

Meeting Date
July 12, 2016



AGENDA	
Section	Consent
Item No.	II.A.5

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: 1) Authorize the Chairman to execute the Release and Hold Harmless Agreement between Knight Enterprises and Brevard County Mosquito Control District, substantially in the form of the attached contingent upon County Attorney and Risk Management approval; and 2) Authorize the County Manager, or designee, to execute future agreements under similar terms, subject to the approval of the County Attorney's Office and Risk Management.

Summary Explanation & Background:

For the past nine years, Mosquito Control has entered into a Release and Hold Harmless Agreement with Knight Enterprises. This Agreement provides secure and weather proof emergency 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 to the Sheriff and Fire Rescue agencies.

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, except to the extent of negligence or wanton misconduct. 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, 403-8084

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

**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 / 258000 / 5340000	Division Name: Mosquito Control
4. Contract Description: Storage of equipment during a major storm event	
5. Contract Monitor: Shannon Maginnis - Mosquito Control	6. Mail Stop #: 23
7. Dept./Office Director: Virginia Barker, Director Natural Resources Management Department	8. Contract Type: Non-financial - Release and Hold Harmless Agreement
ACTION DATE: June 1, 2016	ACTION REQUIREMENT: June 2016

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>WLB</u>	_____	_____	<u>6/20/16</u>
Risk Management	<u>✓</u>	_____	<u>JLS</u>	<u>6/30/2016</u>
County Attorney	_____	_____	_____	_____

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.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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	<u>YES</u>	<u>NO</u>		
User Agency		_____	_____	<u>6/20/16</u>
Risk Management		_____	_____	_____
County Attorney		_____	_____	<u>6/27/16</u>

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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

July 13, 2016

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.5., Release and Hold Harmless Agreement Between Knight Enterprises and Brevard County Mosquito Control District

The Board of Commissioners, in regular session on July 12, 2016, executed the Release and Hold Harmless Agreement between Knight Enterprises and Brevard County Mosquito Control District, substantially in the form of the attached contingent upon County Attorney and Risk Management approval; and authorized the County Manager, or his designee, to execute future agreements under similar terms, subject to the approval of the County Attorney's Office and Risk Management. Enclosed are three executed Release and Hold Harmless Agreements.

Upon execution by Knight Enterprises, please return a fully-executed Hold Harmless Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (3)

cc: Contracts Administration

RELEASE AND HOLD HARMLESS AGREEMENT

This Release and Hold Harmless Agreement ("Agreement") is entered into by and between Knight's Enterprises, LLC, 701 Columbia Blvd Titusville Florida, including its subsidiaries and affiliates, on the one hand, and Brevard County Mosquito Control District, on the other hand, on this 26th day of Sept., 2016.

WHEREAS, Knight's Enterprises, LLC, owns a facility in Titusville Florida.

WHEREAS, Brevard County Mosquito Control District would like to store vehicles, 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's Enterprises, LLC, and Brevard County Mosquito Control District agree as follows:

Storage of Equipment / Training

1. Knight's Enterprises, LLC, agrees to permit Brevard County Mosquito Control District to store the Equipment on this site on a rent-free basis, beginning June 1, 2016, and ending November 30, 2016 (the "Effective Period").

2. Brevard County Mosquito Control District shall have the sole obligation to secure and maintain the Equipment while it is being stored. Brevard County Mosquito Control District shall further have the sole obligation to transport the Equipment at the beginning of the Effective Period and off of the site upon termination of this Agreement.

3. Brevard County Mosquito Control District shall be responsible to clean the area used after each usage and is responsible for any damage resulting from Brevard County Mosquito Control District's presence on the site.

Release and Discharge

4. Brevard County Mosquito Control District, 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's Enterprises, LLC, and each of Knight's Enterprises, LLC, affiliates, divisions, subdivisions, subsidiaries, successors, assigns, and each of Knight's Enterprises, LLC, 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 Brevard County Mosquito Control District 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, except to the extent of negligence or wanton misconduct of Knight's Enterprises, LLC, and each of Knight's Enterprises, LLC, affiliates, divisions, subdivisions, subsidiaries, successors, assigns, and each of Knight's Enterprises, LLC, past, present and future agents, shareholders, servants, employees, officers, directors, representatives, insurers, accountants, attorneys and anyone claiming through or under any of them.

5. (a) To the extent allowed by law, Brevard County Mosquito Control District shall indemnify and defend Knight's Enterprises, LLC, and each of Knight's Enterprises, LLC, affiliates, divisions, subdivisions,

subsidiaries, successors, assigns, and each of Knight's Enterprises, LLC, past, present and future agents, shareholders, servants, employees, officers, directors, representatives, insurers, accountants, attorneys 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, except to the extent of negligence or wanton misconduct of Knight's Enterprises, LLC, and each of Knight's Enterprises, LLC, affiliates, divisions, subdivisions, subsidiaries, successors, assigns, and each of Knight's Enterprises, LLC, past, present and future agents, shareholders, servants, employees, officers, directors, representatives, insurers, accountants, attorneys and anyone claiming through or under any of them.

(b) Nothing contained in this Agreement shall be construed as a waiver of the Brevard Mosquito Control District's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on its potential liability under state or federal law. Nothing in this Agreement shall be construed as consent to be sued by third parties.

Costs

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

Voluntary Agreement

7. 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.

Termination

8. 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.

9. Brevard County Mosquito Control District's obligations to release, hold harmless, and indemnify Knight's Enterprises, LLC, as provided in this Agreement shall continue indefinitely, notwithstanding any termination of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this ^{4th}21st day of Sept, 2016, having read the above and fully understanding the provisions thereof.

By: ***Knight's Enterprises, LLC***

Contact's name (please print): Arthur Helle Date: 9/26/2016

Contact's phone #: 1-321-607-9955

Signature: *Arthur Helle* Date: 9/26/2016

AGENCY:

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

Contact's name: Jim Barfield, Chairman of the Brevard County Mosquito Control District

Signature: *Jim Barfield* Date: July 12, 2016

As approved by the Board July 12, 2016

ATTEST:

Scott Ellis

SCOTT ELLIS, CLERK