

Meeting Date
<b>February 17, 2015</b>



AGENDA	
Section	Consent
Item No.	<i>II.A.2</i>

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	Hold Harmless Agreement Between Brevard County, the City of Cocoa and Gunnstruction for Connection to Water Main Located with a Florida Department of Transportation (FDOT) Right-of-Way and Installation of Fire Hydrant at the Griffis Landing Site
DEPT/OFFICE:	Natural Resources Management Department (NRM)

**Requested Action:**

It is requested that the Board of County Commissioners: 1) Authorize the Chairman to execute a Hold Harmless Agreement substantially in the form of Exhibit A, between Brevard County, the City of Cocoa and Gunnstruction, with County Attorney and Risk Management approval, to allow final permitting and construction of this project; 2) Authorize the Chairman to execute a Bill of Sale to the City of Cocoa for the constructed utilities once the project is complete.

**Summary Explanation & Background:**

In 2010, through funding provided by the State of Florida's Stan Mayfield Working Waterfronts Grant Program and the Florida Inland Navigation District (FIND), Brevard County acquired the working waterfront site, known as Griffis Landing, along with the two commercial fisheries businesses, currently in operation. Improvement of this working waterfront, Brevard's last remaining riverfront commercial fishery operation that takes local seafood directly across its docks, will maintain and enhance recreational and commercial access to Brevard's waterways.

At the regular meeting on April 3, 2012, the Board approved an application to FIND for the first phase of construction at the Griffis Landing site. Phase one FIND grant funding was awarded in October 2012 and covered reconstruction of the site's waterfront elements including; boat ramp upgrades, finger piers, temporary dockage, loading areas, pedestrian walkways and sewer infrastructure. Construction of the phase one features was completed in August 2014.

At the Regular Meeting on April 30, 2013, the Board approved an application to FIND for the second phase of construction at the Griffis Landing site. Phase two FIND grant funding was approved in October 2013 and covers site grading and paving for the installation of trailer and standard parking stalls, sidewalks, storage and work areas for commercial users, installation of a waterfront education pavilion with restrooms, site lighting, required stormwater improvements and utility/water infrastructure. Gunnstruction has been selected as the project contractor.

The pending phase two improvements cover public safety upgrades, including the installation of an additional fire hydrant at the site. The required waterline connection requires a permitted connection to a City of Cocoa water main situated adjacent to the Griffis Landing property, under Highway 520. Permitting of this utility work will require a Hold Harmless Agreement (draft attached) and workmanship guarantee between the County, the City of Cocoa and the project contractor (Gunnstruction). Once installed, the waterline infrastructure within the Highway 520 right-of-way, constructed as part of this project, will be handed over to the City of Cocoa for their ownership and management.

Staff requests authorization for the Chairman to execute: 1) a Hold Harmless Agreement, substantially in the form of Exhibit A, between Brevard County, the City of Cocoa and Gunnstruction and; 2) a Bill of Sale to the City of Cocoa for the constructed utilities once the project is complete.

**Fiscal Impact:**

FY 14/15 - No Net Cost. Any costs are covered under previously approved construction funding.

**FY 15/16 - No Net Cost. Any costs are covered under previously approved construction funding.**

**Name:** Ernest N. Brown or Virginia Barker, Natural Resources Management Department

**Phone:** (321) 633-2016

Clerk to the Board instruction: N/A

Exhibits Attached: Draft Hold Harmless Agreement. City and County Attorneys are working on minor edits.

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager  Stockton Whitten	Assistant County Manager  Mel Scott	Department Director/Extension  Ernest Brown/X52439
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

February 18, 2015

MEMORANDUM

TO: Ernest Brown, Natural Resources Management Director

RE: Item II.A.2, Hold Harmless Agreement with City of Cocoa and Gunnstruction, Inc., for Connection to Water Main Located with a Florida Department of Transportation (FDOT) Right-of-Way, and Installation of Fire Hydrant at the Griffis Landing Site

