

Meeting Date
September 01, 2015



AGENDA	
Section	Consent
Item No.	II.A.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Execution of Release and Hold Harmless Agreement Between Knight Enterprises and Brevard County Mosquito Control District Fiscal Impact: None
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board of County Commissioners authorize the Chairman to execute the Release and Hold Harmless Agreement between Knight Enterprises and Brevard County Mosquito Control District for free storage of heavy equipment in an underground bunker during severe weather.

Summary Explanation & Background:

For the past seven years, Mosquito Control has entered into a Release and Hold Harmless Agreement with Knight Enterprises. This Agreement provides secure and weather proof storage space at no cost for Mosquito Control equipment.

In the event of a hurricane or other severe weather conditions; Mosquito Control would be able to store helicopters and spray equipment in Knight's underground bunkers, protecting the helicopters and support equipment from potential weather related damage.

In 2009, with a hurricane pending, Mosquito Control did safely store and retrieve aviation equipment from a bunker at the Knight facility. Knight Enterprises has also provided this storage arrangement with the Sheriff and Fire Rescue agencies in the past.

The Agreement releases and holds Knight Enterprises harmless from compensatory or punitive damages that in any way may occur as a result of the storage of equipment. In the event of a claim for damages as a result of this Agreement, the fiscal impact may rise to the amount of the sovereign immunity cap on liabilities.

Fiscal Impact: There is no fiscal impact associated with this request.

Staff Contact: Virginia Barker, 633-2016 or Christopher Richmond, 532-2064

Clerk to the Board instruction: **Total of three signed originals: one for Clerk of Court and two for Natural Resources Management Department**

Exhibits Attached: **Release and Hold Harmless Agreement**

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

County Manager Stockton Whitten		Department Director / Extension Virginia Barker/X52435
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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

September 2, 2015

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Interim Director

RE: Item II.A.1., Release and Hold Harmless Agreement Between Knight Enterprises and Brevard County Mosquito Control District for Free Storage of Heavy Equipment

The Board of County Commissioners, in regular session on September 1, 2015, executed Release and Hold Harmless Agreement between Knight Enterprises and Brevard County Mosquito Control District for free storage of heavy equipment in an underground bunker during severe weather. Enclosed are two fully-executed Agreements.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

✓ Tammy Etheridge, Deputy Clerk

Encls. (2)

cc: Contract Administration

RELEASE AND HOLD HARMLESS AGREEMENT

This Release and Hold Harmless Agreement ("Agreement") is entered into by and between Knight Enterprises, L.L.C., ("KNIGHT"), a Florida limited liability company, including its subsidiaries and affiliates, on the one hand, and Brevard County Mosquito Control District ("MOSQUITO CONTROL"), a Special Taxing District, on the other hand, on this 1st day of SEPTEMBER, 2015.

WHEREAS, KNIGHT owns a facility in Titusville, Florida.

WHEREAS, MOSQUITO CONTROL would like to store vehicle, equipment, records, and conduct training (the "Equipment"), on this site.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions and payments herein described, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KNIGHT and MOSQUITO CONTROL agree as follows:

Storage of Equipment / Training

1. KNIGHT agrees to permit MOSQUITO CONTROL to store the Equipment on this site on a rent-free basis, beginning July 1, 2015 and ending November 30, 2015 (the "Effective Period").

2. MOSQUITO CONTROL shall have the sole obligation to secure and maintain the Equipment while it is being stored. MOSQUITO CONTROL will be granted reasonable access to the premises. MOSQUITO CONTROL shall further have the sole obligation to transport the Equipment at the beginning of the Effective Period and off of the site on or before the 10th day after the termination of this Agreement.

3. MOSQUITO CONTROL shall be responsible to clean the area used after each usage and is responsible for any damage resulting from MOSQUITO CONTROL's presence on the site.

4. Nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the limitations of liability set forth in Section 768.28, Florida Statutes.

