

DARBY

Community Development District

DECEMBER 4, 2023

AGENDA

Darby
Community Development District
475 West Town Place
Suite 114
St. Augustine, Florida 32092

November 27, 2023

Board of Supervisors
Darby Community Development District

Dear Board Members:

The Meeting of the Darby Community Development District will be held Monday, December 4, 2023 at 10:30 a.m. at the offices of Corner Lot Development, 1819 Goodwin Street, Jacksonville, Florida 32204.

- I. Roll Call
- II. Audience Comments (*regarding agenda items listed below*)
- III. Organizational Matters
 - A. Acceptance of Resignation from Supervisor Wenner
 - B. Appointment of New Supervisor to Fill Unexpired Term of Office (11/25)
 - C. Oath of Office for Newly Appointed and Elected (Supervisor Allen) Supervisors
 - D. Election of Officers, Resolution 2024-05
- IV. Consideration of Minutes of the October 13, 2023 Meeting
- V. Acceptance of the Minutes of the October 13, 2023 Audit Committee Meeting
- VI. Public Hearings
 - A. Public Hearing Expressing the District's Intent to Utilize the Uniform Method of Levying, Collecting and Enforcing Non-Ad Valorem Assessments (197.3632), Resolution 2024-06
 - B. Public Hearing Adopting Fiscal Year 2023 & Fiscal Year 2024 Budgets
 1. Consideration of Resolution 2024-07 Relating to the Annual Appropriations and Adopting the Budget for Fiscal Year 2023

2. Consideration of Resolution 2024-08 Relating to the Annual Appropriations and Adopting the Budget for Fiscal Year 2024

C. Public Hearing to Adopt Rules of Procedure, 2024-09

- VII. Ratification of Audit Engagement Letter with Grau & Associates to Perform the Audit for Fiscal Year 2023
- VIII. Consideration of Agreement with Duval County Tax Collector Regarding Uniform Method of Collection
- IX. Consideration of Supplemental Assessment Methodology Report
- X. Consideration of Supplemental Assessment Resolution for the Series 2023 Bonds, Resolution 2024-10 (*will be sent under separate cover*)
- XI. Update Regarding Status of Series 2023 Bonds
- XII. Consideration of Resolution Approving Ancillary Documents in Substantial Form, Resolution 2024-11
- XIII. Staff Reports
 - A. Attorney
 - B. Engineer
 - C. Manager – Discussion of Fiscal Year 2024 Meeting Schedule
- XIV. Supervisors Requests
- XV. Audience Comments
- XVI. Financial Statements as of October 31, 2023
- XVII. Consideration of Funding Request No. 5
- XVIII. Next Scheduled Meeting – To Be Discussed
- XIX. Adjournment

THIRD ORDER OF BUSINESS

A.

Re: Darby and Acree CDD resignation

Don Wenner <don@dlpcapital.com>

Mon 10/16/2023 11:37 AM

To: Michael Blevins <mblevins@cornerlotdevelopment.com>

Cc: Shannon Acevedo <shannon.acevedo@dlpcapital.com>; George Leone <gleone@cornerlotdevelopment.com>; Lee Hutchins <lhutchins@cornerlotdevelopment.com>; Andy Allen <aallen@cornerlotdevelopment.com>

"I, Don Wenner, Resign from the Darby CDD Board of Supervisors effective immediately"

"I, Don Wenner, Resign from the Acree CDD Board of Supervisors effective immediately"

D.

RESOLUTION 2024-05

**A RESOLUTION DESIGNATING OFFICERS OF THE DARBY
COMMUNITY DEVELOPMENT DISTRICT**

WHEREAS, the Board of Supervisors of the Darby Community Development District at a regular business meeting held on December 4, 2023 desires to elect the below recited persons to the offices specified.

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

1. The following persons were elected to the offices shown, to wit:

_____	Chairman
_____	Vice-Chairman
<u>Daniel Laughlin</u>	Secretary
<u>Daniel Laughlin</u>	Treasurer
<u>James Oliver</u>	Assistant Treasurer
<u>Marilee Giles</u>	
<u>Darrin Mossing</u>	
<u>Howard McGaffney</u>	
<u>Marilee Giles</u>	Assistant Secretary
<u>James Oliver</u>	
<u>Darrin Mossing</u>	
<u>Howard McGaffney</u>	

PASSED AND ADOPTED THIS 4th DAY OF DECEMBER, 2023.

Chairman / Vice Chairman

Secretary / Assistant Secretary

FOURTH ORDER OF BUSINESS

Minutes of Meeting
Darby
Community Development District

The regular meeting of the Board of Supervisors of the Darby Community Development District was held Friday, October 13, 2023 at 10:24 a.m. at the offices of Corner Lot Development, 1819 Goodwin Street, Jacksonville, Florida

Present and constituting a quorum were:

George Leone	Vice Chairman
Rick Egger	Supervisor
William English	Supervisor

Also present were:

Daniel Laughlin	District Manger
Jim Oliver	GMS
Wes Haber	District Counsel by telephone
Beth Leaptrott	Engineer, Connelly & Wicker
Sete Zare	MBS Capital Markets by telephone
Michael Blevins	Corner Lot Development
Sarah Warren	Bond Counsel, Bryant Miller & Olive

Following is a summary of the actions taken at the September 29, 2023 meeting.

