

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	November 19, 2024	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Standard License Agreement (License Agreement) with the U.S. Army Corps of Engineers, Jacksonville District (ACOE) for the use of a portion of John Stretch Memorial Park, located on SR 80, in unincorporated Palm Beach County, just west of Miami Canal Road.

Summary: This License Agreement grants ACOE a revocable license to undertake the removal of trees and brush, treatment of stumps and roots, cleaning of the toe ditch, and fortification of the berm within approximately 50 feet on the downstream side facilitating access and maintenance of the Herbert Hoover Dike. The term of the License Agreement is 25 years and may be terminated earlier by either party upon 60 days' written notice. During this term, ACOE is responsible for the maintenance of the licensed premises, including but not limited to periodic mowing, fertilizing, and weeding. There is no fiscal impact or cost associated with the approval of this License Agreement. The County's Parks and Recreation department will continue to have administrative responsibility over the park. **(Property & Real Estate Management) District 6 (HJF)**

Background and Justification: John Stretch Memorial Park is situated on SR 80, just west of Miami Canal Road, is located within the Everglades Agricultural Area. The Trustees of the Internal Improvement Fund of the State of Florida dedicated this property to Palm Beach County on March 26, 1965, for public park and recreational purposes. The agreement with ACOE supports the ongoing efforts to maintain and protect the Herbert Hoover Dike, a critical infrastructure for the area. Approval of this License Agreement will support both local park preservation and federal maintenance efforts on this vital flood protection system.

Attachments:

1. Location Map
2. License Agreement

Recommended By:		<u>10/11/24</u>
	Department Director	Date

Approved By:		<u>10/24/24</u>
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2025	2026	2027	2028	2029
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No X

Does this item include the use of federal funds? Yes _____ No X

Does this item include the use of state funds? Yes _____ No X

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

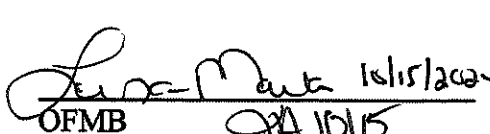
No fiscal impact.

Fixed Asset Number _____
 PCN: 00 35 43 35 00 000 7000

C. Departmental Fiscal Review: 

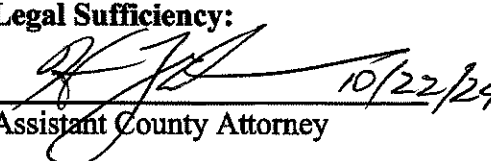
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 10/15/2024
 OFMB
 JPA 10/15
 ESW 10/15

