

Meeting Date
December 15, 2015



AGENDA	
Section	Consent
Item No.	II.A.4

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Use Agreement with Waterway Manor Association, Inc. for Improvements Within the Right-of- Way – District 2 Fiscal Impact: None
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Use Agreement with Waterway Manor Association, Inc. for the use of the public right-of-way for the existing decorative lighthouse, landscaping, signage, and irrigation improvements and for the installation of an underground electric conduit to the decorative lighthouse for the Waterway Manor subdivision in Merritt Island.

Summary Explanation & Background:

The Waterway Manor subdivision in Merritt Island is landmarked by the decorative lighthouse constructed at the entrance to their community near the intersection of N. Courtenay Parkway and Florida Boulevard. The Association desires to enter into the Use Agreement with Brevard County to bring the existing decorative lighthouse, landscaping, signage, and irrigation improvements located within the right-of-way in the Waterway Manor subdivision into compliance with current regulations. Furthermore, the Association is requesting to utilize a portion of the right-of-way for the installation of an underground electric conduit to illuminate the lighthouse. This installation within the right-of-way is pursuant to the conditions of Permit #15RW00655. These improvements are depicted in Exhibit "A" of the Use Agreement.

The County is authorized to allow the use of the right-of-way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. In accordance with the Agreement, the Association shall be required to maintain the improvements without cost to the County. Additionally, the Association is required to provide general liability insurance to include coverage for Explosion, Collapse, Underground (XCU) hazards and auto liability insurance during the term of the Agreement. The Agreement has been reviewed and approved by the County Attorney's Office and Risk Management.

The initial term of this Agreement shall be ten years commencing with the date of execution and shall automatically be renewed annually unless terminated by either party with forty-five days' written notice.

Fiscal Impact: FY 2015/2016 – There is no fiscal impact to Brevard County as a result of this action.

Clerk to the Board Instructions: Return Use Agreement (2 executed originals) to the Public Works Department

Exhibits Attached: Use Agreement (3 originals)

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager			Department Director / Extension		
Stockton Whitten		Assistant County Manager			 John P. Denninghoff / 57202		



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

December 30, 2015

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.4., Use Agreement with Waterway Manor Association, Inc. for the Improvements Within the Right-of-Way for Waterway Manor Subdivision in Merritt Island

This is to correct the memorandum dated December 16, 2015. The Board of County Commissioners, in regular session on December 15, 2015, executed the Use Agreement with Waterway Manor Association, Inc. for the use of the public right-of-way for the existing decorative lighthouse, landscaping, signage, and irrigation improvements, and for the installation of an underground electric conduit to the decorative lighthouse for the Waterway Manor Subdivision in Merritt Island. Enclosed are two fully-executed Use Agreements for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Etheridge".

Tammy Etheridge, Deputy Clerk

/ds

Encls. (2)

USE AGREEMENT

THIS AGREEMENT, made and entered into this 15 day of DECEMBER 2015 by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and WATERWAY MANOR ASSOCIATION, INC., hereinafter referred to as the "ASSOCIATION".

WITNESSETH

WHEREAS the COUNTY owns the public right-of-way within the platted subdivision of Waterway Manor as recorded in Plat Book 21, Page 15 (Unit 01) and Plat Book 21, Page 102 (Unit 02) lying in Section 23, Township 24 South, Range 36 East.

WHEREAS the ASSOCIATION desires to bring the existing decorative lighthouse, landscaping, signage, fountain, and irrigation in certain portions of the public right-of-way within the subdivision of Waterway Manor into compliance; and,

WHEREAS the ASSOCIATION desires to install an underground electrical conduit within a portion of the public right-of-way pursuant to Permit #15RW00655; and,

WHEREAS, the COUNTY pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of public right-of-way for purposes which do not conflict with the interests of the public; and

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. TERM. The initial term of this Agreement shall be ten (10) years commencing with the date of the execution of this Agreement and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with paragraph 14 Termination herein.
2. PREMISES. The COUNTY hereby agrees to permit the ASSOCIATION to utilize certain portions of the public right-of-way as depicted in Exhibit "A", hereinafter referred to as "PREMISES" for the purposes and under the conditions expressed herein. The PREMISES are described as follows: subdivision entrance area, three roadway medians, and one rotary island located in the public right-of-way within the platted subdivision of Waterway Manor.
3. PURPOSES. The ASSOCIATION shall use the PREMISES for the existing decorative lighthouse, landscaping, signage, fountain, and irrigation as cataloged on Exhibit "A" for the purposes and under the conditions expressed herein. Additionally, the COUNTY shall permit the ASSOCIATION to install an underground electric conduit within a portion of the PREMISES as depicted on Exhibit "A", attached hereto, to provide

electricity to illuminate the existing decorative lighthouse at the entrance to the Waterway Manor subdivision. This conduit installation shall be pursuant to Permit #15RW00655. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the PREMISES shall be for decorative purposes only and not for human occupancy, nor shall such structures or improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth shall be the only use consented to by the COUNTY, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the COUNTY shall be entitled to immediately terminate this Agreement.