FIRST ORDER OF BUSINESS

Roll Call

Mr. Laughlin called the meeting to order at 10:24 a.m. and called the roll.

SECOND ORDER OF BUSINESS

Audience Comments

There being none, the next item followed.

THIRD ORDER OF BUSINESS

Oath of Office for Newly Elected Supervisors

This item tabled.

FOURTH ORDER OF BUSINESS

Consideration of the Minutes of the August 29, 2023 Meeting

On MOTION by Mr. Leone seconded by Mr. English with all in favor the minutes of the August 29, 2023 meeting were approved as presented.

FIFTH ORDER OF BUSINESS

Acceptance of the Minutes of the August 29, 2023 Landowners' Meeting

On MOTION by Mr. Egger seconded by Mr. English with all in favor the minutes of the August 29, 2023 landowners meeting were accepted.

SIXTH ORDER OF BUSINESS

Acceptance of the Minutes of the August 29, 2023 Audit Committee Meeting

On MOTION by Mr. Leone seconded by Mr. English with all in favor the minutes of the August 29, 2023 audit committee meeting were accepted.

SEVENTH ORDER OF BUSINESS

Consideration of Items Related to Series 2023 Bonds

A. Presentation of Supplemental Engineer's Report

Ms. Leaptrott gave an overview of the supplemental engineer's report, copy of which was included in the agenda package.

B. Presentation of Supplemental Assessment Methodology Report

Mr. Laughlin gave an overview of the supplemental assessment methodology report, copy of which was included in the agenda package.

Mr. Haber stated the board has been through a process of levying a master assessment lien across all the property within the CDD's boundary and the supplemental engineer's report and the methodology is covering a portion of that project. The next document is the bond resolution that delegates authority for the offering documents to be marketed ultimately resulting in a series of bonds that will be allocated when the property is fully platted to the initial lots identified with the understanding that at some later time we will follow this process again, do another supplemental engineer's report that will identify the latter portion of the master project to be funded with an

additional series of bonds and a latter supplemental methodology report. This is the initial step we are taking for this initial series of bonds.

C. Consideration of Resolution 2024-01, Delegated Award Resolution

Ms. Warren stated Resolution 2024-01 authorizes the series 2023 bonds in a not to exceed amount of \$15 million, the exact amount will be determined as they go through the marketing process. This resolution approves a number of documents in substantial form and those are the first supplemental trust indenture, form of bond purchase agreement, form of preliminary limited offering memorandum, continuing disclosure agreement, form of rule 15c212 certificate of the district, it appoints your underwriter, MBS Capital Markets, to market these bonds, appoints U.S. Bank as trustee, it also approves in substantial form the two reports that the board just reviewed and authorizes any final changes that may need to made to those for purposes of marketing. The parameters are set in section 5.

On MOTION by Mr. Leone seconded by Mr. English with all in favor Resolution 2024-01 was approved.

EIGHTH ORDER OF BUSINESS

Designation of Public Hearing Dates

A. Public Hearing to Adopt the Uniform Method of Collection, Resolution 2024-02

On MOTION by Mr. Eggers seconded by Mr. English with all in favor the public hearing to adopt the uniform method of collection was scheduled for December 4, 2023 at 10:30 a.m. in the same location.

B. Public Hearing to Adopt the Fiscal Year 2023 and Fiscal Year 2024 Budgets

On MOTION by Mr. Egger seconded by Mr. English with all in favor the public hearing for adoption of the fiscal year 2023 and 2024 budgets was scheduled for December 4, 2023 at 10:30 a.m. in the same location.

C. Public Hearing to Adopt the Rules of Procedure Resolution 2024-04

On MOTION by Mr. Egger seconded by Mr. English with all in favor the public hearing to adopt the rules of procedure was scheduled for December 4, 2023 at 10:30 a.m. in the same location.

NINTH ORDER OF BUSINESS

Consideration of Fiscal Year 2024 Budget Funding Agreement

On MOTION by Mr. Leone seconded by Mr. English with all in favor the fiscal year 2024 funding agreement with Plummer JV, LLC was approved.

TENTH ORDER OF BUSINESS

Consideration of RFQ for Engineering Services

Mr. Laughlin stated we received one response from Connelly & Wicker.

On MOTION by Mr. Leone seconded by Mr. English with all in favor the proposal from Connelly & Wicker was approved and staff was authorized to enter into an agreement for engineering services.

ELEVENTH ORDER OF BUSINESS

Acceptance of Audit Committee's Recommendation, Consideration of Proposals for Fiscal Year 2023 Audit Services

On MOTION by Mr. Leone seconded by Mr. English with all in favor the recommendation of the audit committee of Grau & Associates as the no. 1 ranked firm was accepted.

