

**AGREEMENT BETWEEN BROWNIES SEPTIC AND PLUMBING LLC AND THE
HARMONY COMMUNITY DEVELOPMENT DISTRICT REGARDING EMERGENCY
STORMDRAIN PIPE REMOVAL AND INSTALLATION SERVICES**

THIS AGREEMENT made and entered into this 28th day of August, 2020, by and between Brownies Septic and Plumbing LLC, an independent contractor (“Contractor”), whose address is 4949 N. Orange Blossom Trail, Orlando, FL 32810, and the Harmony Community Development District (“District”), care of the District Manager, Kristen Suit, whose address is 313 Campus Street, Celebration, Florida 34747 (hereinafter “Parties”), shall bind the Contractor to provide the emergency storm drain pipe removal and installation services set forth below to the satisfaction of the District.

SECTION I

Purpose of Agreement

The purpose of this Agreement between Contractor, an independent contractor, and the District is for the Parties to enter into an agreement for the provision of emergency storm drain pipe removal and installation services as set forth in Section IV below.

SECTION II

Qualifications of Contractor

The Contractor represents that it is qualified to fulfill the duties set forth below.

SECTION III

Consideration

1. That which induced the parties to enter into this agreement, in addition to the provisions of Section I-III, which provisions are dispositive, is the fee for the Contractor and the services to be received by the District both constituting good, valuable, adequate and sufficient consideration.

2. In consideration of this Agreement and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree to all of the provisions of this contract.

SECTION IV

Duties

1. The duties, obligations, and responsibilities of the Contractor are as follows:
Labor, materials, debris removal, installation, and clean up in the Project Area (located near 7200 Five Oaks Dr, Harmony, FL, 34747)
2. Contractor will prepare the Project Area to remove and replace damaged piping within the Project Area's manhole structure as follows:
 - a. Contractor's equipment for project shall be: (1) Excavator, (1) Skid-Steer (if needed), (1) 18 CY Tri-Axle Dump trucks, (1) Vac Truck.
 - b. Contractor shall replace 42"-48" of Polybutylene Storm Line that will function as originally designed and permitted. The following steps shall be taken by Contractor:
 - i. Remove debris, rock, sediment, and the damaged piping from the manhole structure in the Project Area. Prior to digging, Contractor shall call Sunshine811 at phone number(s) 811 or 1-800-432-4770. Contractor is responsible for importing clean fill and/or stabilizers as needed.
 - ii. Use Excavator to remove sediment and rock around the Toho water line and make a 20' foot cut from the manhole.
 - iii. Remove all further debris and sediment from manhole and use the Vac Truck to hydro-excavate sufficient depth to replace the storm drain line. Contractor will vacuum and clean the manhole after hydro-excavation.
 - iv. Supply and install 42" – 48" (as required) of Polybutylene storm drain line. Contractor shall make the proper storm line connections and use sealant as needed.
 - v. Post-installation of Polybutylene line, Contractor will place reliable clean fill and stabilizers, which are proper for sod replacement. Contractor shall make further repairs to depression/banks and sod as necessary to ensure the Project Area is stabilized.
 - vi. Secure and replace safety fencing around the perimeter of the manhole structure as necessary for safety.

- vii. Should “de-watering” be needed, approval by the District Manager for all change orders is required.
 - viii. Contractor is responsible for repairing or replacing any unreasonable damage to trees, landscaping, irrigation and sidewalks caused by the Contractor in and around the Project Area. Should Contractor damage any utility lines during the project, Contractor is responsible for notifying the proper owner of the lines immediately.
- 3. All decisions concerning compliance with the terms of this contract and operations under this contract are specifically delegated and assigned to the District Manager or her designee. The point-person for Contractor shall be Jared Dennerline who shall report progress and relay any questions to the District Manager.
- 3. Subject to the approval of the District Manager, the Contractor shall:
 - a. Be responsible solely for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District Manager.
 - b. Ensure that employees working on the Project shall wear uniforms or professional attire at all times. Clothing that expresses or implies obscene language or graphics, degrading or demeaning connotations, or in the opinion of the District Manager is unsightly for any reason, shall be strictly prohibited. Contractor personnel shall wear shirts at all times and shall wear footwear that conforms to safe work practices.
 - c. Enforce strict discipline and good order among its employees on the Project site. The Contractor shall ensure that its employees that communicate and interact with the Harmony community and any other customers/party associated with the Harmony project are knowledgeable of the Project and the Services that the Contractor is performing.
 - d. Develop, implement, and maintain a safety program or its operations on the Project. The safety program shall include, at a minimum, a safety policy, safety rules and procedures, safety training, procedures for reinforcing and monitoring safety programs, procedures for accident investigations, providing and maintain equipment safety features, and safety record keeping.