 10/21/24
 Contract Development and Control

B. Legal Sufficiency:

 10/22/24
 Assistant County Attorney

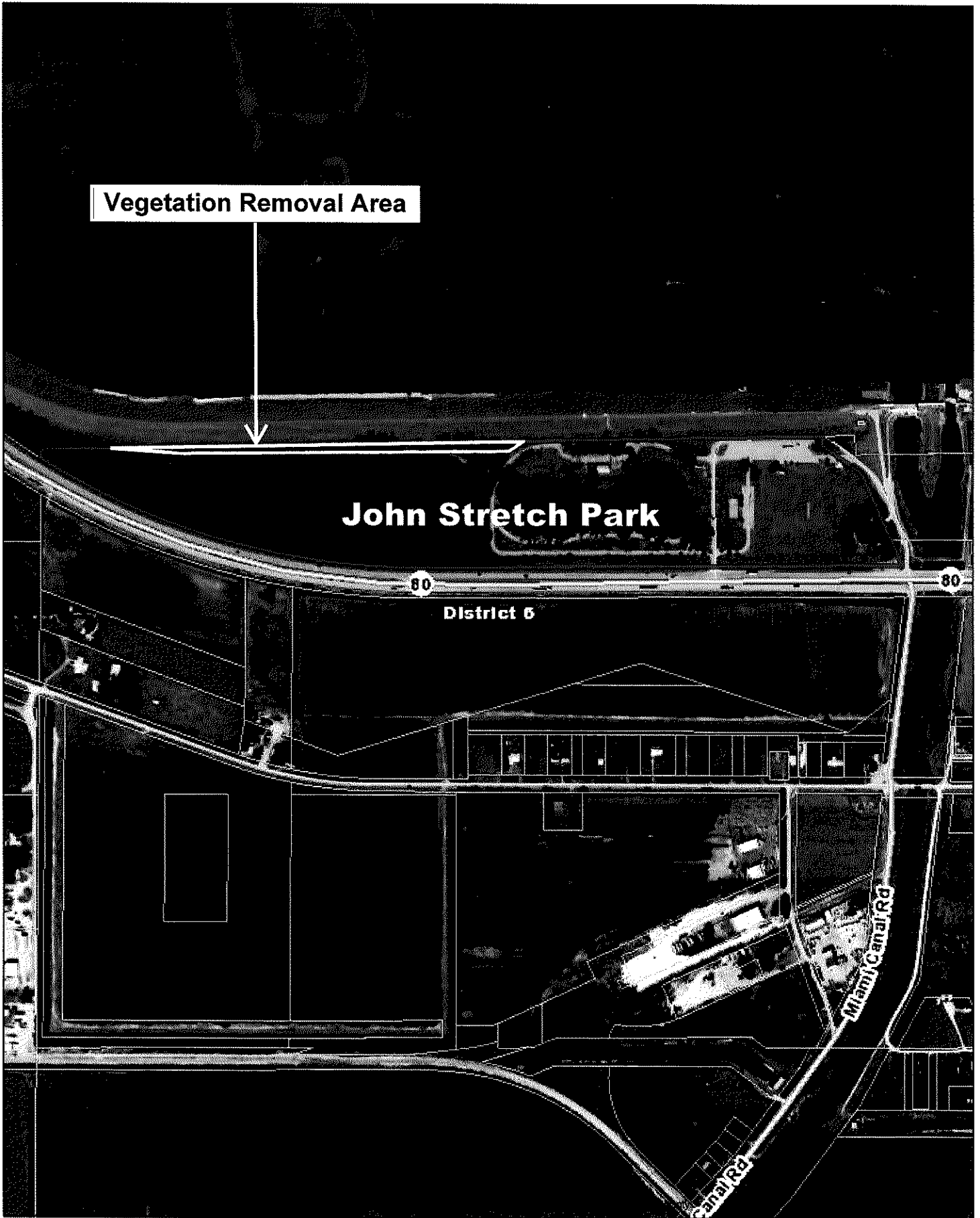
C. Other Department Review:

 10/17/2024
 Department Director

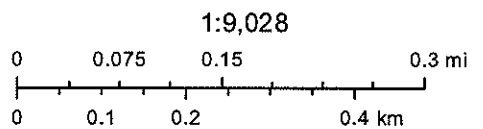
This summary is not to be used as a basis for payment.

Location Map

Portion of 00-35-43-35-00-000-7000



September 27, 2024



Attachment 1

Attachment #2
License Agreement
U.S. Army Corps (2 @ 13 pages)

**STANDARD LICENSE AGREEMENT
FOR USE OF COUNTY PROPERTY**

This License Agreement made and entered into November 19, 2024 by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and **U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT**, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee has applied for a License to Use County property via the Application for License to Use County Property (the "Application"), attached hereto as **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, County has vested dedicated rights in the real property described on the Application; and

WHEREAS, County is authorized and willing to grant Licensee a revocable license to use the property for the purposes described on the Application and hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby permits Licensee to use the Premises, as hereinafter defined, upon the terms and conditions contained in this License Agreement.

1. Premises

The Premises, for the purpose of this License Agreement, is the real property and/or improvements identified on the Application. The Application, which may include special conditions of use as set forth in the Application, is hereby made a part of this License Agreement. The Licensee accepts the Premises in its "as is" condition. The County is in no way representing that the Premises is suitable for the Licensee's use and Licensee hereby accepts all risk relating to the use of the Premises.

Licensee shall use the Premises solely and exclusively for the use listed on the Application; Licensee shall not use, permit or suffer the use of the Premises for any other purpose whatsoever. Licensee shall be entitled to use the Premises only on the days and times listed on the Application. Licensee shall make no improvements, alterations or additions to the Premises. The use of the Premises by Licensee shall not interfere with County's use or operation of the Premises.

Licensee shall immediately report to a County representative any condition or activity on the Premises which poses a risk to persons or property. If directed by the County, Licensee shall postpone its activity until the County notifies the Licensee that it is safe to resume the activity.

