

F. Consent Agenda - Parks and Recreation Department
ITEM 9.



AGENDA REPORT
October 23, 2018

**Approval, Re: Amendment to the Management Services Agreement with Pier
220 Inc. - District 1**

SUBJECT:

Execute the Amendment to the Management Services Agreement with Pier 220 Inc. -
District 1

FISCAL IMPACT:

Approval of this action will result in defraying monthly rent in the amount of \$6,001 for a
period of sixty (60) days for a total of \$12,002.

DEPT/OFFICE:

Parks and Recreation

REQUESTED ACTION:

It is requested the Board of County Commissioners approve and authorize the Chair to
execute the Amendment to the Management Services Agreement with Pier 220 Inc.

SUMMARY EXPLANATION and BACKGROUND:

On September 20, 2017 the Board granted permission for the Parks and Recreation
Department to advertise for Request for Proposals (RFP) for operation of the concession
at the Titusville Veterans' Memorial Fishing Pier. Pier 220 Inc. was the awarded vendor
with the resulting Management Services Agreement entered into on June 25, 2018.

The Management Services Agreement granted the Vendor one hundred twenty (120) days
from the date of execution to open the facility to the public. The date anticipated for the
facility to be open to the public was October 23, 2018. The Vendor began renovations of
the facility immediately upon delivery of the premises. These renovations include
demolishing the existing Tiki Bar and building a new outdoor bar, installing a new hood
system in the kitchen, installing a new fire suppression system, and replacement of fans in
the dining area, among other aesthetic upgrades.

The Vendor has experienced circumstances beyond his control including the length of
time needed for permitting and the undue burden of a delay in receiving supplies from the
effects of Hurricane Florence. The Vendor has requested an additional sixty (60) days to
complete all necessary construction and improvements before the facility can be opened
to the public. The Parks and Recreation Department has been in constant communication
with the Vendor and recommends approval of the sixty (60) day extension which would

bring the date to open the facility to the public no later than December 22, 2018.

Contact: Mary Ellen Donner, 321-633-2046 MaryEllen.Donner@brevardfl.gov

ATTACHMENTS:

Description

- ▣ **Amendment**
- ▣ **Extension request email**
- ▣ **Contract Form CAO Approval**
- ▣ **Contract Form RM Approval**



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 24, 2018

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.9., Approval of Amendment to the Management Services Agreement with Pier 220 Inc.

The Board of County Commissioners, in regular session on October 23, 2018, authorized the Chair to execute the Amendment to the Management Services Agreement with Pier 220, Inc. Enclosed is an executed copy of the Amendment.

Upon execution by Pier 220, Inc., please return the fully-executed amendment to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Finance
Budget
Contracts Administration



Brevard County Parks and Recreation Department
AMENDMENT TO MANAGEMENT
SERVICES AGREEMENT



THIS AMENDMENT made and entered into this 23rd day of October, 2018, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as “County,” and, and **PIER 220 INC**, hereinafter referred to as the “Vendor”.

W I T N E S S E T H:

WHEREAS, the parties hereto have previously entered into a Managements Services Agreement (hereinafter referred to as “Agreement”), more specifically identified as Contract Number 3997, dated June 25, 2018 (attached hereto and incorporated herein as Attachment “A”); and

WHEREAS, the Vendor has requested that the Vendor be given additional time to prior to opening for business; and

WHEREAS, the County is amenable to the Vendor’s request; and

WHEREAS, the parties hereto desire to amend certain provisions of the Agreement to provide for the requested extension;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by this reference.
2. **Section 4(A). “Obligations of the Vendor”**. is hereby deleted in its entirety and replaced with the following: Vendor shall initially open for business no later than one hundred eighty (180) days after the effective date of the Agreement.
3. All the terms and conditions of the Agreement, which is incorporated herein by this reference, not inconsistent with the provisions of this Amendment, shall remain in full force and effect. In the event of a conflict between the Agreement and this Amendment, this Amendment shall prevail.

This Amendment shall be effective immediately upon execution by both parties.

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

ATTEST:

By: [Signature]
Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: [Signature]
Rita Pritchett, Chair Date

As approved by the Board on October 23, 2018.

Reviewed for legal form and content:

[Signature]
Assistant County Attorney

WITNESS:

PIER 220 INC. (CORPORATE SEAL)

Signature & Date

By: _____
Sachin Shenoy, Vice President Date

WITNESS:

Signature & Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged this _____ day of _____ by _____ who personally appeared before me or provided _____ as form of identification and who affirms that he/she signed the instrument voluntarily for the purpose expressed in it.

Signature of Notary of Public

Name of Notary of Public (print, type or stamp)
My Commission Expires: _____

Exhibit "A" to Amendment



Brevard County Parks and Recreation Department
**MANAGEMENT SERVICES
AGREEMENT**



THIS AGREEMENT made and entered into this 25th day of June, 2018 by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **PIER 220 INC**, hereinafter referred to as the "Vendor".