The Board of County Commissioners, in regular session on February 17, 2015, authorized the Chariman to execute a Hold Harmless Agreement, substantially in the form of Exhibit A, between Brevard County, the City of Cocoa and Gunnstruction, Inc., with County Attorney and Risk Management approval, to allow final permitting and construction of connection to a water main located with an FDOT right-of-way and installation of a fire hydrant at Griffis Landing; and authorized the Chairman to execute a Bill of Sale to the City of Cocoa for the constructed utilities once the project is complete. Enclosed is the original Hold Harmless Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/clm

cc: Finance  
Budget  
Contracts Administration

**AGREEMENT**

**THIS AGREEMENT** made this 17th day of February, 2015 between the **CITY OF COCOA**, a Florida municipal corporation, with a mailing address of 603 Brevard Avenue, Cocoa, Florida 33922 (hereinafter "City") and the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA** with a mailing address of 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940 (hereinafter "County") and **GUNNSTRUCTION, Inc.**, with a mailing address of 350 Tangerine Ave. Suite #1, Merritt Island, FL 32953     (hereinafter "Contractor"):

**WITNESSETH:**

**WHEREAS**, the County is the owner and developer of real property, generally located at 580 W. Merritt Island Causeway, Merritt Island, Florida, also known as Griffis Landing, which is serviced by the City's utility system; and

**WHEREAS**, the County desires to connect its property to the City's utility system and has selected Contractor through a competitive process to construct the Griffis Landing Site Improvements pursuant to Bid No. B-3-15-23 and Addendum No. 1 dated November 4, 2014; and

**WHEREAS**, in order for the Contractor to connect to the City's utility system, Contractor must construct a waterline connection within right-of-way owned by the Florida Department of Transportation ("FDOT"); and

**WHEREAS**, FDOT, in accordance with its Utility Accommodation Manual, requires the City to obtain and hold a permit for the construction of utility facilities which will be owned and serviced by the City and located within FDOT right-of-way, notwithstanding the fact that the construction is actually being performed by the County or an agent of the County; and

**WHEREAS**, the Contractor agrees to indemnify and hold harmless the City for any and all claims, liability, damages, or expenses, as provided more thoroughly below, arising from the construction of the utility facilities, within the FDOT right-of-way, connecting the Contractor's property to the City's potable water system; and

**WHEREAS**, to the extent allowed by law, the County agrees to indemnify and hold harmless the City for any and all claims, liability, damages, or expenses, as provided more thoroughly below, arising from the construction of the utility facilities, within the FDOT right-of-way, connecting the County's property to the City's potable water system, if such claims, damages, losses, or expenses are caused solely by the negligent or wrongful acts of the County. Nothing contained in this Agreement shall be construed as a waiver of the County's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on the County's potential liability under state or federal law.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor covenants and agrees as follows:

1. **RECITALS** Foregoing recitals are true and correct and are incorporated herein by this reference.
  
2. **DESCRIPTION OF WORK** Contractor shall perform the work which is described in the Scope of Work, Griffis Landing Improvements Phase 2 Site Improvements Addendum No. 1, Bid No. B-3-15-23, November 4, 2014, which is incorporated herein by this reference and made a part hereof. The Scope of Work shall also contain an itemization of costs associated with the materials and labor required for the construction of the utility facilities.

