

Meeting Date
December 5, 2017



AGENDA	
Section	Consent
Item No.	II.A.3

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Use Agreement with Hammock Estates Homeowners Association for Improvements in the Right-of-Way of Hammock Estates Lane near Aurora Road – District 5 (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 the Hammock Estates Homeowners Association for installation of improvements in the County right-of-way of Hammock Estates Lane near Aurora Road.

Summary Explanation & Background:

Hammock Estates Homeowners Association desires to enter into a Use Agreement with Brevard County to install improvements within the County right-of-way of Hammock Estates Lane near Aurora Road as described in Exhibit “A”. Hammock Estates Homeowners Association requests to install an electrical line and conduit to facilitate new lighting at their subdivision entrance.

The County is authorized to permit use of the right-of-way for utilities under Chapter 86 of the Code of Ordinances of Brevard County, Florida. The installation will be pursuant to Right-of-Way Permit #17RW00904 which has been reviewed by the Public Works staff for compliance with County code and regulations. The initial term of this Agreement shall be ten years and may be automatically renewed annually unless terminated by either party. The Agreement may be terminated with or without cause by either party upon forty-five days written notice.

In accordance with the Agreement, Hammock Estates Homeowners Association will be required to maintain this installation without cost to the County and to provide general liability insurance in an amount not less than one million dollars to include the coverage for XCU hazards during the term of the Agreement.

Fiscal Impact – FY 2017/2018/2019 – There is no cost to Brevard County for the electrical installation.

Clerk to the Board Instructions: Please return fully executed Use Agreement to the Public Works Department.

Exhibits Attached: Use Agreement (3 originals)

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

County Manager Frank Abbate <i>[Signature]</i>	Assistant County Manager John P. Denninghoff <i>[Signature]</i>	Department Director / Extension
	Interim Assistant County Manager Jim Liesenfelt	Andrew J. Holmes, P.E. / 57202



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

December 6, 2017

MEMORANDUM

TO: Andrew Holmes, Public Works Director

RE: Item II.A.3, Use Agreement with Hammock Estates Homeowners Association for Improvements in the Right-of-Way of Hammock Estates Lane Near Aurora Road

The Board of County Commissioners, in regular session on December 5, 2017, executed the Use Agreement with the Hammock Estates Homeowners Association for installation of improvements in the County right-of-way of Hammock Estates Lane near Aurora Road. Enclosed is the fully-executed Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Contracts Administration
Finance
Budget

USE AGREEMENT

THIS AGREEMENT, made and entered into this 5 day of Dec. 2017 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 Hammock Estates Homeowners Association, hereinafter referred to as the "ASSOCIATION".

WITNESSETH

WHEREAS the COUNTY owns the public right of way of Hammock Estate Lane near Aurora Road and;

WHEREAS the ASSOCIATION desires to install underground electrical conduit on a portion of said right of way; 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 13 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 entry way on Hammock Estate Lane.
3. PURPOSES. The ASSOCIATION shall use the PREMISES for the improvements, which includes electrical conduits, pursuant to Permit #17RW00904 and as indicated on Exhibit "A" for the purposes and under the conditions expressed herein. It is hereby mutually agreed and understood that the use of any improvements now or hereafter located on the PREMISES shall be for decorative purposes only and not for human occupancy, nor shall such 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 existing improvements on the PREMISES shall be in accordance with all COUNTY specifications and shall be pursuant to the COUNTY's "Roadway and Easement Improvement Application Form" as Permit #17RW00904. It is hereby agreed and understood that any improvements 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 improvements 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 improvements are not removed within forty-five (45) days of termination, the COUNTY may remove the improvements.

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, including the landscaping, signage, irrigation, lighting, utilities, and flag pole 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. The ASSOCIATION shall provide the COUNTY with a written list of all contractors or other persons other than the members of the ASSOCIATION that will be performing work for the ASSOCIATION pursuant to this Agreement.
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 improvement is or becomes a traffic safety hazard as determined by the COUNTY in its sole discretion or the 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, 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 and to include coverage for "XCU" hazards.