- e. Be available for an inspection (walk-thru) with the District Manager or the Manager's representative during regular working hours after the services set forth above are completed by the Contractor. This inspection shall be scheduled with the District Manager and Contractor, or their lawful representatives, with a resulting punch list of problems and corrective actions taken as soon as practicable after the walk-thru is completed.
 - f. Be responsible for immediately notifying the District through the District Manager of any/all issues, damage, and/or decline directly related to the Contractor's scope of work.
 - g. Report to the District Manager or its designee.
3. Additional duties may be specified by the District Manager or its designee.

SECTION V

Compensation

1. The District agrees to compensate the Contractor a fee of \$57,109.00, with a not to exceed limit of \$75,000.00 subject to District Approval. The District shall pay Contractor 50% of the fee prior to commencement and pay the remaining balance, minus any amount owed for liquidated damages described in Section VI below, upon satisfactory completion of the duties outlined in Section IV above.

3. Any additional compensation for additional duties shall be paid only upon the written authorization of the District Manager or its designee upon board approval.

SECTION VI

Liquidated Damages

In the event that the Contractor has not completed its emergency hydro-excavation investigative duties on or before 4 days following commencement of the project, the Parties agree that damages would not be quantifiable. Consequently, Contractor agrees to pay to the District a per diem rate of \$250.00 in liquidated damages in the event that the emergency removal and installation is not completed, excluding delays caused by inclement weather, by four (4) days following commencement of the project. The Parties agree that this amount is reasonable and will be subtracted from the total amount set forth in Section V above.

SECTION VII

Contractual Relationship

1. Nothing herein shall be construed as creating the relationship of employer or employee between the District/District Manager and the Contractor or between the District/District Manager and the Contractor's employees.
2. Neither the District nor the District Manager shall be subject to any obligations or liabilities of the Contractor or its employees, incurred in the performance of the contract.
3. The Contractor is an independent contractor and nothing contained herein shall constitute or designate the Contractor or any of their employees as employees of the District or the District Manager.
4. Nothing herein shall be construed as to creating an agency relationship between the District and Contractor or the District Manager and Contractor.

SECTION VIII

Term

This Agreement shall commence upon execution by both Parties hereto and shall continue until the duties of the Contractor set forth above are performed to the satisfaction of the District.

SECTION IX

Insurance

The Contractor shall maintain throughout the term of this Agreement the following insurance:

- (a) Worker's Compensation Insurance in accordance with the laws of the State of Florida.
- (b) Commercial General Liability Insurance covering the Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 (one million dollars) combined single limit bodily injury and property damage liability with the District named as an additional insured, and covering at least the following hazards:
 - (i) Independent Contractors Coverage for bodily injury and property damage in connection with subcontractors' operation;
 - (ii) The District shall be named as additional insured.

SECTION X

Indemnification

1. The Contractor agrees to indemnify and hold harmless the District and its Manager, officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, the work to be performed by Contractor, including litigation or any appellate proceedings with respect thereto.

2. Contractor agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in Section 768.28, Florida Statutes, or other statute.

SECTION XI

Authorization

The execution of this Agreement has been authorized duly by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION XII

Assignment of Contract

1. No right or interest in this Agreement, or further formal contract, shall be assigned or delegated by the Contractor without the written permission of the District.

2. Any attempted assignment or delegation by Contractor shall be, void wholly, and ineffective totally, for all purposes, unless made in the conformity with this section.

