



**WINDING CYPRESS
COMMUNITY DEVELOPMENT
DISTRICT**

**COLLIER COUNTY
REGULAR BOARD MEETING
MARCH 1, 2022
1:00 P.M.**

Special District Services, Inc.
The Oaks Center
2501A Burns Road
Palm Beach Gardens, FL 33410

www.windingcypresscdd.org

561.630.4922 Telephone

877.SDS.4922 Toll Free

561.630.4923 Facsimile

AGENDA
WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
Clubhouse at Winding Cypress
7180 Winding Cypress Drive
Naples, Florida 34114
REGULAR BOARD MEETING
March 1, 2022
1:00 p.m.

- A. Call to Order
- B. Proof of Publication.....Page 1
- C. Establish a Quorum
- D. Additions or Deletions to Agenda
- E. Comments from the Public for Items Not on the Agenda
- F. Approval of Minutes
 - 1. November 2, 2021 Regular Board Meeting.....Page 3
- G. Old Business
- H. New Business
 - 1. Consider Resolution No. 2022-01 – Adopting Fiscal Year 2022/2023 Proposed Budget.....Page 7
 - 2. Consider Resolution No. 2022-02 – Adopting Prompt Payment Policies and Procedures.....Page 16
 - 3. Consider Approval of Stormwater Needs Analysis Proposal.....Page 45
- I. Administrative Matters
 - 1. Manager’s Report
 - 2. Engineer’s Report
 - 3. Attorney’s Report
- J. Board Members Comments
- K. Adjourn

Naples Daily News

PART OF THE USA TODAY NETWORK

Published Daily
Naples, FL 34110

Special District Services, Inc.

WINDING CYPRESS COMM DEV DISTRICT
2501 BURNS RD # A

Attn:
PALM BEACH GARDENS, FL 33410-5207

Affidavit of Publication

STATE OF WISCONSIN
COUNTY OF BROWN

Before the undersigned they serve as the authority, personally appeared said legal clerk who on oath says that he/she serves as **Legal Clerk** of the Naples Daily News, a daily newspaper published at Naples, in Collier County, Florida; distributed in Collier and Lee counties of Florida; that the attached copy of the advertising was published in said newspaper on dates listed. Affiant further says that the said Naples Daily News is a newspaper published at Naples, in said Collier County, Florida, and that the said newspaper has heretofore been continuously published in said

Collier County, Florida; distributed in Collier and Lee counties of Florida, each day and has been entered as second class mail matter at the post office in Naples, in said Collier County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper issue(s) dated:

Issue(s) dated: 09/24/2021



Subscribed and sworn to before on September 24, 2021:



Notary, State of WI, County of Brown

1-7-25

My commission expires
Publication Cost: \$318.50
Ad No: 0004918804
Customer No: 1308517
PO #:

of Affidavits 1

This is not an invoice

KATHLEEN ALLEN
Notary Public
State of Wisconsin

WINDING CYPRESS
COMMUNITY DEVELOPMENT
DISTRICT
FISCAL YEAR 2021/2022
REGULAR MEETING SCHEDULE

NOTICE IS HEREBY GIVEN that the Board of Supervisors of the Winding Cypress Community Development District will hold Regular Meetings in the Clubhouse at Winding Cypress located at 7180 Winding Cypress Drive, Naples, Florida 34114 at 1:00 p.m. on the following dates:

October 5, 2021
November 2, 2021
December 7, 2021
February 1, 2022
March 1, 2022
April 5, 2022
May 3, 2022
June 7, 2022
August 2, 2022
September 6, 2022

The purpose of the meetings is to conduct any business coming before the Board. Meetings are open to the public and will be conducted in accordance with the provisions of Florida law. Copies of the Agendas for any of the meetings may be obtained from the District's website or by contacting the District Manager at 561-630-4922 and/or toll free at 1-877-737-4922 prior to the date of the particular meeting.

From time to time one or two Supervisors may participate by telephone; therefore, a speaker telephone will be present at the meeting location so that Supervisors may be fully informed of the discussions taking place. Said meeting(s) may be continued as found necessary to a time and place specified on the record.

If any person decides to appeal any decision made with respect to any matter considered at these meetings, such person will need a record of the proceedings and such person may need to insure that a verbatim record of the proceedings is made at his or her own expense and which record includes the testimony and evidence on which the appeal is based.

In accordance with the provisions of the Americans with Disabilities Act, any person requiring special accommodations or an interpreter to participate at any of these meetings should contact the District Manager at 561-630-4922 and/or toll free at 1-877-737-4922 at least seven (7) days prior to the date of the particular meeting.

Meetings may be cancelled from time to time without advertised notice.

WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
www.windingcypresscdd.org
Pub: Sept 24, 2021 #4918804

**WINDING CYPRESS
COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD MEETING
NOVEMBE 2, 2021**

A. CALL TO ORDER

The November 2, 2021, Regular Board Meeting of the Winding Cypress Community Development District (the “District”) was called to order at 1:00 p.m. at the Clubhouse at Winding Cypress located at 7180 Winding Cypress Drive, Naples, Florida 34114.

B. PROOF OF PUBLICATION

Proof of publication was presented that Notice of the Regular Board Meeting had been published in the *Naples Daily News* on October 22, 2021, as part of the District’s Fiscal Year 2021/2022 Meeting Schedule, as legally required.

C. ESTABLISH A QUORUM

It was determined that the virtual attendance of the following Supervisors constituted a quorum and it was in order to proceed with the meeting:

Chairman	Scott Brooks	Present
Vice Chairman	Mike Hueniken	Absent
Supervisor	Laura Ray	Present
Supervisor	Patrick Butler	Present
Supervisor	Dr. James Verbist	Present

Also present were the following Staff members:

District Manager	Kathleen Meneely	Special District Services, Inc.
District Counsel	Alyssa Willson	Hopping, Green & Sams
District Engineer	Josh Evans	J.R. Evans Engineering, P.A.

Also present were District residents John and Diane Jensen.

D. ADDITIONS OR DELETIONS TO THE AGENDA

Ms. Willson requested the addition of the transition of District Counsel under New Business as well as a fee agreement for same. There was a Board consensus to add both items, as requested.

E. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA

There were no comments from the public for items not on the agenda.

F. APPROVAL OF MINUTES

1. August 3, 2021, Public Hearing & Regular Board Meeting

The minutes of the August 3, 2021, Public Hearing & Regular Board Meeting were presented for consideration.

A **motion** was then made by Ms. Ray, seconded by Mr. Brooks and passed unanimously approving the minutes of the August 3, 2021, Public Hearing & Regular Board Meeting, as presented.

G. OLD BUSINESS

There were no Old Business items to come before the Board.

H. NEW BUSINESS

1. Consider Resolution No. 2021-07 – Adopting a Fiscal Year 2020/2021 Amended Budget

Resolution No. 2021-07 was presented, entitled:

RESOLUTION NO. 2021-07

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING AND ADOPTING AN AMENDED FINAL FISCAL YEAR 2020/2021 BUDGET (“AMENDED BUDGET”), PURSUANT TO CHAPTER 189, FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.

A **motion** was made by Mr. Brooks, seconded by Dr. Verbist and passed unanimously adopting Resolution No. 2021-07, as presented.

2. Consider Maintenance Agreement between the District and the HOA

Ms. Willson presented the agreement that had been prepared to document the synergy between the HOA and the CDD. She explained that the agreement provides the scope of work for each entity and contains a termination clause with a funding mechanism if a termination takes place in the middle of a fiscal year. She stated the document was similar to that which works in the majority of CDDs and HOAs. Mr. Brooks added that the agreement articulates what is already in place and working.

A **motion** was made by Mr. Brooks, seconded by Mr. Butler and passed unanimously approving the Maintenance Agreement between the District and the HOA, as presented.

3. Consider District Counsel New Status with Kutak Rock LLP

Ms. Willson advised that the special district lawyers from HGS were moving to Kutak Rock and will have the firm’s first Florida office. She indicated that the Board had two options: to move their records to Kutak Rock and maintain her as counsel or to go out for a new attorney.

A **motion** was made by Dr. Verbist, seconded by Mr. Brooks and passed unanimously directing to move the District’s records to Kutak Rock and maintain the current legal counsel, as presented.

4. Consider Fee Schedule and Agreement with Kutak Rock

Ms. Willson presented the fee schedule and agreement with Kutak Rock, which becomes official on November 15, 2021. She added that the same hourly rates that were in place with HGS were in the new fee schedule.

A motion was made by Mr. Brooks, seconded by Ms. Ray and passed unanimously approving the Kutak Rock fee schedule and agreement, as presented.

I. ADMINISTRATIVE MATTERS

Ms. Meneely went over the upcoming meeting schedule of December 7, 2021, and February 1, 2021. Upon discussion, it was a consensus to cancel the December meeting.

Ms. Willson advised that a Stormwater Needs Assessment was required by the State and would be coordinated with the District's engineer.

J. BOARD MEMBER COMMENTS

Mr. Brooks asked for an update on the preserve transition. Ms. Willson indicated she had been working with the engineer and SDS had received the funds required for the preserve. She added that all the required documents had been signed and the deeds had been recorded. Ms. Willson also noted that she has been working with the developer on the common areas for stormwater.

Mr. Brooks asked if there were any remaining parcels to which Ms. Willson indicated that all had been completed and would be so declared by a formal resolution sometime in the spring.

Dr. Verbist asked for further clarification regarding the \$748,000 funds that were transferred. Mr. Butler advised it was transferred within the last two weeks and was restricted, as only the interest can be used and is also restrictive as to where it can be invested. Ms. Meneely added that the interest funds can be used for preserve maintenance only.

