

RESOLUTION NO. 2021- 306

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A NON-EXCLUSIVE PERMISSIVE USE AGREEMENT FOR USE OF ST. JOHNS COUNTY PROPERTY IN PONTE VEDRA FOR CONSTRUCTION ACCESS.

RECITALS

WHEREAS, The Batts Company, a Florida corporation ("Batts"), has executed and presented to the County a Non-Exclusive Permissive Use Agreement, attached hereto as Exhibit "A," incorporated by reference and made a part hereof, for use of St. Johns County Property to be used for construction access; and

WHEREAS, Batts has been contracted by the homeowner to install a pool at 335 Ponte Vedra Boulevard; and

WHEREAS, there is insufficient room on the lot for large machinery and excavating equipment to access the backyard from Ponte Vedra Boulevard; and

WHEREAS, Batts requests approval to temporarily use a County-owned 10 foot beach access point north of, and immediately adjacent to, the home at 335 Ponte Vedra Boulevard for ingress and egress to the homeowners' backyard in order to construct the pool; and

WHEREAS, this beach access point shall remain open to the public and at no time will it be restricted or obstructed other than 30 minutes a day while the equipment is traversing the area for ingress and egress to the jobsite located at 335 Ponte Vedra Boulevard.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

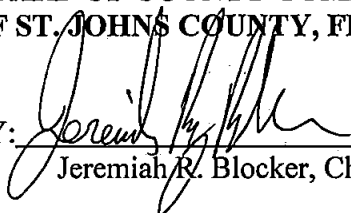
Section 2. The Board of County Commissioners hereby approves the terms of the Non-Exclusive Permissive Use Agreement for use of St. Johns County Property and authorizes the County Administrator, or designee, to execute said Agreement.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of the Court of St. Johns County is instructed to file the original Non-Exclusive Permissive Use Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 7 day of September, 2021.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

BY: 
Jeremiah R. Blocker, Chair

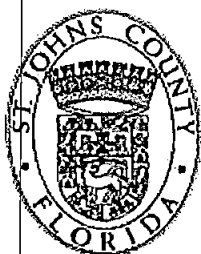
ATTEST: Brandon J. Patty,
Clerk of the Circuit Court & Comptroller


Deputy Clerk

RENDITION DATE 9/9/21



EXHIBIT "A" TO RESOLUTION



**NON-EXCLUSIVE PERMISSIVE USE AGREEMENT
FOR USE OF ST. JOHNS COUNTY PROPERTY**

THIS AGREEMENT (Agreement) is made as of this _____ day of _____, 2021 (Effective Date), by and between St. Johns County, a political subdivision of the State of Florida, 500 San Sebastian View, St. Augustine, Florida 32084 (County) and The Batts Company, 1602 N. 3rd, Jacksonville Beach, Florida 32250, a Florida corporation (Contractor). The County and the Contractor enter into this Agreement on the basis of the following facts, understandings and intentions:

WHEREAS, the County operates and maintains certain real property located off Ponte Vedra Boulevard lying between the South line of Lot 6 Block 5 Ponte Vedra Subdivision, also known as 333 Ponte Vedra Boulevard and the North line of Lot 1 Block 6 Ponte Vedra Subdivision, also known as 335 Ponte Vedra Boulevard (Property), and more specifically depicted in Attachment 1.

WHEREAS, the Property currently serves as a public beach access pedestrian path as shown in Attachment 1, attached hereto; and

WHEREAS, the Contractor seeks temporary non-exclusive use of the Property as access for large machinery and excavating equipment to deliver materials and clean up the jobsite which is located on the easterly portion of said Lot 1, Block 6, also known as 335 Ponte Vedra Boulevard; and

WHEREAS, accordingly, the County and the Contractor seek to enter into this Agreement to set forth their respective duties and obligations regarding use of the Property.

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals stated above are hereby incorporated into the body of this Agreement, and are adopted by each of the parties as findings of fact.
2. **Incorporation of Attachments.** The following attachments are hereby incorporated into, and made part of this Agreement:
 - a. Attachment 1 (Depiction of Property)
 - b. Attachment 2 (Site Plan)
 - c. Attachment 3 (Proof of Insurance)
3. **Permissive Use (Non-Exclusive).** Subject to the terms and conditions contained herein, the County hereby grants the Contractor permission to enter onto the Property, and non-exclusive use of the Property as access for large machinery and excavating

equipment to deliver materials and clean up the jobsite which is located on the easterly portion of said Lot 1, Block 6, also known as 335 Ponte Vedra Boulevard.