2. **Length of Term and Commencement Date**
This License Agreement shall commence upon execution by both parties ("the Commencement Date"). The term of this License Agreement shall continue until the earlier of, the time listed on the Application, twenty-five years from the Commencement Date, or termination in accordance to the terms of this License Agreement.
3. **License Fee**
No License Fee is assessed for the Application. Licensee may be required to pay charges for custodial, set-up or special requirements as indicated on the Application.
4. **Termination**
The County may terminate this License Agreement upon 90 days written notice to the Licensee. Upon Licensee's receipt of written notice from the County, this License Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination. Licensee may terminate this License Agreement upon written notice to the County. Notwithstanding such termination, Licensee shall remain obligated to surrender and restore the Premises as required by this License Agreement and for any obligations arising prior to such termination.
5. **Waste or Nuisance**
Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises. Licensee shall keep the access to the Premises, the parking areas, driveways and other contiguous areas to the Premises free and clear of obstruction.
6. **Governmental Regulations**
Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all applicable governmental authorities pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes and all applicable association/governing body rules and regulations pertaining to the Licensee's use of the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Licensee's activity, on the Premises or in any manner not permitted by law.
7. **Non-Discrimination**
The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Licensee warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

8. **Surrender of Premises**

Upon termination of each use of the Premises by the Licensee, Licensee, at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in at the start of each period of use.

9. **Maintenance and Repair**

Licensee shall conduct all maintenance or repairs to the Premises. In the event that Licensee damages the Premises, County shall have the right but not the obligation to complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so. County will notify Licensee prior to conducting any work and the estimated cost of such work. County shall not proceed with any work without the concurrence of the Licensee, and under no circumstances shall such repair costs exceed the fair market value of the property. Such concurrence shall be received from Licensee in a reasonable time such that there is no further damage to the land. Only in an emergency situation involving imminent harm should the County proceed with repairs without prior concurrence of the Licensee.

10. **Indemnification of County**

The parties acknowledge that Title 31, United State Code, Section 1341 and Title 41, United States Code, Section 11 prohibit Federal agencies from entering any agreement that requires a Federal user to indemnify and/or hold harmless another party where the amount of the government's liability is indefinite, indeterminate or potentially unlimited. The Licensee is a self-insured Federal entity supported by the U.S. Government. Under the Federal Tort Claims Act, Title 28 U.S.C 1346 et seq., the U.S. Government accepts liability for the loss or destruction of property or personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the government while acting within the scope of his or her office. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States.

11. **Insurance**

Licensee is a government entity and Licensee acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Licensee is self-insured for general and auto liability.

In the event, that the Licensee uses contractors or subcontractors for any of the work associated with this License Agreement, the contractors or subcontractors shall, per the Federal Acquisition Regulation (FAR) Part 28, furnish payment and performance bonds to the Licensee to cover the original contract price.

Compliance with the foregoing insurance requirements shall not relieve Licensee of its liability and obligations under this License Agreement.

Licensee's self-insurance shall be primary with respect to any coverage afforded to or maintained by the County.

12. **Utilities**

The County shall be solely responsible for, and promptly pay to the utility or other provider of such service, all charges and assessments for water, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises unless the responsibility for

utilities is listed by the County as a special condition of use on the Application. In no event shall County be liable for an interruption or failure in the supply of any utilities to the Premises.

13. **Rules of Premises**

Licensee shall strictly adhere to the Rules that govern the Premises as set forth in the Application, at all times. Licensee also acknowledges that any violation of the Rules governing the use of the Premises may result in the suspension or termination of this License Agreement.

14. **Sublicensing**

The Licensee may not sublicense or assign any rights, responsibilities or obligations of this License Agreement. This License only extends to Licensee, its contractors, and agents.

15. **Entire Agreement**

This License Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee. All representations, either oral or written, shall be deemed to be merged into this License Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this License Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

16. **Notices**

All notices and elections (collectively, "Notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any Notice shall be the date of delivery of the Notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which Notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Property and Real Estate Management
Attn: Director
2633 Vista Parkway
West Palm Beach, FL 33411

with a copy to:

Palm Beach County
Attn: County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401

(b) If to the Licensee at:

U.S. Army Corps of Engineers
Jacksonville District
Attn: CESAJ-RE-M
P.O. Box 4970
Jacksonville, FL 32232-0019

Either party hereto may change the address for service of Notices required or permitted hereunder upon three (3) days' prior written notice to the other party.