Mr. Brooks stated that he had worked with the HOA's transition committee and had met with Mr. Jensen of that committee, who was in attendance at today's meeting. He added that Mr. Jensen had also spoken to Ms. Meneely on several occasions in addition to different entities who had gone through a transition. Mr. Brooks stated that the transition committee now had a better understanding of the process and roles. Mr. Jensen indicated he now has a clear understanding of accounting and why it is easier to assess maintenance through the HOA rather than the CDD. Mr. Jensen added that the agreement makes everything perfectly clear, but he would like to see a copy of what the costs are to do repairs when the current ones have been completed. Mr. Evans stated he could provide that when the pricing has been completed.

K. ADJOURNMENT

There being no further business to come before the Board, the Regular Board Meeting was adjourned at 1:23 p.m. on a **motion** made by Dr. Verbist, seconded by Ms. Ray and passed unanimously.

Chairman/Vice Chairman

Secretary/Assistant Secretary

Date Approved _____

RESOLUTION 2022-01

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT APPROVING PROPOSED BUDGETS FOR FISCAL YEAR 2022/2023 AND SETTING A PUBLIC HEARING THEREON PURSUANT TO FLORIDA LAW; ADDRESSING TRANSMITTAL, POSTING AND PUBLICATION REQUIREMENTS; ADDRESSING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the District Manager has heretofore prepared and submitted to the Board of Supervisors ("**Board**") of the Winding Cypress Community Development District ("**District**") prior to June 15, 2022, proposed budgets ("**Proposed Budget**") for the fiscal year beginning October 1, 2022 and ending September 30, 2023 ("**Fiscal Year 2022/2023**"); and

WHEREAS, the Board has considered the Proposed Budget and desires to set the required public hearing thereon.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT:

1. **PROPOSED BUDGET APPROVED.** The Proposed Budget prepared by the District Manager for Fiscal Year 2022/2023 attached hereto as **Exhibit A** is hereby approved as the basis for conducting a public hearing to adopt said Proposed Budget.

2. **SETTING A PUBLIC HEARING.** A public hearing on said approved Proposed Budget is hereby declared and set for the following date, hour and location:

DATE:	June 7, 2022
HOUR:	1:00 p.m.
LOCATION:	Club House at Winding Cypress 7180 Winding Cypress Drive Naples, FL 34114

3. **TRANSMITTAL OF PROPOSED BUDGET TO LOCAL GENERAL PURPOSE GOVERNMENT.** The District Manager is hereby directed to submit a copy of the Proposed Budget to Collier County at least 60 days prior to the hearing set above.

4. **POSTING OF PROPOSED BUDGET.** In accordance with Section 189.016, *Florida Statutes*, the District's Secretary is further directed to post the approved Proposed Budget on the District's website at least two days before the budget hearing date as set forth in Section 2, and shall remain on the website for at least 45 days.

5. **PUBLICATION OF NOTICE.** Notice of this public hearing shall be published in the manner prescribed in Florida law.

6. **SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Resolution shall not affect the validity or enforceability of the remaining portions of this Resolution, or any part thereof.

7. **EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 1st DAY OF March, 2022.

ATTEST:

**WINDING CYPRESS COMMUNITY
DEVELOPMENT DISTRICT**

Secretary

By: _____
Its: _____

Winding Cypress Community Development District

**Proposed Budget For
Fiscal Year 2022/2023
October 1, 2022 - September 30, 2023**

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- V ASSESSMENT COMPARISON**

PROPOSED BUDGET
WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2022/2023
OCTOBER 1, 2022 - SEPTEMBER 30, 2023

	FISCAL YEAR 2022/2023 BUDGET
REVENUES	
O & M Assessments	177,752
Debt Assessments - Series 2015	526,216
Debt Assessments - Series 2019	311,687
Interest Income	180
TOTAL REVENUES	\$ 1,015,835
EXPENDITURES	
Supervisor Fees	1,200
Payroll Taxes - Employer	96
Engineering/Inspections	8,500
Preserve Maintenance	79,700
Management	37,680
Legal	15,500
Assessment Roll	5,000
Audit Fees	4,100
Arbitrage Rebate Fee	650
Insurance	6,000
Legal Advertisements	2,500
Miscellaneous	750
Postage	275
Office Supplies	550
Dues & Subscriptions	175
Trustee Fee	7,800
Continuing Disclosure Fee	1,500
TOTAL EXPENDITURES	\$ 171,976
REVENUES LESS EXPENDITURES	\$ 843,859
Bond Payments - Series 2015	(486,750)
Bond Payments - Series 2019	(288,311)
BALANCE	68,798
County Appraiser & Tax Collector Fee	(35,039)
Discounts For Early Payments	(41,134)
EXCESS/ (SHORTFALL)	\$ (7,375)
Carryover Funds From Prior Year	7,375
NET EXCESS/ (SHORTFALL)	\$ -

DETAILED PROPOSED BUDGET
WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2022/2023
OCTOBER 1, 2022 - SEPTEMBER 30, 2023

	FISCAL YEAR 2020/2021 ACTUAL	FISCAL YEAR 2021/2022 BUDGET	FISCAL YEAR 2022/2023 BUDGET	COMMENTS
REVENUES				
O & M Assessments	178,107	177,761	177,752	Expenditures Less Interest & Carryover/.925
Debt Assessments - Series 2015	526,463	526,216	526,216	Bond Payments/.925
Debt Assessments - Series 2019	311,787	311,687	311,687	Bond Payments/.925
Interest Income	217	180	180	Interest Projected At \$15 Per Month
TOTAL REVENUES	1,016,574	\$ 1,015,844	\$ 1,015,835	
EXPENDITURES				
Supervisor Fees	0	1,200	1,200	Supervisor Fees
Payroll Taxes - Employer	0	96	96	Projected At 8% Of Supervisor Fees
Engineering/Inspections	8,566	7,500	8,500	\$1,000 Increase From 2021/2022 Budget
Preserve Maintenance	75,100	79,700	79,700	Fiscal Year 2021/2022 Expenditure Was \$75,100
Management	36,084	36,588	37,680	CPI Adjustment (Capped At 3%)
Legal	10,842	15,500	15,500	FY 2020/2021 Expenditure Through Dec 2021 Was \$4,248
Assessment Roll	5,000	5,000	5,000	As Per Contract
Audit Fees	3,900	4,000	4,100	Accepted Amount Of 2021/2022 Audit
Arbitrage Rebate Fee	650	650	650	No Change From 2021/2022 Budget
Insurance	5,513	5,900	6,000	Insurance Estimate
Legal Advertisements	3,042	2,000	2,500	\$500 Increase From 2021/2022 Budget
Miscellaneous	353	750	750	No Change From 2021/2022 Budget
Postage	288	275	275	No Change From 2021/2022 Budget
Office Supplies	408	575	550	\$25 Decrease From 2021/2022 Budget
Dues & Subscriptions	175	175	175	No Change From 2021/2022 Budget
Trustee Fee	7,740	7,800	7,800	No Change From 2021/2022 Budget
Continuing Disclosure Fee	1,500	2,000	1,500	\$500 Decrease From 2021/2022 Budget
TOTAL EXPENDITURES	159,161	\$ 169,709	\$ 171,976	
REVENUES LESS EXPENDITURES	857,413	\$ 846,135	\$ 843,859	
Bond Payments - Series 2015	(496,203)	(486,750)	(486,750)	2023 Principal & Interest Payments
Bond Payments - Series 2019	(293,870)	(288,311)	(288,311)	2023 Principal & Interest Payments
BALANCE	67,340	71,074	68,798	
County Appraiser & Tax Collector Fee	(13,000)	(35,040)	(35,039)	Three And One Half Percent Of Total Assessment Roll
Discounts For Early Payments	(38,853)	(41,134)	(41,134)	Four Percent Of Total Assessment Roll
EXCESS/ (SHORTFALL)	\$ 15,487	\$ (5,100)	\$ (7,375)	
Carryover Funds From Prior Year	0	5,100	7,375	Carryover Funds From Prior Year
NET EXCESS/ (SHORTFALL)	\$ 15,487	\$ -	\$ -	

DETAILED PROPOSED DEBT SERVICE FUND (SERIES 2015) BUDGET
WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2022/2023
OCTOBER 1, 2022 - SEPTEMBER 30, 2023

	FISCAL YEAR 2020/2021	FISCAL YEAR 2021/2022	FISCAL YEAR 2022/2023	
REVENUES	ACTUAL	BUDGET	BUDGET	COMMENTS
Interest Income	30	25	25	Projected Interest For 2022/2023
NAV Tax Collection	496,203	486,750	486,750	Maximum Debt Service Collection
Total Revenues	\$ 496,233	\$ 486,775	\$ 486,775	
EXPENDITURES				
Principal Payments	140,000	155,000	160,000	Principal Payment Due In 2023
Interest Payments	339,550	330,406	323,625	Principal Payment Due In 2023
Bond Redemption	0	1,369	3,150	Estimated Excess Debt Collections
Total Expenditures	\$ 479,550	\$ 486,775	\$ 486,775	
Excess/ (Shortfall)	\$ 16,683	\$ -	\$ -	

Series 2015 Bond Information

Original Par Amount =	\$7,535,000	Annual Principal Payments Due =	November 1st
Interest Rate =	4.00% - 5.00%	Annual Interest Payments Due =	May 1st & November 1st
Issue Date =	December 2015		
Maturity Date =	November 2045		
Par Amount As Of 1/1/22 =	\$6,690,000		