4. IMPROVEMENTS. The plans and specifications for all improvements, structures, landscaping and facilities made by the ASSOCIATION on the PREMISES shall be in accordance with all COUNTY specifications and shall be submitted as an attachment to the County's "Roadway and Easement Improvement Application Form" with appropriate fees, for approval by the COUNTY or its designated representative prior to the construction or installation of such improvement, structure, landscaping or facility. It is hereby agreed and understood that any structure placed on or constructed on the PREMISES and permanently attached thereto, shall remain the property of the ASSOCIATION and that the ASSOCIATION retains the right to remove such structure within forty-five (45) days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such structure is not removed within forty-five (45) days of termination, the structure shall become the property of the COUNTY.
5. UTILITIES. The ASSOCIATION shall pay all charges for electrical service and other utility services supplied to the ASSOCIATION at the PREMISES.
6. REPAIRS AND MAINTENANCE. The ASSOCIATION shall, at its own expense, maintain the grounds and all improvements, structures and facilities on the PREMISES and make all necessary repairs and replacements to the PREMISES and to any improvements constructed thereon. Such maintenance, repairs and replacements shall be made promptly as and when necessary.
7. ILLEGAL, UNLAWFUL OR IMPROPER USE. The ASSOCIATION shall make no unlawful, improper, immoral or offensive use of the PREMISES, nor will the ASSOCIATION use the PREMISES or allow use of the PREMISES for any purposes other than that hereinabove set forth. Failure of the ASSOCIATION to comply with this provision shall be considered a material default under this Agreement. In the event any structure, improvement or landscaping is deemed a traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and the Agreement shall be subject to immediate termination.
8. INDEMNIFICATION AND INSURANCE. Except where limited by law, the ASSOCIATION agrees that it will indemnify and save harmless the COUNTY from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or

control of the PREMISES or any improvement thereon or any equipment or fixtures used in connection with the PREMISES. The ASSOCIATION agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the COUNTY in connection with its PREMISES and that it will satisfy, pay and discharge any and all judgments that may be entered against the COUNTY in any such action or proceedings. The parties acknowledge specific consideration has been exchanged for the provision.

- a. The ASSOCIATION further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, the following types of insurance. The policy limits required are to be considered minimum amounts:

General Liability Insurance insuring the ASSOCIATION against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the PREMISES and the improvements thereon. Such policies of insurance shall insure the ASSOCIATION in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, and "X-C-U" hazards.

Auto Liability Insurance which includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000.00 combined single limit for each occurrence.

A certificate of such insurance policies shall be provided to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A-201, Viera, Florida, 32940, demonstrating that the aforementioned insurance requirements have been met within ten (10) days of the date of execution of this Agreement and upon coverage renewals. The certificates of insurance shall indicate that the policies have been endorsed to cover the COUNTY as an additional insured and that these policies may not be canceled or modified without thirty (30) days prior written notice to the COUNTY.

- b. The ASSOCIATION shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the PREMISES.
- c. All personal property, equipment, fixtures, structures or improvements constructed or placed on or about the PREMISES shall be at the risk of the ASSOCIATION and the COUNTY shall not be liable for any damage or loss to personal property, equipment, fixtures, structures or improvements located thereon for any cause whatsoever. The ASSOCIATION agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover the ASSOCIATION's interests therein.

- d. At the time of execution of this Agreement, any existing landscaping installed or caused to be installed by the ASSOCIATION on the PREMISES will be the responsibility of the ASSOCIATION. In the event this pre-existing landscaping causes damage to COUNTY property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, the ASSOCIATION will be responsible for immediate repair to COUNTY property. If the ASSOCIATION fails to repair the damage, the ASSOCIATION will pay the COUNTY all costs incurred by the COUNTY to repair the damage.
 - e. Association shall include in any contract for work upon or involving the PREMISES that the contractor shall indemnify and hold harmless the ASSOCIATION and the COUNTY, their officers and employees, from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.
9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the PREMISES at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.
 10. COMPLIANCE WITH STATUTES. The ASSOCIATION shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental; bodies applicable to the PREMISES, for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the PREMISES during the term of the Agreement.
 11. ATTORNEY'S FEES. In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.
 12. ASSIGNABILITY. The ASSOCIATION shall not assign its responsibilities under this Agreement without the prior written consent of the COUNTY. In the event the ASSOCIATION does assign this Agreement with the COUNTY's consent, the ASSOCIATION and any such assigns shall be jointly and severally responsible for the ASSOCIATION's responsibilities under this Agreement. The ASSOCIATION shall provide the COUNTY with a written list of all subcontractors or other persons other than the members of the ASSOCIATION that will be performing work for the ASSOCIATION pursuant to this Agreement.
 13. INDEPENDENT CONTRACTOR. The ASSOCIATION shall perform the services under this Agreement as an Independent Contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to constitute that the ASSOCIATION or any of its agents or employees to be the agent, employee or representative of the COUNTY.

