



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.7.

4/21/2020

### Subject:

Approval, RE: Property Access License Agreement at Watts Park, Merritt Island, Florida

### Fiscal Impact:

No impact

### Dept/Office:

Parks and Recreation

### Requested Action:

It is requested that the Brevard County Board of County Commissioners approve a Property Access License Agreement that allows Kenneth Nelsen and Ashley Keegan Nelsen access to their property through Brevard County owned Watts Park, 695 Needle Boulevard, Merritt Island, Florida. If it becomes necessary to extend the Agreement, it is requested that the County Manager, or designee be authorized to sign additional extensions.

### Summary Explanation and Background:

Kenneth and Ashley Nelsen own the property adjacent to Brevard County owned Watts Park. The Nelsen's are preparing to construct a pool in their backyard but in order to construct it, their contractor needs temporary access with heavy equipment to a portion of Watts Park for ingress/egress to the Nelson's backyard. The attached Property Access License Agreement would give them temporary access through the portion of Watts Park identified on Exhibit A of the Agreement, for a period of three (3) months. If additional time is necessary, it is requested that the County Manager, or designee be authorized to sign any extensions.

Once the pool construction has been completed, the Agreement will terminate.

### Clerk to the Board Instructions:

Please return fully executed Property Access License Agreement to Melissa Renninger, Parks and Recreation telephone 321-633-2046.



April 22, 2020

**M E M O R A N D U M**

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

RE: Item F.7., Approval for Property Access License Agreement at Watts Park, Merritt Island

The Board of County Commissioners, in regular session on April 21, 2020, approved a Property Access License Agreement that allows Kenneth Nelsen and Ashley Keegen Nelsen access to their property through Brevard County owned Watts Park, 695 Needle Boulevard, Merritt Island; and authorized the County Manager or his designee to sign additional extensions if it becomes necessary to extend the Agreement. Enclosed is a fully-executed Property Access License Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Kimberly Powell*  
Kimberly Powell, Deputy Clerk

Encl. (1)

cc: County Manager

## **PROPERTY ACCESS LICENSE AGREEMENT**

**THIS PROPERTY ACCESS LICENSE AGREEMENT** is hereby made and entered into by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and **Kenneth Nelsen and Ashley Keegan Nelsen of 650 Paula Avenue, Merritt Island, Florida 32953** (hereinafter referred to as the "Licensee(s)").

### **WITNESSETH**

**WHEREAS**, the County owns property in Brevard County, Florida, as depicted and outlined in red on Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter referred to as the "County's Property"); and

**WHEREAS**, the Licensee(s) are the owners of certain property located at **650 Paula Avenue, Merritt Island, Florida 32953** as depicted and highlighted in yellow on Exhibit A (hereinafter referred to as the "Licensees' Property"), which is adjacent to the County's Property; and

**WHEREAS**, the Licensees desire to access the County's Property as highlighted in blue on Exhibit A, in order to enter and leave the east side of Licensees' property; and

**WHEREAS**, County desires to grant to Licensees access over the County's Property as more particularly described herein.

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

1. Recitals. The above recitals are true and correct and incorporated into and made part of this License Agreement by this reference.
2. Property. This License Agreement relates to the land owned by the County and identified in the legal description set forth in Exhibit "B" to this License Agreement, which is incorporated herein by this reference.
3. License. The County hereby grants to Licensees a non-exclusive, personal, and revocable license (hereinafter referred to as the "License") solely for the purpose of allowing Licensees ingress and egress to Licensees' Property on the western most portion of the County's Property highlighted in blue on Exhibit A for the term of this License Agreement. This License shall not be interpreted or construed to grant any right of ingress over, egress over, or use of the western most portion of the County's Property by any other person, third party, or property owner other than Licensees, except for invited guests of the Licensees. Licensees shall be present when any and all guests are accessing the western most portion of the County's Property. This License shall not be construed or interpreted as granting or attempting to grant the Licensee ingress or egress across property owned by any other person or legal entity. The License

Agreement does not operate to confer on, or vest in, the Licensees any title, interest, or estate in the County's Property.