DETAILED PROPOSED DEBT SERVICE (SERIES 2019) FUND BUDGET
WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2022/2023
OCTOBER 1, 2022 - SEPTEMBER 30, 2023

	FISCAL YEAR 2020/2021	FISCAL YEAR 2021/2022	FISCAL YEAR 2022/2023	
REVENUES	ACTUAL	BUDGET	BUDGET	COMMENTS
Interest Income	17	25	25	Projected Interest For 2022/2023
NAV Tax Collection	293,870	288,311	288,311	Maximum Debt Service Collection
Total Revenues	\$ 293,887	\$ 288,336	\$ 288,336	
EXPENDITURES				
Principal Payments	75,000	80,000	85,000	Principal Payment Due In 2023
Interest Payments	211,750	207,527	203,031	Principal Payment Due In 2023
Bond Redemption	0	809	305	Estimated Excess Debt Collections
Total Expenditures	\$ 286,750	\$ 288,336	\$ 288,336	
Excess/ (Shortfall)	\$ 7,137	\$ -	\$ -	

Series 2019 Bond Information

Original Par Amount =	\$4,470,000	Annual Principal Payments Due =	November 1st
Interest Rate =	3.75% - 5.00%	Annual Interest Payments Due =	May 1st & November 1st
Issue Date =	February 2019		
Maturity Date =	November 2049		
Par Amount As Of 1/1/22 =	\$4,320,000		

WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT ASSESSMENT COMPARISON

	Fiscal Year 2019/2020 Assessment*	Fiscal Year 2020/2021 Assessment*	Fiscal Year 2021/2022 Assessment*	Fiscal Year 2022/2023 Projected Assessment*
O & M For Phases 1 & 2 SF Villas	\$ 232.18	\$ 232.13	\$ 232.07	\$ 232.06
Debt For Phases 1 & 2 SF Villas	\$ 849.00	\$ 849.00	\$ 849.00	\$ 849.00
Total For Phases 1 & 2 SF Villas	\$ 1,081.18	\$ 1,081.13	\$ 1,081.07	\$ 1,081.06
O & M For Phases 1 & 2 SF 50' Units	\$ 232.18	\$ 232.13	\$ 232.07	\$ 232.06
Debt For Phases 1 & 2 SF 50' Units	\$ 954.00	\$ 954.00	\$ 954.00	\$ 954.00
Total For Phases 1 & 2 SF 50' Units	\$ 1,186.18	\$ 1,186.13	\$ 1,186.07	\$ 1,186.06
O & M For Phases 1 & 2 SF 65' Units	\$ 232.18	\$ 232.13	\$ 232.07	\$ 232.06
Debt For Phases 1 & 2 SF 65' Units	\$ 1,060.00	\$ 1,060.00	\$ 1,060.00	\$ 1,060.00
Total For Phases 1 & 2 SF 65' Units	\$ 1,292.18	\$ 1,292.13	\$ 1,292.07	\$ 1,292.06
O & M For Phase 3 SF 50' Units	\$ 232.18	\$ 232.13	\$ 232.07	\$ 232.06
Debt For Phase 3 SF 50' Units	\$ 1,429.00	\$ 1,429.00	\$ 1,429.00	\$ 1,429.00
Total For Phase 3 SF 50' Units	\$ 1,661.18	\$ 1,661.13	\$ 1,661.07	\$ 1,661.06
O & M For Phase 3 SF 65' Units	\$ 232.18	\$ 232.13	\$ 232.07	\$ 232.06
Debt For Phase 3 SF 65' Units	\$ 1,544.00	\$ 1,544.00	\$ 1,544.00	\$ 1,544.00
Total For Phase 3 SF 65' Units	\$ 1,776.18	\$ 1,776.13	\$ 1,776.07	\$ 1,776.06

* Assessments Include the Following :

4% Discount for Early Payments

2% County Tax Collector Fee

1.5% County Property Appraiser Fee

Community Information:

Phases 1 & 2: 554 Units

Phase 3: 212 Units

Total: 766 Units

Phases 1 & 2:

Villas: 152 Units

50' Lots: 270 Units

65' Lots: 132 Units

Total: 554 Units

Phase 3:

Villas: 0 Units

50' Lots: 136 Units

65' Lots: 76 Units

Total: 212 Units

Note:

Developer made Phase 3 Bond Prepayment
in January 2020 for 1 lot differential
(1 65' Lot Replaced with 1 50' Lot)

MEMORANDUM

TO: DISTRICT MANAGER
FROM: KUTAK ROCK LLP
RE: PROMPT PAYMENT POLICIES

As you may know, during the 2021 legislative session, Part VII of Chapter 218, Florida Statutes (the “Local Government Prompt Payment Act”) was amended. This includes an increase from 1 percent (1%) to 2 percent (2%) as the floor interest rate on late payments for construction services and the addition of certain contractor rights in the event a local government entity fails to timely commence dispute resolution procedures in the event of an improper payment request or invoice. *See* §§ 218.735(9) and 218.76(2)(b), Fla. Stat. As provided in Florida Chapter Laws 2021-124, these changes apply to contracts executed on or after July 1, 2021.

Accordingly, we advise that districts adopt new or updated Prompt Payment Policies and Procedures as attached hereto to reflect these changes. For districts that have previously adopted Prompt Payment Policies and Procedures prepared by Hopping Green & Sams, this consists of the following changes as reflected in track-change format:

VII. Resolution of Disputes

* * *

B. Dispute Resolution Procedures

1. If an Improper Payment Request or Improper Invoice is submitted, and the Provider refuses or fails to submit a revised payment request or invoice as contemplated by the PPA and these Policies and Procedures, the Provider shall, not later than thirty (30) days after the date on which the last payment request or invoice was Date Stamped, submit a written statement via certified mail to the Agent, copying the District Manager, specifying the basis upon which the Provider contends the last submitted payment request or invoice was proper.
2. Within forty-five (45) days of receipt by the Agent and District Manager of the disputed, last-submitted payment request or invoice, the Agent and/or District Manager shall commence investigation of the dispute and render a final decision on the matter no later than sixty (60) days after the date on which the last-submitted payment request or invoice is Date Stamped.

3. With regard to contracts executed on or after July 1, 2021, if the District does not commence the dispute resolution procedure within the time provided herein, a Provider may give written notice via certified mail to the Agent, copying the District Manager, of the District's failure to timely commence its dispute resolution procedure. If the District fails to commence the dispute resolution procedure within four (4) business days after receipt of such notice, any amounts resolved in the Provider's favor shall bear mandatory interest, as set forth in section 218.735(9), Florida Statutes, from the date on which the payment request or invoice containing the disputed amounts was Date Stamped. If the dispute resolution procedure is not commenced within four (4) business days after receipt of the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a Provider of its contractual obligations.
34. Absent a written agreement to the contrary, if the Provider refuses or fails to provide the written statement required above, the Agent and/or District Manager is not required to contact the Provider in the investigation. In addition, and absent a written agreement to the contrary, if such written statement is not provided, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider.
45. The Board shall approve any decision of the District Manager to contract with a third party which would result in: 1) an expenditure above what is budgeted for the Construction Services or Non-Construction Services; or 2) an expenditure which exceeds the original contract amount for the Construction Services or Non-Construction Services by more than ten percent (10%) or Ten Thousand Dollars (\$10,000).
56. A written explanation of the final decision shall be sent to the Provider, via certified mail, within five (5) business days from the date on which such final decision is made. A copy of the written explanation of the final decision shall be provided to the Chairperson of the Board simultaneously with the certified mailing to the Provider.
67. If a Provider does not accept in writing the final decision within five (5) days after receipt by the Provider, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider. If the costs of the third party purchases exceed the amount the District owes to the Provider, the District may seek to recover such excess from the Provider in a court of law or as otherwise provided in an agreement between the District and the Provider. Nothing contained herein shall limit or affect the District's ability to enforce all of its legal and contractual rights and remedies against the Provider.

X. Late Payment Interest Charges

* * *

B. Related to Construction Services

All payments for Construction Services that are not made within the time periods specified within the applicable statute, shall bear interest from thirty (30) days after the due date, at the rate of one percent (1%) per month for contracts executed on or before June 30, 2021, and at the rate of two percent (2%) per month for contracts executed on or after July 1, 2021, or the rate specified by agreement, whichever is greater. §218.735(9), Fla. Stat. The Provider must submit a Proper Payment Request to the District for any interest accrued in order to receive the interest payment. An overdue period of less than one (1) month is considered as one (1) month in computing interest. (§218.74(4), Fla. Stat.).

Unpaid interest is compounded monthly. The term one (1) month means a period beginning on any day of a month and ending on the same day of the following month.

RESOLUTION 2022- [REDACTED]

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
[REDACTED] COMMUNITY DEVELOPMENT DISTRICT
ADOPTING PROMPT PAYMENT POLICIES AND PROCEDURES
PURSUANT TO CHAPTER 218, *FLORIDA STATUTES*; PROVIDING A
SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the [REDACTED] Community Development District (the “District”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within [REDACTED], Florida; and

WHEREAS, Chapter 218, *Florida Statutes*, requires timely payment to vendors and contractors providing certain goods and/or services to the District; and

WHEREAS, the Board of Supervisors of the District (“Board”) accordingly finds that it is in the best interest of the District to establish by resolution Prompt Payment Policies and Procedures as may be amended or updated from time to time for immediate use and application.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
SUPERVISORS OF THE [REDACTED] COMMUNITY
DEVELOPMENT DISTRICT:**

SECTION 1. The Prompt Payment Policies and Procedures attached hereto as **Exhibit A** are hereby adopted pursuant to this Resolution as necessary for the conduct of District business. The Prompt Payment Policies and Procedures shall remain in full force and effect until such time as the Board may amend or replace them; provided, however, that as the provisions of Chapter 218, *Florida Statutes*, are amended from time to time, the attached Prompt Payment Policies and Procedures shall automatically be amended to incorporate the new requirements of law without any further action by the Board. The Prompt Payment Policies and Procedures hereby adopted supplant and replace any previously adopted Prompt Payment Policies and Procedures.