3. **RESPONSIBILITIES OF COUNTY AND CONTRACTOR** The County's and Contractor's duties in connection with the scope of work to be performed are as follows:
- a. **Responsibility for Supervision and Construction** Contractor shall be solely responsible for all work contemplated under this agreement. All work shall be in accordance with the City of Cocoa's Utility Handbook and all federal, state or locally issued permits. Contractor shall supervise and direct the work, and provide all attention necessary for such proper supervision and direction.
  - b. **Discipline and Employment** Contractor shall maintain at all times strict discipline among its employees, and agrees not to employ or contract for work on the project any person unfit or without sufficient skill or licensure to perform the job. Should Contractor contract for the work contemplated herein, the Sub-Contractor shall be duly licensed by the State of Florida and shall execute an addendum to this Agreement adding Sub-Contractor as a party and agreeing to provide the same protections to the City provided herein, including but not limited to indemnification and insurance.
  - c. **Furnishing of Labor, Materials, etc.** Contractor shall provide all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work contemplated herein. The County shall pay the Contractor for the faithful performance of the work described in Griffis Landing Improvements Phase 2 Site Improvements Addendum No. 1, Bid No. B-3-15-23, November 4, 2014 pursuant a separate agreement between the County and Contractor.
  - d. **Warranty/Bond** Contractor will provide a written guarantee for all work and materials for two (2) calendar year after acceptance by City. Contractor shall supply a materials, performance and payment bond(s) in accordance with Florida law and to the satisfaction of City, in an amount specified within the Scope of Work.
  - e. **As Built Surveys** Contractor shall provide an "As-Built" survey for the location of the facilities within the FDOT right-of-way.
  - f. **Bill of Sale** Upon acceptance by the City of the work performed, the County shall convey the utility facilities constructed to the City by Bill-of-Sale, which is to the satisfaction of the City and for no compensation.
  - g. **Traffic Maintenance** Contractor shall be solely responsible for maintenance of all traffic during construction in accordance with Chapter 8 of the Utility Accommodation Manual. To do so Contractor shall employ and use personnel who are trained in proper traffic maintenance and shall further use proper signage and barricades. These techniques shall be minimal requirements and are not intended to foreclose other techniques for the proper maintenance of traffic.
  - h. **Preparation of Permit Application** The engineer of record for the project, Bussen Mayer Engineering Group, Inc, shall be responsible to prepare and process all applications for the construction of utilities within the FDOT right-of-way.
  - i. **Utility Notification** Contractor shall be solely responsible, in accordance with the Utility Accommodation Manual to locate all other utility services using the effected FDOT right-of-way and to notify such entities prior to the construction.

4. **RESPONSIBILITIES OF CITY**

a. **General Administration of Agreement** The primary function of the City is to provide the general administration of this Agreement. In performance of these duties Carl Larrabee, P.E. or his authorized representative, shall serve as the City's Project Director during the entire period of construction. The City may change the Project Director during the term of this contract.

b. **Inspections, Opinions, and Progress Reports** The City shall be kept apprised with the progress and quality of the work by Contractor and may make periodic visits to the work site. The City will not be responsible for the means of construction, or for the sequences, methods, and procedures, except that the same shall be in conformance with the City's guidelines and requirements.

c. **Access to Worksite for Inspections** The City shall be given complete access to the worksite at all times during work preparation and progress. The Project Director is not obligated to make exhaustive or continuous on-site inspections to perform his duties of supervising and reporting on work progress, and any such inspections shall not waive City's claim regarding defective work by Contractor.

d. **Rejection and Stoppage of Work** The City shall have authority to disapprove of work, which in its opinion, does not conform to the Scope of Work, and in this connection, may halt the work or a portion thereof, when necessary.

5. **NOTICES** Any notice or approval under this Contract shall be sent, postage prepaid, to the applicable party designated below. Either party may designate such other address as shall be given by written notice

**CITY:**

**COUNTY:** Matt Culver  
Boarding & Waterways Program Coordinator  
Brevard County Natural Resources Management Department  
2725 Judge Fran Jamieson Way, Building A, Room 219  
Viera, FL 32940  
Phone: (321) 633-2016 – Office/(321) 482-7970 – Cell

**CONTRACTOR:** Gunnstruction  
350 Tangerine Ave. Suite#1  
Merrit Island, FL 32953  
(321)-455-6498

6. **INDEMNIFICATION AND HOLD HARMLESS** For all work performed pursuant to this Agreement, Contractor, agrees to the fullest extent permitted by law, to indemnify and hold harmless the City, and its council, employees, officers and city attorneys (individually and in their official capacities) from and against any and all claims, losses, damages, personal injuries (including but not limited to death), or liability (including reasonable attorneys fees

through all administrative and appellate proceedings); directly or indirectly arising out of or resulting from any act or omission of Contractor, and its employees, agents, and contractors under this Agreement and/or in default of this Agreement. Contractor shall also require any sub-contractor to execute in favor of the City a blanket hold-harmless agreement (as provided in **Exhibit "A"**, attached hereto) for any work or service performed under this Agreement

The indemnification provided above shall obligate the Contractor, or sub-contractor, to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its employees and officers which may result from any negligent act, omission or operation of work related to the work under this Agreement whether the work is performed by the Contractor, or anyone directly or indirectly employed by them. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are no greater than at a rate of \$200 per hour.