- a. **Duration of Use.** Such use will begin on September 7, 2021 (Beginning Date), and will continue through and until February 6, 2022 (Ending Date), unless otherwise authorized by the County in writing.
 - b. **Hours of Use.** The County authorizes the Contractor to access and use the entire Property as described herein and depicted in Attachment 1 (attached hereto and incorporated herein) beginning at 8 a.m. through and until 5 p.m. five (5) days a week Monday through Friday for the Duration of Use.
 - c. **Public Access.** The Property shall remain open to public access and at no time will beach access be restricted or obstructed other than 30 minutes a day while the equipment is traversing the Property for ingress and egress to the jobsite located at 335 Ponte Vedra Boulevard.
 - d. **Condition of the Property.** The Contractor understands and agrees to accept use of the Property in "as-is" condition.
4. **Time is of the Essence.** Time is of the essence with respect to the Contractor's performance under this Agreement. Failure by the Contractor to perform timely on the dates and within the time periods described herein shall constitute a material breach of this Agreement.
5. **Restoration of the Property.**
- a. **Clean-Up.** The Contractor will remove all trash and debris generated during use of the Property by no later than five (5) business days following the Ending Date or completion of construction, whichever occurs first. The Contractor will not be issued a Certificate of Completion related to St. Johns County Clearance Sheet Permit #R2006-001305*002 until Property has been restored to pre-use conditions.
 - b. **Pre-Use Assessment.** Prior to the Contractor's use as described herein, the Contractor and a County representative shall inspect the Property (including taking photos) to assess its condition.
 - c. **Post-Use Assessment.** By no later than five (5) business days after the Contractor completes use of the Property or the Ending Date, whichever occurs first, the Contractor and a County representative will inspect the Property (including taking photos) to assess its condition.
 - d. **Restoration.** Except normal wear and tear caused by pedestrian traffic, or damages caused by activities unrelated to the Contractor's use of the Property, the Contractor is solely liable to restore the Property to its pre-use condition.

Accordingly, the Contractor shall provide all labor, materials, costs and expenses necessary to restore the Property to its pre-use condition.

- e. **Timing.** Unless otherwise authorized in writing by the County, the Contractor shall complete restoration of the Property by no later than five (5) business days following the completion of construction.
6. **Indemnification.** The Contractor will indemnify, defend and hold harmless the County, its officers, employees, contractors, subcontractors, guests, invitees, volunteers and agents, against any and all claims for loss or expense or suits for damage to persons or property (including the Contractor's property), caused by or arising from use of the Property by the Contractor, its employees, members, agents, and subcontractors. The Contractor acknowledges and agrees that this provision regarding Indemnification survives early termination by either party or expiration of this Agreement.
7. **Insurance.** Prior to its use of the Property, the Contractor shall secure and maintain for the duration of this Agreement comprehensive general liability insurance, to include property damage and bodily injury with minimum policy coverage of \$1,000,000. As applicable, the Contractor shall further secure and maintain for the duration of this Agreement, Workers' Compensation Insurance, in an amount no less than is required by applicable Florida Law. The County shall be named as an additional insured on all comprehensive general coverage. Proof of such insurance shall be provided to the County Land Management Department prior to the Contractor's use of the Property.
8. **Permits, Licenses and Approvals.** Prior to its use of the Property, the Contractor shall secure and maintain all applicable licenses, permits and approvals necessary to complete the work described herein. Proof of such licenses, permits and approvals shall be provided to the Real Estate Department of St. Johns County prior to the Contractor's use of the Property.
9. **Hazards.** The Contractor hereby acknowledges and understands that, in the event that the Contractor's use of the Property creates a public safety hazard as determined in the County's sole discretion, at the Contractor's sole cost and expense, the Contractor shall be required to take all necessary actions to remedy such hazard(s) as directed by the County.
10. **Miscellaneous Provisions.**
 - a. Neither the County nor the Contractor will assign this Agreement or delegate or subcontract the performance of the Agreement without the prior written consent of the other.
 - b. This Agreement shall not be amended or modified in any manner except by written instrument properly executed by each party.
 - c. This Agreement is governed by the laws of the State of Florida, and any provisions contained in this Agreement in conflict therewith shall be void and

of no effect. Any suit, action or proceeding arising in connection with this Agreement shall be brought in St. Johns County, Florida.

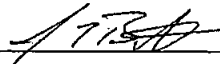
- d. No delay or failure by the County to exercise or enforce any right or provision of this Agreement will be considered a waiver thereof.
- e. If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remainder of this Agreement.
- f. The obligations under this Agreement, which by their nature would continue beyond the expiration of the term of this Agreement, shall survive termination or expiration of this Agreement.
- g. This Agreement contains the entire understanding between the parties with respect to the subject matter of this Agreement.
- h. This Agreement may be executed in one or more counterparts all of which when taken together shall be considered one and the same agreement. A complete, executed copy of this Agreement shall be enforceable as an original.
- i. The parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.
- j. Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, County and the Contractor have caused this Agreement to be made on the date above written.

ST. JOHNS COUNTY, a political
Subdivision of the State of Florida

THE BATTS COMPANY

By: _____
Hunter S. Conrad Date
Its: County Administrator

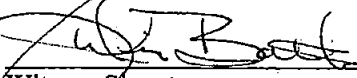
By:  _____ 8/18/21
Date

James T. Batts III
Print Name

President
Title

 _____ 8/18/21
Date
Witness Signature

Michael Weaver
Print Name

 _____ 8/18/21
Date
Witness Signature

Julie Batts
Print Name



Access Area

335 Ponte Vedra Blvd.

San Juan Dr

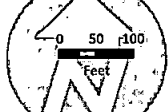
San Diego Pl

Ponte Vedra Blvd

Pablo Rd



2019 Aerial Imagery



August 12, 2021

Permissive Use Agreement

The Batts Company

Land Mngt. Systems
Real Estate Division
209-0764

Disclaimer:
This map is for reference use only.
Data provided are derived from multiple
sources with varying levels of accuracy.
The St. Johns County Real Estate Division
disclaims all responsibility for the accuracy
or completeness of the data shown herein.