SECTION 2. If any provision of this Resolution is held to be illegal or invalid, the other provisions shall remain in full force and effect.

SECTION 3. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this ____ day of _____, 202__.

ATTEST:

[REDACTED]
**COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

Exhibit A: Prompt Payment Policies and Procedures

EXHIBIT A



COMMUNITY DEVELOPMENT DISTRICT

Prompt Payment Policies and Procedures

**In Accordance with the Local Government Prompt Payment Act
Chapter 218, Part VII, *Florida Statutes***

_____, 202_

Community Development District
Prompt Payment Policies and Procedures

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I. Purpose

In accordance with the Local Government Prompt Payment Act (Chapter 218, Part VII, *Florida Statutes*) (“PPA”), the purpose of the [REDACTED] Community Development District (“District”) Prompt Payment Policies and Procedures (“Policies & Procedures”) is to provide a specific policy to ensure timely payment to Vendors and Contractors (both hereinafter defined) providing goods and/or services to the District and ensure the timely receipt by the District of goods and/or services contemplated at the time of contracting. Please note that the PPA, like any statute or law, may be amended from time to time by legislative action. These Policies & Procedures are based on the statutory requirements as of the date identified on the cover page of this document. By this reference, as applicable statutory provisions subsequently change, these Policies & Procedures shall automatically be amended to incorporate the new requirements of law. These Policies & Procedures are adopted by the District to provide guidance in contracting matters. Failure by the District to comply with these Policies & Procedures shall not expand the rights or remedies of any Provider (hereinafter defined) against the District under the PPA. Nothing contained herein shall be interpreted as more restrictive on the District than what is provided for in the PPA.

II. Scope

These Policies & Procedures apply to all operations of the District, including Construction Services and Non-Construction Goods and Services, as applicable.

III. Definitions

A. Agent

The District-contracted architect, District-contracted engineer, District Manager, or other person, acting on behalf of the District, which is required by law or contract to review invoices or payment requests from Providers (hereinafter defined). Such individuals/entities must be identified in accordance with §218.735 (1), Fla. Stat., and further identified in the relevant agreement between the District and the Provider.

B. Construction Services

All labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvement to real property that require a license under parts I and II of Chapter 489, Fla. Stat.

C. Contractor or Provider of Construction Services

The entity or individual that provides Construction Services through direct contract with the District.

D. Date Stamped

Each original and revised invoice or payment request received by the District shall be marked electronically or manually, by use of a date stamp or other method, which date marking clearly indicates the date such invoice or payment request is first delivered to the District through its Agent. In the event that the Agent receives

an invoice or payment request, but fails to timely or physically mark on the document the date received, "Date Stamped" shall mean the date of actual receipt by the Agent.

E. Improper Invoice

An invoice that does not conform to the requirements of a Proper Invoice.

F. Improper Payment Request

A request for payment for Construction Services that does not conform to the requirements of a Proper Payment Request.

G. Non-Construction Goods and Services

All labor, services, goods and materials provided in connection with anything other than construction, alteration, repair, demolition, reconstruction, or other improvements to real property.

H. Proper Invoice

An invoice that conforms to all statutory requirements, all requirements of these Policies and Procedures not expressly waived by the District and any additional requirements included in the agreement for goods and/or services for which the invoice is submitted not expressly waived by the District.

I. Proper Payment Request

A request for payment for Construction Services which conforms to all statutory requirements, all requirements of these Policies & Procedures not expressly waived by the District and any additional requirements included in the Construction Services agreement for which the Payment Request is submitted not expressly waived by the District.

J. Provider

Includes any Vendor, Contractor or Provider of Construction Services, as defined herein.

K. Purchase

The purchase of goods, materials, services, or Construction Services; the purchase or lease of personal property; or the lease of real property by the District.

L. Vendor

Any person or entity that sells goods or services, sells or leases personal property, or leases real property directly to the District, not including Construction Services.

IV. Proper Invoice/Payment Request Requirements

A. General

Prior to Provider receiving payment from the District, Non-Construction Goods and Services and Construction Services, as applicable, shall be received and performed in accordance with contractual or other specifications or requirements to the satisfaction of the District. Provision or delivery of Non-Construction Goods and Services to the District does not constitute acceptance for the purpose of payment. Final acceptance and authorization of payment shall be made only after delivery and inspection by the Agent and the Agent's confirmation that the Non-Construction Goods and Services or Construction Services meet contract specifications and conditions. Should the Non-Construction Goods and Services or Construction Services differ in any respect from the specifications, payment may be withheld until such time as the Provider takes necessary corrective action. Certain limited exceptions which require payment in advance are permitted when authorized by the District Board of Supervisors ("Board") or when provided for in the applicable agreement.

B. Sales Tax

Providers should not include sales tax on any invoice or payment request. The District's current tax-exempt number is [REDACTED]. A copy of the tax-exempt form will be supplied to Providers upon request.

C. Federal Identification and Social Security Numbers

Providers are paid using either a Federal Identification Number or Social Security Number. To receive payment, Providers should supply the District with the correct number as well as a proper Internal Revenue Service W-9 Form. The District Manager shall treat information provided in accordance with Florida law.

Providers should notify the District Manager when changes in data occur (telephone [REDACTED], email [REDACTED]).

D. Proper Invoice for Non-Construction Goods and Services

All Non-Construction Goods and Services invoiced must be supplied or performed in accordance with the applicable purchase order (including any bid/proposal provided, if applicable) or agreement and such Non-Construction Goods and Services quantity and quality must be equal to or better than what is required by such terms. Unless otherwise specified in the applicable agreement, invoices should contain all of the following minimum information in order to be considered a Proper Invoice:

1. Name of Vendor
2. Remittance address
3. Invoice Date
4. Invoice number
5. The "Bill To" party must be the District or the Board, or other entity approved

- in writing by the Board of the District Manager
6. Project name (if applicable)
 7. In addition to the information required in Section IV.D.1-6 above, invoices involving the *purchase of goods* should also contain:
 - a. A complete item description
 - b. Quantity purchased
 - c. Unit price(s)
 - d. Total price (for each item)
 - e. Total amount of invoice (all items)
 - f. The location and date(s) of delivery of the goods to the District
 8. In addition to the information required in Section IV.D.1-6 above, invoices involving the *purchase of services* should also contain:
 - a. Itemized description of services performed
 - b. The location and date of delivery of the services to the District
 - c. Billing method for services performed (i.e., approved hourly rates, percentage of completion, cost plus fixed fee, direct/actual costs, etc.)
 - d. Itemization of other direct, reimbursable costs (including description and amount)
 - e. Copies of invoices for other direct, reimbursable costs (other than incidental costs such as copying) and one (1) of the following:
 - i. Copy of both sides of a cancelled check evidencing payment for costs submitted for reimbursement
 - ii. Paid receipt
 - iii. Waiver/lien release from subcontractor (if applicable)
 9. Any applicable discounts
 10. Any other information or documentation, which may be required or specified under the terms of the purchase order or agreement

E. Proper Payment Request Requirements for Construction Services

Payment Requests must conform to all requirements of Section IV, A-D above, unless otherwise specified in the terms of the applicable agreement or purchase order between the District and the Provider.

V. Submission of Invoices and Payment Requests

The Provider shall submit all Invoices and Payment Requests for both Construction Services and Non-Construction Goods and Services to the District's Agent as provided in the purchase order or agreement, as applicable, and to the District Manager as follows:

Submit the invoice and/or payment request, with required additional material and in conformance with these Policies and Procedures, by mail, by hand delivery, or via email (Note: email is the preferred method for receipt of Non-Construction Goods and Services invoices).

1. Mailing and Drop Off Address

Community Development District

2. Email Address

VI. Calculation of Payment Due Date

A. Non-Construction Goods and Services Invoices

1. Receipt of Proper Invoice

Payment is due from the District forty-five (45) days from the date on which a Proper Invoice is Date Stamped.

2. Receipt of Improper Invoice

If an Improper Invoice is received, a required invoice is not received, or invoicing of a request for payment is not required, the time when payment is due from the District is forty-five (45) days from the latest date of the following:

- a. On which delivery of personal property is fully accepted by the District;
- b. On which services are completed and accepted by the District;
- c. On which the contracted rental period begins (if applicable); or
- d. On which the District and the Vendor agree in a written agreement that provides payment due dates.

3. Rejection of an Improper Invoice

The District may reject an Improper Invoice. Within ten (10) days of receipt of the Improper Invoice by the District, the Vendor must be notified that the invoice is improper and be given an opportunity to correct the deficient or missing information, remedy the faulty work, replace the defective goods, or take other necessary, remedial action.

The District's rejection of an Improper Invoice must:

- a. Be provided in writing;
- b. Specify any and all known deficiencies; and
- c. State actions necessary to correct the Improper Invoice.

