

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:

Robin Rogers 6/29/2021

Robin Rogers
Assistant County Attorney

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

By: Mary Ellen Donner 7/30/2021
Mary Ellen Donner Date
Parks and Recreation Director

As approved by the Board on July 20, 2021.

Witnesses:

Denise Hayes
Print Name

Denise Hayes 7/1/21
Signature Date

M. Bixler
Print Name

Mary Beth Bixler 7/1/21
Signature Date

Caretaker

By: ~~Tim Herbener~~ 7.1.21
Tim Herbener Date

Exhibit "A"
Park Map

McLarty Park

790 Barton Boulevard
Rockledge, FL 32955



2011 Aerial

Brevard County Parks and Recreation
2725 Judge Fran Jamieson Way
Viera, FL 32940

0 50 100 Feet

DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.