4. Right of Access. The Licensees are hereby granted access through the County's Property along the designated path identified on Exhibit "A" for ingress and egress purposes in order to access Licensees' Property, subject to and in accordance with the County's rules and regulations governing such access, as well as all applicable laws and regulations promulgated by the State of Florida or any other governmental entity. The County shall allow Licensees to utilize the western most portion of the County's Property during the term of this License to access the rear of Licensees' Property. Neither the License nor the Licensees' use of the western most portion of the County's Property shall constitute a basis for obtaining a building permit for the construction of any improvements on the Licensees' property. This License Agreement is intended solely to provide a revocable, personal privilege to enter and leave Licensees' Property, and in no way interferes with Licensees' right to apply for and acquire, if appropriate, a legal easement over the County's Property at some date in the future. In no way does this License Agreement extinguish any existing legal right Licensees currently have concerning access to their property. Licensees further agree to close any gate(s) used by the Licensees to enter or exit the County's Property.

5. No Other Activity. The Licensees may not enter upon or engage in any other activity upon the County's Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the County's Property.

6. Authority; Maintenance. The County represents that it has the right to grant the license herein described. The County shall not bear any responsibility for the maintenance of the County's Property, including the western most portion of the County's Property, and shall have no duty to keep the County's Property in a condition passable by Licensees. Licensees shall not undertake any maintenance or improvement of the County's Property without the expressed written permission of the County, which permission may be withheld in the County's sole discretion. Licensees shall have the right, after obtaining written approval from County staff, to maintain but not improve the western most portion of the County's Property depicted on Exhibit A. As it pertains to this License Agreement, maintenance includes trimming of trees and brush that restrict travel along the western most portion of the County's Property and removal of tire ruts and tire tracks so as to keep the western most portion of the County's Property in a condition to support travel on it. No maintenance may be conducted outside the boundaries of the western most portion of the County's Property.

7. Undue Waste. Licensees shall not commit undue waste to the County's Property and agree to restore any damage to the western most portion of the County's Property that occurs as a result of or is associated with Licensees' use of the western most portion of the County's Property to the satisfaction of the County.

8. Indemnification. Licensees shall indemnify and hold harmless the County, and its agents, officers, and employees, from and against any and all claims, losses, and expenses, including attorney's fees, arising out or resulting from the performance of the work relating to this License Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Licensees, or anyone acting directly or indirectly for the Licensees or on their behalf, regardless of whether or not it is caused in part by a party indemnified hereunder. Licensees shall be solely responsible for any liability, damages, costs, fines, and/or administrative or criminal enforcement actions resulting from their activities on the County's Property. Nothing contained herein shall be construed or interpreted as a waiver of the County's sovereign immunity protections or limitations on damages provided for in Section 768.28, Florida Statutes, as amended. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Licensees acknowledge specific consideration has been received for this hold harmless/indemnification provision. The duties and responsibilities established in this paragraph shall survive expiration or termination of this License Agreement.

9. Insurance. Licensees agree that they have or will have appropriate levels of insurance in force at all times and maintained during the term of this License Agreement to cover any claims, including those in Paragraph 8 hereto. Prior to any work being conducted, Licensees shall show proof to the County that they have been named as an additional insured on any insurance policy held by a contractor(s).

10. Term. The term of this License Agreement, and the rights granted herein, shall be effective upon the date of last signature below and shall continue for three (3) months (hereinafter the "Term"). Licensees may request the County Manager, or designee, to grant up to three (3) additional extensions of three (3) months. Such requests must be made at least twenty (20) days prior to the expiration of the Term.

11. Revocation or Termination. This License Agreement may be revoked or terminated by the County upon thirty (30) days' written notice to the Licensees if the Licensees:

- a. Transfer ownership of all or any part of the Licensees' Property. In the event of transfer of ownership of all or any part of the Licensees' Property, Licensees agree to make a condition of the transfer that the new owner shall apply to the County for a License Agreement thirty (30) days prior to the transfer of title, which shall not be unreasonable withheld by the County. In the event the County has reason not to enter into a License Agreement with the new owner, the County will notify Licensees within the 30 day period of the reasons a License Agreement should not be issued to the prospective new owner;
- b. Obtain alternate access for ingress and egress to Licensees' Property;
- c. Violate any law, rule, regulation, or management plan applicable to the County's Property, as promulgated by the State of Florida, or any of its agencies; the County; or any other governmental agency with jurisdiction;

