

F. Consent Agenda - Utility Services Department
ITEM 6.



AGENDA REPORT
September 18, 2018

**Inspection Agreement between NASA and Brevard County for NASA's KARS
Park Private On-Site Lift Station & Force Main**

SUBJECT:

Approval Re: Inspection Agreement between NASA and Brevard County for KARS Park Private On-Site Lift Station & Force Main (District 2)

FISCAL IMPACT:

No fiscal impact.

DEPT/OFFICE:

Utility Services

REQUESTED ACTION:

It is requested that the Board of County Commissioners authorize the Chairman to execute an Inspection Agreement between NASA and Brevard County for County inspection of KARS Park private on-site lift station and force main.

SUMMARY EXPLANATION and BACKGROUND:

NASA will be constructing a sewer system connecting to Brevard County's existing force main on E. Hall Road. The on-site lift station and force main will be privately maintained by NASA. We require an Irrevocable License Agreement with all private systems which gives us legal access to the property at any time to do an inspection of the on-site system to assure it is being properly maintained. The Utility Services Director has authority to sign Irrevocable License Agreements. However, for security reasons, the Irrevocable License Agreement was modified to meet our requirements and the security requirements of NASA which requires Board approval.

This agreement has been reviewed and approved by both NASA Counsel and the County Attorney's Office.

Contact: Jim Helmer, Utility Services Director, 321-633-2091, jim.helmer@brevardfl.gov

CLERK TO THE BOARD INSTRUCTIONS:

Print three copies for execution. Return two to Rose Lyons, Utility Services and retain one for clerk files.

ATTACHMENTS:

Description

- **NASA License Agreement**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

September 19, 2018

M E M O R A N D U M

TO: Jim Helmer, Utility Services Director

RE: Item F.6., Inspection Agreement with NASA for NASA's KARS Park Private On-Site Lift Station and Force Main

The Board of County Commissioners, in regular session on September 18, 2018, approved and executed Inspection Agreement with NASA for County inspection of KARS Park private on-site lift station and force main. Enclosed are two fully-executed Inspection Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration

Inspection Agreement

This Inspection Agreement is entered into on 18 day of September, 2018, by and between Tom Engler, Director, Center Planning and Development, acting on behalf of National Aeronautics and Space Administration, Kennedy Space Center, Florida ("NASA") and Brevard County, Florida a political subdivision of the State of Florida ("County").

WHEREAS, NASA is the owner of certain land situated in Brevard County, Florida, more particularly described as KARS Park ("Property"); and

WHEREAS, County is the owner and operator of the utility that provides sanitary sewer service to the Property; and

WHEREAS, NASA has determined that this Agreement will not be adverse to the interests of the United States; and

WHEREAS, NASA desires to receive sewer service from County; and

WHEREAS, County normally requires connecting properties to dedicate the ownership of major sanitary sewer infrastructure (gravity mains eight inches in diameter and greater, manholes 4-feet in diameter and greater and all pumping stations) to the County to ensure proper maintenance; and

WHEREAS, The NASA has requested to retain ownership and maintenance responsibilities of the on-site sewer system.

Now, therefore, the parties agree as follows:

The County shall allow NASA to connect its sewer system into the County's sewer system pursuant to the terms of this Agreement.

1) NASA shall allow County employees and/or County contractors to enter the Property, without prior notice, to inspect the sewer system to ensure that NASA is maintaining the sewer system pursuant to the terms of this Agreement.

2) Term. The term of this Agreement is for twenty-five (25) years. This Agreement may be renewed in writing by both parties prior to termination. This Agreement shall be recorded in the Public Records of Brevard County, Florida. This Agreement shall be removed from the Public Record upon its expiration or termination.

3) Assignment. The County shall neither transfer nor assign any of its rights or responsibilities under this Agreement, nor grant any interest, privilege, or license whatsoever in connection with this Agreement without permission in writing from NASA. NASA shall not transfer or assign any of its rights or responsibilities under this Agreement to another party without prior written permission from the County.

4) Termination. NASA may terminate this Agreement in whole or in part if:
(a) The County fails to comply with any material term or condition of this Agreement;
(b) NASA determines that the interests of the national space program, the national defense, or the public welfare require it.

NASA may terminate this Agreement by providing 30 days' written notice to the County of such termination. Such termination shall be effective as of the date specified in the notice.

Any such termination shall be without cost to either party. NASA shall disconnect from the County's sewer system upon such termination or the County may disconnect NASA's sewer system from the County system including shutting off the dedicated valve that connects NASA's sewer system to the County's sewer system.

- 5) Maintenance. NASA retains, reserves, and will continue to enjoy the right to use the property for any and all other purposes permitted by law. In consideration of the County's authorization for NASA to connect its sewer system to the County's, NASA agrees to maintain its sewer system to all applicable standards provided in the Brevard County Code of County Ordinances, Florida Statutes, and federal laws. Such maintenance includes, without limitation, limiting discharge into the sewer system to those amounts identified in the application for sewer service attached as Exhibit A and made a part of this Agreement, and preventing the intentional or unintentional inflow or infiltration of storm water, rainwater, groundwater or other unpermitted water sources.
- 6) Remedies. Should NASA refuse to allow the County access to inspect the sewer system as provided for in this Agreement, the County shall have the right to disconnect NASA's sewer system from the County's system. Should the County determine, in its sole discretion, that NASA's sewer system is in need of repair and/or has not been properly maintained, the County shall issue to NASA a notice to cure, giving NASA reasonable time, but not less than 30 calendar days, commencing on the date of NASA's receipt of such notice to make the necessary repair or maintenance. If NASA fails to make the necessary repair or maintenance within the time period in the cure notice, the County may disconnect NASA's sewer service or pursue any other remedy available to it.
- 7) Amendment. This agreement may be modified or amended in whole or in part only by a written instrument executed by both NASA and the County.
- 8) Recording. This Agreement will be recorded in the public records of Brevard County, Florida.
- 9) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- 10) Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including, but not limited to contractors and subcontractors), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party's property or the property of its Related Entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of gross negligence or willful misconduct. Nothing herein shall be construed as a waiver of sovereign immunity by either party.
- 11) The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if they were the drafters of this Agreement.
- 12) No funds will be exchanged between NASA KSC and Brevard County under this Inspection Agreement.
- 13) Attorneys' Fees and Costs. In the event of any litigation arising out of or with respect to this Agreement, each party shall be responsible for their own attorneys' fees and expenses including, but not limited to, reasonable attorneys' fees, expert witness fees and all other costs, including all such costs with respect to any appellate proceedings. Venue for such action will be in the United States District Court for the Middle District of Florida.

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

WITNESSES: Miafa Calhoun
Name: Miafa Calhoun

Thomas Engler
Tom Engler, Director, Center Planning and Development,
acting on behalf of National Aeronautics and Space
Administration, Kennedy Space Center

WITNESSES: Adriana Davis
Name: Adriana Davis

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 27th day of July, 2018, by
Tom Engler, Director, Center Planning and Development, acting on behalf of National Aeronautics and Space
Administration, Kennedy Space Center. He is personally known to me ~~or has produced~~
as identification:



NOTARY PUBLIC Penny L. Chambers
(seal)

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**
By: Rita Pritchett
Rita Pritchett, Chair
Brevard County Board of County Commissioners
As approved by the Board on: 9/18/18

Attest:

Scott Ellis
Scott Ellis, Clerk of Court