7. **SOVEREIGN IMMUNITY** Nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitation imposed on the City's potential liability under state and federal law.

8. **INSURANCE**

a. **Liability Amounts** During the term of this Agreement, Contractor shall be responsible for providing the types of insurance and limits of liability as set forth below, and shall require any sub-contractor working on the project to provide the same.

1. The Contractor shall maintain comprehensive general liability insurance in the minimum amount of \$1,000,000 as the combined single limit for each occurrence to protect the Contractor from claims of bodily injury, including wrongful death, as well as from claims from property damages which may arise from any work performed under this Agreement whether such work is performed by the Contractor or by anyone directly employed by or contracting with the Contractor.

2. The Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit bodily injury and minimum \$50,000 property damage as the combined single limit for each occurrence to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

3. The Contractor shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing work for the City pursuant to this Agreement.

b. **Special Requirements.** Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a thirty (30) day advance written notification to the City in the event of cancellation or

modification of any stipulated insurance coverage. **The City shall be an additional named insured on stipulated insurance policies required herein, as its interest may appear, from time to time.**

c. The insurance required by this Agreement shall include the liability and coverage provided herein, or as required by law, whichever requirements afford greater coverage. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until written notice is provided as required by the Florida Statutes. Contractor agrees to promptly inform City of any notice received regarding cancellation, material change or refusal to renew the policies of insurance required herein. It shall be a material breach of this Agreement for the Contractor to fail or refuse to immediately provide City with copies of any such notice. All such insurance shall remain in effect until acceptance of the work by City. In the event that the Contractor shall fail to comply with the foregoing requirement, the City is authorized, but in no event shall be obligated, to purchase such insurance, and the City may bill the Contractor. The Contractor shall immediately forward funds to the City in full payment for said insurance. It is expressly agreed that neither the provision of the insurance referred to in this Agreement nor the City's acceptance of the terms, conditions or amounts of any insurance policy shall be deemed a warranty or representation as to adequacy of such coverage. All insurance coverage shall be with insurer(s) rated as A+ by Best's Rating Guide (or equivalent rating and rating service as reasonably determined by the City Manager) and licensed by the State of Florida to engage in the business of writing of insurance. Unless agreed to by the City to the contrary, the City shall be named on the insurance policies required herein as "additional insured." The Contractor shall cause its insurance carriers, prior to the effective date of this agreement to furnish insurance certificates specifying the types and amounts of coverage in effect pursuant hereto, the expiration dates of such policies, and a statement that no insurance under such policies will be canceled except in accordance with the requirements of the Florida Statutes. Further copies of all relevant policies will be provided to the City within thirty (30) days of the effective date of this agreement. If the City has any objection to the coverage afforded by or other provision of the insurance required to be purchased and maintained by the Contractor in accordance with this Article on the basis of its not complying with the Agreement, the City shall notify the Contractor in writing thereof within thirty (30) days of the date of delivery of such certificates to the City. For all work performed pursuant to this Agreement, the Contractor shall continuously maintain such insurance in the amounts, type, and quality as required by the Agreement.

d. **Independent Associates and Consultants** All independent associates, consultants, and sub-contractors employed by Contractor to perform any work hereunder shall fully comply with the insurance provisions contained in this paragraph.

8. **COMPLIANCE WITH LAWS AND REGULATIONS** Contractor shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of work under this Agreement.

9. **ASSIGNMENT**

a. Contractor shall not assign or subcontract this Agreement, any work hereunder, or any rights hereunder without the prior, written consent of City.

b. If upon receiving written approval from City, any part of this Agreement is subcontracted by Contractor, Contractor shall be fully responsible to City for all acts and/or

omissions performed by the subcontractor as if no subcontract had been made.

c. If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify the County and Contractor. The Contractor shall take immediate steps to remedy the situation.

10. **INDEPENDENT CONTRACTOR.** At all times during the term of this Agreement, Contractor shall be considered an independent contractor and not an employee of the City.