- b. 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 annually upon insurance renewal. The certificates of insurance shall indicate that the aforementioned policies have been endorsed to name 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.
 - c. The ASSOCIATION shall include in any contract for work upon or involving the PREMISES that the contractor shall indemnify and hold harmless ASSOCIATION and the COUNTY 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 contract.
 - d. The ASSOCIATION shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the PREMISES.
 - e. 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 improvements or facilities to cover the ASSOCIATION's interests therein.
 - f. At the time of execution of this Agreement, any existing improvements installed on the PREMISES, will be the responsibility of the ASSOCIATION. In the event the existing landscaping improvements cause damage to COUNTY property, including 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.
9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the PREMISES at any time for any purpose related to COUNTY business..
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. BINDING EFFECT: ASSIGNABILITY. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. The

ASSOCIATION shall not assign its responsibilities under this Agreement without the prior written consent of the COUNTY. In the event the ASSOCIATION assigns its duties under this Agreement to another entity, the ASSOCIATION and any such assigns shall be jointly and severally responsible for the ASSOCIATION's responsibilities under this Agreement.

12. 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.
13. 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.
14. NOTICE. Notice under this Agreement shall be given to the:

Brevard County Public Works Department
Attn: Support Services Manager
2725 Judge Fran Jamieson Way, Bldg. A-201
Viera, Florida 32940

Hammock Estates Homeowners Association
1838 Sabal Palm Drive
Melbourne, FL 32934
15. 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.
16. ATTORNEY'S FEES AND VENUE. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs. The venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. **Any trial shall be non-jury.**
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.
18. SEVERABILITY: If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

19. RIGHT TO AUDIT RECORDS: In performance of this Agreement, the ASSOCIATION shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the ASSOCIATION in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the COUNTY. The ASSOCIATION shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to the ASSOCIATION by the COUNTY in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the information technology systems of the COUNTY.

DONE, ORDERED and ADOPTED in Regular Session this 5 day of Dec. 2017.

ATTEST:



Scott Ellis
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rita Pritchett
Rita Pritchett, Chair
As approved by the Board on 12/5/17

APPROVED AS TO FORM AND CONTENT:

Assistant County Attorney
Assistant County Attorney

HAMMOCK ESTATES HOMEOWNERS
ASSOCIATION OF BREVARD, INC. 175

Jeffrey S. Miller
Jeffrey S. Miller, President
29 Nov 2017 (Date)

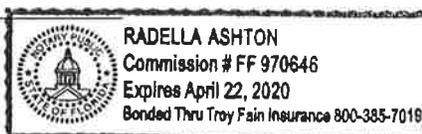
STATE OF FLORIDA
COUNTY OF BREVARD

BEFORE ME personally appeared JEFFREY S. MILLER 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 29th day of NOVEMBER, 2017.

Radella Ashton
Notary Public, State of Florida

My Commission Expires _____



CERTIFICATE

I, the undersigned, Jeffrey S. Miller, do HEREBY CERTIFY that the following is a true and correct statement of resolutions adopted by Consent of the Board of Directors of Hammock Estates HOA, on 17 NOV 2017 and the action taken has not in any manner been rescinded or modified.

APPROVAL OF AGREEMENT

RESOLVED, that the Agreement between Hammock Estates HOA 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 ASSOCIATION this 29 day of November, 2017.

Jeffrey S. Miller
Jeffrey S. Miller, President
Hammock Estates Homeowners Association
of Brevard INC

(RA)

I HEREBY CERTIFY that on this day personally appeared before me JEFFREY STEPHEN S. MILLER, 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 Hammock Estates HOA that he affixed thereto the official seal of Association; and that as such officer, he is duly authorized to do so.