14. TERMINATION. This Agreement may be terminated with or without cause by either party upon forty-five (45) days' written notice thereof to the other party; provided, however, that upon termination, the ASSOCIATION shall, at the request of the COUNTY, remove all improvements to the PREMISES, or, in the alternative, reimburse the COUNTY for the cost of such removal.
15. NOTICE. Notice under this Agreement shall be given to the COUNTY at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940, and to the ASSOCIATION at P.O. Box 54031 Merritt Island, FL 32953.
16. WAIVER. The waiver by the COUNTY of any of the ASSOCIATION's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the ASSOCIATION under this Agreement.
17. ENTIRETY. This Agreement represents the understanding between the parties in its entirety and no other agreements, either oral or written, exist between the COUNTY and the ASSOCIATION.

DONE, ORDERED and ADOPTED in Regular Session this 15 day of DECEMBER 2015.

ATTEST



 Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
 OF BREVARD COUNTY, FLORIDA



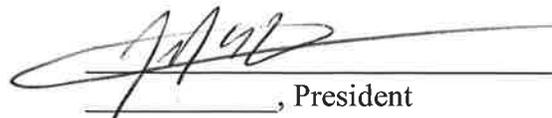
 Jim Barfield, Chairman
 As approved by the Board on DECEMBER 15, 2015

APPROVED AS TO FORM:



 Assistant County Attorney

WATERWAY MANOR ASSOCIATION, INC.


 _____, President
 Joseph Marks

STATE OF FLORIDA
 COUNTY OF BREVARD

BEFORE ME personally appeared Joseph Marks, known to me to be the person who executed the foregoing Agreement, and they acknowledged before me that they executed the same for the purposes described therein.

WITNESS my hand and official seal this 30 day of November, 2015.



 Notary Public, State of Florida
 My Commission Expires 11-30-17



CERTIFICATE

I, the undersigned, Joseph Marks, do HEREBY CERTIFY that the following is a true and correct statement of resolutions adopted by Consent of the Board of Directors of Waterway Manor Association, Inc., on 11/30/2015 and the action taken has not in any manner been rescinded or modified.

APPROVAL OF AGREEMENT

RESOLVED, that the Agreement between Waterway Manor Association, Inc. and the Board of County Commissioners of Brevard County, Florida, appended hereto and by reference made a part hereof is hereby approved by the ASSOCIATION.

FURTHER RESOLVED, that the President or Vice President, as well as other appropriate officers of this ASSOCIATION, are empowered to execute any and all documents, and/or instruments, to effect the purposes of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Waterway Manor Association, Inc. this 30 day of November, 2015.



Joseph Marks, President
Waterway Manor Association, Inc.

I HEREBY CERTIFY that on this day personally appeared before me Joseph Marks, to me known to be the person who signed the foregoing Certificate as such officer, and acknowledged the execution thereof to be his free act and deed on behalf of Waterway Manor Association, Inc.; that he affixed thereto the official seal of Waterway Manor Association, Inc.; and that as such officer, he is duly authorized to do so.

WITNESS my signature and official seal this 30 day of November 2015.

Mary Beth Beutler

Notary Public, State of Florida

My Commission Expires 11-30-17

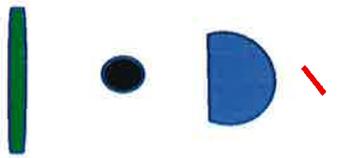


Exhibit "A"



WATERWAY MANOR UNIT NO. 1
P.B. 21-15 #02

- Median – The three medians contain existing landscaping to include palm trees and shrubbery; irrigation (hardware & pumps), and signage.
- Decorative Lighthouse – Landmark decorative lighthouse located at the entrance to the subdivision along with existing landscaping, which includes rocks and shrubbery, and signage.
- Rotary Island – The rotary island contains an existing fountain (decorative water feature similar to a shallow pond) along with landscaping.
- Proposed Conduit – Within County Right-of-Way only.



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor:	
2. Fund/Account #:	Division Name: Finance and Contracts Administration
4. Contract Description: Use Agreement – Waterway Manor Association, Inc.	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: 81; ext. 52853
7. Dept./Office Director: Public Works / John P. Denninghoff	8. Contract Type: Use Agreement
ACTION DATE:	ACTION REQUIREMENT: Please Review

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	/	_____	<u>HE</u>	<u>11-16-2015</u>
Risk Management	✓	_____	<u>JLW</u>	<u>11/19/2015</u>
County Attorney	✓	_____	<u>DJ</u>	<u>11/16/2015</u>

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

old



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

December 16, 2015

MEMORANDUM

TO: Robin Sobrino, Planning and Development Department Director

RE: Item II.A.4., Use Agreement with Waterway Manor Association, Inc. for the Improvements Within the Right-of-Way for Waterway Manor Subdivision in Merritt Island

The Board of County Commissioners, in regular session on December 15, 2015, executed the Use Agreement with Waterway Manor Association, Inc. for the use of the public right-of-way for the existing decorative lighthouse, landscaping, signage, and irrigation improvements, and for the installation of an underground electric conduit to the decorative lighthouse for the Waterway Manor Subdivision in Merritt Island. Enclosed are two fully-executed Use Agreements for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Etheridge".

Tammy Etheridge, Deputy Clerk

/ds

Encls. (2)