17. **Severability**

If any term or provision of this License Agreement shall be held invalid or unenforceable, the remainder of this License Agreement shall not be affected and every other term and provision of this License Agreement shall be deemed valid and enforceable to the extent permitted by law.

18. **Governing Law and Venue**

This License Agreement shall be governed by the laws of the United States Federal Government. Any legal action necessary to enforce the License Agreement will be held in a court of competent jurisdiction selected by the United States Department of Justice.

19. **Recording**

Licensee shall not record this License Agreement, or any memorandum or short form thereof in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this License Agreement.

20. **Time of Essence**

Time is of the essence with respect to the performance of every provision of this License Agreement in which time of performance is a factor.

21. **Palm Beach County Office of the Inspector General**

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Licensee, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

22. **No Third Party Beneficiary**

No provision of this License Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this License Agreement, including but not limited to any citizen or employees of the County and/or Licensee.

IN WITNESS WHEREOF, County and Licensee have executed this License Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESS:

LICENSEE:

**U.S. ARMY CORPS OF ENGINEERS
Jacksonville District**

By: Harster A. Bealyer
Signature

Harster A. Bealyer
Printed Name

By: T H McQuillen
Signature

Timothy H. McQuillen
Printed Name

Chief, Real Estate Division
Title

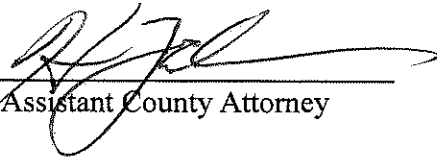
[Signatures continue on next page]

ATTEST:

**JOSEPH ABRUZZO
CLERK OF THE CIRCUIT
COURT & COMPTROLLER**

By: _____
Deputy Clerk

**APPROVED AS TO
LEGAL SUFFICIENCY**

By: 
Assistant County Attorney

COUNTY:

**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____
, Mayor

**APPROVED AS TO TERMS AND
CONDITIONS**

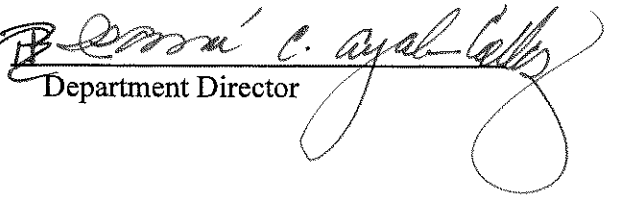
By: 
Department Director

Exhibit "A"

APPLICATION FOR LICENSE TO USE
COUNTY PROPERTY

Does Use include the sale of Goods and/or Services? Yes No

Will User charge an Admission Fee and/or Participation Fee? Yes No

Amount to be charged for Admission Fee and/or Participation Fee: n/a

Detailed description of the nature and purpose of use (attach additional sheets as necessary):
The U.S. Army Corps of Engineers is required to maintain a vegetation and encroachment free zone of 50 feet on the downstream side of the Herbert Hoover Dike in order to have unrestricted access for safety inspections and flood fighting actions. Said 50-foot zone is located along the northern boundary of the County property as depicted on Exhibit "A-1" attached hereto and made a part hereof ("Premises").

4. FOOD AND BEVERAGE

Use includes food and/or beverage? Yes No

Use includes the sale, use or consumption of alcohol? Yes No

Note: A custodial fee may be imposed if the Use involves food and/or beverages.

5. DATE AND TIME OF USE

Date(s) of Use: 09/01/2024 through 08/31/2049 – Limited to park hours

Time(s) of Use: : AM/PM - : AM/PM

6. EQUIPMENT

Amount of Equipment Requested: n/a Tables n/a Chairs

All equipment contained or used within the Facility is subject to approval by the Department.

7. ADDITIONAL USERS

Organization(s)/individual(s) participating in use, if other than Applicant (attach additional pages to list more organization(s)/individual(s)):

Name: N/A

Address: _____

City: _____ State: _____ Zip: _____

Phone: () - Email: _____

Contact Person: _____

Type of Entity: Public Agency Non-Profit Other (Specify) _____

8. VENDORS

List all vendors of the Event: n/a

9. ADVERTISING

Will the event be advertised to the Public? Yes No
If yes, by what means?: Radio TV Other _____

TO BE PROVIDED BY FDO (After evaluation of the Application):

1. FEES AND ADDITIONAL CHARGES

<input type="checkbox"/>	License Fees	\$	<u>n/a</u>
<input type="checkbox"/>	Custodial Fees	\$	_____
<input type="checkbox"/>	Service Costs	\$	_____
<input type="checkbox"/>	Other Costs	\$	_____

2. Special Conditions of Use: See attached Exhibit A-2

By signing below, I certify that I have the authority to represent and obligate the Licensee and I agree on behalf of the Licensee to comply with the terms of this Application.