WITNESSETH:

WHEREAS, the County is the owner, lessee, or authorized administrator of certain real property located in Brevard County, Florida, commonly known as the Titusville Veterans Memorial Fishing Pier, (hereinafter referred to as "Park" and attached hereto as **Exhibit "A"**), located at 2 A. Max Brewer Memorial Parkway, Titusville, FL 32796 ; and

WHEREAS, the Park was constructed for the purpose of a food and beverage service area and recreational activities for the general public; and

WHEREAS, the Park is owned by the City of Titusville, hereinafter referred to as "City" and operated by the County pursuant to an Interlocal Agreement (attached hereto as **Exhibit "B"**); and

WHEREAS, the County has negotiated with the Vendor for the management and operation of concession services at the Park and desire to set forth the terms and conditions as described in Proposal #P-3-18-05; and

WHEREAS, the County may provide parks, preserves, playgrounds, recreation areas, and other recreational and cultural facilities and programs pursuant to 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.** This Agreement shall be effective for a period of five (5) years and four (4) months from the date of execution. It is mutually agreed the Vendor may request renewal of this Agreement for two (2) additional five (5) year terms. The request for renewal shall be submitted in writing at least ninety (90) days prior to expiration of the Agreement. Each Agreement renewal will be subject to renegotiation, including the monthly rent. Monthly rent shall be negotiated yearly based on the effective date of the Agreement. Monthly rent increases shall not exceed an amount equal to ten percent (10%) of the previous year's monthly rent. The County shall have no obligation to renew this Agreement. Vendor shall not be entitled to damages for nonrenewal of this Agreement.

In the event, the Interlocal Agreement between the County and the City is no longer in effect, resulting in the County's cessation of operation of the Park, the County's obligations under this Agreement shall be deemed terminated. Such termination shall not constitute a breach by the County.

Upon the last day of this Agreement or any renewal term, the Vendor shall peaceably and quietly leave the Park in good order and repair.

2. Payments.

- A. The Vendor shall provide a cash bond in the amount of Eighteen Thousand Dollars (\$18,000) to be conditioned upon the faithful performance of all the provisions herein set forth. The cash bond shall be posted with the County within ten (10) days after execution of this Agreement
- B. Vendor shall pay monthly rent payments of Six Thousand One Dollars (\$6,001) plus any applicable sales or use tax due under state law for the operation of the Park, payable to the Brevard County Board of County Commissioners. Payment shall be due on or before the tenth (10th) day of each month to North Area Operations, 475 North Williams Avenue, Titusville, FL 32780.
- C. Monthly rent shall include reasonable utility fees for water, sewer and garbage.
- D. Upon renewal rent shall be increased as provided for in Section 1.
- E. The County may, for a period not to exceed six (6) months, negotiate a reduction in the monthly payment of rent due to the County when unforeseen circumstances including Pier conditions, major equipment breakdown, and acts of Nature, warrant said reduction. The parties agree that the Vendor has no right to a rate reduction, but that any reduction is subject to the sole discretion of the County.

3. Accounting Procedures and Reports.

All sales shall be registered on a cash register or computerized POS system with the amount of sale visible to the customer. The cash register/system must be furnished by the Vendor and shall be the responsibility of the Vendor. The County shall approve the type of cash register or computerized POS system to ensure accountability purposes.

Vendor shall furnish to the County, at the Vendor's expense, a monthly attendance report by the tenth (10th) day of each month for the previous month's business. Sales tax reports shall be made to the State of Florida.

4. Obligations of the Vendor.

Vendor shall:

- A. Initially open for business no later than one hundred and twenty (120) days after the effective date of this Agreement.
- B. Adequately maintain and offer menu items sufficient to satisfy the demands and needs of the public to include non-alcoholic and alcoholic beverages. All fees and charges for menu items shall be competitive

in nature and will not exceed the average retail prices of the same or comparable items charged by similar commercial establishments within Brevard County, as determined in the sole discretion of the County. Once established, no fees or charges may be changed without prior written approval of the County.

- C. Produce various means of marketing with creative menu items, specials, promotions and activities.
- D. Advertisements be in good taste commensurate with an acceptable family-orientated environment. Advertising of other businesses not related to the operation of the Park are prohibited. All signage must be in compliance with any applicable jurisdiction's code or ordinance.
- E. Provide a regular schedule for service to Park patrons. This schedule shall be subject to approval by the County and shall be posted at all times in full view of the public. Said schedule shall not be modified or altered without prior approval by the County. Proposed schedule changes must be submitted to the County in writing at least fifteen (15) days prior to proposed effective date.
- F. Maintain a "No-Smoking" policy within the indoor service and seating area.
- G. The use of styrofoam is prohibited.
- H. Provide all employees, contractors, subcontractors, agents, representatives and volunteers and other persons providing services at the Park a uniform to be worn at all times. Uniforms shall be conducive to a family-orientated atmosphere.
- I. Maintain a high level of public relations and customer service that promotes a highly favorable family-orientated atmosphere. Conduct said business in a manner which is courteous and fair to the public and be responsive to customer's requests and complaints.
- J. Accept common forms of payment from patrons (cash, debit and credit card). The Vendor shall pay all associated costs for acceptance of these types of payments.
- K. Access to the Park shall remain free with no admission fee.
- L. Park patrons shall be allowed to sit in the outside concession area without charge or a requirement to purchase goods from the Vendor based upon available seating and weather conditions.
- M. Assist the County in enforcing the City's prohibition of alcoholic beverages being brought to the Park by any patron other than those purchased from the Vendor. The County shall provide appropriate signage. The Vendor shall call local law enforcement if a patron refuses to comply with this requirement.
- N. The Vendor may request any person violating any applicable law, rule or regulation to leave the Park. If a patron remains in the Park after such request the Vendor shall immediately notify local law enforcement.
- O. Immediately report to the County any accident or incident requiring emergency response.
- P. Allow the City up to four (4) one day special events per year at the Park as required in the Interlocal Agreement. The City may at its discretion use the patron seating area of the Park for such events and may negotiate with the Vendor for food and beverage service for such special events.

Q. Cooperate fully with County and City officials in all matters relating to the concession and the Park.

5. **County Obligations.**

- A. Maintain the outdoor memorials, flag pole and replacement of flags.
- B. Capital repairs, except those capital repairs which are the obligation of the Vendor, to the Park to include roof, walls, floors, and foundation.