11. **DEFAULT BY CONTRACTOR AND CITY'S REMEDIES**

a. The City reserves the right to revoke and terminate this Agreement and rescind all rights and privileges associated with this Agreement, without penalty, in the following circumstances, each of which shall represent a default and breach of this Agreement:

1. Contractor defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within ten (10) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within ten (10) calendar days, in which case the Contractor shall have such time as is reasonably necessary to remedy the default, provided the Contractor promptly takes and diligently pursues such actions as are necessary therefore; or

2. Contractor is adjudicated bankrupt or makes any assignment for the benefit of creditors or Contractor becomes insolvent, or is unable or unwilling to pay its debts; or

3. Contractor has acted grossly negligent, as defined by general and applicable law, in performing the work hereunder; or

4. Contractor has committed any act of fraud upon the City; or

5. Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

6. Notwithstanding the aforementioned, in the event of a default by Contractor, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice.

12. **TERMINATION** Notwithstanding any other provision of this Agreement, City may, upon written notice to Contractor, terminate this Agreement, without penalty, if: (a) Contractor is in default pursuant to Section 11; (b) Contractor makes a general assignment for the benefit of its creditors; (c) Contractor fails to comply with any condition or provision of this Agreement; or (d) Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement. In addition, either party may terminate for convenience with no penalty at any time upon thirty (30) days advance written notice.

13. **GOVERNING LAW & VENUE** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any

state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida. Any trial shall be non-jury.

14. **SEVERABILITY** In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise be fully enforceable.

15. **WAIVER AND ELECTION OF REMEDIES** Waiver by any party of any terms, or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

16. **THIRD PARTY RIGHTS** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City, County and Contractor.

17. **ENTIRE AGREEMENT** This Agreement, Addendums and Exhibits attached hereto, constitute the entire agreement between City, County and Contractor with respect to the work specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

18. **NO JOINT VENTURE** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

19. **ATTORNEY'S FEES** Should any party bring an action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the costs and expenses of such action including, but not limited to, reasonable attorneys' fees, whether at settlement, trial or on appeal.

20. **COUNTERPARTS** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

21. **DRAFTING** The parties represent that they have shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

22. **CORPORATE REPRESENTATIONS BY CONTRACTOR** Contractor hereby represents and warrants to the City the following:

a. Contractor is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

b. The undersigned representative of Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Contractor.

**IN WITNESS WHEREOF**, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**CITY:**  
**CITY OF COCOA, FLORIDA**

**COUNTY:**  
**BOARD OF COUNTY COMMISSIONERS OF**  
**BREVARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
John A. Titkanich, Jr., City Manager

By: \_\_\_\_\_  
Robin Fisher, Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, County Clerk




BOARD OF COUNTY COMMISSIONERS

Utility Services Department  
2725 Judge Fran Jamieson Way  
Building A, Room 213  
Viera, Florida 32940

## Inter-Office Memo

TO: Scott Knox, County Attorney

FROM: Owen Callard, Utility Services Capital Construction 

DATE: September 15, 2014

SUBJ: Approval for Legal Form and Content - Contract for CIP Construction: Lift Station S-16  
Force Main Replacement  
Bid No. B-4-14-55

Attached, please find the five (5) original Contract documents for the CIP construction contract referenced above. These documents have been executed by the Contractor and are being prepared for execution by the Board Chairman.

Also attached is a copy of the Initial Contract Form, (pursuant to AO-29), which indicates that you reviewed the Contract and provided approval with the attached email message. This was done, according to policy, prior to the contract being advertised for bids. These photocopies are provided for your information.

Please execute each of the original contract documents where indicated on the signature page. When complete, please notify this office at ext. 5-2089 and I will pick up the package. If these documents are acceptable, we will then send the original contract documents to the Board Chairman and the Clerk for final execution.

If you have any questions, please notify me. Thank you for your assistance.

Attachments

SECTION 00500

CONTRACT

THIS CONTRACT, by and between the Brevard County, Florida Board of County Commissioners, a political subdivision of the State of Florida (hereinafter called the Owner), and GUNNSTRUCTION, INC., a CORPORATION doing business at 350 TANGERINE AVE. SUITE #1 MERRITT ISLAND, FL (hereinafter called the "Contractor"). (Address) 32953 (Describe form of Ownership)

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1.01 SCOPE OF THE WORK

The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown on the Drawings and described in the Specifications entitled,

Lift Station S-16 Force Main Replacement

as prepared by Frazier Engineering, Inc., acting as, and in the Contract Documents entitled, the Engineer, and shall do everything required by this Contract and the other Contract Documents.