- d. Engage in any hunting activity on the County's Property;
- e. Discharge any firearms on or across any portion of the County's Property;
- f. Conduct any illegal or unauthorized activity on the County's Property;
- g. Enter upon or conducts activity upon the County Property for uses other than use of the western most portion of the County's Property for ingress and/or egress during the Term of this License Agreement;
- h. Violate any term, provision, or condition of this License Agreement; or
- i. If, in the sole discretion of the County, the County determines that the Licensees' continued use of the County's Property for the specific purposes outlined herein interferes with the County's management of the County's Property. In such a case, the County has the discretion to provide alternate access for ingress and/or egress if possible.
- j. This License Agreement may be revoked at any time for any reason by the County.

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

13. No Interest in the Property. This License Agreement is the grant of a personal right to the Licensees. This License Agreement shall not be construed to create any real property interest in the County's Property.

14. Assignment. The License Agreement may not be assigned, transferred, conveyed, or devised to any other person, corporation, partnership, or other entity.

15. 15.Acceptance. This License Agreement constitutes the entire agreement between the County and the Licensees and supersedes all prior arrangements and understandings whether written or oral relative to the subject matter(s) thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. Venue; Governing Law. Venue for any legal action brought by any party to this License Agreement to interpret, construe, or enforce this License Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.

16. Attorney's Fees. In the event of any legal action to enforce the terms of this License Agreement, each party shall bear its own attorney's fees and costs.

17. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this License Agreement and duly executed by both parties.

18. Severability. If any term, covenant, condition, or provision of this License Agreement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

19. Counterparts. This License Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by facsimile machine and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original License Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this License Agreement.

**[SIGNATURES TO FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this License Agreement as of the date of last signature below.

ATTEST:

By: [Signature]  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By: [Signature]  
Bryan Lober, Chair  
As approved by the Board on: 4/21/2020

WITNESS

Beth M. Scott  
Name  
[Signature] 3/26/20  
Signature Date

LICENSEES

Kenneth R. Nelsen  
Name Kenneth R. Nelsen  
[Signature] 03-26-2020  
Signature Date

Ashley M. Nelsen  
Name Ashley M. Nelsen  
[Signature] 3/26/20  
Signature Date

STATE OF Florida  
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 26th day of March, 2020,  
by Kenneth Nelsen, Ashley Nelsen, who is personally known to me or produced  
FL DL as identification.

[Signature]  
Notary Public

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

(NOTARY PUBLIC SEAL)



Beth M. Scott

(Printed, Typed or Stamped Name of  
Notary Public)