6. **Improvements.** Any improvements or repairs, to the Park by the Vendor must be requested in writing to the County, and mutually agreed upon by the County and the Vendor, with written permission granted by the County, prior to any actual work commencing. Said request shall state the party responsible for funding such improvements. The plans, specifications, and location for all improvements, structures, landscaping, and facilities made by the Vendor to the Park shall be submitted in writing to and approved by County prior to the construction or installation of such improvement, structure, landscaping or facility. It is hereby mutually agreed and understood that any building, structure, fixture, or facility located thereon and permanently attached thereto shall become the property of the fee simple title holder.

7. **Repairs and Maintenance.** The Vendor shall keep the Park, including the fishing pier and parking lot, clean and free of litter, rubbish, or any obstacles in accordance with any applicable law, regulations or ordinances. The Vendor shall immediately notify the County of maintenance, safety, and/or repair concerns or problems.

The Vendor shall:

- A. Perform daily janitorial services and any and all maintenance and repair to the interior and exterior of the Park service and seating areas, porches, fishing pier and parking lot. The Vendor shall be responsible for all aspects of cleanliness in the Park service and seating areas to include but not be limited to the cleaning of porches, tables, chairs, counters, and floors.
- B. Provide appropriate trash containers for use in conjunction with the operation of the Park. Trash containers located in public seating shall be kept clean and stain free. Vendor shall provide a dumpster for pick up and disposal of garbage for the Park. Vendor shall practice environmental trash separation by providing recycling containers for patrons use for recycling cans, plastic and glass bottles.
- C. Be responsible for disposal of cooking oil in compliance with any applicable laws or ordinances.
- D. Be responsible for security of the Park and to take appropriate measures to minimize damage when severe weather or other dangerous conditions are expected. All inspections, maintenance, repair monitoring and costs associated with a security system shall be the responsibility of the Vendor.
- E. Be responsible for all maintenance and repairs associated with Fire alarm phone line and monitoring.
- F. Be responsible for all maintenance and repairs to electrical and plumbing associated with the operation of the Park.
- G. Adhere to any and all electrical conservation policies established by the County.
- H. Purchase, install and maintain any and all equipment required for the successful operation of the Park. Maintain equipment in good working condition. Appearance of equipment must meet standards that will

not conflict with the overall decorum of the Park. Equipment shall include but is not limited to refrigeration equipment, stoves, grills, deep fat fryers, microwaves, sinks, ice machines and associated food and beverage preparation equipment as needed. Where the system is not ventilated to handle or accommodate deep fat fryers, it is the responsibility of the Vendor to provide such ventilation.

- 7.2 Any County owned property or equipment, (described in Exhibit "C" and attached hereto), shall not be sold, loaned, rented, used or moved outside of the Park without the written approval of the County.
- 7.3 The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions maintained at the Park. The Vendor shall maintain the Park in its present condition, ordinary wear and tear excepted.
8. **Background Investigation Check.** The Vendor's employees, contractors, subcontractors, agents, representatives and volunteers and other persons providing services at the Park shall be screened at a High Level (Level 1). The Vendor shall be responsible for, and pay the cost of, having background screening checks performed on all of the Vendor's employees, contractors, subcontractors, agents, representatives and volunteers.

The Vendor 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 1) background screening. The Vendor 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 Parks and Recreation Department Director may deny the Vendor 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 "D" on background screening in determining if a person shall be disqualified from working/volunteering at the Park.

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 VECMS)
- 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)

9. **Statutes, Laws, Rules and Regulations.** The Vendor's use of the Park will be in accordance with all applicable laws, rules, regulations, policies and procedures approved by the Department and/or the County including but not limited to: PRD-4 Background Screening for Volunteers and Contracted Services and AO-26. The County reserves the right to disapprove any and all activities held at the Park, which may be in conflict with the Department's and/or the County's Policies and Administrative Orders, and agrees to furnish the Vendor with a copy of such rules, regulations, policies, procedures, and amendments thereto.

It shall be the Vendor'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. Vendor shall provide to the County written evidence of current satisfactory health inspections at all times. The Vendor shall secure and maintain all licenses and/or permits required and pay when due any and 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.

10. **Illegal, Unlawful or Improper Use.** The Vendor shall not make any unlawful, immoral, improper, or offensive use of the Park nor allow said Park to be utilized for any purpose other than that hereinabove set forth. Failure of the Vendor to comply with this provision shall be considered a material breach of this Agreement and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Park and terminate this Agreement.

11. **Right to Audit Records.** In the performance of this Agreement, the Vendor 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 Vendor 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 Vendor 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 Instructor 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 Vendor 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 Vendor does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, the Vendor may transfer, at no cost to the County, all public records in possession of the Vendor. If the Vendor transfers all public records to the County upon termination of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

12. **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 Vendor of the request and the Vendor 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 Vendor 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 belows.

If the Vendor fails to provide the requested public records to the County within a reasonable time, the Vendor 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 Vendor'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 Vendor's possession and control, the Vendor agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Vendor shall hire and compensate attorney(s) to represent the Vendor and County in defending such action. The Vendor shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'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.

13. **Insurance.**

- A. **General Liability:** Vendor agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County or the City, policies of insurance generally known as general liability policies insuring the Vendor 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 Park and any improvements thereon. The County and City shall be named as an additional insured and as a loss payee. The General Liability Insurance shall be issued by responsible insurance companies and in a form acceptable to the County and City, protecting and insuring against all the foregoing with combined single limits of not less than One Million dollars (\$1,000,000) for Bodily Injury, Property Damage and Sexual Abuse and Molestation Coverage, and Fire Legal Liability in the amount of Seven Hundred Fifty Thousand dollars (\$750,000).