If the Vendor submits a corrected invoice, which corrects the deficiencies specified in the District's written rejection, the District must pay the corrected invoice within the later of: (a) ten (10) business days after date the corrected invoice is Date Stamped; or (b) forty-five (45) days after the date the Improper Invoice was Date Stamped.

If the Vendor submits an invoice in response to the District's written rejection which fails to correct the deficiencies specified or continues to be an Improper Invoice, the District must reject that invoice as stated herein.

4. Payment of Undisputed Portion of Invoice

If the District disputes a portion of an invoice, the undisputed portion shall be paid in a timely manner and in accordance with the due dates for payment as specified in these Policies & Procedures.

B. Payment Requests for Construction Services

1. Receipt of Proper Payment Request

The time at which payment is due for Construction Services from the District is as follows:

- a. If an Agent must approve the payment request before it is submitted to the District Manager, payment (whether full or partial) is due twenty-five (25) business days after the payment request is Date Stamped. The Provider may send the District an overdue notice. If the payment request is not rejected within four (4) business days after Date Stamp of the overdue notice, the payment request shall be deemed accepted, except for any portion of the payment request that is fraudulent, misleading or is the subject of dispute.

The agreement between the District and the Provider shall identify the Agent to which the Provider shall submit its payment request, or shall be provided by the District through a separate written notice no later than ten (10) days after contract award or notice to proceed, whichever is later. Provider's submission of a payment request to the Agent shall be Date Stamped, which shall commence the time periods for payment or rejection of a payment request or invoice as provided in this section.

- b. If, pursuant to contract, an Agent is not required to approve the payment request submitted to the District, payment is due twenty (20) business days after the payment request is Date Stamped unless such payment request includes fraudulent or misleading information or is the subject of dispute.

2. Receipt and Rejection of Improper Payment Request

- a. If an Improper Payment Request is received, the District must reject the Improper Payment Request within twenty (20) business days after the date on which the payment request is Date Stamped.
- b. The District's rejection of the Improper Payment Request must:
 - i. Be provided in writing;
 - ii. Specify any and all known deficiencies; and
 - iii. State actions necessary to correct the Improper Invoice.

- c. If a Provider submits a payment request which corrects the deficiency specified in the District's written rejection, the District must pay or reject the corrected submission no later than ten (10) business days after the date the corrected payment request is Date Stamped.

3. Payment of Undisputed Portion of Payment Request

If the District disputes a portion of a payment request, the undisputed portion shall be paid in a timely manner and in accordance with the due dates for payment as specified in this section.

VII. Resolution of Disputes

If a dispute arises between a Provider and the District concerning payment of an invoice or payment request, the dispute shall be resolved as set forth in §218.735, Fla. Stat., for Construction Services, and §218.76, Fla. Stat. for Non-Construction Goods and Services.

A. Dispute between the District and a Provider

If a dispute between the District and a Provider cannot be resolved following resubmission of a payment request by the Provider, the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract, if any. In the absence of a prescribed procedure in the contract, the dispute must be resolved by the procedures specified below.

B. Dispute Resolution Procedures

1. If an Improper Payment Request or Improper Invoice is submitted, and the Provider refuses or fails to submit a revised payment request or invoice as contemplated by the PPA and these Policies and Procedures, the Provider shall, not later than thirty (30) days after the date on which the last payment request or invoice was Date Stamped, submit a written statement via certified mail to the Agent, copying the District Manager, specifying the basis upon which the Provider contends the last submitted payment request or invoice was proper.
2. Within forty-five (45) days of receipt by the Agent and District Manager of the disputed, last-submitted payment request or invoice, the Agent and/or District Manager shall commence investigation of the dispute and render a final decision on the matter no later than sixty (60) days after the date on which the last-submitted payment request or invoice is Date Stamped.
3. With regard to contracts executed on or after July 1, 2021, if the District does not commence the dispute resolution procedure within the time provided herein, a Provider may give written notice via certified mail to the Agent, copying the District Manager, of the District's failure to timely commence its dispute resolution procedure. If the District fails to

commence the dispute resolution procedure within 4 business days after receipt of such notice, any amounts resolved in the Provider's favor shall bear mandatory interest, as set forth in section [218.735](#)(9), Florida Statutes, from the date on which the payment request or invoice containing the disputed amounts was Date Stamped. If the dispute resolution procedure is not commenced within 4 business days after receipt of the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a Provider of its contractual obligations.

4. Absent a written agreement to the contrary, if the Provider refuses or fails to provide the written statement required above, the Agent and/or District Manager is not required to contact the Provider in the investigation. In addition, and absent a written agreement to the contrary, if such written statement is not provided, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider.
5. The Board shall approve any decision of the District Manager to contract with a third party which would result in: 1) an expenditure above what is budgeted for the Construction Services or Non-Construction Services; or 2) an expenditure which exceeds the original contract amount for the Construction Services or Non-Construction Services by more than ten percent (10%) or Ten Thousand Dollars (\$10,000).
6. A written explanation of the final decision shall be sent to the Provider, via certified mail, within five (5) business days from the date on which such final decision is made. A copy of the written explanation of the final decision shall be provided to the Chairperson of the Board simultaneously with the certified mailing to the Provider.
7. If a Provider does not accept in writing the final decision within five (5) days after receipt by the Provider, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider. If the costs of the third party purchases exceed the amount the District owes to the Provider, the District may seek to recover such excess from the Provider in a court of law or as otherwise provided in an agreement between the District and the Provider. Nothing contained herein shall limit or affect the District's ability to enforce all of its legal and contractual rights and remedies against the Provider.

VIII. Purchases Involving Federal Funds or Bond Funds

When the District intends to pay for a purchase with federal funds or bond funds, the District shall make such purchases only upon reasonable assurances that federal funds or

bond funds sufficient to cover the cost will be received. When payment is contingent upon the receipt of bond funds, federal funds or federal approval, the public procurement documents and any agreement with a Provider shall clearly state such contingency. (§218.77, Fla. Stat.).

IX. Requirements for Construction Services Contracts – Project Completion; Retainage

The District intends to follow the PPA requirements for construction project completion and retainage, including, but not limited to, §218.735 (7) and (8), Fla. Stat.

X. Late Payment Interest Charges

Failure on the part of the District to make timely payments may result in District responsibility for late payment interest charges. No agreement between the District and a Provider may prohibit the collection of late payment interest charges allowable under the PPA as mandatory interest. (§218.75, Fla. Stat.).

A. Related to Non-Construction Goods and Services

All payments due from the District, and not made within the time specified within this policy, will bear interest, from thirty (30) days after the due date, at the rate of one percent (1%) per month on the unpaid balance. The Vendor must submit a Proper Invoice to the District for any interest accrued in order to receive the interest payment. (§218.735(9), Fla. Stat.).

An overdue period of less than one (1) month is considered as one (1) month in computing interest. Unpaid interest is compounded monthly. The term one (1) month means a period beginning on any day of a month and ending on the same day of the following month.

B. Related to Construction Services

All payments for Construction Services that are not made within the time periods specified within the applicable statute, shall bear interest from thirty (30) days after the due date, at the rate of one percent (1%) per month for contracts executed on or before June 30, 2021, and at the rate of two percent (2%) per month for contracts executed on or after July 1, 2021, or the rate specified by agreement, whichever is greater. §218.735(9), Fla. Stat. The Provider must submit a Proper Payment Request to the District for any interest accrued in order to receive the interest payment. An overdue period of less than one (1) month is considered as one (1) month in computing interest. (§218.74 (4), Fla. Stat.).

Unpaid interest is compounded monthly. The term one (1) month means a period beginning on any day of a month and ending on the same day of the following month.

C. **Report of Interest**

If the total amount of interest paid during the preceding fiscal year exceeds \$250, the District Manager is required to submit a report to the Board during December of each year, stating the number of interest payments made and the total amount of such payments. (§218.78, Fla. Stat.).

RESOLUTION 2022-02

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT ADOPTING PROMPT PAYMENT POLICIES AND PROCEDURES PURSUANT TO CHAPTER 218, *FLORIDA STATUTES*; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Winding Cypress Community Development District (the “District”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within Collier County, Florida; and

WHEREAS, Chapter 218, *Florida Statutes*, requires timely payment to vendors and contractors providing certain goods and/or services to the District; and

WHEREAS, the Board of Supervisors of the District (“Board”) accordingly finds that it is in the best interest of the District to establish by resolution Prompt Payment Policies and Procedures as may be amended or updated from time to time for immediate use and application.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. The Prompt Payment Policies and Procedures attached hereto as **Exhibit A** are hereby adopted pursuant to this Resolution as necessary for the conduct of District business. The Prompt Payment Policies and Procedures shall remain in full force and effect until such time as the Board may amend or replace them; provided, however, that as the provisions of Chapter 218, *Florida Statutes*, are amended from time to time, the attached Prompt Payment Policies and Procedures shall automatically be amended to incorporate the new requirements of law without any further action by the Board. The Prompt Payment Policies and Procedures hereby adopted supplant and replace any previously adopted Prompt Payment Policies and Procedures.

SECTION 2. If any provision of this Resolution is held to be illegal or invalid, the other provisions shall remain in full force and effect.

SECTION 3. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this 1st day of March, 2022.