Commission No.: \_\_\_\_\_

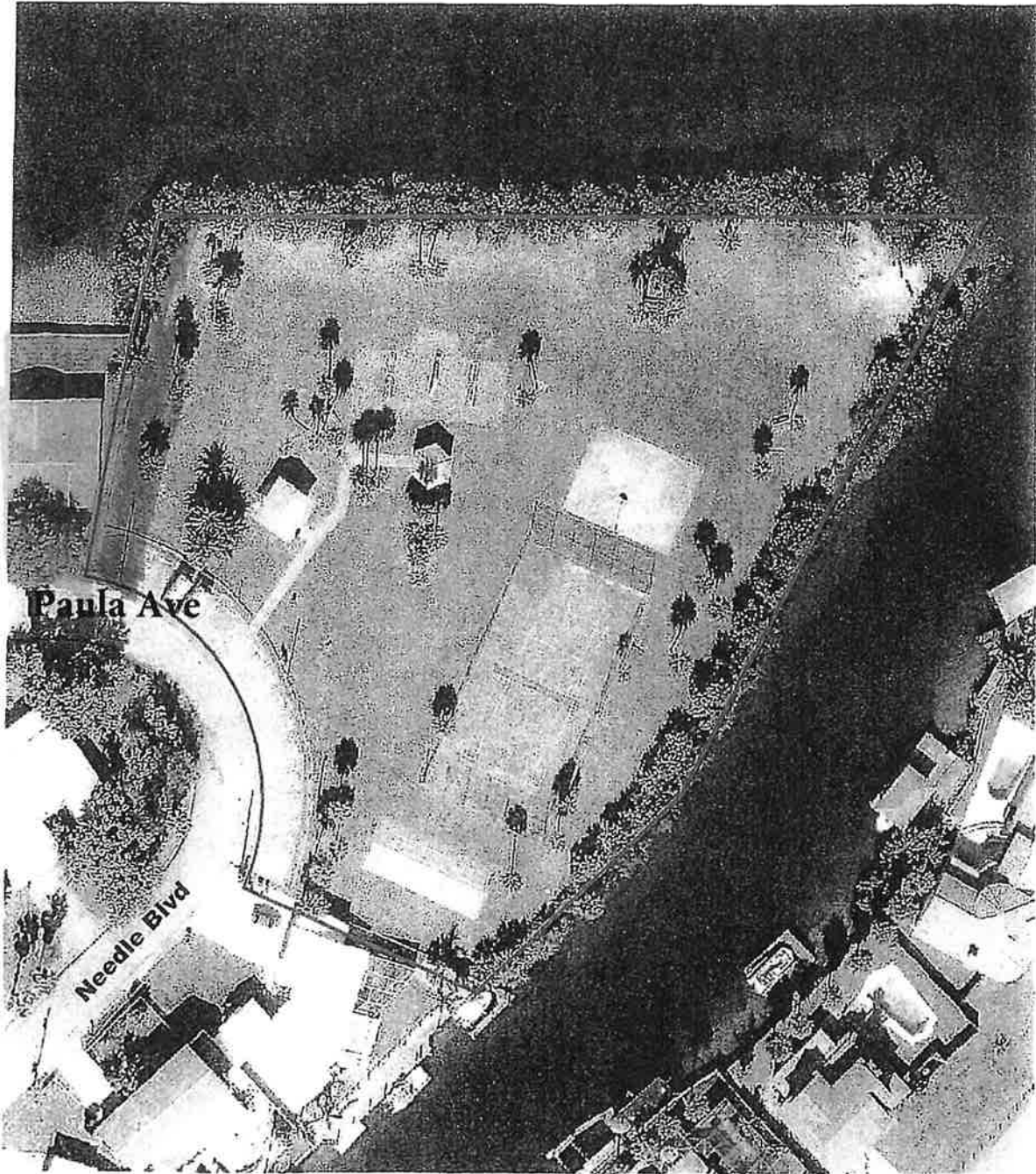
My Commission Expires: \_\_\_\_\_



EXHIBIT "A"