- B. **Workers' Compensation Insurance:** Vendor shall maintain Workers' Compensation Insurance in accordance with Florida Statute.
 - C. All personal property housed or placed at the Park shall be at the risk of the Vendor, whether owned by the County, City or the Vendor, and the County and/or City shall not be liable for any loss or damage to the personal property of the Vendor or others located thereon for any cause whatsoever. The Vendor agrees and understands that the County and the City do not and shall not carry liability, theft or fire insurance on said property to cover the Vendor's interest therein.
 - D. The Vendor shall retain title to all personal property purchased by the Vendor and placed at the Park, unless otherwise agreed to by the parties. The Vendor will obtain approval from the County prior to placing any personal property or equipment at the Park. All personal property belonging to the Vendor will be marked in a manner consistent with the character of the property
14. **Insurance Certificates.** Vendor shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County and the City. Said certificates shall provide that the County and the City are an additional insured, and that County and City shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and City and licensed and authorized under the laws of the State of Florida.
15. **Indemnification.** The Vendor shall indemnify and hold harmless the County and City 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 real property owned by the County and/or the City or any improvements or any furniture, furnishings, equipment and fixtures utilized in connection with the real property owned by the County and/or the City by the Vendor unless such claims, damages, expenses, or losses are caused solely by acts of the County or City, its employees, or other persons not a party to this Lease acting on the County's or City's request. The Vendor agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County and/or the City in connection with the Vendor's use, occupation, management or control of said real property owned by the County and/or the City and that it will satisfy, pay and discharge any and all judgments that may be entered against the County and/or the City in such action or proceeding.

16. **ADA Compliance.** The County and Vendor shall conform to current requirements of the Americans with Disabilities Act in the performance of this Agreement, and shall not cause or place at the Park any condition causing the Park to become non-compliant. The parties shall work together to remedy any known violations of the ADA that may occur.
17. **Independent Contractor.** The Vendor shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall, in any way, be construed to constitute the Vendor or any of its agents or employees as the representative agents or employees of the County.
18. **Right of Entry by County.** The County or its agents may at any time enter in and on the referenced Park for the purpose of inspection of same and performing such other duties as are required by the terms of this Agreement and the rules, regulations, ordinances and laws of any government body.
19. **Covenants against Assignment.** The Vendor, its successors or assigns, shall not assign any rights under this Agreement nor allow same to be assigned by operation of law without express written approval of the County. The Vendor may not allow any other individual, group, or Vendor to exclusively utilize the Park or any part thereof without prior written consent from the Area Manager. No fees or charges of any kind shall be levied by the Vendor for use of the Park except direct costs as necessary for the operation of the Park. Such fees or charges must be approved in advance by the County.
20. **Emergencies.** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the Park, to use the Park to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.
21. **Attorneys' Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorneys' fees and costs.
22. **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.
23. **Venue.** 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.
24. **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 the contractor of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Agreement by the County.

25. **Public Entity Crimes.** A person or affiliate who had 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 Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
26. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.
27. **Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Agreement shall be subject to copyright by the Instructor in the United States or any other country.
28. **Music Performance.** The Vendor shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Vendor shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Vendor agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
29. **Successors in Interest.** This Agreement and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.
30. **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, Vendor shall timely pay all rent due as otherwise provided herein.
31. **Default and Termination.** The occurrence of one or more of the following events shall constitute a default by the Vendor under this Agreement:
 - A. Failure or refusal to pay any amount of rent or any other monetary obligation owed by the Vendor hereunder, when due, where such failure continues for a period of five (5) days after written notice thereof from the County to the Vendor;
 - B. Failure of the Vendor to observe or perform any other covenant, obligation or condition of this Agreement, where such failure shall continue after written notice thereof from the County to the Vendor. If the nature of the default is such that more than fifteen (15) days are reasonably required for its cure, then the Vendor shall not be deemed to be in default if the Vendor shall commence such cure within said fifteen (15) day period and thereafter diligently prosecute such cure to completion, which completion shall not occur no later than thirty (30) days from the date of such notice from the County.

- C. Three (3) or more violations of any local, state or federal law, code or ordinance within a calendar year period of time to include but not be limited to the Florida Department of Business and Professional Regulation (DBPR) food inspections considered a High Priority Violation and/or an Intermediate Violation. DBPR defines a High Priority food violation as those which could contribute directly to a foodborne illness or injury. DBPR defines an Intermediate food service violation as those which, if not addressed, could lead to risk factors that contribute to foodborne illness or injury.
 - D. Any waiver by the County of a breach of covenant of this Agreement by the Vendor shall not be construed as a waiver of subsequent breach of the same covenant. No breach for a covenant of this Agreement shall be deemed to have been waived by the County unless the waiver is in writing signed by the County.
 - E. Upon occurrence of one or more of the foregoing events of default, the County Manager, or designee, as hereby specifically delegated this authority by the Board of County Commissioners of Brevard County, Florida, may elect to terminate this Agreement.
 - F. 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 (30) days after written notice to the County by the Vendor specifically describing such failure. If the County fails to perform any of its contractual obligations under this Agreement and such failure is not cured within thirty (30) days (or such additional time as is reasonably required to correct any such default) of receipt of written notice of default, the Vendor's sole legal remedy for said default is to, terminate this Agreement upon written notice to the County.
 - G. This Agreement may be terminated for convenience by either party upon sixty (60) days written notice to the other party. Upon expiration or termination of this Agreement, the Vendor shall have thirty (30) days within which to remove any personal property from the Park. Any personal property not removed within said thirty (30) day period shall become the property of the County.
32. **Notice.** Notice under this Agreement shall be given to the County by delivering written notice postage prepaid, to the Brevard County Parks and Recreation, North Area Parks Operations, 475 N. Williams Avenue, Titusville, FL 32796; and notice shall be given to the Vendor by mailing written notice, postage prepaid, to address.
33. **Responsibility.** The Vendor's President shall be responsible for ensuring the Vendor is abiding by the terms of this Agreement. The Area Manager shall be responsible for assuring the contents of this Agreement are properly applied.
34. **Modification and Waiver.** No modification of this Agreement shall be binding on the County or the Vendor unless reduced to writing and signed by a duly authorized representative of County and the Vendor. The waiver by County of any of Vendor's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of Vendor under this Agreement.