ATTEST:

**WINDING CYPRESS COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

Chairperson, Board of Supervisors

Exhibit A: Prompt Payment Policies and Procedures

EXHIBIT A

WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

Prompt Payment Policies and Procedures

**In Accordance with the Local Government Prompt Payment Act
Chapter 218, Part VII, *Florida Statutes***

March 1, 2022

Winding Cypress Community Development District
Prompt Payment Policies and Procedures

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I. Purpose

In accordance with the Local Government Prompt Payment Act (Chapter 218, Part VII, *Florida Statutes*) (“PPA”), the purpose of the Winding Cypress Community Development District (“District”) Prompt Payment Policies and Procedures (“Policies & Procedures”) is to provide a specific policy to ensure timely payment to Vendors and Contractors (both hereinafter defined) providing goods and/or services to the District and ensure the timely receipt by the District of goods and/or services contemplated at the time of contracting. Please note that the PPA, like any statute or law, may be amended from time to time by legislative action. These Policies & Procedures are based on the statutory requirements as of the date identified on the cover page of this document. By this reference, as applicable statutory provisions subsequently change, these Policies & Procedures shall automatically be amended to incorporate the new requirements of law. These Policies & Procedures are adopted by the District to provide guidance in contracting matters. Failure by the District to comply with these Policies & Procedures shall not expand the rights or remedies of any Provider (hereinafter defined) against the District under the PPA. Nothing contained herein shall be interpreted as more restrictive on the District than what is provided for in the PPA.

II. Scope

These Policies & Procedures apply to all operations of the District, including Construction Services and Non-Construction Goods and Services, as applicable.

III. Definitions

A. Agent

The District-contracted architect, District-contracted engineer, District Manager, or other person, acting on behalf of the District, which is required by law or contract to review invoices or payment requests from Providers (hereinafter defined). Such individuals/entities must be identified in accordance with §218.735 (1), Fla. Stat., and further identified in the relevant agreement between the District and the Provider.

B. Construction Services

All labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvement to real property that require a license under parts I and II of Chapter 489, Fla. Stat.

C. Contractor or Provider of Construction Services

The entity or individual that provides Construction Services through direct contract with the District.

D. Date Stamped

Each original and revised invoice or payment request received by the District shall be marked electronically or manually, by use of a date stamp or other method,

which date marking clearly indicates the date such invoice or payment request is first delivered to the District through its Agent. In the event that the Agent receives an invoice or payment request but fails to timely or physically mark on the document the date received, "Date Stamped" shall mean the date of actual receipt by the Agent.

E. Improper Invoice

An invoice that does not conform to the requirements of a Proper Invoice.

F. Improper Payment Request

A request for payment for Construction Services that does not conform to the requirements of a Proper Payment Request.

G. Non-Construction Goods and Services

All labor, services, goods, and materials provided in connection with anything other than construction, alteration, repair, demolition, reconstruction, or other improvements to real property.

H. Proper Invoice

An invoice that conforms to all statutory requirements, all requirements of these Policies and Procedures not expressly waived by the District and any additional requirements included in the agreement for goods and/or services for which the invoice is submitted not expressly waived by the District.

I. Proper Payment Request

A request for payment for Construction Services which conforms to all statutory requirements, all requirements of these Policies & Procedures not expressly waived by the District and any additional requirements included in the Construction Services agreement for which the Payment Request is submitted not expressly waived by the District.

J. Provider

Includes any Vendor, Contractor or Provider of Construction Services, as defined herein.

K. Purchase

The purchase of goods, materials, services, or Construction Services; the purchase or lease of personal property; or the lease of real property by the District.

L. Vendor

Any person or entity that sells goods or services, sells, or leases personal property, or leases real property directly to the District, not including Construction Services.

IV. Proper Invoice/Payment Request Requirements

A. General

Prior to Provider receiving payment from the District, Non-Construction Goods and Services and Construction Services, as applicable, shall be received and performed in accordance with contractual or other specifications or requirements to the satisfaction of the District. Provision or delivery of Non-Construction Goods and Services to the District does not constitute acceptance for the purpose of payment. Final acceptance and authorization of payment shall be made only after delivery and inspection by the Agent and the Agent's confirmation that the Non-Construction Goods and Services or Construction Services meet contract specifications and conditions. Should the Non-Construction Goods and Services or Construction Services differ in any respect from the specifications, payment may be withheld until such time as the Provider takes necessary corrective action. Certain limited exceptions which require payment in advance are permitted when authorized by the District Board of Supervisors ("Board") or when provided for in the applicable agreement.

B. Sales Tax

Providers should not include sales tax on any invoice or payment request. The District's current tax-exempt number is [REDACTED]. A copy of the tax-exempt form will be supplied to Providers upon request.

C. Federal Identification and Social Security Numbers

Providers are paid using either a Federal Identification Number or Social Security Number. To receive payment, Providers should supply the District with the correct number as well as a proper Internal Revenue Service W-9 Form. The District Manager shall treat information provided in accordance with Florida law.

Providers should notify the District Manager when changes in data occur (telephone (239) 444-5790, email kdailey@sdsinc.org).

D. Proper Invoice for Non-Construction Goods and Services

All Non-Construction Goods and Services invoiced must be supplied or performed in accordance with the applicable purchase order (including any bid/proposal provided, if applicable) or agreement and such Non-Construction Goods and Services quantity and quality must be equal to or better than what is required by such terms. Unless otherwise specified in the applicable agreement, invoices should contain all of the following minimum information in order to be considered a Proper Invoice:

1. Name of Vendor
2. Remittance address
3. Invoice Date

4. Invoice number
5. The “Bill To” party must be the District or the Board, or other entity approved in writing by the Board of the District Manager
6. Project name (if applicable)
7. In addition to the information required in Section IV.D.1-6 above, invoices involving the *purchase of goods* should also contain:
 - a. A complete item description
 - b. Quantity purchased
 - c. Unit price(s)
 - d. Total price (for each item)
 - e. Total amount of invoice (all items)
 - f. The location and date(s) of delivery of the goods to the District
8. In addition to the information required in Section IV.D.1-6 above, invoices involving the *purchase of services* should also contain:
 - a. Itemized description of services performed
 - b. The location and date of delivery of the services to the District
 - c. Billing method for services performed (i.e., approved hourly rates, percentage of completion, cost plus fixed fee, direct/actual costs, etc.)
 - d. Itemization of other direct, reimbursable costs (including description and amount)
 - e. Copies of invoices for other direct, reimbursable costs (other than incidental costs such as copying) and one (1) of the following:
 - i. Copy of both sides of a cancelled check evidencing payment for costs submitted for reimbursement
 - ii. Paid receipt
 - iii. Waiver/lien release from subcontractor (if applicable)
9. Any applicable discounts
10. Any other information or documentation, which may be required or specified under the terms of the purchase order or agreement

E. Proper Payment Request Requirements for Construction Services

Payment Requests must conform to all requirements of Section IV, A-D above, unless otherwise specified in the terms of the applicable agreement or purchase order between the District and the Provider.

V. Submission of Invoices and Payment Requests

The Provider shall submit all Invoices and Payment Requests for both Construction Services and Non-Construction Goods and Services to the District’s Agent as provided in the purchase order or agreement, as applicable, and to the District Manager as follows:

Submit the invoice and/or payment request, with required additional material and in conformance with these Policies and Procedures, by mail, by hand delivery, or via email (Note: email is the preferred method for receipt of Non-Construction Goods and Services invoices).

1. Mailing and Drop Off Address

Winding Cypress Community Development District
c/o Special District Services, Inc.
27499 Riverview Center Boulevard, #253
Bonita Springs, Florida 34134

2. Email Address

kdailey@sdsinc.org

VI. Calculation of Payment Due Date

A. Non-Construction Goods and Services Invoices

1. Receipt of Proper Invoice

Payment is due from the District forty-five (45) days from the date on which a Proper Invoice is Date Stamped.

2. Receipt of Improper Invoice

If an Improper Invoice is received, a required invoice is not received, or invoicing of a request for payment is not required, the time when payment is due from the District is forty-five (45) days from the latest date of the following:

- a. On which delivery of personal property is fully accepted by the District;
- b. On which services are completed and accepted by the District;
- c. On which the contracted rental period begins (if applicable); or
- d. On which the District and the Vendor agree in a written agreement that provides payment due dates.

3. Rejection of an Improper Invoice

The District may reject an Improper Invoice. Within ten (10) days of receipt of the Improper Invoice by the District, the Vendor must be notified that the invoice is improper and be given an opportunity to correct the deficient or missing information, remedy the faulty work, replace the defective goods, or take other necessary, remedial action.

The District's rejection of an Improper Invoice must:

- a. Be provided in writing;
- b. Specify any and all known deficiencies; and
- c. State actions necessary to correct the Improper Invoice.

If the Vendor submits a corrected invoice, which corrects the deficiencies specified in the District's written rejection, the District must pay the corrected invoice within the later of: (a) ten (10) business days after date

the corrected invoice is Date Stamped; or (b) forty-five (45) days after the date the Improper Invoice was Date Stamped.

If the Vendor submits an invoice in response to the District's written rejection which fails to correct the deficiencies specified or continues to be an Improper Invoice, the District must reject that invoice as stated herein.

4. Payment of Undisputed Portion of Invoice

If the District disputes a portion of an invoice, the undisputed portion shall be paid in a timely manner and in accordance with the due dates for payment as specified in these Policies & Procedures.

B. Payment Requests for Construction Services

1. Receipt of Proper Payment Request

The time at which payment is due for Construction Services from the District is as follows:

- a. If an Agent must approve the payment request before it is submitted to the District Manager, payment (whether full or partial) is due twenty-five (25) business days after the payment request is Date Stamped. The Provider may send the District an overdue notice. If the payment request is not rejected within four (4) business days after Date Stamp of the overdue notice, the payment request shall be deemed accepted, except for any portion of the payment request that is fraudulent, misleading or is the subject of dispute.