Release and Discharge

5. MOSQUITO CONTROL, on its own behalf, and on behalf of its agents, servants, employees, officers, directors, representatives, accountants, attorneys, parents, affiliates, divisions, subdivisions, subsidiaries, successors, assigns and anyone claiming through or under any or each of them, does hereby completely release, acquit, and forever discharge KNIGHT, and each of KNIGHT's affiliates, divisions, subdivisions, subsidiaries, successors, assigns, and each of KNIGHT's past, present and future agents, shareholders, servants, employees, officers, directors, representatives, and anyone claiming through or under any of them, from any and all known and unknown, foreseeable actions, claims, actions, causes of action, counterclaims, claims for indemnity and/or contribution, demands, debts, liabilities, obligations, accounts, rights, damages, costs, expenses and compensation of any nature whatsoever, under whatever theory, whether for compensatory or punitive damages, which MOSQUITO CONTROL now has or claims to have, or may in the future have, or which may hereafter accrue on account of or by reason of, or in any way growing out of this agreement.

6. MOSQUITO CONTROL shall indemnify and defend KNIGHT and each of KNIGHT's affiliates, divisions, subdivisions, subsidiaries, successors, assigns, and each of KNIGHT's agents, shareholders, servants, employees, officers, directors, representatives, insurers, and anyone claiming through or under any of them, from any and all known and unknown, foreseen and unforeseen actions, claims, actions, causes of action, counterclaims, claims for indemnity and/or contribution, demands, debts, liabilities, obligations, accounts, rights, damages, costs, expenses and compensation of any nature whatsoever, under whatever theory, whether for compensatory or punitive damages, which any person now has or claims to have, or may in the future have, or which may hereafter accrue on account of or by reason of, or in any way growing out of, or relating to, or concerning, whether directly or indirectly, proximately or remotely, transportation and storage of the Equipment on this site, provided, that the limit of the MOSQUITO CONTROL's duty to indemnify or hold KNIGHT harmless shall not exceed the limits of the waiver of sovereign immunity (in effect at the time of occurrence of the incident indemnified against and held harmless by MOSQUITO CONTROL) as provided in Section 768.28, Florida Statutes, as amended from time-to-time.

Costs

7. Each party hereto shall bear its own costs, including attorney's fees, incurred in connection with this Agreement and the matters referred to herein.

Voluntary Agreement

8. The parties hereto represent and warrant that they have read this Agreement and fully understand its provisions. The parties further represent and warrant that they have had the benefit of full and complete legal advice in connection with this Agreement, that an authorized representative has read and fully understands the meaning and intent of every provision of this Agreement, and that they completely understand and have executed the same voluntarily and without duress, persuasion, fraud or undue influence.

9. This Agreement shall terminate upon the first of the following events to occur:

- a. The expiration of the Effective Period.
- b. Five (5) days following written notice by one party to the other of their intent to terminate this Agreement.
- c. Immediate "Sale" of the property.

10. MOSQUITO CONTROL's obligations to release, hold harmless and indemnify KNIGHT as provided in this Agreement shall continue indefinitely, notwithstanding any termination of this Agreement, provided, that the limit of the MOSQUITO CONTROL's duty to indemnify or hold KNIGHT harmless shall not exceed the limits of the waiver of sovereign immunity (in effect at the time of occurrence of the incident indemnified against and held harmless by MOSQUITO CONTROL), as provided in Section 768.28, Florida Statutes, as amended from time-to-time.

Governing Law

11. This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement and any dispute arising hereunder shall be governed interpreted and construed according to the laws of the State of Florida.

12. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 1st day of September, 2015, having read the above and fully understanding the provisions thereof.

By: ***Knight Enterprises, L.L.C.***

Contact's name (please print) Arthur Weelle

Signature: *Arthur Weelle*

Date: 7/16/2015

DISTRICT

By: ***Brevard County Mosquito Control District***

Contacts name: Robin Fisher, Chairman of the Brevard County Mosquito Control District

Signature: *Robin Fisher*

Date: 09/01/15

APPROVED BY THE BOARD: 09/01/15

ATTEST:

Scott Ellis
SCOTT ELLIS, CLERK

**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: Knight LLC – No funds or payment due	
2. Fund/Account #: 0190 / 258001 / 5340000	Division Name: Mosquito Control
4. Contract Description: Storage of equipment during a major storm event	
5. Contract Monitor: John Sternagel - Mosquito Control	6. Mail Stop #: 23
7. Dept./Office Director: Virginia Barker, Interim Director Natural Resources Management Department	8. Contract Type: Non-financial - Release and Hold Harmless Agreement
ACTION DATE: July/2015	ACTION REQUIREMENT: July/2015

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>JDS</u>	<u>6/24/15</u>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>A/COI</u>	<u>6/16/15</u>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>MDS</u>	<u>6/24/15</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.*