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

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

ATTEST:

By: [Signature]
Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: [Signature]
Rita Pritchett, Chair

As approved by the Board on September 19, 2017.

WITNESS:

[Signature] 6/22/18
Signature & Date
WITNESS
[Signature] 6/22/18
Signature & Date

PIER 220 INC. (CORPORATE SEAL)

By: [Signature]
Sachin Shenoy, Vice President
Date: 6/22/18

State of Florida
County of Brevard

The foregoing instrument was acknowledged this 22nd day of June by Sachin Shenoy who personally appeared before me or provided DL#SS00-796-66-294.0 as form of identification and who affirms that he/she signed the instrument voluntarily for the purpose expressed in it.

[Signature]
Signature of Notary of Public
Shirley L. Corliss
Name of Notary of Public (print, type or stamp)
My Commission Expires: Jan 22, 2019

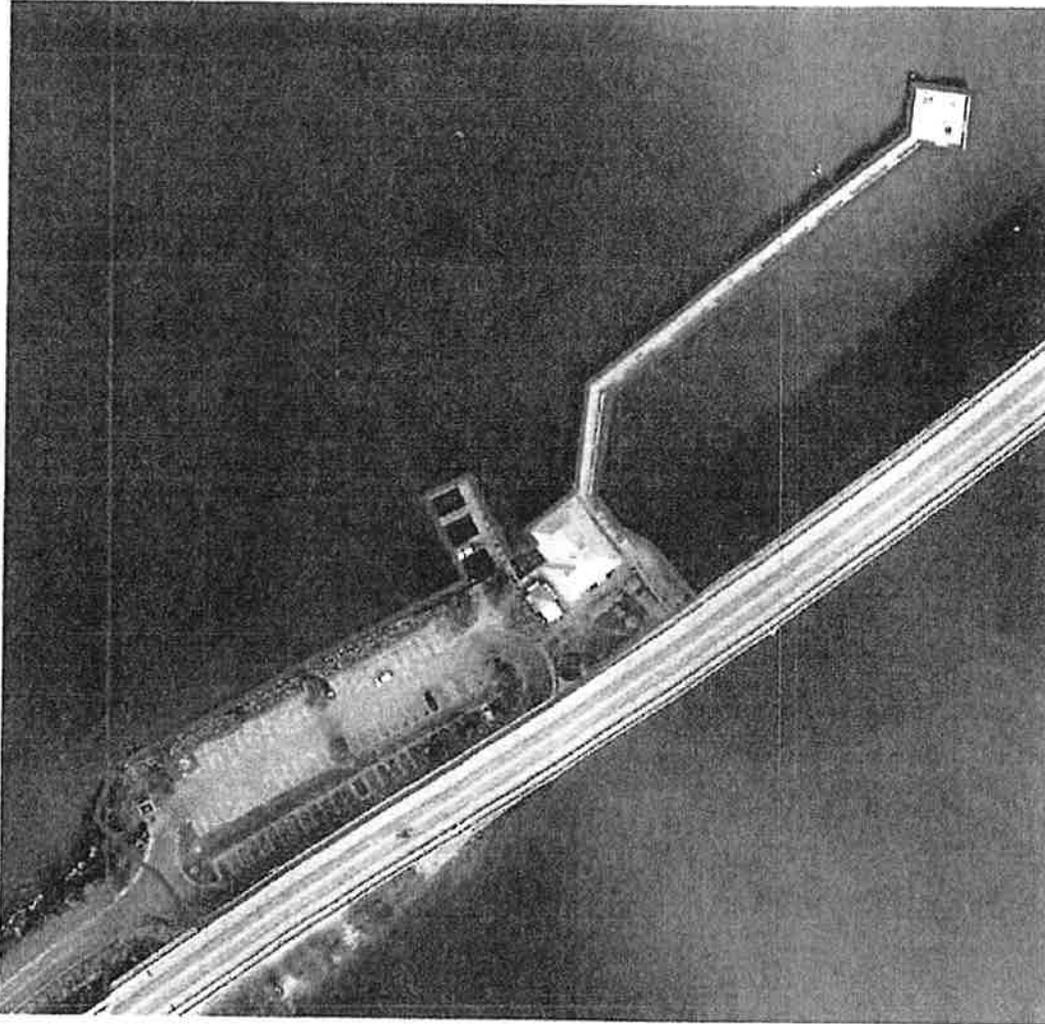


Reviewed for legal form and content:
[Signature]
Assistant County Attorney

Exhibit "A"

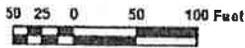
Titusville Veterans Memorial Fishing Pier

2 A. Max Brewer Memorial Parkway
Titusville, FL 32796



Brevard County Parks and Recreation

2017 Aerial



2725 Judge Fran Jamieson Way
Viera, FL 32940



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

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT made and entered into this 21st day of July, 1992, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County," and the CITY COUNCIL OF THE CITY OF TITUSVILLE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "City," which said Interlocal Agreement terminates and supersedes that prior Agreement between the parties hereto dated February 3, 1987.