SECTION XIII

Waiver

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

SECTION XIV

Termination

The performance of services may be terminated in whole or in part by the District Manager in accordance with this provision and may be revised by the Board.

SECTION XV

Modifications and Recordings

This Agreement can be modified or rescinded only by a writing signed by both parties to the contract or their duly authorized agents.

SECTION XVI

Payment for Services Procedure

1. The Contractor shall deliver to the District Manager an Application for Payment in such form and with such detail as the District Manager requires.
 - a. Upon Contractor's completion of the project, Contractor shall submit a final Invoice to the District Manager for the balance due. Final payment shall be made in accordance with the *Local Government Prompt Payment Act* following a satisfactory inspection and the Contractor's submission of releases of liens from subcontractors and/or materialmen, if any.
2. The District through its Manager reserves the right to require itemized documentation to verify the amount owed as prescribed in the Application for Payment. If documentation is required to verify the Contractor's Application for Payment, then payment by the District Manager on behalf of the District will take place on the 30th day of the calendar month in which both the Application for Payment and the itemized documentation are received by the District through its Manager.
3. Any change orders are discouraged and subject to the District Board approval and any District change order policy.

SECTION XVII

Advertising

1. The Contractor, by virtue of this Agreement, shall acquire no right to use, and shall not use, the name of the “District” or the name of “Harmony” (either alone or in conjunction with or as part of any other word, mark or name) in any advertising, publicity or promotion.
2. This advertising restriction shall include, but is not limited to, the express or implied endorsement by the District of the Contractor’s services.
3. This advertising prohibition shall extend to any use of “Harmony,” or the “District,” in any other manner whatsoever, whether specifically mentioned above or not.

SECTION XVIII

Waiver

Any failure by the District and the District Manager to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and the District reserves the right and privilege to subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

SECTION XIX

Final Payment

1. The Contractor’s acceptance of the final payment under this Agreement, or the acceptance of the final payment upon early termination hereof, shall constitute a full and complete release of the District and District Manager from any and all claims of the Contractor.
2. The claims upon which the District is released includes, but may not be limited by, any demands and causes of action whatsoever which the contractor may have against the District in any way related to the subject matter of this Agreement.
3. Upon receipt of final payment from the District Manager, the Contractor shall, as a condition precedent to receipt of final payment, submit to the District a fully and properly executed general Release.
4. Neither the District’s or District Manager’s review, approval, acceptance of payment, nor lack of payment for any of the Services required under this Agreement shall be construed as a waiver of any rights, under this Agreement or act as a waiver to any cause of action arising out of the performance of this Agreement.

5. The Contractor shall be and remain liable to the District in accordance with law for all damages to the District caused by the Contractor's performance, or lack of performance, of any of the services furnished, or agreed upon, pursuant to this Agreement.

SECTION XX

Enforcement of Agreement

In the event that either the District or the Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION XXI

Miscellaneous Provisions

1. This agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be assigned, amended, modified or rescinded, unless otherwise provided in this Agreement, except in writing and signed by the parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision is found to be invalid or alter substantially the benefits of the Agreement for either of the parties.

2. The rights and remedies of the District provided for under this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

3. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

4. Written notices, required to be given under this Agreement, shall deemed given when received by the District through personal delivery, courier service, or certified mail delivered to all of the following addresses:

Harmony Community Development District
ATTN: Kristen Suit, District Manager
313 Campus Street
Celebration, Florida 34747

Brownies Septic and Plumbing LLC
ATTN: Jared Dennerline
4949 N. Orange Blossom Trail,
Orlando, FL 32810

Young Qualls, P.A.

ATTN: Timothy R. Qualls
216 South Monroe Street
Tallahassee, Florida 32301

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

ATTEST:

Bronnie's Septic & Plumbing
CONTRACTOR

[Signature]

By: Jared Dennertine
Manager

Date: 8-31-2020

ATTEST:

Harmony Community Development District
DISTRICT

[Signature]

By: [Signature]
Steve Berube

Date: 8-31-20

As authorized for execution by the Board of Supervisors of the Harmony Community Development District at its August 27, 2020 Emergency Meeting.