# Watts Park

695 Needle Boulevard  
Merritt Island, FL 32953



Brevard County Parks and Recreation

2725 Judge Fran Jamieson Way  
Viera, FL 32940

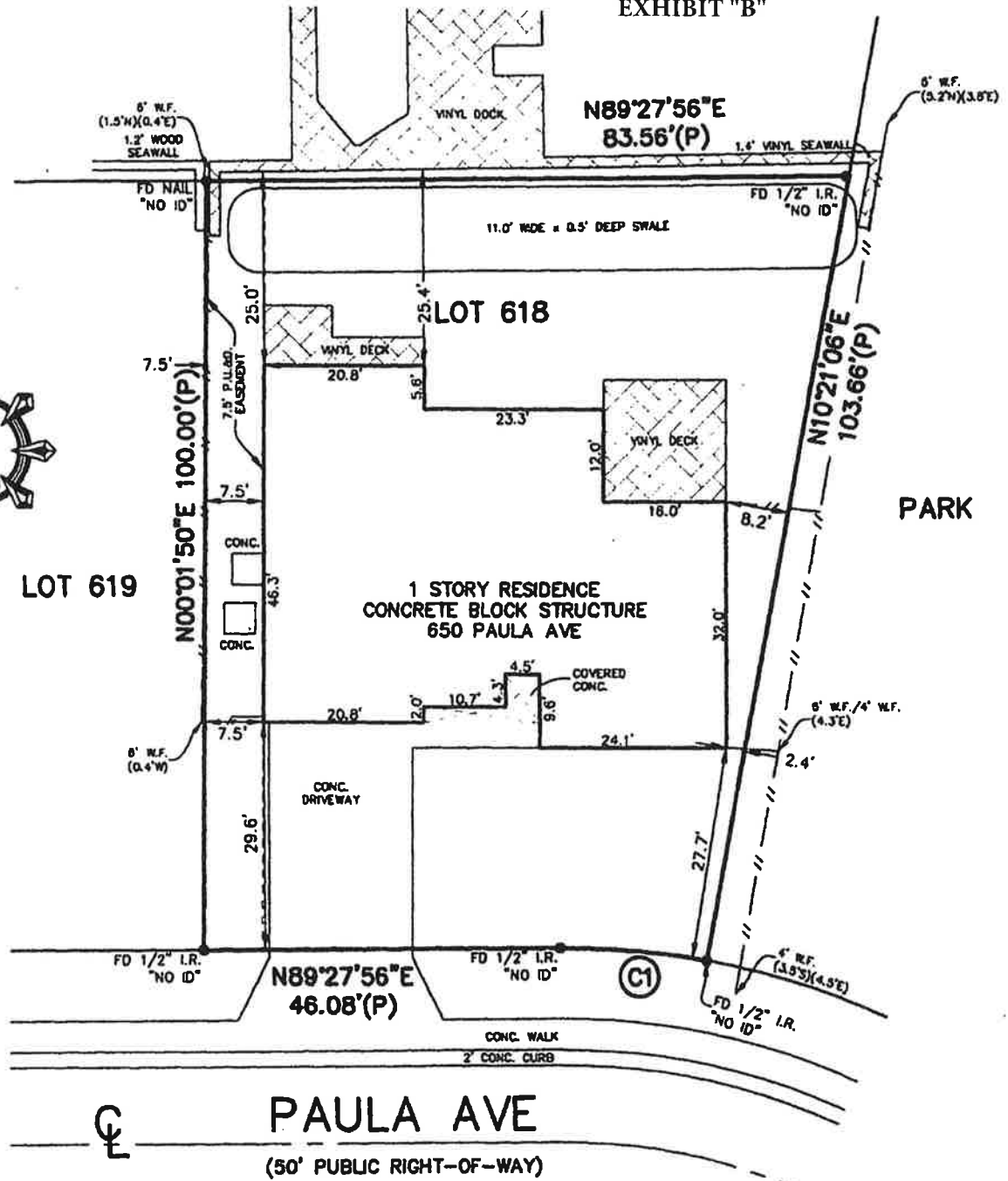
2014 Aerial

0 25 50  
Feet



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

# EXHIBIT "B"



## CERTIFIED TO:

**ASHLEY NELSEN AND KENNETH NELSEN**  
**CROSS COUNTRY MORTGAGE,**  
**DOCKSIDE TITLE, LLC**  
**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

## SURVEYOR'S NOTES:

- 1) THE BEARING SYSTEM SHOWN HEREON IS BASED ON A ASSUMED BEARING OF N.89°27'56"E., ALONG THE NORTH RIGHT-OF-WAY LINE OF PAULA AVE.
- 2) AS PER FLOOD INSURANCE RATE MAP NO.12009C 0435 G, INDEX DATED 03-17-2014, THE ABOVE DESCRIBED PROPERTY LIES IN ZONE X & AE.
- 3) THIS SURVEY WAS PREPARED FROM TITLE INFORMATION PROVIDED TO THE SURVEYOR. THERE MAY BE ADDITIONAL RESTRICTIONS OR EASEMENTS THAT AFFECT THE PROPERTY.
- 4) THIS TRACT CONTAINS 7,455 SQUARE FEET OR 0.17 ACRES OF LAND MORE OR LESS.

## CERTIFIED BY:

**DAVID A. BLOCK**  
**FLORIDA P.S.M. 6263**  
 (NOT VALID UNLESS SEALED)  
**1545 BREAM STREET**  
**MERRITT ISLAND, FL 32952**  
**PHONE: 321-452-7048**  
**FAX: 321-452-5109**  
**www.blocksurveying.com**  
**dblock@blocksurveying.com**

**SCALE: 1" = 20'**  
**DATE: 12/14/2016**



# INITIAL CONTRACT REVIEW AND APPROVAL FORM


## SECTION I - GENERAL INFORMATION

1. Contractor: Kenneth and Ashley Keegan Nelsen	
2. Fund/Account #:	3. Department Name: Parks and Recreation
4. Contract Description: Property Access License Agreement	
5. Contract Monitor: Melissa Renninger	7. Contract Type:  LEASE/RENTALS
6. Dept/Office Director: Mary Ellen Donner	

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

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

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>		
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>		
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		4/7/2020

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

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

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

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

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

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

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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