The agreement between the District and the Provider shall identify the Agent to which the Provider shall submit its payment request or shall be provided by the District through a separate written notice no later than ten (10) days after contract award or notice to proceed, whichever is later. Provider's submission of a payment request to the Agent shall be Date Stamped, which shall commence the time periods for payment or rejection of a payment request or invoice as provided in this section.

- b. If, pursuant to contract, an Agent is not required to approve the payment request submitted to the District, payment is due twenty (20) business days after the payment request is Date Stamped unless such payment request includes fraudulent or misleading information or is the subject of dispute.

2. Receipt and Rejection of Improper Payment Request

- a. If an Improper Payment Request is received, the District must reject the Improper Payment Request within twenty (20) business days after the date on which the payment request is Date Stamped.
- b. The District's rejection of the Improper Payment Request must:
 - i. Be provided in writing;
 - ii. Specify any and all known deficiencies; and
 - iii. State actions necessary to correct the Improper Invoice.
- c. If a Provider submits a payment request which corrects the deficiency specified in the District's written rejection, the District must pay or reject the corrected submission no later than ten (10) business days after the date the corrected payment request is Date Stamped.

3. Payment of Undisputed Portion of Payment Request

If the District disputes a portion of a payment request, the undisputed portion shall be paid in a timely manner and in accordance with the due dates for payment as specified in this section.

VII. Resolution of Disputes

If a dispute arises between a Provider and the District concerning payment of an invoice or payment request, the dispute shall be resolved as set forth in §218.735, Fla. Stat., for Construction Services, and §218.76, Fla. Stat. for Non-Construction Goods and Services.

A. Dispute between the District and a Provider

If a dispute between the District and a Provider cannot be resolved following resubmission of a payment request by the Provider, the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract, if any. In the absence of a prescribed procedure in the contract, the dispute must be resolved by the procedures specified below.

B. Dispute Resolution Procedures

1. If an Improper Payment Request or Improper Invoice is submitted, and the Provider refuses or fails to submit a revised payment request or invoice as contemplated by the PPA and these Policies and Procedures, the Provider shall, not later than thirty (30) days after the date on which the last payment request or invoice was Date Stamped, submit a written statement via certified mail to the Agent, copying the District Manager, specifying the basis upon which the Provider contends the last submitted payment request or invoice was proper.

2. Within forty-five (45) days of receipt by the Agent and District Manager of the disputed, last-submitted payment request or invoice, the Agent and/or District Manager shall commence investigation of the dispute and render a final decision on the matter no later than sixty (60) days after the date on which the last-submitted payment request or invoice is Date Stamped.
3. With regard to contracts executed on or after July 1, 2021, if the District does not commence the dispute resolution procedure within the time provided herein, a Provider may give written notice via certified mail to the Agent, copying the District Manager, of the District's failure to timely commence its dispute resolution procedure. If the District fails to commence the dispute resolution procedure within 4 business days after receipt of such notice, any amounts resolved in the Provider's favor shall bear mandatory interest, as set forth in section 218.735(9), Florida Statutes, from the date on which the payment request or invoice containing the disputed amounts was Date Stamped. If the dispute resolution procedure is not commenced within 4 business days after receipt of the notice, the objection to the payment request or invoice shall be deemed waived. The waiver of an objection pursuant to this paragraph does not relieve a Provider of its contractual obligations.
4. Absent a written agreement to the contrary, if the Provider refuses or fails to provide the written statement required above, the Agent and/or District Manager is not required to contact the Provider in the investigation. In addition, and absent a written agreement to the contrary, if such written statement is not provided, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third-party purchases from amounts owed to the Provider.
5. The Board shall approve any decision of the District Manager to contract with a third party which would result in: 1) an expenditure above what is budgeted for the Construction Services or Non-Construction Services; or 2) an expenditure which exceeds the original contract amount for the Construction Services or Non-Construction Services by more than ten percent (10%) or Ten Thousand Dollars (\$10,000).
6. A written explanation of the final decision shall be sent to the Provider, via certified mail, within five (5) business days from the date on which such final decision is made. A copy of the written explanation of the final decision shall be provided to the Chairperson of the Board simultaneously with the certified mailing to the Provider.

7. If a Provider does not accept in writing the final decision within five (5) days after receipt by the Provider, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third-party purchases from amounts owed to the Provider. If the costs of the third-party purchases exceed the amount the District owes to the Provider, the District may seek to recover such excess from the Provider in a court of law or as otherwise provided in an agreement between the District and the Provider. Nothing contained herein shall limit or affect the District's ability to enforce all of its legal and contractual rights and remedies against the Provider.

VIII. Purchases Involving Federal Funds or Bond Funds

When the District intends to pay for a purchase with federal funds or bond funds, the District shall make such purchases only upon reasonable assurances that federal funds or bond funds sufficient to cover the cost will be received. When payment is contingent upon the receipt of bond funds, federal funds or federal approval, the public procurement documents and any agreement with a Provider shall clearly state such contingency. (§218.77, Fla. Stat.).

IX. Requirements for Construction Services Contracts – Project Completion; Retainage

The District intends to follow the PPA requirements for construction project completion and retainage, including, but not limited to, §218.735 (7) and (8), Fla. Stat.

X. Late Payment Interest Charges

Failure on the part of the District to make timely payments may result in District responsibility for late payment interest charges. No agreement between the District and a Provider may prohibit the collection of late payment interest charges allowable under the PPA as mandatory interest. (§218.75, Fla. Stat.).

A. Related to Non-Construction Goods and Services

All payments due from the District, and not made within the time specified within this policy, will bear interest, from thirty (30) days after the due date, at the rate of one percent (1%) per month on the unpaid balance. The Vendor must submit a Proper Invoice to the District for any interest accrued in order to receive the interest payment. (§218.735(9), Fla. Stat.).

An overdue period of less than one (1) month is considered as one (1) month in computing interest. Unpaid interest is compounded monthly. The term one (1) month means a period beginning on any day of a month and ending on the same day of the following month.

B. Related to Construction Services

All payments for Construction Services that are not made within the time periods specified within the applicable statute, shall bear interest from thirty (30) days after the due date, at the rate of one percent (1%) per month for contracts executed on or before June 30, 2021, and at the rate of two percent (2%) per month for contracts executed on or after July 1, 2021, or the rate specified by agreement, whichever is greater. §218.735(9), Fla. Stat. The Provider must submit a Proper Payment Request to the District for any interest accrued in order to receive the interest payment. An overdue period of less than one (1) month is considered as one (1) month in computing interest. (§218.74 (4), Fla. Stat.).

Unpaid interest is compounded monthly. The term one (1) month means a period beginning on any day of a month and ending on the same day of the following month.

C. Report of Interest

If the total amount of interest paid during the preceding fiscal year exceeds \$250, the District Manager is required to submit a report to the Board during December of each year, stating the number of interest payments made and the total amount of such payments. (§218.78, Fla. Stat.).

MEMORANDUM

TO: DISTRICT MANAGER

FROM: KUTAK ROCK LLP

RE: WASTEWATER AND STORMWATER NEEDS ANALYSIS

During the 2021 legislative session, sections 403.9301 and 403.9302, Florida Statutes, were enacted requiring local governments to perform a 20-year needs analysis of certain wastewater and stormwater services or systems. Subject special districts are required to complete this analysis by June 30, 2022, and every five years thereafter. This memorandum answers basic questions regarding these new statutory provisions and requests that District Managers seek authorization for staff to solicit proposals to complete the required study as appropriate. We expect the services necessary to complete the required analysis to be exempt from competitive solicitation requirements as a planning or study activity below the statutory threshold of \$35,000. §§ 287.055, 287.017, Fla. Stat. Thus, as deemed appropriate and in the best interests of the subject district, districts may elect to utilize the services of existing engineering or other professionals currently under contract or may seek additional proposals for completion of the required needs analysis.

Which special districts are required to complete a needs analysis under sections 403.9301 and 403.9302, Florida Statutes?

Special districts providing “wastewater services” or a “stormwater management program or stormwater management system” must complete a needs analysis.¹

What constitutes “wastewater services”?

Wastewater services means providing service to pipelines or conduits, pumping stations, and force mains and associated facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal or to a plant or other works used for the purpose of

¹ Counties, municipalities, and special districts located in a “rural area of opportunity” may be exempt from the requirements of sections 403.9301 and 403.9302, Florida Statutes, if compliance would create an undue economic hardship. This includes:

- *Northwest Rural Area of Opportunity:* Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the area within the city limits of Freeport and Walton County north of the Choctawhatchee Bay and intercoastal waterway.
- *South Central Rural Area of Opportunity:* DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).
- *North Central Rural Area of Opportunity:* Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.



**WORK ORDER
FOR CONSULTANT SERVICES**

PROJECT NAME/PHASE:

DATE: January 13, 2022Winding Cypress CDDORDERED BY: Kathleen Daily**FEE TYPE:**☐

COST PLUS

Estimated at: _____ \$

Time and materials based on hourly rate schedule
in effect at time service is rendered.☒

LUMP SUM

Fixed Fee: \$8,500.00**Scope Description with Fee Amount and Fee Type****Background**

The Florida Legislature passed House Bill 53 related to public infrastructure. A portion of it is shown below relating to stormwater and the requirement to create a 20-year needs analysis.

403.9302 Stormwater management projections.

(3) By June 30, 2022, and every 5 years thereafter, each county, municipality, or special district providing a stormwater management program or stormwater management system shall develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government shall include the following:

(a) A detailed description of the stormwater management program or stormwater management system and its facilities and projects.