1.02 THE CONTRACT SUM

- A. The Owner shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents, as follows:
- B. Based upon the price shown in the Contractor's Bid heretofore submitted to the Owner, which Bid is a part of these Contract Documents, the aggregate amount of this Contract is the sum of Three Hundred Seventy-nine Thousand Four Hundred Ninety Dollars (\$379,490.00).

1.03 COMMENCEMENT AND COMPLETION OF WORK

- A. The Contractor shall commence work within 10 calendar days after the start of the Contract Time identified on the Notice to Proceed.
- B. The Contractor shall prosecute the Work with faithfulness and diligence and shall complete the Work no later than 180 days after the date specified in the Notice to Proceed.

1.04 CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- A. The Contractor hereby agrees that Contractor has carefully examined the surface of the site and has made sufficient reasonable test holes, or other surface and subsurface investigations and is fully satisfied that said site is a correct and suitable one for this work and Contractor assumes full responsibility therefore. The provisions of the Contract shall control any inconsistent provisions contained in the specifications. All Drawings and Specifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations shall this Contract be more strongly construed against the Owner than against the Contractor and Contractor's Surety.
- B. Any ambiguity or uncertainty in the Drawings or Specifications shall be interpreted and construed by the Owner and such decision shall be final and binding upon all parties. If the ambiguity or uncertainty could have been identified during the Bidding process, such discrepancy or inconsistency shall not serve as a claim for additional time or money.
- C. It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work or material by the Owner, or by any agent or representative as being in compliance with the terms of this Contract or with the Drawings, and Specifications covering said work, shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, or the Drawings and Specifications covering said work; and that the Owner may require the Contractor and Surety to strictly comply with this Contract and the Drawings and Specifications; and that the Owner may require the Contractor and the Surety to repair, replace, restore any and all of said work and materials which within a period of two years from and after the date of the acceptance of work are found to be defective or to fail in any way to comply with this Contract or with the Drawings and Specifications. This provision shall not apply to material or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. Failure on the part of the Contractor or Contractor's Surety, immediately after Notice to either repair or replace any such defective materials and workmanship shall entitle the Owner, if the Owner sees fit, to replace or repair the same and recover the reasonable cost of such replacement or repair from the Contractor and Surety who, shall in any event be jointly and severally liable to the Owner by reason of the Contractor's breach of this Contract or Contractor's failure to comply strictly with this Contract and with the Drawings and Specifications.

1.05 LIQUIDATED DAMAGES

- A. Both parties recognize that precise actual damages for delay are impossible to determine. The parties therefore agree to fix liquidated damages for delay in the Substantial Completion of the Project, as that term is more fully defined in Section 00700 of this Contract. **As a condition precedent to the issuance of the Notice to Proceed, a written addendum setting forth a reasonable date by which the Contractor must realize Substantial Completion shall be executed by the Contractor and the Owner. The reasonable Substantial Completion date set forth in the addendum shall be determined by the Owner's Engineer after consultation with the Contractor.**

On the Substantial Completion date, or such revised Substantial Completion date of the Project as may occur because of an authorized written Change Order of contract time for Substantial Completion, all essential elements of the Project must be ready for their intended use. Therefore, the agreed upon liquidated damages for failure to substantially complete the essential elements of the Project by the Substantial Completion date shall be \$100.00 per day for each calendar day of delay in the Substantial Completion of the work, beyond the Substantial Completion date, up to but not including the date the Project is deemed substantially complete by the Owner's Engineer.