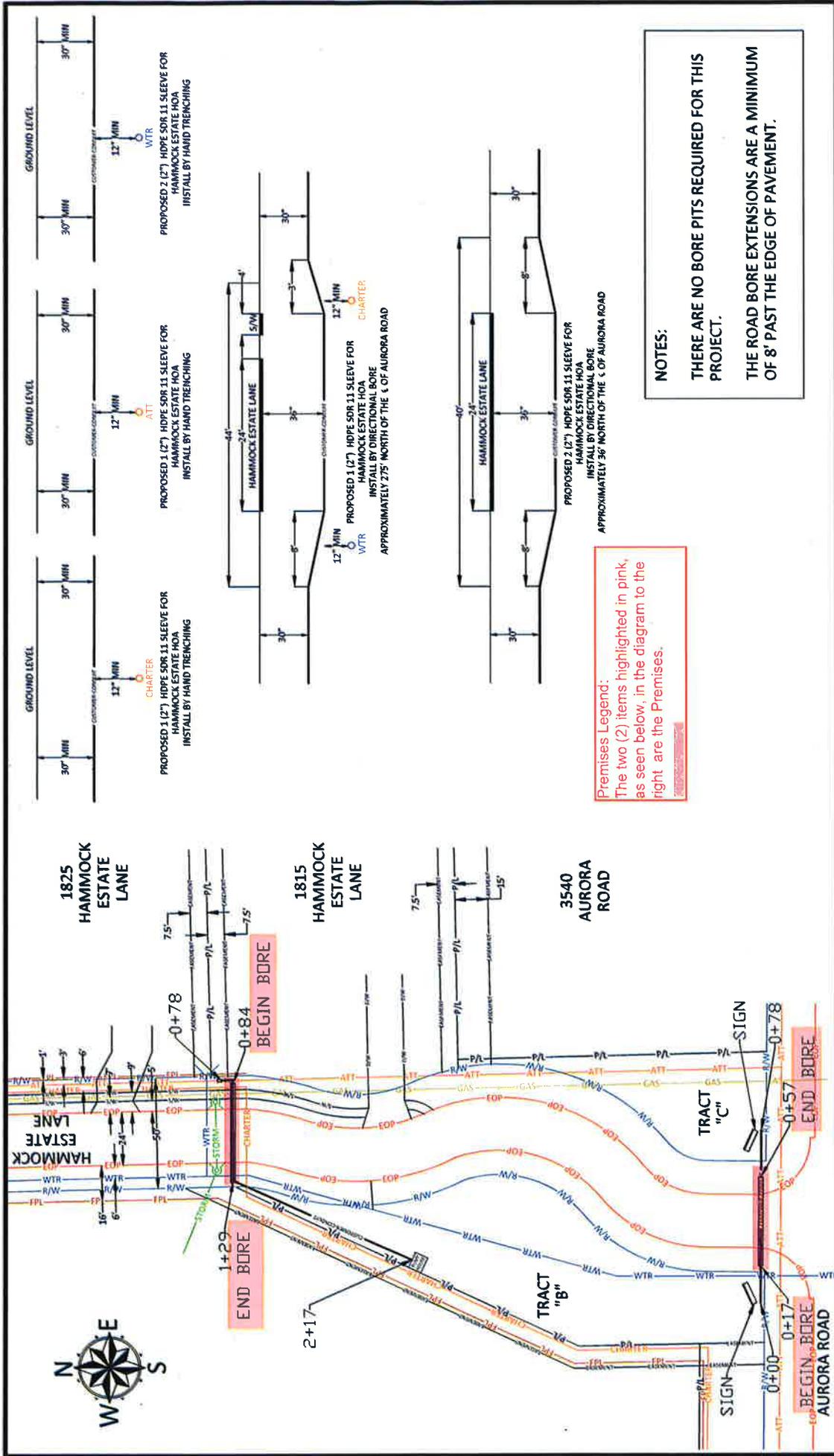
WITNESS my signature and official seal this 29th day of NOVEMBER 2017.

Raedella Ashton

Notary Public, State of FLORIDA
My Commission Expires _____



Exhibit "A"



Premises Legend:
 The two (2) items highlighted in pink, as seen below, in the diagram to the right are the Premises.

NOTES:
 THERE ARE NO BORE PITS REQUIRED FOR THIS PROJECT.
 THE ROAD BORE EXTENSIONS ARE A MINIMUM OF 8' PAST THE EDGE OF PAVEMENT.

<p>SCALE: NOT TO SCALE</p>	<p>LOCATION: HAMMOCK ESTATE LANE</p>	<p>DESCRIPTION: PROPOSED PLACEMENT AND CROSS SECTION OF CONDUITS FOR HAMMOCK ESTATE HOA ON HAMMOCK ESTATE LANE</p>	<p>DATE: 23 OCTOBER 2017</p>
<p>DEBORAL MILLER, TREASURER AND ACTING VP HAMMOCK ESTATES HOA 1825 SABAL PALM DRIVE MELBOURNE, FL 32934</p>		<p>811 Know what's below. Call before you dig.</p>	

*This page only
5th change
II.A.3*

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

**Replacement
Attachment
II.A.3.**

INITIAL CONTRACT FORM

Information must be completed on all new contracts submitted to the Board.

1. Contractor:	
2. Fund/Account #:	Department Name: Public Works
4. Contract Description: Use Agreement with Hammock Estates HOA	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: EXT 52853
7. Dept./Office Director: Andrew J. Holmes, P.E., Public Works Director	8. Contract Type: Use Agreement
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Need complete data

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	✓	_____	<i>HW</i>	<i>11/25/17</i>
Risk Management	X	_____	ML	11-2-2017
County Attorney	✓	_____	<i>DCJ</i>	<i>11/24/17</i>

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

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	

Soney, just this top sheet is a replacement. (original agreements are attached) 11/30 Decima

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, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.