W I T N E S S E T H :

WHEREAS, the County and the City have previously entered into an Agreement dated February 3, 1987, concerning the joint funding, as well as maintenance, operation, and programming of recreational activities at certain parks and facilities located within the City of Titusville, Florida; and

WHEREAS, the County and City have previously entered into an Agreement involving Rotary Park dated August 2, 1988; and

WHEREAS, the City has determined that a public purpose exists in the establishment, maintenance, and operation of municipal recreational services within the boundaries of the City of Titusville, Florida; and

WHEREAS, the City and the County presently own various parks and recreational facilities used and operated for the purpose of public recreation services, which are more particularly described below; and

WHEREAS, pursuant to the provisions of Section 125.01(1)(q), Florida Statutes, the County established the District One Brevard County Recreation Municipal Service Taxing Unit, through the adoption of Brevard County Ordinance No. 76-29, codified in Article VI, Chapter 18, Code of Brevard County, Florida; and

WHEREAS, pursuant to Section 125.01(1)(q), Florida Statutes, the boundaries of a municipal service taxing unit may include all or part of the boundaries of a municipality located within the boundaries of the municipal service taxing unit, subject to the

consent by ordinance of the governing body of the affected municipality given either annually or for a term of years; and

WHEREAS, the City has indicated a desire to have the incorporated areas of the City of Titusville, Florida, included within the boundaries of the District One Brevard County Recreation Municipal Service Taxing Unit; and

WHEREAS, the County has amended Article VI, Chapter 18, Code of Brevard County, Florida, to reflect the expansion of the boundaries of the District One Brevard County Recreation Municipal Service Taxing Unit to include the incorporated areas of the City of Titusville, Florida, through the adoption of Brevard County Ordinance No. 92-012; and

WHEREAS, the City has consented to the expansion of the boundaries of the District One Brevard County Recreation Municipal Service Taxing Unit to include the incorporated areas of the City of Titusville, Florida, through the adoption of City of Titusville Ordinance No. 11-1992; and

WHEREAS, the City has previously provided funding to the County for recreational services in the City of Titusville; and

WHEREAS, the taxable value of real property in the unincorporated areas of District One County Commission District for 1991 was \$927,419,656 and the taxable value of real property in the corporate limits of the City of Titusville for 1991 was \$974,507,170; and

WHEREAS, the City and County desire to provide for an equitable basis for recreation service in District One; and

WHEREAS, the parties hereto desire to enter into this Interlocal Agreement, terminating and superseding that prior Agreement between the parties dated February 3, 1987, and amendments thereto, including Rotary Park Agreement dated August 2, 1988, to set forth the terms and conditions by which the District One Brevard County Recreation Municipal Service Taxing Unit shall fund, operate, maintain, and program public recreational activities at the parks and recreational facilities located within the

boundaries of said District One Brevard County Recreation Municipal Service Taxing Unit.

NOW, THEREFORE, in consideration of the mutual premises, promises, and covenants hereinafter contained, the parties hereto hereby agree as follows:

SECTION 1. That the prior Agreement between the parties, dated February 3, 1987, and amendments thereto, a copy of which is attached hereto as Exhibit "A", is hereby terminated and superseded by the provisions of this Interlocal Agreement, effective September 30, 1992. The Rotary Park Agreement dated August 2, 1988 is hereby terminated as of September 30, 1992.

SECTION 2. The term of this Agreement shall commence upon the date of execution of this Interlocal Agreement by the parties hereto, and shall continue until such date as the City of Titusville rescinds by ordinance its consent to the inclusion of the incorporated areas of the City of Titusville, Florida, within the boundaries of the District One Brevard County Recreation Municipal Service Taxing Unit, or until otherwise terminated by mutual assent of the parties.

SECTION 3. The various parks and recreational facilities subject to this Agreement are listed in Exhibit "B", which is attached hereto and made a part hereof by this reference. The parties hereby agree that additional properties of the City may be added to the subject property from time to time, upon mutual agreement of the parties. The City may withdraw certain parks from this Agreement upon ninety (90) days prior written notice to the County, which notice must be received by the County on or before July 1 of any given year. The terms and conditions for any withdrawal of parks by the City shall be determined at the time of withdrawal upon mutual agreement of the parties.

SECTION 4. The City hereby grants to the County exclusive use, jurisdiction, and control of those properties listed in Exhibit "B" attached hereto; provided, however, that the County shall not use nor occupy said property, nor any part thereof, nor

permit the same or any part thereof, to be used or occupied, for any purpose other than as herein specified, and shall not assign any rights provided under this Agreement, nor delegate any duties or obligations specified herein to any other agency, public or private, without the prior written consent of the City; provided, however, that the County shall be permitted to enter into separate agreements with sanctioned groups, to include, but not be limited to, little league baseball, youth softball, little league football, youth soccer, square dance groups, and senior citizens' organizations. It is recognized by the County that the City is currently engaged in developing long range development plans for various areas within the municipal boundaries of the City of Titusville, which plans may affect one or more of the various parks and recreational facilities listed in Exhibit "B". The County agrees to take no action in regard to the various parks and recreational facilities listed in Exhibit "B", which are contrary to the City's above referenced planning, without prior consultation with, and consent by, the City.

SECTION 5. The City's share of the funding for the operation, maintenance, and programming of public recreational activities at the parks and recreational facilities located within the boundaries of the City shall be provided through those funds generated by the District One Brevard County Recreation Municipal Service Taxing Unit, on an annual basis. Further, the County is hereby authorized to expend such other funds as may be available for the provision of recreational services and facilities within the boundaries of the City, during the term of this Agreement.