- B. The liquidated damages for delay in the completion or construction of non-essential elements of the Project after the date of Substantial Completion is fixed at \$75.00 per calendar day.
- C. Final completion must occur within 14 days after the Project is deemed substantially complete by the Owner's Engineer. The liquidated damages for delay of final completion of the Project beyond the established date are fixed at \$50.00 per calendar day.
- D. This liquidated damages clause applies only to delay claims arising out of the Contractor's failure to timely perform the work required under the Contract. Nothing in this liquidated damages provision shall be deemed to preclude the prosecution of a claim for actual damages involving defects in the work, breach of contract or any other claim for damages not involving a claim based solely on delay caused by the Contractor's untimely performance of the work.
- E. For each day that any part of the work remains uncompleted after the expiration of the time allowed for completion of the work stipulated in the Contract or as increased by an authorized written Change Order, the sum per day set forth in the applicable subparagraph A, B or C above, shall be deducted from any moneys due the Contractor, or if no money is due the Contractor, the Owner shall have the right to recover said sum or sums from the Contractor, from the Surety, or from both. The amount of these deductions are to cover liquidated damages to the Owner incurred by additional and other expenses due to the failure of the Contractor to complete the work or any part of the work within the completion time specified in subparagraph A, B or C, whichever is applicable, and such deductions are not to be considered as penalties.

#### 1.06 PARTIAL AND FINAL PAYMENTS

In accordance with the provisions fully set forth in the General Conditions, and subject to additions and deductions as provided, the Owner shall pay the Contractor as follows:

- A. The Owner shall make partial payments to the Contractor, on the basis of the estimate of work as approved by the Owner's Engineer, pursuant to provisions of Section 219.70, Florida Statutes, Florida Prompt Payment Act, less five percent (5%) of the amount of such estimate which is to be retained by the Owner until all work has been performed strictly in accordance with this Contract and until such work has been accepted by the Owner. The Owner shall not be responsible for payment to the Contractor for delays.
- B. Upon receipt of the payment bond Surety's written consent to the release of final payment to the Contractor who has furnished and recorded a payment bond and after all guarantees that may be required in the specifications have been furnished and are found acceptable by the Owner, final

payment on account of this Contract shall be made within twenty (20) days after completion by the Contractor of all work covered by this Contract and acceptance of such work by the Owner. If the payment bond surety serves a written revocation of consent to payment or a written direction that the COUNTY withhold a specified amount from a payment, the COUNTY shall withhold from the final payment the amount specified by the payment bond Surety.

1.07 ADDITIONAL BOND

- A. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the Performance and Payment Bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the Work, the Contractor shall, at Contractor's expense, and within three days after the receipt of Notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

1.08 CONTRACT DOCUMENTS

- A. The Contract Documents are those referenced in Section 00700 of the Contract in Article 1 entitled "Definitions", as set forth in the Instructions to Bidders, which may or may not be attached hereto, and such contract documents also include any approved and fully executed change or task orders. All of the above described contract documents are incorporated as a part of this Contract as if set forth in full herein.

IN WITNESS WHEREOF the parties hereto have executed this Contract on the dates indicated below:\*

Attest:

  
\_\_\_\_\_  
Scott Ellis, Clerk

Seal

Board of County Commissioners of  
Brevard County, Florida (Owner)

By:   
\_\_\_\_\_  
Mary Bolin Lewis, Chairman

Date: \_\_\_\_\_

As approved by the Board on:

\_\_\_\_\_  
August 20, 2014

\_\_\_\_\_  
GUNNSTRUCTION, INC.  
Contractor

Date: 8/20/14


By: DANA McMULLAN  
(Printed Name)

Signature: 

Title: VICE PRESIDENT

\_\_\_\_\_  
(Seal)

Reviewed for legal form and content:

  
\_\_\_\_\_  
(Assistant) County Attorney

(\* In the event that the Contractor is a Corporation, there shall be attached to the Contract a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.

**WRITTEN ACTION OF SOLE SHAREHOLDER  
AND SOLE MEMBER OF BOARD OF DIRECTORS  
OF  
GUNNSTRUCTION, INC.**

The undersigned, being the sole member of the board of directors and the sole shareholder of the above-referenced corporation, hereby takes the following written action in lieu of holding a meeting regarding same, all pursuant to the terms of Section 607.0704 and Section 607.0821, *Florida Statutes*:

**IT IS RESOLVED**, as follows:

The following persons are hereby elected to the office set forth opposite their name, to serve until the next annual meeting of the board of directors, or until their successors are duly elected and qualify:

Name

Office


William Elliott

President

Dana L. McMullan

Vice-President, Secretary and Treasurer

DATED: July 1 , 2014.

  
\_\_\_\_\_  
William Elliott, Director and Shareholder