(b) The number of current and projected residents served calculated in 5-year increments.

(c) The current and projected service area for the stormwater management program or stormwater management system.

(d) The current and projected cost of providing services calculated in 5-year increments.

(e) The estimated remaining useful life of each facility or its major components.

(f) The most recent 5-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.

(g) The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

(4) Upon completing the requirements of subsection (3), each municipality or special district shall submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its stormwater management program or stormwater management system is located. Each county shall compile all analyses submitted to it under this subsection into a single document and include its own analysis in the document. The county shall file the compiled document with the Secretary of Environmental Protection and the coordinator of the Office of Economic and Demographic Research no later than July 31, 2022, and every 5 years thereafter.

Task 1 - Analysis

The CONSULTANT will assist the CLIENT the analysis required in 403.9302, Florida Statutes, Section (3) as requested by the Office of Economic and Demographic Research (EDR). Information will be collected by the CONSULTANT from own records and publicly available sources. Analysis of system components will be presented in a narrative format with exhibits as necessary to convey the information in an effective manner. A typical lifespan will be created for each asset along with the existing age and remaining lifespan. Replacement/retrofit costs will be developed for each asset acknowledging that actual asset life will vary from the typical. Revenue determinations (past, present, and future) will require assistance from the District Manager or designee.

Task 2 - Report

The CONSULTANT will compile the narrative, graphs, and tables from Task 1 and populate the spreadsheets created by EDR to be sent to Lee County before June 30, 2022. Lee County will be responsible to compile this report with others and their own information and transmit it to the EDR.

Reimbursable Expenses – Cost + 15%

Reimbursable expenses including but not limited to, document reproductions, mileage and delivery services, will be reimbursed per the attached rate schedule.

All regulatory agency review and permit fees are the responsibility of the Client and are not part of this Work Order fee.

AUTHORIZATION:

The work referenced above will be initiated when copy of this work order is signed by both parties.

I hereby authorize the performance of the above services and agree to pay the charges resulting therefrom as identified in the "FEE-TYPE" above. Work authorized under this agreement is subject to the attached J.R. Evans Engineering Terms & Conditions.



Josh Evans, P.E.
J.R. Evans Engineering, P.A.

1/13/22

Date

Kathleen Daily for Special District Services, Inc. Date
The Oaks Center
2501A Burns Rd.
Palm Beach Gardens, FL 33410

Hourly Rate Codes (effective 01/01/22):

These rates are subject to any increases which may take effect over the term on the contract.

Principal Engineer	\$240
Senior Project Manager	\$200
Project Manager	\$170
CRS/NFIP Consultant	\$165
Project Engineer IV	\$150
Project Engineer III	\$135
Project Engineer II	\$125
Project Engineer I	\$115
Senior Designer	\$140
Designer	\$125
GIS Specialist	\$140
Project Coordinator	\$85
Construction Inspector II	\$125
Construction Inspector I	\$95
Intern	\$75
Administrative	\$55

Reimbursable Expenses:

Other Incidental Expenses: Actual Cost plus 15%

Mileage: Current IRS Mileage Rate

Expert Witness at 200% of Scheduled Rate

Reproduction: Administrative Rate plus below cost:

24x36 B/W Print \$1.50/sheet

24x36 Color Print \$15/sheet

24x36 Color Aerial - \$35/sheet

8 ½ x 11 B/W - \$0.25/sheet

8 ½ x 11 Color - \$1.00/sheet

11 x 17 B/W - \$1.25/sheet

11 x 17 Color - \$2.50

STANDARD BUSINESS TERMS & CONDITIONS

These Standard Business Terms & Conditions are attached to, and made part of, the Proposals and Agreements between J.R. Evans Engineering, P.A. and Client.

Limitation of Liability

J.R. Evans Engineering's services under this Agreement will be consistent with the Standard of Care for all professional engineering and related services to be performed or furnished by J.R. Evans Engineering. These engineering services shall be provided with the care and skill ordinarily provided by members of the Engineering Profession practicing under similar circumstances. Upon notice to J.R. Evans Engineering and by mutual Agreement between the parties, J.R. Evans Engineering will correct those services not meeting such a standard without additional compensation.

J.R. Evans Engineering and Client recognize that the project involves risk. The risks have been allocated such that the Client agrees to the fullest extent permitted by the law, J.R. Evans Engineering's total liability to Client for any and all injuries, claims, losses, expenses, damages, reasonable attorney's fees, and defense costs, arising out of or in any way connected to this project and/or Agreement from any cause or causes, shall not exceed the amount of the fee charged for the specific service described. Such causes include, but are not limited to, J.R. Evans Engineering's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

Design Professionals; Contractual Limitation on Liability

(1) A design professional employed by a business entity or an agent of the business entity is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract if:

- (a) The contract is made between the business entity and a claimant or with another entity for the provision of professional services to the claimant;
- (b) The contract does not name as a party to the contract the individual employee or agent who will perform the professional services;
- (c) Pursuant to this section, an individual employee or agent may not be held individually liable for negligence;
- (d) The business entity maintains any professional liability insurance required under the contract; and
- (e) Any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to the contract.

(2) As used in this section, the term "business entity" means any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Payments and Collection

Invoicing will be provided on a monthly basis or at completion of the service. Statements are due and payable upon receipt. Client agrees to carefully read all billing statements and promptly notify J.R. Evans Engineering, in writing, of any claimed errors or discrepancies, within fifteen (15) days from the date of the statement. If J.R. Evans Engineering is not notified by the Client in writing, it is presumed that the owner agrees with the correctness, accuracy, and fairness of the billing statement.

Past due amounts may incur a late fee of 1% and J.R. Evans Engineering can upon giving 7 days written notice to Client, suspend services until payment in full is received. Retainers shall be credited on the final invoice. J.R. Evans Engineering is entitled to collect reasonable fees and costs, including collection agency, attorney's fees and interest as required to obtain collection of any fees under the Agreement.

Reimbursable Expenses

Expenses for reproduction services, courier fees, delivery, presentation materials, long distance phone calls, travel made on behalf of the project, subcontractors, and any other out-of-pocket expenses incurred on the project are reimbursable to J.R. Evans Engineering. These expenses will be billed to the Client per the Rate Schedule in effect at time of services.

Permit and Application Fees

Client shall pay all permit and application fees required for the project.

Letters of Map Change (LOMC)

If a LOMC is granted for the project area, J.R. Evans Engineering is not responsible (financially or otherwise) for any future LOMC's performed by FEMA (and/or its contractors) or private consultants, which could potentially modify the project area's Flood Insurance Rate designation.

The VE flood zone removal guarantee shall become null and void and shall not be applicable in the event of the following: If the building(s), is found by FEMA to have been constructed in violation(s) of FEMA/NFIP floodplain management rules/regulations in effect at time of construction, and a cure for the violation(s) is not provided by the Client (or others representing the Client) to FEMA's satisfaction, and FEMA subsequently denies or otherwise rejects the LOMR application due solely to the outstanding violation(s).

Termination

This agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Irrespective of which party shall affect termination, the Client shall pay J.R. Evans Engineering for all services rendered to the date of termination.

Duty to Cooperate

The parties agree to provide reasonable access to information regarding the site or the Work performed and to responsible personnel as may be required to address any claim made regarding the Work performed or this Agreement. The parties further agree to provide copies to each other of any claims, demands or notices from any federal, state or local public agency regarding the Work performed for this Agreement.

Attorney Fees

Should litigation arise related to services under this Agreement, the prevailing party is entitled to recover reasonable costs including staff time, court costs, attorney fees and related expenses.

Mediation

J.R. Evans Engineering and Client agree that all disputes or claims between them arising out of or relating to this Agreement made during design, construction, or post-construction of the project shall be submitted to nonbonding mediation unless the parties agree otherwise.

Ownership of Documents

All documents, including electronic media, prepared by J.R. Evans Engineering under this Agreement shall remain the property of J.R. Evans Engineering. These documents may not be used by Client for any other endeavor without the written consent of J.R. Evans Engineering.

Delays

J.R. Evans Engineering is not responsible for delays caused by factors beyond J.R. Evans Engineering's control including but not limited to the production of contract documents; issuance of permits from any government or agency; beginning or completion of construction; or performance of any phase of the work pursuant to this Agreement. J.R. Evans Engineering does not guarantee issuance of any permit.

treating, stabilizing, or holding wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

What constitutes “stormwater management program or stormwater management system”?

“Stormwater management program” means an institutional strategy for stormwater management, including urban, agricultural and other stormwater. “Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

What must the needs analysis for these services or systems include?

- A detailed description of associated facilities;
- The number of current and projected residents served calculated in 5-year increments;
- The current and projected service area;
- The current and projected cost of providing services calculated in 5-year increments;
- The estimated remaining useful life of each facility or its major components;
- The most recent 5-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components; and
- The district’s plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the district expects to close any projected funding gap.
- The Office of Economic and Demographic Research has [templates and other resources and guidance](#) under development on its website to assist in completion of this required analysis.

When must the needs analysis required be complete?

The 20-year needs analysis must be completed by June 30, 2022.

What happens to the needs analysis once it is complete?

The complete needs analysis and associated methodology and supporting data must be submitted to the county within which the largest portion of the subject district facilities are located. Each county must then compile all analyses submitted to it (from special districts, municipalities, and the county itself) into a single document that must be filed with the Department of Environmental Protection and Office of Economic and Demographic Research by July 31, 2022 and every five years thereafter. The Office of Economic and Demographic research is required to evaluate the compiled documents for purposes of developing a statewide analysis that will include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure.