

## WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

## **COLLIER COUNTY**

SPECIAL BOARD MEETING JUNE 29, 2023 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 SPECIAL BOARD MEETING June 29, 2023 1:00 p.m.

A.	Call to Order
B.	Proof of PublicationPage 1
C.	Administer Oath of Office and Review Board Member Duties and Responsibilities
D.	Review Sunshine and Public Records LawsPage 2
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K.	New Business
	1. Consider Resolution No. 2023-11 – Authorizing Electronic Approvals and Check SignersPage 12
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L.	Administrative Matters
	1. Manager's Report
	2. Engineer's Report

- 3. Attorney's Report
- M. Board Members Comments
- N. Adjourn

#### Location

Collier County, Florida

#### Notice Text

NOTICE OF SPECIAL BOARD MEETING OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT The Board of Supervisors of the Winding Cypress Community Development District (the "District") will hold a Special Board Meeting on June 29, 2023, at 1:00 p.m. at the Clubhouse at Winding Cypress located at 7180 Winding Cypress Drive, Naples, Florida 34114. The purpose of the Special Board Meeting is for the Board to consider any business which may properly come before it. The Board Meeting is open to the public and will be conducted in accordance with the provisions of Florida law for community development districts. The Board Meeting may be continued in progress without additional notice to a time, date, and location stated on the record. A copy of the agenda for the Board Meeting may be obtained from the District's website or from the District Manager, Special District Services, located at 2501A Burns Road, Palm Beach Gardens, Florida 33410. There may be occasions when one or more Supervisors will participate by telephone. Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this Board Meeting is asked to advise the District Office at least forty-eight (48) hours before the meeting by contacting the District Manager at (561) 630-4922 and/or toll free at 1-877-737-4922. If you are hearing or speech impaired, please contact the Florida Relay Service at 1-800-955-8770, who can aid you in contacting the District Office. A person who decides to appeal any decision made at this Board Meeting with respect to any matter considered at the Board Meeting is advised that person will need a record of the proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based. Meetings may be cancelled from time to time without advertised notice. WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT www.windingcypresscdd.org Pub Date: June 21, 2023 #5740075

KUTAKROCK

Kutak Rock LLP 107 West College Avenue, Tallahassee, FL 32301 office 850 692 7300

Alyssa Willson alyssa.willson@kutakrock.com

#### MEMORANDUM

TO: BOARD OF SUPERVISORS WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT "DISTRICT"

FROM: ALYSSA WILLSON

DATE: JUNE 6, 2023

RE: SUNSHINE LAW AND APPLICABILITY TO COMMITTEES

I would like to provide a short overview of Florida's public meeting requirements, particularly as it is applied to committee use. Please contact me at your convenience with any questions.

#### Florida's Government in the Sunshine Law

Generally speaking, Florida's Sunshine Law applies to all formal or informal gatherings of two or more Board Supervisors to discuss matters that **may foreseeably come before the Board for official action**. Section 286.011, Florida Statutes, contains three requirements for such meetings: (1) the meetings must be open to the public; (2) the meetings must be noticed; and (3) minutes of the meetings must be taken. The Sunshine Law is intended to protect the public from "closed door" politics, and Courts broadly construe the law to ensure it meets this remedial and protective purpose.<sup>1</sup>

Committees and advisory groups may be subject to the Sunshine Law, depending on the scope of the committee's activity. Courts and Florida's Attorney General have opined that it extends to meetings of committees or advisory groups that have been delegated some decision-making authority (e.g., tasked with responsibility to make recommendations on some Board-related business), whether delegation is by the board or by a single board member.<sup>2</sup> A limited exemption to the applicability of the Sunshine Law requirement has been recognized for committees established for the limited purpose of fact-finding activities.

<sup>&</sup>lt;sup>1</sup> See, e.g., Wood v. Marston, 442 So.2d 934, 938 (Fla. 1983).

<sup>&</sup>lt;sup>2</sup> Wood v. Marston, 442 So.2d 934 (Fla. 1983). See also Att'y General Opinion 75-41.

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The "dispositive question" is whether the committee has been delegated "decision-making authority," as opposed to mere "information-gathering or fact-finding authority."<sup>3</sup> Even if the District board ultimately makes the final decision on a committee recommendation, if there is not a finite number of options or choices to consider, it is likely there is a component of decision-making that undertaken by the committee in determining the options considered and presented to the board. "In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision making function by sorting through options and making recommendations to the governmental body."<sup>4</sup>

Therefore, it is recommended that unless the scope of fact-finding is extremely limited and the committee is able to operate within the fact-finding exemption any committees appointed by the board operate in accordance with the Sunshine Law. Below are recommended requirements and best practices:

- Appoint a finite number of members to the committee;
- Publish notice of time/place/location of committee meetings and ensure open to the public;
- Appoint an individual to take minutes of the meeting and provide to the District Manager;
- Submit minutes to the board for acceptance into the District record at the next Board meeting; and
- Follow all applicable District Rules of Procedure.

<sup>&</sup>lt;sup>3</sup> Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010). <sup>4</sup> Inf. Op. to Randolph, June 10, 2010.

#### **RESOLUTION 2023-10**

A RESOLUTION OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT DESIGNATING A CHAIR, A VICE CHAIR, A SECRETARY, ASSISTANT SECRETARIES, A TREASURER AND AN ASSISTANT TREASURER OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT, AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of Supervisors of the Winding Cypress Community Development

District desires to elect the below recited persons to the offices specified.

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

1. The following persons are elected to the offices shown:

Chair	
Vice Chair	
Secretary	
Treasurer	
Assistant Secretary	
Assistant Treasurer	

**PASSED AND ADOPTED** this <u>29<sup>th</sup></u> day of June, 2023.

**ATTEST:** 

#### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

Secretary / Assistant Secretary

Chairperson, Board of Supervisors

#### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT REGULAR BOARD MEETING JUNE 6, 2023

#### A. CALL TO ORDER

The June 6, 2023, Regular Board Meeting of the Winding Cypress Community Development District (the "District") was called to order at 1:01 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 May 28, 2023, as legally required.

#### C. DISCUSSION REGARDING POTENTIAL APPLICANTS TO THE BOARD

Ms. Krizen explained that the meeting agenda would be taken in a different order than the community is used to in order to establish a quorum. The full Board Meeting cannot be called to order until a quorum is present. There were three District residents who responded to the e-mail sent out by the District Manager: Scott Spitzer, Barbra Powell and Leonard Boscia. The Board had previously received copies of the letters of interest and had an opportunity to review them.

A **motion** was made by Mr. Petrovsky, seconded by Mr. Ciriello and passed unanimously appointing Scott Spitzer to Seat 5.

#### D. ADMINISTER OATH OF OFFICE

Ms. Krizen administered the Oath of Office to Mr. Spitzer.

#### E. ESTABLISH A QUORUM

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

Supervisor	Scott Spitzer	Present
Supervisor	Patrick Ciriello	Present
Supervisor	Alex Petrovsky	Present

Also present were the following Staff members:

District Manager	Michelle Krizen	Special District Services, Inc.
District Counsel	Alyssa Willson via phone	Kutak Rock
District Engineer	Josh Evans	J.R. Evans Engineering, P.A.

Also present were the following:

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Todd Wodraska of Special District Services, Inc. (via phone) Sharon Moore Michael Morala Marco Arilli John Jensen Pat Orangio Michael Dyckman Diana and John Sager Robert Ide Louis Strippoli Maxine Byrne Joan McGowan Nick DePinto Godonhue Ronnie Asefulo David Margulies Jayne Shidd Kevin Dufonuc Larry Ahearn

Ms. Krizen advised that after the deadline and too late to share with the Board prior to the meeting, she received information regarding a fourth interested District resident. After discussion the Board consensus was to discuss the qualification of this candidate, as well as any other interested parties. The residents present were asked if anyone else was interested in serving on the Board. There were none. The Board was then provided with letters from Paul Ellwood, Barbra Powell and Leonard Boscia to review.

A **motion** was made by Mr. Petrovsky, seconded by Mr. Ciriello and passed unanimously appointing Barbra Powell to Seat 2.

A motion was then made by Mr. Petrovsky, seconded by Mr. Ciriello and passed unanimously appointing Paul Ellwood to Seat 4.

It was noted that Both new Board Members were out of town and would sworn in at the next meeting.

#### F. REVIEW BOARD MEMBER RESPONSIBILITIES & DUTIES

Ms. Willson went over the responsibilities and duties of a Board Member and the Sunshine Law and Public Records Law.

#### G. REVIEW CDD PURPOSE AND FUNCTIONS

Ms. Willson shared a PowerPoint presentation with the Board, which was included in the meeting packet. During this presentation, the ability to refinance the bonds was discussed as well as the ability of the individual to prepay their portion of the bond.

#### H. CONSIDER RESOLUTION NO. 2023-06 – DESIGNATING OFFICERS

A **motion** was made by Mr. Ciriello, seconded by Mr. Petrovsky and passed unanimously approving Resolution 2023-06 designating the officers.

The board expressed the wish to discuss this again when all board members are present.

Chair: Alex Petrovsky VC: Patrick Ciriello Secretary/ Treasurer: Michelle Krizen AS: Scott Spitzer AS: Kathleen Meneely

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#### I. ADDITIONS OR DELETIONS TO THE AGENDA

Mr. Spitzer requested the addition of an investigation resolution to the agenda. There was a consensus of the Board to add this item under New Business.

#### J. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA

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

#### K. APPROVAL OF MINUTES

#### 1. May 2, 2023, Regular Board Meeting

The minutes of the May 2, 2023, Regular Board Meeting were presented for consideration.

A **motion** was made by Mr. Ciriello, seconded by Mr. Petrovsky and passed unanimously approving the minutes of the April 4, 2023, Regular Board Meeting, as presented.

#### L. OLD BUSINESS 1. Review Lake Bank Repairs<sup>2</sup> Proposal

The current proposal from Dragonfly is in the amount of \$63,450, which is over the budgeted amount of \$25,000. The repairs should be done when the lake levels are low to ensure that the areas are exposed and corrected.

Maxine Byrne purchased a water lot and is disappointed to see the house across the lake from her has two huge visible black pipes. Is this going to be an annual sight? Mr. Evans explained that without knowing exactly where she lived, he cannot confirm, but it is possibly the pipes that were improperly installed. The pipe should not be visible, as it should be under the water level.

Diana Sager wanted to know why was this our problem? Why didn't DiVosta or Pulte take care of it before leaving?

John Jensen was a member of the landscape and grounds committee and has noted erosion, cracks in the sidewalks and different things to present to the developer for correction. Mr. Jensen also noted concerns that the prior Board only allocated \$25,000 to Lake Bank Maintenance. Several residents commented that other developments had tall grass/littoral plantings or rocks surrounding their lakes to prevent erosion.

Joan McGowan is concerned that she has a drain that is 100% occluded with soil. Mr. Evans will check it out.

A **motion** was made by Mr. Petrovsky, seconded by Mr. Spitzer and passed unanimously authorizing Mr. Evans to check out the pipe at 7495 Blackberry Drive and contract with Sewer Viewer if he deems it necessary for the not to exceed amount of \$1,500.

After further discussion, a **motion** was made by Mr. Ciriello, seconded by Mr. Spitzer and passed unanimously authorizing Mr. Evans to identify the most severe areas and to treat as many as possible with a budget of \$25,000 and work with District Counsel to create a contract; further authorizing the Chair to execute the contract once approved by District Counsel

A discussion then ensued regarding the homes that had received letters letting them know the drain was improperly installed and they needed to correct it. Are those homes going to have the erosion fixed even though the drain is not corrected, knowing erosion would still occur? These areas are not going to be treated for erosion. The HOA questioned should the homeowners still spend the money to fix the issue. Mr. Petrovsky would like to see a temporary hold on fixing the drains because there are other issues at play. There could be a better fix or someone else could be held responsible. Ms. Willson will draft a letter on behalf of the CDD to the HOA to share with those who had previously received a letter.

#### M. NEW BUSINESS

## 1. Consider Resolution No. 2023-09 – Authorizing the Preliminary Investigation of Potential Claims and Litigation Against DiVosta Homes LP and Affiliates

Resolution No. 2023-09 was presented, entitled:

#### **RESOLUTION 2023-09**

#### RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING THE PRELIMINARY INVESTIGATION OF POTENTIAL CLAIMS AND LITIGATION AGAINST DIVOSTA HOMES L.P. AND AFFILIATES

A copy of the resolution was presented to the Board and members of the audience. The Board and District residents were provided a few minutes to look over before Mr. Spitzer's presentation which is summarized as follows.

The lake banks are not in good repair. Why is that the case? Mr. Spitzer recently walked the banks with an outside lake bank consultant. This professional raised serious concerns about the lake banks. It appears that at the least there has been negligent maintenance. One of the Board Members appointed by Pulte recently commented that it was "natural erosion" and Pulte does not have the responsibility for its upkeep. That statement is problematic. No one is disputing erosion is natural and will occur. The issue is what erosion would be prevented or lessoned if lake bank practices were done? What could and should have been done differently? Deferred maintenance always costs more. There will be increased costs due to the lack of maintenance. Mr. Spitzer spoke about an article that described HOA and developer turn-over as a critical juncture and full reviews should be done and ties should be cut with the developer and their affiliates. Charter members of new boards should always begin the turn=over with new Board Members and experts.

This resolution will authorize the preliminary investigation of potential claims and litigation against DiVosta Homes L.P. and affiliates.

Ms. Krizen shared that if legal action was to be taken it could be costly. Mr. Spitzer explained he was not taking legal action at this time, just investigating.

Ms. Willson advised she was unable to represent the CDD on this matter if they choose to pursue legal action due to her firm representing Pulte in other capacities on other projects and the District retaining separate special counsel would be necessary to assist in a legal evaluation of any potential claims.\_-The question was raised by a resident if Mr. Evans worked with Pulte on any other projects. Mr. Evans stated that he did; however you will probably not find an engineer in this area who has not worked with Pulte.

Mr. Petrovsky spoke of his desire to represent the community and receive input from residents before voting. Mr. Petrovsky asked the residents present to raise their hand if they were in favor of this resolution. All residents present raised their hands in favor; none were opposed.

A **motion** was made by Mr. Petrovsky, seconded by Mr. Ciriello and passed unanimously adopting Resolution No. 2023-09, amended as discussed to reflect the following changes regarding removal of references to sunshine law exemption, removal of the term "without limitation" and authorizing Mr. Spitzer to review legal candidates and Mr. Ciriello to review engineering candidates and as reviewed and approved by Ms. Willson and Mr. Spitzer.

#### 2. Consider Resolution No. 2023-07 – Authorizing Electronic Approvals and Check Signers

Resolution No. 2023-07 was presented, entitled:

#### **RESOLUTION NO. 2023-07**

#### A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT, AUTHORIZING THE ESTABLISHMENT OF A DISTRICT CHECKING/OPERATING ACCOUNT, DESIGNATING DISTRICT OFFICIALS AND/OR AUTHORIZED STAFF TO REVIEW, APPROVE AND ISSUE PAYMENT OF EXPENDITURES, SELECTING THE SIGNATORIES THEREOF; AND PROVIDING AN EFFECTIVE DATE.

The Chair reviews and authorizes expenditures of the District. This resolution updates the information to reflect the current Chair. If the Chair changes, this will be updated again. The other authorized names reflect employees Special District Services, Inc.

A **motion** was made by Mr. Ciriello, seconded by Mr. Spitzer and passed unanimously adopting Resolution No. 2023-07, as presented.

Financial compensation of Board Members was discussed. Messrs. Petrovsky, Spitzer and Ciriello all requested to be compensated at the rate of \$200 per meeting.

## 3. Consider Resolution No. 2023-08 – Adopting an Amended Proposed Budget for Fiscal Year 2022/2023 and Setting a Public Hearing Date

Resolution No. 2023-08 was presented, entitled:

#### **RESOLUTION NO. 2023-08**

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT AMENDING RESOLUTION NO. 2023-05; AMENDING THE PROPOSED BUDGET AND SETTING THE DATE AND TIME FOR THE PUBLIC HEARING TO CONSIDER THE FISCAL YEAR 2023/2024 FINAL BUDGET AND ASSESSMENTS AND AUTHORIZING THE SECRETARY AND DISTRICT MANAGER TO TAKE CERTAIN ACTIONS TO ACCOMPLISH THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

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The proposed budget was presented and approved at the May meeting. Since the Board has changed, this is being presented to allow the current Board Members to adjust the budget, as needed. The Board was reminded that this number could go down before the final budget but cannot be increased. Since the Board has opted to be compensated for meetings, this was added to the budget.

A discussion ensued regarding the Lake Bank budget. There was an increase from \$25,000 to \$50,000 on the proposed budget. The Board Members were not comfortable with that number. Is that a reasonable number? What would be a good number? What is a reasonable amount to increase the assessment? Currently the proposed budget had an 11% increase from the previous year. After much discussion, the Board agreed to increase the Lake Bank budget to \$75,000. With the investigation proposal, there is the potential to have an increase in legal fees. There is not any way to anticipate the potential costs, so the Board decided to add an additional \$10,000 to legal fees.

A **motion** was then made by Mr. Ciriello, seconded by Mr. Petrovsky and passed unanimously adopting Resolution No. 2023-08, as amended above, and setting the Public Hearing for August 1, 2023.

#### 4. Consider the Addition of a July Meeting Date

The Board reached consensus adding another meeting in July. The Regular Meeting date would be July 4 so Mr. Petrovsky proposed the following Tuesday, July 11 at 1:00. The Board agreed with this date and time. The District Engineer has a conflict and will have to call in to the meeting.

#### 5. Discussion Regarding Lake Bank, Well Levels and Permitting

Mr. Petrovsky invited the South Florida Water Management District out to inspect the lakes. This is the permitting agency for the lakes. Upon inspection, the District was found to not be in compliance in several areas. The letter of noncompliance will be sent to the entity named on the permits. A request to transfer the permit from Barron Collier Limited and DiVosta to the CDD was filed, but not processed. Ms. Willson asked if District staff was able to interact with the DiVosta staff, if contacted. Mr. Petrovsky explained that the Pulte/DiVosta staff would invite the CDD to the Pulte office to discuss the issue after they receive the letter. Ms. Willson explained that the Board can have District staff (Manager, Counsel and Engineer) present, if desired, but only one Board Member.

#### N. ADMINISTRATIVE MATTERS 1. Manager's Report

It was noted that a Financial Report would be included in all future meeting books. This report shows YTD spending and all the expenditures made during the month. The Board was provided with he opportunity to ask questions. There were no questions at this time.

Ms. Krizen noted that the next meeting was scheduled for July 11, 2023, followed by the Public Hearing on the budget on August 1, 2023.

#### 2. Engineer's Report

Mr. Evans stated that he had been kept in the dark about many of the Board's inquiries and actions of the past few months. This makes it challenging to function as the District Engineer. Mr. Evans understands why the Board left him out of conversations and is confident in his work and the permits have all been inspected and approved. Mr. Evans asked the Board if there was any benefit for him to remain as the District's Engineer? He indicated he would resign if the Board would like however, that is not his desire.

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He is community and has spent a great deal of time and energy in the community. Mr. Spitzer replied that we were not there.

#### 3. Attorney's Report

Ms. Willson had nothing further to report. Ms. Willson provided the Board an opportunity to ask questions. There were none.

#### O. BOARD MEMBER COMMENTS

The HOA Architectural Committee would like to create a process after approval to ensure that residents who apply to install the District approved drains have installed them correctly. Currently the HOA receives the application and a damages/debris deposit. Once the work has been completed, the resident receives the deposit back. The HOA is not an engineer and is unable to assess if the drain was correctly installed. It was noted that this item would be added to the agenda for the next meeting.

#### P. ADJOURNMENT

There being no further business to come before the Board, the Regular Board Meeting was adjourned at 3:48 p.m. on a **motion** made by Mr. Ciriello, seconded by Mr. Spitzer and passed unanimously.

Chairman/Vice Chairman

Secretary/Assistant Secretary

Date Approved

#### **RESOLUTION NO. 2023-11**

#### A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT, AUTHORIZING THE ESTABLISHMENT OF A DISTRICT CHECKING/OPERATING ACCOUNT, DESIGNATING DISTRICT OFFICIALS AND/OR AUTHORIZED STAFF TO REVIEW, APPROVE AND ISSUE PAYMENT OF EXPENDITURES, SELECTING THE SIGNATORIES THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Winding Cypress Community Development District ("District") has established a District checking/operating account in order for the District to expend public funds of the District as authorized and required; and

WHEREAS, the Board of Supervisors (the "Board") of the District shall designate authorized staff and/or District officials to approve expenditures, via electronic or non-electronic approval processes, from the checking/operating account;

WHEREAS, the Board of the District has selected Todd Wodraska, Jason Pierman, Patricia LasCasas, Michelle Krizen and to serve as the signatories, as required, on the District checking/operating account; and

WHEREAS, all resolutions or parts thereof of the District in conflict with the provisions contained herein are to the extent of any such conflict, hereby superseded and repealed.

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

**Section 1.** The above recitals are hereby adopted.

<u>Section 2</u>. Each expenditure from the checking/operating account will require a minimum of two (2) approvals and a designated member of the Board, by an electronic approval procedure, will have an opportunity to review the District's expenditure(s) prior to release of payment(s).

<u>Section 3</u>. When necessary to write checks, the signatures of two (2) of the six (6) signatories named herein will be required on all District checks tendered from the District checking/operating account, as approved.

#### **PASSED, ADOPTED and becomes EFFECTIVE** this <u>29<sup>th</sup></u> day of <u>June</u>, 2023.

#### ATTEST:

#### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

By:\_\_\_

By:

Chairperson/Vice Chairperson

Secretary/Assistant Secretary

TO: Michelle Krizen, Winding Cypress CDD- District ManagerFROM: Scott Spitzer, SupervisorDATE: June 14, 2023RE: Special Litigation Counsel For Possible Claims and Litigation

I prepared this report pursuant to Board Resolution 2023-09, which authorized and directed me to conduct a preliminary search for special litigation counsel for the Board's consideration for engagement to evaluate, provide recommendations and possibly pursue claims and litigation against Divosta and affiliates, and perhaps others. Please include this in the Agenda package for the Board of Supervisors.

#### I. CLAIMS AND LITIGATION PROCESS AND COSTS

Below are <u>rough</u>, <u>preliminary estimates</u> from my search of key factors:

1)Estimated time frame: 24-30 months; 36 months+ if the case were to go to trial;

2)Lead litigation partner fees: \$425-\$685/hr. (other lawyers on team with same/lower rates)

3)<u>A complete contingency fee is available from the Ball Janik law firm.</u> A contingency fee or hybrid contingency fee (lower rate + % of settlement) for some of the other firms is possible, but this only occur subsequent to the delivery of an engineer's detailed litigation report.

4)Estimated pre-trial legal costs on an hourly basis: \$200,000-\$250,000; Engineers \$50,000-\$100,000

5)3 cost phases: I: some legal, engineer's litigation report; II. Pretrial discovery: heavy litigation some engineering costs; III. Trial: heavy legal and some engineering costs.

6)There will be some pre-trial discovery (depositions; written interrogatories), including preliminary motion practice (e.g. Pulte motion to dismiss the complaint). Useful to have a larger firm for this.

7)While the case could go to trial with significant additional costs, a trial would not be likely.

8)Settlement would likely be exclusively for a \$ amount (not repairs) less than 100% + a general release

#### **II.SUMMARY OF PROPOSED ACTIONS FOR APPROVAL**

#### 1)Amend the Proposed Budget

Given the time constraint of the current budget process and not yet finalized costs of special litigation counsel and special engineering consultant firm, add \$250,000 to cover engineering and legal costs to investigate and pursue claims and litigation for the design, operation and maintenance of the lake banks. It would be added to the budget on the understanding that all or most of it may not be used if an "Upfront Contingency Fee Arrangement" satisfactory to the Board can be arranged (see below).

2)Engage a Law Firm and an Engineering Firm

a) "Upfront Contingency Fee Arrangement": Engage a law firm, hopefully on an "up front" contingency fee basis based on a preliminary, no-cost engineering view.

<u>Proceed for an "upfront" contingency fee-based arrangement with the Ball Janik LLP law firm, utilizing</u> <u>Epic Forensics and Engineering, or another engineering firm;</u> or

b) "*Phase II Contingency Fee Arrangement*": Engage an engineering firm solely to conduct a full litigation report (waiting several months to begin due to budgeting process for a special engineering project if in excess of \$35,000), then negotiate with attorneys for a contingency fee or hybrid, partial continency fee (i.e. lower hourly fees + some % of damages), whose terms may or may not be acceptable to the CDD), or alternatively engage the law firm and engineering firm on a straight hourly basis.

#### ATTACHMENT A LAW FIRM REVIEW PROCESS

Below is information on the law firms I reviewed based on online searches, their websites, and my speaking with them either on Zoom, on a phone call or in a face-to-face meeting.

#### LAW FIRMS REVIEWED

The law firms have a concentration in Florida association law, knowledge about Florida "turn over" situations and experience in litigation against Florida residential developers. The partners I spoke to are experienced in this practice area. Several were recommended by other lawyers that I contacted. Each has interest in representing the CDD.

Ball Janik LLP
 Becker & Poliakoff, P.A.
 Tannenbaum, Lemole & Hill
 Anthony M. Lawhon, P.A
 Woods, Weidenmiller, Michetti and Rudnick, LLP

#### LAW FIRMS BACKGROUND

1.Ball Janik

4 offices in Florida (Miami, Orlando, Tampa and Sarasota); 85 employees in Florida Represent 200 HOAs and CDDs in Florida. No representation of residential developers in the past 5 years 20 active lawsuits against Pulte; cases against every major developer in the past 5 years Jeffrey Widelitz -Partner Orlando Office. His group manages 62 HOAs and CDD clients (407) 902-2092 Recommended by another firm in the field but outside their geographic area. Haven't represented residential developers in at least the last 5 years. Always will agree to an "upfront" contingency fee arrangement; covers fees and costs; no interest charge.

2.Becker & Poliakoff

11 offices in Florida, and offices New York and New Jersey; 125 attorneys

Represent 900 HOAs; sometimes represents developers

Participated in Florida Supreme Court victory in 2013 confirming developer has implied warranties of

fitness for improvements (e.g. retention basins) that provide "essential services" to homeowners.

Represented Spring Isle Community Association (Orlando: 324 homes) against Pulte in 2017.

Represent Del Webb Orlando HOA against Pulte in construction defects case filed in 2021.

Sanjay Kurian- Ft. Meyer Office Managing Shareholder (239) 433-7707; 9 Attorneys in the office.

Was co-counsel on NJ case against Hovnanian and received a \$9m verdict.

Might agree to a Phase II Contingency Fee Arrangement after detailed engineering report.

3.Tannenbaum, Lemole & Hille

Three-person firm work from several offices (Osprey, Ft. Meyers, Sarasota, Orlando and Clearwater) Has several cases pending against Pulte by HOAs; 4 decades representing HOAs against developers Obtained a \$6 1/2m verdict against Pulte on behalf of a 175-unit townhome development in North Florida 1 of 3 firms being considered by the Lely Master Assn. for turnover claims against Stock but were told they are not large enough to represent Lely, so they are in the process of hiring 2 associates to assist. Alan Tannenbaum -Partner Osprey Office (Sarasota County area) (941) 308-3157 Might agree to a Phase II Contingency Fee Arrangement after detailed engineering report.

4. Anthony M. Lawhon, Esq.

single office in Naples with two partners; Cary Goggin- Partner (239) 325-8956 Formerly Managing Litigation Partner at Goede, Deboest and Cross, Winding Cypress HOA's attorneys Highly recommended by Brian Cross of Goede Deboest and Cross Has litigated against Pulte, Lennar, D.R. Horton, Taylor Morrison Represented Marbella Lakes HOA (Naples: 490 homes) against developer with lake bank erosion issues

Might agree to Phase II Contingency Fee Arrangement after detail engineering report.

5.Wood, Weidenmiller, Michetti and Rudnick
3 offices (Naples, Bonita Springs, Jacksonville Beach)
Greg Woods- Shareholder Naples Office (239) 325-4070
Outside trial counsel for Collier County; has tried 70+ cases to jury verdict
Has litigated against Pulte
No contingency fee arrangements are acceptable.

TO: Michelle Krizen, Winding Cypress CDD- District ManagerFROM: Scott Spitzer, SupervisorDATE: June 14, 2023RE: Special Engineering Consultant Firm For Possible Claims and Litigation

While I wasn't asked to conduct a preliminary search for an engineering firm to conduct an evaluation for possible claims and litigation against Divosta and affiliates, and perhaps others, one firm with solid credentials (expertise and potential cost arrangements through the Ball Janik LLP law firm) has come to my attention. I would like the Board of Supervisors to have this information. Please include this in the Agenda package for the Board of Supervisors' review at the upcoming meeting.

**Epic Forensics and Engineering, Inc.** is a full-service engineering firm based in West Palm Beach, Florida with four offices in Florida (2 in West Palm Beach, Orlando and Aventura) and 38 licensed engineers. Their primary focus is forensic engineering for Associations (not developers) to assess, provide opinions and litigation forensics on design and operation of buildings and other structures, as well as to provide design services to mitigate construction defects.

I spoke to Ben Messerschmidt, a partner of the firm (561) 212-0753; Ben@EpicForensics.com)

They've represented many HOAs against developers.

This includes every HOA against developer G.L. Homes at all of their residential developments during the past 5 years, including the Parkland Golf and Country Club (1,200 homes), Boca Bridges and Seven Bridges (700 single family home development in a Delray Beach case filed in February, 2022). G.L. Homes is one of the nation's largest privately held builders of residential developments. They've represented the Jupiter Country Club (360 homes, 480 acres and 14 lakes and golf course) in its claims against Toll Brothers.

They are highly recommended by the Ball Janik law firm, which I believe is best suited to represent us.

They've worked closely and cooperatively with the Ball Janik firm in more than 10 cases against residential developers.

If their work were not part of an "upfront" contingency arrangement with the Ball Janik firm, they could provide an opinion within the \$35,000 limit on special engineering engagements not requiring a public procurement process. Further work on the case would involve additional costs and expenses.

#### **RESOLUTION 2023-12**

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING THE NEGOTIATION OF A CONTINGENCY FEES-BASED CONTRACT WITH BALL JANIK, LLP, SUBJECT TO BOARD OF SUPERVISOR REVIEW AND APPROVAL, AS SPECIAL LITIGATION COUNSEL, WHICH CONTRACT SHALL INCLUDE EPIC FORENSICS AND ENGINEERING, INC. OR ANOTHER ENGINEERING FIRM, AS THE SPECIAL ENGINEERING CONSULTANT FIRM, FOR THE INVESTIGATION, REPORT TO THE BOARD OF SUPERVISORS, AND TO PURSUE CLAIMS AND LITIGATION, IF NECESSARY, AGAINST DIVOSTA HOMES L.P. AND AFFILIATES, AND ANY OTHER RESPONSIBLE PARTIES, WITH RESPECT TO THE CDD RETENTION BASINS.

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

The Board of Supervisors (the "Board") of the Winding Cypress Community Development District (the "CDD") hereby authorizes the negotiation of a contingency fees-based contract with the law firm of Ball Janik LLP as special litigation counsel, and which contract shall include Epic Forensics and Engineering, Inc. or another engineering firm, as the special engineering consultant firm, for the investigation and report to the Board and to pursue claims and litigation, if necessary, against Divosta Homes L.P. and its affiliates, and any other responsible parties, with respect to the design, construction, and maintenance and repair of the CDD retention basins; and be it further resolved that

Board Member Scott Spitzer is hereby authorized and directed to negotiate, but not execute, a contingency fees-based contract for the engagement of Ball Janik LLP. As aforesaid. any such preliminarily negotiated agreement shall be brought back for Board review and consideration at a future publicly noticed and held Board meeting.

[Remainder of page intentionally left blank]

APPROVED AND ADOPTED this \_\_\_\_\_day of \_\_\_\_\_ 2023.

\_\_\_\_\_

ATTEST:

### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

Secretary / Assistant Secretary

Chairperson, Board of Supervisors

#### **RESOLUTION NO. 2023-13**

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT AMENDING RESOLUTION NO. 2023-08; AMENDING THE PROPOSED BUDGET AND SETTING THE DATE AND TIME FOR THE PUBLIC HEARING TO CONSIDER THE FISCAL YEAR 2023/2024 FINAL BUDGET AND ASSESSMENTS AND AUTHORIZING THE SECRETARY AND DISTRICT MANAGER TO TAKE CERTAIN ACTIONS TO ACCOMPLISH THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Supervisors ("Board") of the Winding Cypress Community Development District (the "District") is required by Chapter 190.008, *Florida Statutes*, to approve a Proposed Budget for each fiscal year; and

**WHEREAS**, the Board previously adopted Resolution 2023-08 approving a proposed budget and setting a public hearing for August 1, 2023; and

**WHEREAS,** the Board to has determined to make further changes to the Proposed Budget (the "Amended Proposed Budget") as attached hereto as Exhibit A; and

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

1. Resolution No. 2023-08 is hereby amended reflect the approval of the Amended Proposed Budget for Fiscal Year 2023/2024.

2. Pursuant to Chapter 190, Florida Statutes, a public hearing on the Amended Proposed Budget for Fiscal Year 2023/2024 is hereby declared and set for the following date, hour and location:

DATE: HOUR: 1:00 LOCATION: Clu 718

, 2023 1:00 p.m. Clubhouse at Winding Cypress 7180 Winding Cypress Drive Naples, Florida 34114

3. The District Manager is authorized to execute any and all necessary transmittals, certifications or other acknowledgements or writings, as necessary, to comply with all applicable notice requirements. The Secretary of the District is hereby directed to submit a copy of the of the Amended Proposed Budget to Collier County immediately upon approval of this Resolution as a supplement to the Proposed Budget which was submitted at least sixty (60) days prior to the public hearing date for adoption of the same.

4. Except as otherwise provided herein, all provisions of Resolution 2023-08 continue in full force and effect.

The invalidity or unenforceability of any one or more provisions of this 5. Resolution shall not affect the validity or enforceability of the remaining portions of this Resolution, or any part thereof.

This Resolution shall take effect upon its passage and adoption by the Board. 6.

### **PASSED, ADOPTED and EFFECTIVE** this <u>6<sup>th</sup></u> day of <u>June</u>, 2023.

**ATTEST:** 

#### WINDING CYPRESS **COMMUNITY DEVELOPMENT DISTRICT**

By:\_\_\_\_\_\_By:\_\_\_\_\_By:\_\_\_\_\_Chairperson/Vice Chairperson

Exhibit A: Amended Proposed Budget for Fiscal Year 2023/2024

# Winding Cypress Community Development District

## Proposed Budget For Fiscal Year 2023/2024 October 1, 2023 - September 30, 2024

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- I PROPOSED BUDGET
- II DETAILED PROPOSED BUDGET
- III DETAILED PROPOSED DEBT SERVICE FUND BUDGET (SERIES 2015)
- IV DETAILED PROPOSED DEBT SERVICE FUND BUDGET (SERIES 2019)
- V ASSESSMENT COMPARISON

#### PROPOSED BUDGET WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT FISCAL YEAR 2023/2024 OCTOBER 1, 2023 - SEPTEMBER 30, 2024

	FISCAL YEAR 2023/2024
REVENUES	 BUDGET
O&M (Operation & Maintenance) Assessments	 274,518
Debt Assessments - Series 2015	526,216
Debt Assessments - Series 2019	311,687
Interest Income	1,500
TOTAL REVENUES	\$ 1,113,921
EXPENDITURES	
Administrative Expenditures	
Supervisor Fees	1,200
Payroll Taxes - Employer	96
Management	38,808
Legal	15,500
Assessment Roll	5,000
Audit Fees	4,200
Arbitrage Rebate Fee	650
Insurance	6,700
Legal Advertisements	2,500
Miscellaneous	725
Postage	300
Office Supplies	575
Dues & Subscriptions	175
Trustee Fee	8,300
Continuing Disclosure Fee	1,000
Total Administrative Expenditures	\$ 85,729
Maintenance Expenditures	
Engineering/Inspections	20,000
Preserve Maintenance	79,700
Lake Bank Maintenance	50,000
Pipe Maintenance	20,000
Total Maintenance Expenditures	\$ 169,700
Total O&M Expenditures	\$ 255,429
REVENUES LESS EXPENDITURES	\$ 858,492
	,
Bond Payments - Series 2015	(486,750)
Bond Payments - Series 2019	(288,311)
BALANCE	83,431
County Appraiser & Tax Collector Fee	(38,378)
Discounts For Early Payments	(45,053)
EXCESS/ (SHORTFALL)	\$ -
Carryover Funds From Prior Year	0
NET EXCESS/ (SHORTFALL)	\$ -

#### DETAILED PROPOSED BUDGET WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT FISCAL YEAR 2023/2024 OCTOBER 1, 2023 - SEPTEMBER 30, 2024

	FISCAL YEAR	FISCAL YEAR	FISCAL YEAR	
	2021/2022	2022/2023	2023/2024	
REVENUES	ACTUAL	BUDGET	BUDGET	COMMENTS
D&M (Operation & Maintenance) Assessments	178,300	177,752		Expenditures Less Interest & Carryover/.925
Debt Assessments - Series 2015	526,393	526,216	526,216	Bond Payments/.925
Debt Assessments - Series 2019	311,909	311,687		Bond Payments/.925
nterest Income	908	180		Operating Account: \$300 - Preserve Account: \$1,200
TOTAL REVENUES	1,017,510	\$ 1,015,835	\$ 1,113,921	
EXPENDITURES				
Administrative Expenditures				
Supervisor Fees	0	1,200	1,200	Supervisor Fees
Payroll Taxes - Employer	0	96	96	Projected At 8% Of Supervisor Fees
lanagement	36,588	37,680	38,808	CPI Adjustment (Capped At 3%)
egal	8,629	15,500	15,500	FY 2022/2023 Expenditure Through Feb 2022 Was \$4,751
ssessment Roll	5,000	5,000	5,000	As Per Contract
Audit Fees	4,000	4,100	4,200	Accepted Amount Of 2022/2023 Audit
Arbitrage Rebate Fee	650	650	650	No Change From 2022/2023 Budget
nsurance	5,706	6,000		Fiscal Year 2022/2023 Expenditure Was \$6,134
egal Advertisements	2,058	2,500	2,500	No Change From 2022/2023 Budget
/iscellaneous	464	750		\$25 Decrease From 2022/2023 Budget
Postage	303	275		\$25 Increase From 2022/2023 Budget
Difice Supplies	588	550		\$25 Increase From 2022/2023 Budget
Dues & Subscriptions	175	175		No Change From 2022/2023 Budget
Trustee Fee	7,740	7,800		\$500 Increase From 2022/2023 Budget
Continuing Disclosure Fee	1,500	1,500		\$500 Decrease From 2022/2023 Budget
Fotal Administrative Expenditures				\$500 Declease From 2022/2025 Budget
	73,401	\$ 83,776	\$ 85,729	
Maintenance Expenditures				
Engineering/Inspections	27,088	8,500	20,000	FY 2022/2023 Expenditure Through March 2023 Was \$13,360
Preserve Maintenance	75,100	79,700	79,700	No Change From 2022/2023 Budget
ake Bank Maintenance	0	25,000	50,000	\$25,000 Increase From 2022/2023 Budget
Pipe Maintenance	0	0	20,000	For Testing And Cleaning
Fotal Maintenance Expenditures	\$ 102,188	\$ 113,200		
Total O&M Expenditures	\$ 175,589	\$ 196,976	\$ 255,429	
REVENUES LESS EXPENDITURES	841,921	\$ 818,859	\$ 858,492	
Sond Payments - Series 2015	(496,286)	(486,750)	(486,750)	2024 Principal & Interest Payments
Bond Payments - Series 2019	(294,081)	(288,311)	(288,311)	2024 Principal & Interest Payments
BALANCE	51,554	43,798	83,431	
	51,554	43,138	03,431	
County Appraiser & Tax Collector Fee	(14,435)	(35,039)	(38,378)	Three And One Half Percent Of Total Assessment Roll
Discounts For Early Payments	(38,548)	(41,134)		Four Percent Of Total Assessment Roll
	¢ (4.400)	¢ (00.077)	¢	
EXCESS/ (SHORTFALL)	\$ (1,429)	\$ (32,375)	<b>ə</b> -	
Carryover Funds From Prior Year	0	32,375	0	Carryover Funds From Prior Year
NET EXCESS/ (SHORTFALL)	\$ (1,429)	\$-	\$-	

#### DETAILED PROPOSED DEBT SERVICE FUND (SERIES 2015) BUDGET WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT FISCAL YEAR 2023/2024 OCTOBER 1, 2023 - SEPTEMBER 30, 2024

	FISCAL	YEAR	FISC	CAL YEAR	FI	ISCAL YEAR	
	2021/2	2022	20	)22/2023		2023/2024	
REVENUES	ACTU	JAL	В	UDGET		BUDGET	COMMENTS
Interest Income		31		25		100	Projected Interest For 2023/2024
NAV Tax Collection		496,285		486,750		486,750	Maximum Debt Service Collection
Total Revenues	\$	496,316	\$	486,775	\$	486,850	
EXPENDITURES							
Principal Payments		145,000		160,000		165,000	Principal Payment Due In 2024
Interest Payments		333,578		323,625		316,625	Principal Payment Due In 2024
Bond Redemption		0		3,150		5,225	Estimated Excess Debt Collections
Total Expenditures	\$	478,578	\$	486,775	\$	486,850	
Excess/ (Shortfall)	\$	17,738	\$	-	\$	-	

#### Series 2015 Bond Information

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

Par Amount As Of 1/1/23 = \$6,535,000

#### DETAILED PROPOSED DEBT SERVICE (SERIES 2019) FUND BUDGET WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT FISCAL YEAR 2023/2024 OCTOBER 1, 2023 - SEPTEMBER 30, 2024

	FISCAL YEAR	FISCAL YEAR	FISCAL YEAR	
	2021/2022	2022/2023	2023/2024	
REVENUES	ACTUAL	BUDGET	BUDGET	COMMENTS
Interest Income	17	25	100	Projected Interest For 2023/2024
NAV Tax Collection	294,081	288,311	288,311	Maximum Debt Service Collection
Total Revenues	\$ 294,098	\$ 288,336	\$ 288,411	
EXPENDITURES				
Principal Payments	75,000	85,000	85,000	Principal Payment Due In 2024
Interest Payments	208,938	203,031	201,344	Principal Payment Due In 2024
Bond Redemption	0	305	2,067	Estimated Excess Debt Collections
Total Expenditures	\$ 283,938	\$ 288,336	\$ 288,411	
Excess/ (Shortfall)	\$ 10,160	\$ -	\$ -	

#### 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
lssue Date = Maturity Date =	February 2019 November 2049		

Par Amount As Of 1/1/23 = \$4,240,000

#### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT ASSESSMENT COMPARISON

		Fiscal Year 2020/2021 Assessment*		Fiscal Year 2021/2022 Assessment*		Fiscal Year 2022/2023 Assessment*		Fiscal Year 2023/2024 Projected Assessment*
O & M For Phases 1 & 2 SF Villas	\$	232.13	\$	232.07	\$	232.06	\$	358.38
Debt For Phases 1 & 2 SF Villas	\$	849.00	\$	849.00	\$	849.00	\$	849.00
Total For Phases 1 & 2 SF Villas	\$	1,081.13	\$	1,081.07	\$	1,081.06	\$	1,207.38
O & M For Phases 1 & 2 SF 50' Units	\$	232.13	\$	232.07	\$	232.06	\$	358.38
Debt For Phases 1 & 2 SF 50' Units	\$	954.00	\$	954.00	\$	954.00	\$	954.00
Total For Phases 1 & 2 SF 50' Units	\$	1,186.13	\$	1,186.07	\$	1,186.06	\$	1,312.38
O & M For Phases 1 & 2 SF 65' Units	\$	232.13	\$	232.07	\$	232.06	\$	358.38
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	\$	1,292.13	\$	1,292.07	\$	1,292.06	\$	1,418.38
O & M For Phase 3 SF 50' Units	\$	232.13	\$	232.07	\$	232.06	\$	358.38
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	\$	1,661.13	\$	1,661.07	\$	1,661.06	\$	1,787.38
O & M For Phase 3 SF 65' Units	\$	232.13	\$	232.07	\$	232.06	\$	358.38
<u>Debt For Phase 3 SF 65' Units</u>	\$	1,544.00	\$	1,544.00	\$	1,544.00	<u>\$</u>	1,544.00
Total For Phase 3 SF 65' Units	<b>\$</b>	<b>1,776.13</b>	<b>\$</b>	<b>1,776.07</b>	<b>\$</b>	<b>1,776.06</b>	\$	1,902.38

\* Assessments Include the Following :

4% Discount for Early Payments

2% County Tax Collector Fee

1.5% County Property Appraiser Fee

Community Info	ormation:	Phases 1 & 2:		Phase 3:		Note:		
Phases 1 & 2:	554 Units	Villas:	152 Units	Villas:	0 Units	Developer made Phase 3 Bond Prepayment		
Phase 3:	212 Units	50' Lots:	270 Units	50' Lots:	136 Units	in January 2020 for 1 lot differential		
Total:	766 Units	65' Lots:	132 Units	65' Lots:	76 Units	(1 65' Lot Replaced with 1 50' Lot)		
		Total:	554 Units	Total:	212 Units			

June 15, 2023

Michelle Krizen Special District Services 2501 Burns Road, Ste. A Palm Beach Gardens, FL 33410

#### RE: Winding Cypress Agreement Termination

Dear Michelle,

I hereby terminate the agreement effective within 30 days of today. This could be effective sooner at the board's pleasure. I will work with your manager to assist in a smooth transition.

Should you have any questions, or require any additional information, please contact our office.

Sincerely,

Josh R Ewans

Josh R. Evans, P.E. President

#### **REQUEST FOR QUALIFICATIONS FOR ENGINEERING SERVICES FOR THE WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT**

#### *RFQ for Engineering Services*

The Winding Cypress Community Development District ("District"), located in Collier County, Florida, announces that professional engineering services will be required on a continuing basis for the District's Capital Improvement Plan, including stormwater management system, landscaping improvements and other public improvements authorized by Chapter 190, *Florida Statutes*. The engineering firm selected will act in the general capacity of District Engineer and provide District engineering services, as required.

Any firm or individual ("Applicant") desiring to provide professional services to the District must: 1) hold applicable federal, state and local licenses; 2) be authorized to do business in Florida in accordance with Florida law; and 3) furnish a statement ("Qualification Statement") of its qualifications and past experience on U.S. General Service Administration's "Architect-Engineer Qualifications, Standard Form No. 330," with pertinent supporting data. Among other things, Applicants must submit information relating to: a) the ability and adequacy of the Applicant's professional personnel; b) whether the Applicant is a certified minority business enterprise; c) the Applicant's willingness to meet time and budget requirements; d) the Applicant's past experience and performance, including but not limited to past experience as a District Engineer for any community development districts and past experience with Collier County; e) the geographic location of the Applicant's headquarters and offices; f) the current and projected workloads of the Applicant; and g) the volume of work previously awarded to the Applicant by the District. Further, each Applicant must identify the specific individual affiliated with the Applicant who would be handling District meetings, construction services, and other engineering tasks.

The District will review all Applicants and will comply with Florida law, including the Consultant's Competitive Negotiations Act, Chapter 287, *Florida Statutes* ("CCNA"). All applicants interested must submit eight (8) copies of Standard Form No. 330 and Qualification Statement by \_\_\_\_\_\_\_m on \_\_\_\_\_\_, 2023 to the attention of Michelle Krizen, Special District Services, Inc., 2501A Burns Road, Palm Beach Gardens, Florida 33410 ("District Manager's Office").

The Board shall select and rank the Applicants using the requirements set forth in the CCNA and the evaluation criteria on file with the District Manager, and the highest ranked Applicant will be requested to enter into contract negotiations. If an agreement cannot be reached between the District and the highest ranked Applicant, negotiations will cease and begin with the next highest ranked Applicant, and if these negotiations are unsuccessful, will continue to the third highest ranked Applicant.

The District reserves the right to reject any and all Qualification Statements. Additionally, there is no express or implied obligation for the District to reimburse Applicants for any expenses associated with the preparation and submittal of the Qualification Statements in response to this request.

Any protest regarding the terms of this Notice, or the evaluation criteria on file with the District Manager, must be filed in writing, within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after the publication of this Notice. The formal protest setting forth with particularity the facts and law upon which the protest is based shall be filed within seven (7) calendar days (including Saturdays, Sundays, and state holidays) after the initial notice of protest was filed. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object or protest with respect to aforesaid Notice or evaluation criteria provisions. Any person who files a notice of protest shall provide to the District, simultaneous with the filing of the notice, a protest bond with a responsible surety to be approved by the District and in the amount of Ten Thousand Dollars (\$10,000.00). Additional information and requirements regarding protests are set forth in the District's proposed Rules of Procedure, which are available from the District Manager.

Publish on \_\_\_\_\_, 2023 (DM: must be published at least 14 days prior to submittal deadline in a newspaper of general circulation. Please set submittal deadline based on when able to publish notice.)

#### WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

#### DISTRICT ENGINEER PROPOSALS

#### **COMPETITIVE SELECTION CRITERIA**

#### 1) Ability and Adequacy of Professional Personnel (Weight: 25 Points) Consider the capabilities and experience of key personnel within the firm including certification, training, and education; affiliations and memberships with professional organizations; etc. 2) Consultant's Past Performance (Weight: 25 Points) Past performance for other community development districts in other contracts; amount of experience on similar projects; character, integrity, reputation, of respondent; etc. 3) Geographic Location (Weight: 20 Points) Consider the geographic location of the firm's headquarters, offices and personnel in relation to the project. 4) Willingness to Meet Time and Budget Requirements (Weight: 15 Points) Consider the consultant's ability and desire to meet time and budget requirements including rates, staffing levels and past performance on previous projects; etc. 5) Certified Minority Business Enterprise (Weight: 5 Points) Consider whether the firm is a Certified Minority Business Enterprise. Award either all eligible points or none. 6) Recent, Current and Projected Workloads (Weight: 5 Points) Consider the recent, current and projected workloads of the firm.

7) Volume of Work Previously Awarded to Consultant by District (Weight: 5 Points)

Consider the desire to diversify the firms that receive work from the District; etc.

#### AGREEMENT FOR INTERIM DISTRICT ENGINEERING SERVICES

**THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES** (the "**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between:

**Winding Cypress Community Development District**, a local unit of specialpurpose government established pursuant to Chapter 190, *Florida Statutes*, and located in Collier County, Florida, with a mailing address of 2501A Burns Road, Palm Beach Gardens, Florida 33410 (the "**District**"); and

\_\_\_\_\_, a \_\_\_\_\_, with a mailing address of \_\_\_\_\_\_(the "Engineer").

#### RECITALS

**WHEREAS**, the District is a local unit of special purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, *Florida Statutes*, by ordinance of the Board of County Commissioners of Collier County, Florida; and

**WHEREAS**, the District is authorized to plan, acquire and/or maintain improvements, facilities and services in conjunction with the development and maintenance of the lands within the District; and

**WHEREAS**, the District intends to employ Engineer on an interim basis to perform engineering, construction administration, environmental management and permitting, financial and economic studies, as defined by a separate work authorization or work authorizations; and

**WHEREAS**, the Engineer shall serve as District's professional representative in each service or project to which this Agreement applies and will give consultation and advice to the District during performance of these services.

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained, the acts and deeds to be performed by the parties hereto and the payments by the District to the Engineer of the sums of money herein specified, it is mutually covenanted and agreed as follows:

**ARTICLE 1. INCORPORATION OF RECITALS.** The recitals stated above are true and correct and are incorporated by reference herein as a material part of this Agreement.

#### ARTICLE 2. SCOPE OF SERVICES.

- **A.** The Engineer will provide general engineering services for the District, including:
  - **1.** Preparation of any necessary reports and attendance at meetings of the Board.

- **2.** Assisting in meeting with necessary parties involving bond issues, special reports, feasibility studies or other tasks.
- **3.** Providing professional engineering services, including but not limited to, review and execution of documents under the District's Trust Indentures and monitoring of District projects.
- 4. Any other items requested by the Board.
- **B.** Engineer shall, when authorized by the Board, provide general services related to construction of any District projects, including but not limited to:
  - **1.** Periodic visits to the site, or full time construction management of District projects, as directed by District.
  - 2. Processing of contractors' pay estimates.
  - **3.** Preparation of, and/or assistance with, the preparation of work authorizations, requisitions, change orders and acquisitions for review by the District Manager, District Counsel, and the Board.
  - **4.** Final inspection and requested certificates for construction, including the final certificate of construction.
  - 5. Consultation and advice during construction, including performing all roles and actions required of any construction contract between District and any contractor(s) in which Engineer is named as owner's representative or "Engineer."
  - **6.** Any other activity related to construction as authorized by the Board.
- **C.** With respect to maintenance of the facilities, Engineer shall render such services as authorized by the Board.

**ARTICLE 3. METHOD OF AUTHORIZATION.** Each service or project shall be authorized in writing by the District. The written authorization shall be incorporated in a work authorization which shall include the scope of services, compensation, project schedule, and special provisions or conditions specific to the service or project being authorized and shall be in a form similar to the form set for in **Exhibit A** hereto ("**Work Authorization**"). Authorization of services or projects under this Agreement shall be at the sole option of the District.

**ARTICLE 4. COMPENSATION.** It is understood and agreed that the payment of compensation for services under this Agreement shall be stipulated in each Work Authorization. Services rendered by Engineer under this Agreement shall not exceed the amounts specifically authorized by each written Work Authorization and shall not exceed amounts in Section 287.055,

Florida Statutes for requiring competitive solicitation. One of the following methods will be utilized:

- A. Lump Sum Amount The District and Engineer shall mutually agree to a lump sum amount for the services to be rendered payable monthly in direct proportion to the work accomplished. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY FOUR, the District shall require the Engineer to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The price for any lump sum Work Authorization, and any additions thereto, will be adjusted to exclude any significant sums by which the District determines the Work Authorization was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments must be made within one (1) year following the completion of the work contemplated by the lump sum Work Authorization.
- B. Hourly Personnel Rates For services or projects where the scope of services is not clearly defined or recurring services or other projects where the District desires the use of the hourly compensation rates, the rates outlined in Exhibit
  B, attached hereto and incorporated by this reference, shall apply. The District and Engineer may agree to a "not to exceed" amount when utilizing hourly personnel rates for a specific work authorization.

**ARTICLE 5. REIMBURSABLE EXPENSES.** Reimbursable expenses consist of actual expenditures made by Engineer, its employees, or its consultants in the interest of the services for the incidental expenses as listed as follows:

- **A.** Expenses of transportation and living when traveling in connection with a project and fees paid for securing approval of authorities having jurisdiction over the project. All expenditures shall be made in accordance with Chapter 112, *Florida Statutes*, and with the District's travel policy.
- **B.** Expense of reproduction, postage and handling of drawings and specifications.

**ARTICLE 6. TERM OF AGREEMENT.** It is understood and agreed that this Agreement is for interim engineering services. It is further understood and agreed that the term of this Agreement will be from the time of execution of this Agreement by the parties until such time as the District notifies Engineer that it has entered into a subsequent agreement for engineering services.

**ARTICLE 7. SPECIAL CONSULTANTS.** When authorized in writing by the District, additional special consulting services may be utilized by Engineer and paid for on a cost basis.

**ARTICLE 8. BOOKS AND RECORDS.** Engineer shall maintain comprehensive books and records relating to any services performed under this Agreement, which shall be retained by

Engineer for a period of at least four (4) years from and after completion of any services hereunder, or such further time as required under Florida law. The District, or its authorized representative, shall have the right to audit such books and records at all reasonable times upon prior notice to Engineer.

#### ARTICLE 9. OWNERSHIP OF DOCUMENTS.

- A. Upon payment of all applicable compensation as properly invoiced and paid pursuant to Article 4, all rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement (the "Work Product") shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.
- **B.** Upon payment of all applicable compensation as properly invoiced and paid pursuant to Article 4, the Engineer shall deliver all Work Product to the District upon completion thereof, unless it is necessary for the Engineer in the District's sole discretion to retain possession for a longer period of time. Notwithstanding the foregoing, the Engineer agrees that delivery of any Work Product necessary to proceed with the ongoing work of the District shall not be withheld or unreasonably delayed solely based upon the timing of the invoicing or payment. Upon early termination of the Engineer's services hereunder, the Engineer shall deliver to the District all such Work Product, whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. The Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the District.
- **C.** The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. The Engineer hereby assigns to the District any and all rights the Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise, the preparation of such copyrightable or patentable materials or designs.

**ARTICLE 10. REUSE OF DOCUMENTS.** All documents including drawings and specifications furnished by Engineer pursuant to this Agreement are instruments of service. Such

documents are not intended or represented to be suitable for reuse by District or others on extensions of the work for which they were provided or on any other project. Any reuse without specific written consent by Engineer will be at the District's sole risk and without liability or legal exposure to Engineer. All documents including drawings, plans and specifications furnished by Engineer to District are subject to reuse in accordance with Section 287.055(10), *Florida Statutes*.

**ARTICLE 11. ESTIMATE OF COST.** Since Engineer has no control over the cost of labor, materials, or equipment or over a contractor's methods of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable cost provided as a service hereunder are to be made on the basis of its experience and qualifications and represent Engineer's best judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposals, bids, or the construction costs will not vary from opinions of probable cost prepared by Engineer. If the District wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitation established by the District will be considered additional services and justify additional fees.

# ARTICLE 12. INSURANCE.

- **A.** Subject to the provisions of this Article, the Engineer shall, at a minimum, maintain throughout the term of this Agreement the following insurance:
  - **1.** Workers' Compensation Insurance in accordance with the laws of the State of Florida.
  - 2. Commercial General Liability Insurance, including but not limited to, bodily injury (including contractual), property damage (including contractual), products and completed operations, and personal injury with limits of not less than One Million Dollars and No Cents (\$1,000,000.00) per occurrence, and not less than Two Million Dollars and No Cents (\$2,000,000.00) in the aggregate covering all work performed under this Agreement.
  - **3.** Automobile Liability Insurance, including without limitation bodily injury and property damage, including all vehicles owned, leased, hired, and non-owned vehicles with limits of not less than One Million Dollars and No Cents (\$1,000,000.00) combined single limit covering all work performed under this Agreement.
  - **4.** Professional Liability Insurance for Errors and Omissions, with limits of not less than One Million Dollars and No Cents (\$1,000,000.00).
- **B.** All insurance policies, except for the Professional Liability Insurance, secured by Engineer pursuant to the terms of this Agreement shall be written on an "occurrence" basis to the extent permitted by law.

- **C.** The District and the District's officers, supervisors, agents, staff, and representatives shall be named as additional insured parties, except with respect to the Worker's Compensation Insurance and Professional Liability Insurance for which only proof of insurance shall be provided. The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Section. No certificate shall be acceptable to the District, unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.
- **D.** If the Engineer fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Engineer shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

**ARTICLE 13. CONTINGENT FEE.** The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

**ARTICLE 14. AUDIT.** Records of the Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times. The Engineer agrees that the District or any of its duly authorized representatives shall have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement for a period of four (4) years or longer as required by law. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until either (a) the completion of an audit and resolution of all questions arising therefrom, or (b) three years after the expenditure of all funds under this Agreement, or (c) the public record retention period established by the District's records retention policy, whichever comes later.

**ARTICLE 15. COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** In performing its obligations under this Agreement, the Engineer and each of its agents, servants, employees, or anyone directly or indirectly employed by the Engineer, shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public or governmental authority having appropriate jurisdiction. If the Engineer fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Engineer or

any of its agents, servants, or employees, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

**ARTICLE 16. COMPLIANCE WITH PROFESSIONAL STANDARDS.** In performing its obligations under this Agreement, the Engineer and each of its agents, servants, employees, or anyone directly or indirectly employed by Engineer, shall maintain the generally accepted professional standard of care, skill, diligence, and professional competency for such work and/or services consistent with industry standards used by members of the Engineer's profession practicing under similar circumstances. Any designs, drawings, reports, or specifications prepared or furnished by Engineer that contain errors, conflicts, or omissions will be promptly corrected by Engineer at no cost to the District.

# ARTICLE 17. INDEMNIFICATION.

- **A.** The Engineer agrees, to the fullest extent permitted by law (except against professional liability claims), to indemnify, defend, and hold harmless the District and the District's officers, supervisors, agents, staff, and representatives (together, the "**Indemnitees**"), from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Engineer and other persons employed or utilized by the Engineer in the performance of this Agreement, including without limitation the Engineer's contractors, subcontractors, and subsubcontractors. To the extent a limitation on liability is required by Section 725.06 of the Florida Statutes or other applicable law, liability under this section shall in no event exceed the sum of One Million Dollars and No Cents (\$1,000,000.00) and Engineer shall carry, at his own expense, insurance in a company satisfactory to District to cover the aforementioned liability. Engineer agrees such limitation bears a reasonable commercial relationship to the Agreement and was part of the project specifications or bid documents.
- **B.** The Engineer agrees and covenants that nothing in this Agreement shall constitute or be construed as a waiver of the District's sovereign immunity pursuant to Section 768.28, *Florida Statutes*, or other law, and nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
- **C.** In the event that any indemnification, defense, or hold harmless provision of this Agreement is determined to be unenforceable, the provision shall be reformed in accordance with the mutual intent of the Engineer and the District to provide indemnification, defense, and hold harmless provisions to the maximum effect allowed by Florida law and for the benefit of the Indemnitees.

**D.** Neither District nor Engineer shall be liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to, loss of revenue, loss of production or loss of profit.

**ARTICLE 18. EMPLOYMENT VERIFICATION.** The Engineer agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.

**ARTICLE 19. INDEPENDENT CONTRACTOR.** In all matters relating to this Agreement, the District and the Engineer agree and acknowledge that the Engineer shall serve as an independent contractor of the District. Neither the Engineer nor employees of the Engineer, if any, are employees of the District under the meaning or application of any Federal or State unemployment, insurance laws, or any other potentially applicable laws. The Engineer agrees to assume all liabilities or obligations by any one or more of such laws with respect to employees of the Engineer, if any, in the performance of this Agreement. The Engineer shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Engineer shall have no authority to represent as agent, employee, or in any other capacity the District, unless set forth differently herein or authorized by vote of the Board.

**ARTICLE 20. CONTROLLING LAW.** The Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for all proceedings with respect to this Agreement shall be Collier County, Florida.

**ARTICLE 21. NOTICE.** All notices, requests, consents and other communications under this Agreement ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to Engineer:

Attn:

 B. If to District: Winding Cypress Community Development District 2501A Burns Road Palm Beach Gardens, Florida 33410 Attn: District Manager
 With a copy to: Kutak Rock LLP 107 West College Avenue Tallahassee, Florida 32301 Attn: District Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any

time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Engineer may deliver Notice on behalf of the District and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days' written notice to the parties and addressees set forth herein.

ARTICLE 22. PUBLIC RECORDS. Engineer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Engineer agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Engineer acknowledges that the designated public records custodian for the District is Michelle Krizen ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Engineer shall 1) keep and maintain public records required by the District to perform the Services; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the Engineer does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the Agreement, transfer to the District, at no cost, all public records in Engineer's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Engineer, the Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

# IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEERS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 630-4922, MKRIZEN@SDSINC.ORG, OR 2501A BURNS ROAD, PALM BEACH GARDENS, FLORIDA 33410.

**ARTICLE 23. NO THIRD PARTY BENEFITS.** Nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by operation of law.

**ARTICLE 24. SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

**ARTICLE 25. ASSIGNMENT.** Except as provided otherwise in this Agreement, neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Any purported assignment without such written consent is void. Nothing in this paragraph shall prevent the Engineer from employing such independent professional associates and consultants as Engineer deems appropriate and consistent with this Agreement.

**ARTICLE 26. CONSTRUCTION DEFECTS.** ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, *FLORIDA STATUTES.* 

**ARTICLE 27. AMENDMENT.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing that is executed by both the District and the Engineer.

**ARTICLE 28. ARM'S LENGTH TRANSACTION.** This Agreement reflects the negotiated agreement of the District and the Engineer, each represented by competent legal counsel. Accordingly, this Agreement shall be construed as if both parties jointly prepared it, and no presumption against one party or the other shall govern the interpretation or construction of any of the provisions of this Agreement.

**ARTICLE 29. INDIVIDUAL LIABILITY.** UNDER THIS AGREEMENT, AND PURSUANT TO THE REQUIREMENTS OF SECTION 558.0035, *FLORIDA STATUTES*, THE REQUIREMENTS OF WHICH ARE EXPRESSLY INCORPORATED HEREIN, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE ENGINEER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

**ARTICLE 30. TERMINATION.** The District may terminate this Agreement for cause immediately upon notice to Engineer. The District or the Engineer may terminate this Agreement without cause upon thirty (30) days' written notice. At such time as the Engineer receives notification of the intent of the District to terminate the Agreement, the Engineer shall not perform any further services, unless directed to do so in writing by the District. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential damages of any kind (including but not limited to lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

**ARTICLE 31. HEADINGS FOR CONVENIENCE ONLY.** The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

**ARTICLE 32. ENFORCEMENT OF AGREEMENT.** In the event that either the District or the Engineer is required to enforce this Agreement by court proceedings or otherwise, then the substantially prevailing party shall be entitled to recover from the other party all costs incurred,

including reasonable attorney's fees, paralegal fees, expert witness fees, and costs at all judicial levels.

**ARTICLE 33. ACCEPTANCE.** Acceptance of this Agreement is indicated by the signatures of the authorized representatives of the District and the Engineer in the spaces provided below.

**ARTICLE 34. COUNTERPARTS.** This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

**ARTICLE 35.** E-VERIFY. The Engineer shall comply with and perform all applicable provisions of Section 448.095, *Florida Statutes*. Accordingly, to the extent required by Florida Statute, Engineer shall register with and use the United States Department of Homeland Security's E-Verify system to verify the work authorization status of all newly hired employees. The District may terminate this Agreement immediately for cause if there is a good faith belief that the Engineer has knowingly violated Section 448.09(1), *Florida Statutes*. By entering into this Agreement, the Engineer represents that no public employer has terminated a contract with the Engineer under Section 448.095(2)(c), *Florida Statutes*, within the year immediately preceding the date of this Agreement.

**ARTICLE 36. COMPLIANCE WITH SECTION 20.055**, *FLORIDA STATUTES*. The Engineer agrees to comply with Section 20.055(5), *Florida Statutes*, to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to such section and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), *Florida Statutes*.

**ARTICLE 37. SCRUTINIZED COMPANIES STATEMENT.** Engineer certifies it: (i) is not in violation of Section 287.135, *Florida Statutes;* (ii) is not on the Scrutinized Companies with Activities in Sudan List; (iii) is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; (iv) does not have business operations in Cuba or Syria; (v) is not on the Scrutinized Companies that Boycott Israel List; and (vi) is not participating in a boycott of Israel. If the Engineer is found to have submitted a false statement with regards to the prior sentence, has been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, has engaged in business operations in Cuba or Syria, and/or has engaged in a boycott of Israel, the District may immediately terminate the Contract.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed on the day and year first above written.

Attest:

## WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT

Secretary / Assistant Secretary	Chairperson / Vice Chairperson, Board of Supervisors	
Witness	By: Its:	

**EXHIBIT A:** Form of Work Authorization **EXHIBIT B:** Rate Schedule

# Exhibit A

# Form of Work Authorization

\_\_\_\_\_, 2023

Winding Cypress Community Development District Collier County, Florida

# Subject:Work Authorization Number \_\_\_\_Winding Cypress Community Development District

Dear Chairperson, Board of Supervisors:

("Engineer"), is pleased to submit this work authorization to provide interim engineering services for the Winding Cypress Community Development District (the "District"). We will provide these services pursuant to our current agreement dated \_\_\_\_\_\_, 2023 ("Engineering Agreement") as follows:

#### I. Scope of Work

The District will engage Engineer to perform general District Engineering Services on an interim basis.

#### II. Fees

The District will compensate Engineer pursuant to the hourly rate schedule contained in the Engineering Agreement. Such compensation shall not exceed the Section 287.055, Florida Statutes, thresholds above which requires competitive solicitation.

This proposal, together with the Engineering Agreement, represents the entire understanding between the District and Engineer with regard to the referenced work authorization. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Upon receipt, we will promptly schedule our services.

Thank you for considering \_\_\_\_\_\_. We look forward to helping you create a quality project.

APPROVED AND ACCEPTED

Sincerely,

By:

Authorized Representative of Winding Cypress Community Development District

Date: \_\_\_\_\_

Exhibit B Rate Schedule



June 26, 2023

Dear Board of Directors:

1806 Old Okeechobee Rd., Suite A West Palm Beach, Florida 33409 Ph: 561-581-8800 www.epicforensics.com

Thank you very much for the opportunity to present our Statement of Qualifications to represent your Homeowners' Association ("Association") with the Florida Statute 558 transition process at the Winding Cypress Homeowners' Association, Inc. ("Property").

## **COMPANY INFORMATION**

#### *Solution of Firm*

Epic Forensics & Engineering, Inc. ("Epic") is a full-service consulting firm specializing in Florida Statute Chapter 558 Turnovers ("558") on large-scale homeowner and luxury high-rise condominium associations. We encourage you to visit out our website at <u>www.epicforensics.com</u> for further detail on the services we offer and clients we serve.

Epic has an in-house staff of 40+ individuals ranging from Professional and Junior Engineers, Specialized Technicians, and Administrative Support. Epic currently employs over 10 Professional Engineers with backgrounds in Civil, Structural, Mechanical, and Fire Protection. Approximately 85% of Epic's production staff are engineers, being able to provide a much better value to our Clients from a unified knowledge base from schooling, and all actively work on 558 projects.

#### *Staff Experience*

Epic is structured as three distinct groups: Forensics, Engineering Design, and Construction Administration.

The Forensics group is responsible for producing forensic engineering studies and providing expert testimonies during various legal phases, including trial. As a firm, we have successfully represented hundreds of community associations during the 558 process. Our experts have over 200 years of combined engineering experience and have provided hundreds of hours of mediation and deposition testimony.

The Engineering Design group provides traditional engineering design, plans, and specifications for new, renovation, and restoration construction. During the course of a 558 project, the need to utilize these services to immediately address deficiencies that cannot wait until any formalized settlement occurs may be needed.

The Construction Administration group acts primarily as the Association's representation during the construction phase of a project. They assist with the contractor bidding process and perform construction and threshold inspections all the way through to the project completion.

Attached to this letter, are a set of staff Curricula Vitae (CV) of some of our proven engineering experts. The CVs will provide the technical qualifications of our staff that will be involved with this project. Additional CVs can be made available upon request.



### *Experience with Similar Projects*

Epic has assisted on several comparable Homeowners' Associations to Winding Cypress Homeowners' Association, Inc. Below is a list of notable properties we have been involved with along with some key property features:

- Seven Bridges (Delray Beach, FL)
  - Developer: GL Homes
  - Property Features: 701 residences, clubhouse, fitness center and studio, locker rooms, pro shop, resort-style pool, tennis courts, indoor and outdoor basketball courts, restaurant, lakes, fountains, access roadways and sidewalks.
- The Bridges (Delray Beach, FL)
  - Developer: GL Homes
  - Property Features: 591 residences, clubhouse, lakes, fountains, bridges, tennis courts, basketball court, resort-style pool, site lighting, guardhouse, site parking, drainage areas, structures and boundary walls, access roadways and sidewalks.
- Valencia Bay (Boynton Beach, FL)
  - Developer: GL Homes 55+ Community
  - Property Features: 582 residences, clubhouse, fitness center, yoga / exercise room, locker rooms, resort-style pool, tennis courts, pro shop, pickleball courts, handball courts, bocce ball courts, 1/2-court basketball, indoor/outdoor restaurant, outdoor poolside bar, Grand Ballroom, lakes, fountains, roadways and sidewalks.
- Valencia Cay (Port St. Lucie, FL)
  - Developer: GL Homes 55+ Community
  - Property Features: 1,071 residential units, clubhouse which includes resort style pool, spa, card room, social room, arts & crafts studio, catering kitchen, indoor/outdoor restaurant, and event lawn, access roadways and sidewalks.
- Valencia Cove (Boynton Beach, FL)
  - Developer: GL Homes 55+ Community
  - Property Features: 822 residences, clubhouse, lakes, tennis and bocce ball courts, basketball court, resort-style pool, site lighting, guardhouse, general site parking, drainage areas, structures and boundary walls, access roadways and sidewalks.
- Jupiter Country Club (Jupiter, FL)
  - Developer: Toll Brothers
  - Property Features: 556 residences, golf course, fitness center, aerobics studio, lakes, fountains, tennis courts, resort-style pools, men's and women's locker room, restaurant, access roadways and sidewalks, and other property elements.

# Parkland Golf and Country Club (Parkland, FL)

- Developer: Toll Brothers
- Property Features: 880 residences, lakes, fountains, guardhouses, site drainage, irrigation, landscaping, and other property elements.



# Customer References

- Valencia Bay (Boynton Beach, FL)
  - Lauren Wolfe
     561.336.2665
     vbaypm@langmanagement.com
- The Bridges
  - Carmen Roozrokh (Property Manager and Regional Director at GRS Management) 561.404.9253 croozrokh@grsmgt.com
- Jupiter Country Club
  - Michelle Arnold (Former Property Manager) 561.386.9779 <u>mbank@campbellproperty.com</u>
- Parkland Golf and Country Club
  - Mary Banmiller (Property Manager) 954.856.1916
     <u>mbanmiller@campbellproperty.com</u>
- The Ritz Carlton Residences (Sunny Isles Beach, FL)
  - Janine Conello (Property Manager) 305.709.0590

# **PROJECT APPROACH - METHODOLOGY**

Epic shall designate a project manager as the Association's contact for this project, who will be responsible for all project-related communications with the Association and the Association's attorney. The following steps are the general methodology of our projects.

# *Property Condition Assessment*

Epic will perform a visual, non-intrusive PCA<sup>1</sup> of the Property's common elements within the limits of the Association. In addition to the requirements of ASTM E2018, professional civil, structural, and mechanical engineers, licensed in the State of Florida, will be assigned to evaluate these systems of the Property.

The PCA shall consist of the following:

- Review the 'As-built' construction plans and specifications for the Property.
- Examine applicable codes and life safety codes relevant to the Property.
- Examine the list of deficiencies suspected to exist as furnished by the Association.
- Perform a visual review of the readily accessible elements included within the scope of work. At a minimum, these elements may include Site Civil, Structural Systems, Mechanical, Electrical, and Plumbing ("MEP") Systems, Roofing, and Glass and Glazing.

<sup>&</sup>lt;sup>1</sup> In general accordance with ASTM E2018, "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process" and the International Association of Certified Home Inspectors.



# 🗧 Engineer's Report

Following the on-site evaluations, Epic will prepare a written professional engineering report concerning the condition of the Property. The PCA Report is intended to describe the following, if applicable to place parties associated with the design and construction of the Property on notice:

- Observed construction deficiencies with their approximate location.
- Observed conditions of construction defects, deviations from plans, and code violations.
- State discipline to which the related deficiency pertains to.
- State the criterion in which, in Epic's opinion, substantiates the construction defect observed.
- Observed deficiencies will be compiled into a List of Deficiencies ("LOD") matrix for comparison and analysis.

# *Additional Services*

Epic can provide and coordinate additional services after or during the PCA. Some of the common services needed are listed below:

- Destructive Investigations.
- Preliminary Opinion of Probable Cost.
- Expert Testimony.

# **PROJECT SCHEDULE**

Epic will provide our services as expeditious as practicable to meet a mutually agreed-upon schedule. A typical schedule is as follows:

- Field work commences with two (2) weeks after receiving "Client Provided Information", such as plans and documents.
- The Progress Report will be submitted to the Association's Counsel approximately 120 days following receipt of the "Client Provided Information." Epic can accommodate a shorter time period, if requested.
- The Signed Report will be submitted within two (2) weeks of receiving the Association's Progress Report comments in writing.



#### CONCLUSION

Following your review of this letter, Epic is available to address any additional questions and/or concerns that may arise. At the appropriate time, and in mutual agreement with the Transition Engineering Subcommittee or Association, a date to perform our preliminary walkthrough shall be scheduled to ultimately provide the Association a formal Agreement.

Thank you again for this opportunity. Should you have any questions, please contact me at 561-581-8800.

Respectfully Submitted,

**EPIC FORENSICS & ENGINEERING, INC.** Registry 30519

Ben Messerschmidt, P.E. Executive Director

Attachments

• Curricula Vitae of Select Epic Staff



# CURRICULUM VITAE BEN MESSERSCHMIDT, P.E. Executive Director / Forensic Engineer



# YEARS OF EXPERIENCE: 14

#### EDUCATION

Bachelor of Science in Civil Engineering, University of Florida, 2010

#### REGISTRATIONS

Professional Engineer in Florida, P.E. No. 78752 (2015)

National Association of Underwater Instructors, Open Water Diver, #mess092886bersd

International Institute of Building Enclosure Consultants, #47382

National Roofing Contractors Association, #414094

International Concrete Repair Institute Member

Sealant, Waterproofing & Restoration Institute Member

#### PROFESSIONAL EXPERIENCE

Executive Director Epic Forensics & Engineering, Inc., West Palm Beach, FL 2014 - Present

Civil / Structural Analyst Kimley-Horn and Associates, Inc., West Palm Beach, FL 2010 – 2014

Construction Estimator / Inspector Intern, Berman Property Maintenance and Construction, Orlando, FL 2009

Project Intern Barton Malow Company, Jacksonville, FL 2008

#### PROFESSIONAL SUMMARY

Mr. Messerschmidt's work experience ranges from forensic and engineering assessments of mid- and high-rise luxury condominiums, master planned residential communities, residential buildings, parking structures, and accident investigation involving automobiles, structural failures, and building code compliance deficiencies to cellular site design and construction, elevated platform design and retrofits, design of underground utilities, and traffic impact analyses. As a certified diver, he performs condition assessments of seawalls, pilings, and overall site conditions to provide comprehensive condition assessment reports.

#### **PROFESSIONAL DEVELOPMENT**

Structural Building Condition Surveys: Looking for Trouble, ASCE, Lake Worth, FL

Advanced Florida Building Code Update, DBPR, FHBA and FBC Seminar, West Palm Beach, FL

Airfield Pavement Inspection Training, Florida Department of Transportation (FDOT) Statewide Pavement Management Program, Orlando, FL

Airfield Pavement Distress Repair Training, FDOT Statewide Pavement Management Program, Orlando, FL

Understanding Design and Construction Defects, The Construction Specifications Institute, Deerfield Beach,  $\mathsf{FL}$ 

Deciphering Building Code Provisions for Structural Renovation, American Society of Civil Engineers (ASCE), West Palm Beach, FL

Condition Evaluation of Existing Structures, Concrete and Steel, ASCE, West Palm Beach,  $\mathsf{FL}$ 

Mitigating Effects of Corrosion and Deterioration in Construction, ASCE, West Palm Beach,  $\mathsf{FL}$ 

Engineering Practice for Wetting-Induced Collapse of Soil, ASCE, West Palm Beach,  $\mathsf{FL}$ 

Applying Expertise as an Engineering Expert Witness, Kimley-Horn and Associates, Inc., West Palm Beach, FL

#### **RELEVANT EXPERIENCE**

*Property Condition Assessments:* mid- and high-rise condominiums, single and multi-family residential communities, marinas, boat yards, office buildings, bridges, historical structures, warehouses, and airports.

*Forensic:* building assessments, building settlements, hurricane damage, marinas and waterfront facilities (including underwater investigations), vehicular accident investigation, slip and fall, and building code compliance.

*Civil Engineering:* airports, roadways, marinas, roofs, rooftop structures, elevated equipment platforms, recreational decks, retaining walls, and traffic analyses.



# CURRICULUM VITAE SARIBEL GARCIA, P.E.

**Forensic Engineer** 

# YEARS OF EXPERIENCE: 10

#### EDUCATION

Bachelor of Science in Civil Engineering, Florida Atlantic University

#### REGISTRATIONS

Professional Engineer in Florida, P.E. No. 91901

EDI Level 2 Certified and Adhered Stone Veneer Certified, EDI Number FL-150

#### **PROFESSIONAL EXPERIENCE**

Forensic Engineer Epic Forensics & Engineering, Inc., Orlando, FL 2022 - Present

Forensic Engineer NV5, Inc., Hollywood, FL 2012 – 2022

#### **PROFESSIONAL SUMMARY**

Mrs. Garcia's work experience in forensic and engineering assessments ranges from single-family residences to high-rise condominiums and commercial buildings. Her experience includes several construction types such as cast-inplace concrete, CMU, pre-cats concrete panels, steel, and wood structures. Her primary focus has been the building envelope including stucco, fenestration, waterproofing, concrete protection, and more. Mrs. Garcia has extensive experience in forensics engineering defense.

#### **PROFESSIONAL DEVELOPMENT**

Below Grade Waterproofing & Design, The Art of Metal Roofing, Building Enclosure & Code Related Performance & Hurricane IRMA, PVC-TPO and SBS, Stucco & EIFS, Roof Consultants Institute, Ft Lauderdale, FL.

Glass and Metal Symposium, Crawford-Tracey Corporation, Davie, FL.

Certified F-Number Technician Training, Allen Face & Company, Miami Lakes, FL.

Training and Certification of Field Personnel for unbonded Post-Tensioning Level 1 and 2, Post Tensioning Institute, FL.

#### **RELEVANT EXPERIENCE**

*Projects*: mid- and high-rise condominiums, single and multi-family residential communities, hotels, office buildings, parking structures, marinas, historical structures, warehouses, seawalls, and schools.

*Property Condition Assessments:* Post-construction building finishes inspections, including flooring, drywall, stucco, paint, and sealants. Determine the cause of damages and allocate responsibility based on the observations. Recommend repairs and appropriate repair procedures based on building conditions and applicable codes and standards.

*Consulting Services:* investigations, assessments, drawings review, developing repair protocols, and providing quality assurance.

*Forensic investigations:* including wall claddings, windows, curtain wall systems, and waterproofing as part of building envelope investigations and construction defect litigation. Analyze and prepare data for litigation and prepare expert reports.

*Concrete failure analysis:* sample collection and preparation of repair protocols. Inspection of steel reinforcement and post-tensioned tendons repairs.

*Construction Quality Assurance:* Prepare repair protocols and oversee repairs on site as the Special Inspector Authorized Representative. Supervise conformance with repair protocols and code compliance, including the restoration of tiled walls, post-tensioned tendons, concrete, masonry, wood structure, wood sheathing, coatings, waterproofing, and sealants.



# CURRICULUM VITAE JUAN A. BORGES, P.E. Forensics Project Engineer

EDUCATION

Bachelor of Civil Engineering, Catholic University, Washington, D.C.

#### REGISTRATION

Florida Professional Engineer, #40888, 1989

Post-Tensioning Institute (PTT) Level 2 Unbonded PT Inspector

ISO 14000 Environmental Lead Auditor

OSHA HAZWOPER Certified

#### **PROFESSIONAL EXPERIENCE**

EPIC Forensics & Engineering, Inc. – Aventura, Florida Senior Forensics Engineer 2022 to Present

NV5 Inc., – Hollywood, Florida Senior Project Manager 2012 to 2022

Bureau Veritas North America, Inc., – Miami, Florida Senior Project Manager 2010 to May 2012

KJB & Associates, Inc., – Miami, Florida Director of Engineering 2008 to 2010

Sim–G Technologies, Inc., – Miami, Florida Engineering Director 2006 to 2008

TY Lin, Inc., – Miami, Florida Subconsultant 2005 to 2006

#### **PROFESSIONAL SUMMARY**

Miami Access Tunnel/Port of Miami Engineering & Environmental Support/Studies 2010 – 2012

Mr. Borges is the Senior Project Manager responsible for the Port of Miami Access Tunnel Project. Bureau Veritas provides Environmental and Engineering support services to Bouygues Civil Works Florida. This project involves the advancement of a 45-foot diameter tunnel boring machine (TBM) twice under the main channel of the Port of Miami (POM) for a distance in excess of <sup>3</sup>/<sub>4</sub> miles each, to install twin tunnels for the ingress and egress of vehicular traffic to the POM. Mr. Borges has been in charge for the performance of community noise and vibration studies, benthic and bay bottom surveys, marine mammal watch training, asbestos and lead surveys, hazardous materials inventories for bridge and building demolitions associated with the project.

**Dewatering Permitting Program for Florida Power and Light (FPL)** *Permitting/Environmental Assessments* 

2010 –2012

Mr. Borges is the Senior Project Manager responsible for the development of the FPL Dewatering Permitting Program at Bureau Veritas for FPL sites associated with the installation of power utility and customer service points. Responsibilities include interacting with FPL project managers, utility contractors, regulators, municipalities, and developers to determine permit requirements and effective permitting strategies to obtain Miami-Dade County Storm Water Class V Permits as well as South Florida Water Management District Water Use Permits throughout Miami-Dade County.

ISO 14001/Environmental Management System Implementation/Audits 2010 –2012

Mr. Borges is the Senior Project Manager responsible for the ISO 14001 and Environmental Compliance Audit Program at the Miami International Airport (MIA). MIA is the first international airport to become ISO14001 certified in the United States. Bureau Veritas created Greenpoint, a paperless environmental management system, which integrates MIA's three separate ISO 14001 certifications (Maintenance, Civil Engineering and Environmental, and Commodities Divisions) into one universal electronic system. Raider Environmental Services, Inc., – Miami, Florida Project Manager 2005

Shaw Environmental and Infrastructure, Inc., – Miami, Florida Project Manager 2000 to 2005

Miami-Dade Aviation Department – Miami, Florida Professional Engineer 1993 to 2000

Miami-Dade Building and Zoning Department – Miami, Florida Building Inspector 1993

Garmon Construction – Miami, Florida Construction Manager 1992 to 1993

Miami-Dade Transit Agency – Miami, Florida Environmental Manager 1990 to 1992

Miami-Dade Environmental Resources Management (DERM) – Miami, Florida Environmental Engineer 1986 to 1990

City of Miami Beach Public Works – Miami, Florida Civil Engineer 1980 to 1986 Marlins Ballpark Dewatering Plan Design and Permitting 2009 – 2011

Mr. Borges was the Design Engineer of the Dewatering System for the Public Infrastructure Phase of the Marlins Ballpark. Services included: contractor evaluation, site geotechnical and environmental review, evaluation of existing stormwater system capacity and associated environmental impacts coupled with the dewatering activities, and the preparation and submittal of DERM Class V and SFWMD Water Use Permit Applications for processing, monitoring, and reporting required by permit conditions.

Miami International Airport (MIA) North Terminal Development Environmental Support ServicesProgram

#### 2000 - 2006

In responsible charge of a \$13 Million environmental construction/support contract during the construction of MIA's North Terminal Development Program. Scope of Work included: dewatering treatment system selection, permit preparation (DERM Class V and SFWMD Water Use Permits), implementation, and environmental compliance reporting. Preparation, negotiation, implementation, and compliance reporting of the Project's Soil Management Plan. Design fueling system abandonment and area restoration, site inspections during construction, and reporting as required by permit conditions to the stakeholders.

Stormwater Sewer System Inspection and Evaluation Stormwater Sewer and System Inspection, Evaluation & Certification 2006 – 2009

Performed Stormwater System performance evaluations and directed system repairs, upgrades as needed, and issuance of 5-year certification required of Stormwater Systems located in Broward County, Florida. Televising and reporting of results of CCTV inspections of Stormwater and Sanitary Sewer Facilities.

MIA Runway 826 Program Environmental Support Services 2004 – 2005

Preparation of DERM Class V and SFWMD Water Use Permits related to Dewatering permits. Determination of capacity of stormwater system ability to receive dewatering discharges using SFWMD calculations, submittal, implementation, and compliance reporting associated with contractor dewatering activities during runway construction activities. Preparation and submittal of Cadmium and Lead Soil Stabilization Plan to the FDEP. Upon approval, implemented said plan, including stabilization, monitoring, sampling, and preparation of final report requirements. US Army Corps of Engineers Stormwater Treatment Area Demonstration Project Stormwater Construction Project/Services

2006 - 2008

Mr. Borges was the Project Manager and Quality Control Representative responsible for the construction and implementation of a 640 Acre stormwater treatment area in Wellington, Florida. This demonstration facility was constructed for the U.S. Army Corp of Engineers as a treatment alternative for phosphorous-contaminated surface waters associated with the Everglades Restoration Program. Activities included: the construction of levees and surface water treatment cells, drainage structures, dewatering, SWPPP, NPDES and wildlife compliance monitoring, and reporting.

Pavarini Construction School Projects Environmental Inspections Support Services 2006 – 2007

Performed environmental compliance, SWPPP, and NPDES inspections at various school sites throughout Miami-Dade, Broward, and Palm Beach during the construction phase of new schools.

**DERM Groundwater, Surface Water, and Soil Contamination Cleanup Contract Contractor** *Environmental Assessment, Remediation & Response Services* 

2000 - 2006

Performed Project Management of DERM Contract for various environmental projects. Projects included an emergency response to spills into stormwater systems, including surface water, groundwater, and soils. Evaluation of impacts and remedial strategies, including implementation and monitoring, and regulatory reporting.

MIA Pan Am Main Base Assessment, Remediation & Closure Environmental Assessment, Remediation & Closeout Services

#### 1993 – 2000

Mr. Borges was the Project Manager responsible for an Environmental Program in excess of \$10 million that included: environmental compliance reviews, assessment, remediation design, and implementation strategies, and regulatory monitoring and reporting, associated with active 80-acre aircraft maintenance, parking, and taxi lane site at the MIA. Environmental activities included: assessment and identification of five contaminated areas within site, a 57,000ton contaminated soils source removal design review of restoration requirements of the pavement areas, and management plan (and others), tank and aircraft fuel system compliance issues, development of an environmental site master plan, evaluation and implementation. Stormwater system and manatee inspections during construction activities and dewatering events impacting the site.



June 26, 2023

Board of Directors Winding Cypress Homeowners Association, Inc Special District Services, Inc. 2501 A Burns Road Palm Beach Gardens, Florida 33410

1806 Old Okeechobee Road Suite A West Palm Beach, FL 33409 Ph: 561-581-8800 www.epicforensics.com

## **Re:** Agreement for "On-Call" Professional Engineering Services

Dear Board of Directors:

**Epic Forensics & Engineering, Inc.** ("Epic") is pleased to submit this letter agreement (the "Agreement") to **Special District Services, Inc.** ("Client" or "Association") for providing professional engineering services. Our project understanding, scope of services, schedule, and fee are below.

#### **PROJECT UNDERSTANDING**

In conversations with you, it is our understanding that the Client would like engineering representation. The Client would like to establish an "on call" agreement with Epic, such that Epic will provide professional engineering services ("Services") for the Client. Epic will perform Services as requested by the Client, or its designated representative, which shall be governed by this Agreement and its standard provisions.

Based on this understanding, we offer to perform the following Scope of Services:

# **SCOPE OF SERVICES**

#### Task 1 – Professional Engineering Services

Epic will provide Services for the Client. Epic and the Client desire to set forth the general terms and conditions whereby Epic will, from time to time, be engaged to provide Services to the Client. The particulars of each such engagement being set forth will be performed hourly, as per our then-current rate schedule, or as otherwise described in either an executed Individual Project Order ("IPO") or in email correspondence with the Client or its designated representative. Authorization received by Epic via IPO, phone call and/or email correspondence shall be considered approval to proceed with performing the subject professional engineering services.



#### SCHEDULE

We will provide our services as expeditiously as practicable to meet a mutually agreed-upon schedule.

#### FEES

#### Task 1 – Professional Engineering Services

Epic will perform the Services in Task 1 on a labor fee plus direct reimbursable expense basis. Labor fees will be billed on an hourly basis, portal-to-portal, in accordance with the attached 2023 Hourly Rate Schedule (or our then-current rate schedule during a later time of service).

If requested, Epic can also perform the Services in Task 1 on a lump sum fee basis (based on a clearly defined scope of work) using either an authorized IPO or via authorized email correspondence.

#### BILLING

Fees will be invoiced monthly based on a percent-complete of work performed for the monthly billing cycle. The invoice will incorporate the actual amount of services performed and expenses incurred. Payment will be due within 25 days of the Client's receipt of the invoice.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. With the exception of lump sum services, a percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, overhead, in-house reproduction, postage, supplies, and project-related computer time. A mileage reimbursement rate equivalent to that of the current Federal standard rate will be added to each invoice, when applicable. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client.

Epic, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. **Please provide the following information:** 

Please email all invoices to



#### CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to **Epic Forensics & Engineering, Inc.**, and "Client" shall refer to **Special District Services, Inc.** 

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute two copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, **please complete** and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me at 561-581-8800 if you have any questions.

Respectfully submitted, EPIC FORENSICS & ENGINEERING, INC. Registry 30519

Bv:

Ben Messerschmidt, P.E. Executive Director

Attachments – 2023 Hourly Rate Schedule; Request for Information; Standard Provisions.



Agreed to this \_\_\_\_\_\_, 2023.

# **Special District Services, Inc.**

By:

(Signature)

(Print Name and Title)

(Email Address)

Attest:

(Signature)

(Print Name and Title)

(Email Address)

= EXECUTION OF THIS SIGNATURE PAGE REPRESENTS ACCEPTANCE OF THE ENTIRE AGREEMENT =



#### 2023 HOURLY RATE SCHEDULE \*

<b>CLASSIFICATION</b>	<u>RATE</u>
Administration Support Staff	\$100 - \$120
Technician	\$130 - \$150
Analyst / Professional	\$175 - \$200
Project Manager	\$170 - \$210
Professional Engineer, P.E.	\$220 - \$240
Senior Professional, P.E.	\$240 - \$270
Associate	\$285
Executive Director	\$300
Principal	\$325

#### NOTES:

- 1. Preparation for Mediation, Deposition, Testimony and Trial, will be billed at 1.25 times the billing rates based on the above classifications and rates.
- 2. Attendance for Mediation will be billed at 1.25 times the billing rates based on the above classifications and rates.
- 3. Attendance for Deposition, Testimony and Trial, will be billed at 1.50 times the billing rates based on the above classifications and rates.
- 4. Evidence storage fees and specialized equipment fees will be charged as applicable.

\*Rates stated are subject to annual increase.



# **REQUEST FOR INFORMATION**

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Mailing Address for	
Invoices	
On-Property Contact	
On-Property Contact's	
Phone Number	
On-Property Contact's	
E-Mail	
Contact for Billing Inquiries	
Billing Contact's Phone	
Number	
Billing Contact's E-Mail	
PM Attorney's Name	
PM Attorney's Law Firm	
PM Attorney's Phone	
Number	

#### **Property Identification**

Street Address	
County in which Property is Located	

#### **Property Board Identification**

President Name(s)	
Vice President Name(s)	
Number of Board Members	

#### EPIC FORENSICS & ENGINEERING, INC. STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services**. The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(a)We strive to provide our services in the most cost effective manner possible. We utilize support staff in those situations where we deem it appropriate and in your interest. We may find it to your benefit to obtain input from multiple team members. Utilizing intra-office conferences, we can efficiently share ideas and communicate information. Therefore, you may see billing for more than one team member on the same day.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.

(c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.

(d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services. Client agrees that if Consultant must wait more than fifteen (15) minutes for pre-arranged access, the wait time may be charged as an Additional Service at the discretion of the Consultant.(e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

(f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.(g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.

(h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.

(i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Direct Reimbursable Expenses.** Direct Reimbursable Expenses are actual and reasonable non-salary costs incurred specifically in fulfilling the terms of this Agreement, such as:

(a) Travel, food and lodging, including automotive equipment rentals, fuel, maintenance, tolls, parking, mileage or per diem paid by the Consultant for personal expenses of only their own employees in accordance with their normal company policy.

(b) Communications, including telephone, facsimile, telegraph, postage, parcel post, airfreight and package express.

(c) Reproductions including photographs, prints and offset work.

(d) Outside professional service and laboratory charges, including those for surveys, photogrammetry, soils investigations and tests and other charges for engineers, surveyors, lawyers, sociologists, economists, model makers, architects, scientists and other specialists. Outside professional service and laboratory charges must be authorized in advance by the Client to be reimbursable.

(e) Rental charges for equipment, including, but not limited to, equipment owned by the Consultant at their established rates and for equipment rented from third parties by Consultant.

(f) Governmental fees and charges required to obtain documents related to the construction and maintenance of the subject property.

(g) Evidence storage.

(5) **Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions: (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law.

(b) If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement. To continue services after such late payment, Consultant may, in addition to any deposit paid prior to commencement of services, if any, at its sole discretion, require payment of an additional deposit to be applied to the final invoice.

(c) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.

(d) Client shall be responsible for any shortfall in the payment at the rate set herein for deposition by opposing counsel to the extent the full amount of such fees are not paid within thirty (30) days of receipt by opposing counsel of the Consultant's invoice for such fees or in the event a court reduces the Consultant's rate to a rate below those agreed to herein.

(e) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.

(f) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees (including but not limited to in-house counsel), reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(g) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(6) Use of Documents. All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven 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, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(9) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance of \$1,000,000. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(10) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(11) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is less. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 11 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 11 shall require the Client to indemnify the Consultant.

(12) **Mutual Waiver of Consequential Damages**. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(13) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(14) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes whichever is less.

(15) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

#### (16) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(17) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(20) IT IS AGREED THAT PURSUANT TO FLORIDA STATUTE 558.0035, INDIVIDUAL EMPLOYEES HIRED BY CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE AND/OR DAMAGES RESULTING FROM NEGLIGENCE IN PERFORMING SERVICES UNDER THIS AGREEMENT.