SECTION 6. The County shall maintain the property as listed in Exhibit "B", and all improvements thereon, in good repair and appearance, at all times during the term of this Agreement. Whenever the term "Park" is used in Exhibit "B", it shall include all facilities at that location. The County shall maintain, install improvements on, including capital improvements, and provide recreational programs for the various City-owned parks on a par or

similar basis as County-owned parks within the District One Brevard County Recreation Municipal Service Taxing Unit. Upon termination of this Agreement, or any extension thereof, the County shall return the subject property to the City in as good a state and condition as reasonable use and wear would permit.

SECTION 7. The County shall pay all costs for gas, electricity, fuel, light, heat, power, water, garbage, and trash disposal, and other utilities, for those properties listed in Exhibit "B", utilized by the County, or others under the authority of the County, under the provisions of this Agreement. The City shall be responsible for payment of any and all stormwater assessments or charges levied against those properties listed in Exhibit "B", during the term of this Agreement.

SECTION 8. All personal property placed upon the properties listed in Exhibit "B" shall be at the risk of the County, or other owner thereof, and the City shall not be held liable for any damage thereto or to the County or any other person, which liability arises from any condition of the premises or act of negligence, carelessness, or improper conduct of any person whatsoever. The County hereby agrees to hold the City harmless from any accident which may occur on those properties listed in Exhibit "B", while being utilized by the County under the provisions of this Agreement, or any act, condition, or occurrence from which any liability may arise.

SECTION 9. The County shall maintain a system of self-insurance, which shall maintain a cash reserve in said self-insurance system sufficient to provide coverage in the amount of not less than \$100,000.00 for one injury, \$300,000.00 for one accident, and \$100,000.00 for property damage. The City may request that the County present to the City specific documentation confirming the level of fiscal responsibility required by this section.

SECTION 10. The City shall retain the underlying fee simple title to the properties described in Exhibit "B" and any permanent

improvements constructed thereon, subject to any subsequent agreement between the parties entered into pursuant to Section 3 above. It is recognized that improvements will be installed on City-owned and County-owned parks without distinction as to ownership. The City hereby assigns all other rights and responsibilities for said properties to the County under this Agreement.

SECTION 11. The County shall operate, maintain, and administer municipal recreation and park services and activities on the properties listed in Exhibits "B", within its budget limitations, consistent with those levels of activities and programming set forth in Exhibit "C" attached hereto and incorporated herein by this reference. The County shall also maintain the same or similar services, activities, and programming as presently offered at Sylvan Park, and its Community Center, and at Rotary Park. All funds generated through the Brevard County District One Recreation Municipal Service Taxing Unit shall be utilized for the provision of the above referenced services and activities within the boundaries of said Brevard County District One Recreation Municipal Service Taxing Unit, pursuant to the provisions of Section 125.01, Florida Statutes.

SECTION 12. The County may construct permanent improvements to the premises of those properties listed in Exhibit "B"; provided, however, that the County shall not construct any facilities for which costs exceed \$5,000.00, except upon submission of applicable plans and specifications to the City Manager for review and approval by the City.

SECTION 13. The County shall maintain, for the term of this Agreement, a system of records and accounts, in a format approved by the County for general funding subject to audit, and shall furnish to the City Manager reports on an annual basis, reflecting disbursement of funds expended for municipal recreation and parks activities under the Brevard County District One Recreation Municipal Service Taxing Unit.

SECTION 14. It is hereby agreed between the parties that the employment of personnel, agents, and any other employees by the County conducting activities governed by this Agreement shall not be construed as the employment of personnel, agents, or employees of the City.

SECTION 15. Notice, where applicable, shall be provided to the City and County as follows:

CITY

City of Titusville, Florida
c/o City Manager
Post Office Box 2806
Titusville, Florida 32781-2806

COUNTY

Board of County Commissioners of Brevard County, Florida
c/o County Administrator
2725 St. Johns Street
Building C, 3rd Floor
Melbourne, Florida 32940

SECTION 16. Prior to June 15 of each year during the term of this Agreement, the County shall submit to the City a proposed, preliminary budget, reflecting the maintenance, capital improvements, programs, and other services to be offered on the properties listed on Exhibit "B", as well as the other County parks and recreational facilities located within the District One Brevard County Recreation Municipal Service Taxing Unit. The County's proposed, preliminary budget shall reflect the proposed allocation or distribution of MSTU funds. The City Council shall review the proposed preliminary budget and distribution of MSTU funds on or before August 1 of each year, and provide its input and recommendations to the County and the North Brevard Commission on Parks and Recreation, or its subsequent functional equivalent.

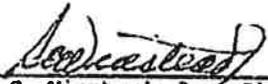
SECTION 17. No funds received or generated by the District One Brevard County Recreation Municipal Service Taxing Unit shall be diverted or transferred to the County's General Fund or any other parks and recreation district within the County.