T M Z
Signature of Authorized Representative

Date: 9/23/2024

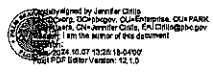
Timothy H. McQuillen, Chief, RE Div.
Printed Name and Title of Authorized Representative

APPROVED BY:

[Signature]
Director, Facilities Development & Operations Department

Date: 10/11/24

OTHER DEPARTMENTAL REVIEW (If necessary):

Jennifer Cirillo 
Signature of Director of Department

Date: _____

EXHIBIT "A-1"

PREMISES

50-foot vegetation and encroachment free zone depicted below:
A portion of PCN: 00-35-43-35-00-000-7000

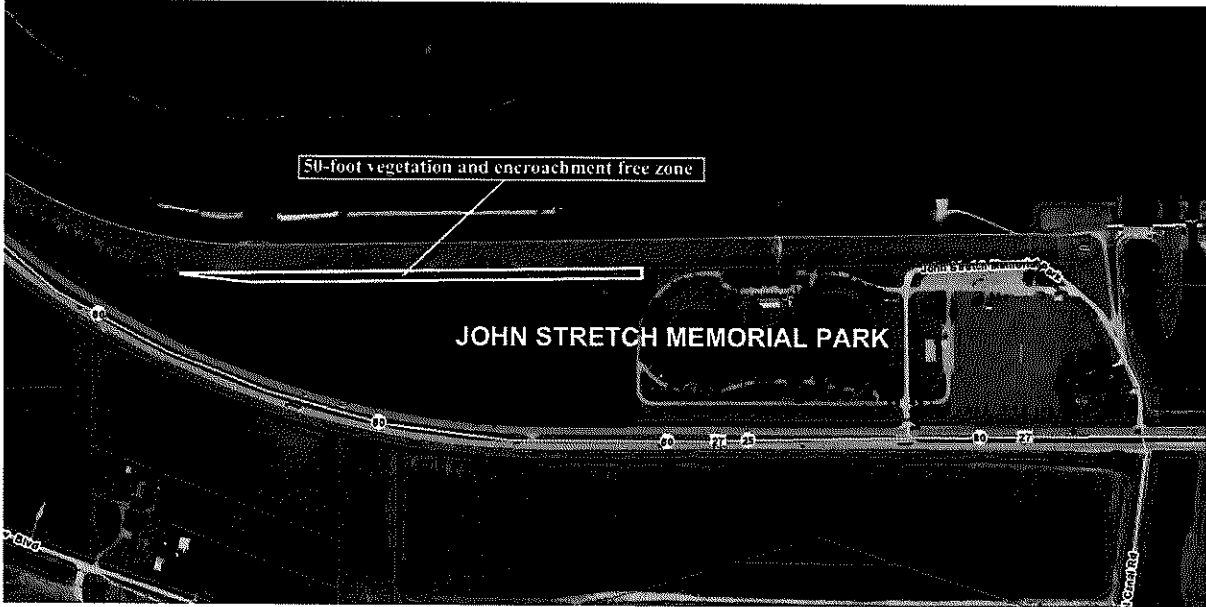


EXHIBIT "A-2"

Special Conditions of Use for Standard License Agreement for Commercial Activity

1. Removal of trees and brush, treatment of stumps and roots, cleaning of toe ditch, and fortification of the berm is limited to the Premises as depicted on Exhibit "A-1".

2. Licensee shall not use, maintain, store or dispose of any containers including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Licensee shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all environmental laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, in violation of Environmental Laws, whether by Licensee or any third party, shall be reported to County immediately upon the knowledge thereof by Licensee. Licensee shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Licensee, or Licensee's agents, licensees, invitees, subcontractors or employees.

3. During the term of this License Agreement, Licensee shall perform maintenance of the Premises at Licensee's sole cost and expense, including but not limited to periodic mowing, fertilizing and weeding, until such time Licensee constructs a permanent gravel road upon the Premises. Licensee is required to obtain written approval from the County prior to the construction of said gravel road.