





Office of Consent Agenda 07/10/18
INDIAN RIVER COUNTY
ATTORNEY

Dylan Reingold, County Attorney
William K. DeBraul, Deputy County Attorney
Kate Pingolt Cotner, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: William K. DeBraul, Deputy County Attorney 

THROUGH: Richard B. Szpyrka, P.E., Public Works Director 

DATE: July 3, 2018

SUBJECT: Request from Costello Brothers Marine Construction for payments to be sent to Great Horn Financial for Main Relief Canal Conveyor System Replacement

On June 5, 2018, the Board of County Commissioners approved awarding a contract to Costello Brothers Marine Construction, Inc. (Costello) for replacement of the conveyor system of the PC Main Screening System at the Main Relief Canal. The amount of the contract is \$586,236.60. Staff has been working with Costello to get the necessary insurance and bonding documents reviewed, approved and recorded so a Notice to Proceed may be issued. During this process, staff was contacted by Great Horn Financial Services, LLC (Great Horn) concerning the contract with Costello.

Great Horn, at the request of Costello, has asked the County to honor the attached "Irrevocable Directive of Draw Proceeds" (Directive) entered into by Costello and Great Horn. The County is being asked to issue payments on the contract in Costello's name but endorsed with the following: "Deposit Only to Disbursement Control Account # _____, Sun Trust Bank, Maryland". The check or wire transfer will be sent to Great Horn at their office in Maryland. Upon receipt of the check or wire transfer and approved pay applications, Great Horn would then disburse payment to the subcontractors and materialmen as specified in the pay application. So long as the pay application is approved by Costello and the County, Great Horn must cut checks for the full amount specified on the pay application. Great Horn is basically acting as an escrow agent to the subcontractors and a funds manager to Costello. Firms such as Great Horn are frequently used in three situations:

- at the request of a bonding company to reduce the amount of collateral that must be posted by a contractor to the bonding company; or
- used to give the contractor a better rate on the bond; or
- if a contractor is nearing its bonding capacity

Although the County is not a party to the Disbursement Control Agreement between Costello and Great Horn, the County is named as an additional insured by Great Horn (Certificate of Insurance is attached) and the County retains its full rights under the bond posted by Costello. After speaking with representatives from Great Horn, Costello and the County Finance Office, staff is agreeable to issuing payments as described in the Directive.

Funding. Aside from the payments made on the contract, there will be no additional expenditure of County funds for this matter.

Recommendation. Staff recommends that the Board approve the Irrevocable Directive of Draw Proceeds between Costello, Great Horn and the County and authorize the Chairman to execute the Directive on behalf of the Board. Staff further recommends that the Board direct the Finance Office to make payments via wire or ACH on the contract between the County and Costello for replacement of the PC Main Screening System to Great Horn Financial Services, LLC with the endorsement on the payment as indicated in the Irrevocable Directive of Draw Proceeds.

Copies to: Elissa Nagy, Finance Director
Keith McCully, Stormwater Engineer
Richard B. Szyrka, P.E., Public Works Director
Costello Brothers Marine Construction, Inc.

Attachments: Irrevocable Directive of Draw Proceeds (Exhibit "A")
Certificate of Insurance (Exhibit "B")