SECTION 18. The County agrees to annually consult with the North Brevard Commission on Parks and Recreation in the development of the annual budget for the District One Brevard County Recreation

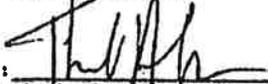
Municipal Service Taxing Unit, The County shall give consideration to the input and recommendation of the North Brevard Commission on Parks and Recreation. Once the budget is adopted, except in an emergency situation, no funds in excess of \$5,000.00 shall be transferred or reallocated from one park or recreational program to another without first being reviewed and receiving the input from the North Brevard Commission on Parks and Recreation. If an emergency occurs, input shall be sought by the County, after-the-fact, from the North Brevard Commission on Parks and Recreation. In the budgeting process, the North Brevard Commission on Parks and Recreation and the County agrees to give consideration to the source of the funds generated and the delivery of the services to the area from which the funds were generated. The City recognizes that the final decision rests with the County after giving consideration to the input from the City and the North Brevard Commission on Parks and Recreation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:


R. C. Winstead, Jr., Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 
Thad Altman, Chairman

ATTEST:


Janet R. Camacho, City Clerk

CITY COUNCIL OF THE CITY OF
TITUSVILLE, FLORIDA

By: 
Thomas R. Mariani, Mayor

Agree\Titusville.cit

EXHIBIT "B"

Parks and Recreation Facility

<u>City Owned</u>	<u>Activity/Program</u>
Blanton Park	Category IV
Broad Street	Category IV
Marina Park	Category I, IV, V, VII
Park area along Riverfront Near the Upland Building but excluding the Upland Building	Category IV, VII
Sandpoint Park	Category I, IV, V, VII
Sylvan Park and Community Center	Category I, III, IV, V, VI, VII
Wuestoff Nature Park	Category III, IV
North Brevard Exercise Trail	Category IV

EXHIBIT "C"

ACTIVITY/PROGRAM/CATEGORIES

Athletics - Category I

Softball
Baseball
Soccer
Basketball
Tennis

Racquetball
Handball
Football
Volleyball

Aquatics - Category II

Public Swim
Instructional/Lessons
Community Rental for Groups
School Use
Competitive Swim Use

Recreation Centers - Category III

Socials
Teen Dances
Sanctioned Group Use
Playground Games
Organized Classes for Groups
Community Meetings

General Parks - Category IV

Picnic Tables/Grill
Pavilions
Playground Equipment Areas
Multi-Purpose Fields
Building Rentals
Launching Area
Multi-Purpose Courts

Special Interest - Category V

Elementary Band
Exercise Classes
Bridge
Crafts
Summer Family Track
Special Events/Tournaments
Open Gym

Summer Recreation - Category VI

Summer organized youth activities/programs with paid staff at school/recreation centers.

Sanctioned Groups Usage - Category VII

Square Dancing
Round Dancing
Dancing
Little League Baseball
Youth League Softball
Youth League Football
Youth Soccer

Exhibit "C"

County Equipment

1. Reach-in Refrigerator/Freezer 23 cu. Ft. on Casters-True T-23 OT
2. 1000 watt Microwave oven, 120 volt – Amana RCS10PBDA
3. Microwave shelf 24" x 20" Stainless Steel Wall Mount Microwave Oven Shelf, Custom Fabricated
4. 4 Slice Pop-Up Toaster, Toastmaster TP409
5. Corner Counter 60" x 48" Stainless Steel Custom Fabricated
6. Corner Shelf 60" x 48" Stainless Steel Custom Fabricated
7. 36" Electric Griddle/Grill, Toastmaster TECG7336
8. 15" Electric Counter Model Hot Plates, Toastmaster TECHP1132
9. 2-13" Electric Fryers, Toastmaster TERCF1427
10. French Fry Warmer with Pan and Drain Gate, Hatco GRFF
11. 72" Griddle Stainless Steel Equipment Stand with 1 1/2" Backsplash on Rear and Sides, Custom Fabricated
12. 30" High X12" Deep Stainless Steel Low Storage Shelving Unit
13. 2-48" Long Sandwich/Salad Prep units with Refrigeration Cases, True TSSU4812
14. Ice Maker with a 380 lb. 24 hour production capability at 90 degree air and 70 degree water temperature. Manitowoc SD-04521A on 8570 Bin
15. 96" x 12" Stainless Steel Wall Mount Shelf Custom Fabricated (over sandwich/salad prep unit)
16. 4 Stainless Steel Counters, 1- 24" x 24", 2 - 30" x 24", 1- 96" x 24" with 4 Backsplash on Rear Custom Fabricated
17. 4 Stainless Steel Shelves, 12" Deep above Counters
18. 96" x 12" Stainless Steel Wall Mount Shelf Custom Fabricated
19. Two Section Reach-In Refrigerator, 49 cu. Ft. on Casters, True T49
20. Two Section Reach-In Freezer, 49 cu. Ft. on Casters, True T49F
21. 24" x 144" x 74" Dry Storage Wire Shelving, Powder Coated, Nexel Poly-Z-Brite Series
22. 16" x 72" x 74" Dry Storage Wire Shelving, Powder Coated, Nexel Poly-Z Brite Series
23. 24" x 24" Stainless Steel Cash Register Stand Custom Frabricated
24. Under Counter Dishwasher for chemical sanitizing with Chemical Pumps, CMALIX16
25. Exhaust Hood, Captive Aire 4524NC, with a Front Perforated Supply Plenum (BSP) Accessory, with 1 Factory Installed 10" x 30" Exhaust Riser
26. Full Height S/S Diamond Wallsplash
27. Fire System #1 to include:
 - A. Permit
 - B. Hook-Up
 - C. Test
 - D. Ansul ~ 3.0/1.5, 4.5 Gallon Fire System in Utility Cabinet (includes Pre-Piped Hood with Detection, Tank, Release Mechanism, Micro-switches, Pull Station)

Exhibit "D"



BOARD OF COUNTY COMMISSIONERS

ADMINISTRATIVE ORDER

NUMBER: AO-05
CANCELS: 04/24/15
APPROVED: 06/12/18
ORIGINATOR: Human Resources
REVIEW: 06/12/21

Title: Background Investigation Checks

I. PURPOSE AND SCOPE

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

II. DEFINITIONS AND REFERENCES

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 cannot 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.

- 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.
- 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).

- 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 any high level security 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
- 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.

IV. RESERVATION OF AUTHORITY

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

Frank Abbate 6/12/18
Frank Abbate, County Manager / Date