TWELFTH ORDER OF BUSINESS

Staff Reports

A. Attorney

Mr. Haber stated there are a number of ancillary documents that I prepared and shared with the developer. The district has already signed an acquisition agreement with the developer, which is the document that allows the CDD to acquire using bond proceeds completed infrastructure and Michael and I are working through the process on the offsite infrastructure that may need to go to JEA before we can actually issue the bonds. There are a number of other documents that will need to be reviewed, commented upon not only by the developer but various other parties. If you can circulate those amongst those the developer wants to look at them and get any comments, I'm happy to circulate them to the broader group for review. One of the documents I included is a tri-

party agreement, which is a document for the lender to sign potentially acknowledge that any mortgage on the property would be inferior to the assessment lien that will secure the bond and needs to be signed before they can market the offering document. That one is the priority if it has not yet been reviewed. If anyone on the developer's behalf have reviewed those documents and have any questions, do not hesitate to give me a call.

B. Engineer

Ms. Leaptrott stated as it relates to the CDD and the offsite, I have been working with Michael on the documents. There is an owner's affidavits, bill of sale, clearance documents, we are getting close, we still need the contractor information. I will follow-up to make sure those documents are good to submit. We have to first get the utilities cleared then JEA will set them.

Mr. Blevins stated I think Wes has gone through all of those.

Mr. Haber stated I think we are good on those.

Mr. Blevins stated we will just show that chain when we submit to JEA.

Ms. Leaptrott stated Phase 1 and Phase 2 are in the early stages of construction.

C. Manager – Discussion of Fiscal Year 2024 Meeting Schedule

Mr. Laughlin stated we have a December 4th meeting scheduled and we can set a schedule at that meeting.

THIRTEENTH ORDER OF BUSINESS Supervisor's Requests

There being none, the next item followed.

FOURTEENTH ORDER OF BUSINESS Audience Comments

There being none, the next item followed.

FIFTEENTH ORDER OF BUSINESS Financial Statements as of September 30, 2023

A copy of the financials was included in the agenda package.

SIXTEENTH ORDER OF BUSINESS Ratification of Funding Request No. 3

Mr. Oliver stated our standard fee is \$45,000 and Michael and I had a discussion and the fee is \$36,000.

On MOTION by Mr. Leone seconded by Mr. English with all in favor Funding Request no. 3 was approved.

SEVENTEENTH ORDER OF BUSINESS Consideration of Funding Request No. 4

On MOTION by Mr. Leone seconded by Mr. English with all in favor funding request no. 4 was approved.

EIGHTEENTH ORDER OF BUSINESS Next Meeting Scheduled – To be Determined

Mr. Laughlin stated the next meeting will be held December 4, 2023 at 10:30 a.m. in the same location. If we need to hold a special meeting to consider bond documents, we will contact the board members.

On MOTION by Mr. English seconded by Mr. Egger with all in favor the meeting adjourned at 10:55 a.m.

Secretary/Assistant Secretary

Chairman/Vice Chairman

FIFTH ORDER OF BUSINESS

Minutes of Meeting
Darby
Community Development District

The Darby Community Development District audit committee meeting was held Friday, October 13, 2023 at 10:21 a.m. at the offices of Corner Lot Development, 1819 Goodwin Street, Jacksonville, Florida

Present were:

George Leone	Vice Chairman
Rick Egger	Supervisor
William English	Supervisor

Also present were:

Daniel Laughlin	District Manger
Jim Oliver	GMS
Wes Haber	District Counsel by telephone
Beth Leaptrott	Interim Engineer, Connelly & Wicker
Sete Zare	MBS Capital Markets by telephone
Michael Blevins	Corner Lot Development
Sara Warren	BMO

Following is a summary of the actions taken at the September 29, 2023 meeting.

FIRST ORDER OF BUSINESS

Roll Call

Mr. Laughlin called the audit committee meeting to order at 10:21 a.m. and called the roll.

SECOND ORDER OF BUSINESS

**Review and Ranking of Audit Proposals
Received in Response to the RFP**

Mr. Laughlin stated we received proposals from Berger Toombs Elam Gaines & Frank and Grau & Associates. I prepared a ranking the board can discuss. These are companies we have worked with a number of times and they are both very qualified. Ability of personnel both received 20 points, proposer's experience both received 20 points, understanding scope of work they both received 20 points, ability to furnish required services, Berger Toombs received 15 points and Grau & Associates received 20 points, we had some issues with Berger Toombs this past year with audits coming in late. Price, Berger Toombs received 16 points and Grau &

Associates received 20 points, Grau was lower for the three years at \$9,900. The initial price from Berger Toombs was lower but the cost will increase with bond issuances and we are going to issue bonds so the cost was more than Grau & Associates. The final scoring is Berger Toombs 91 points out of 100 and Grau & Associates received the full 100 points.

On MOTION by Mr. Leone seconded by Mr. Egger with all in favor the ranking presented by the manager of Grau & Associates no. 1 with 100 points and Berger Toombs no. 2 with 91 points was accepted.

THIRD ORDER OF BUSINESS

Other Business

There being none,

On MOTION by Mr. Leone seconded by Mr. Egger with all in favor the audit committee meeting adjourned at 10: 24 a.m.

SIXTH ORDER OF BUSINESS

A.

RESOLUTION 2024-06

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE DARBY COMMUNITY DEVELOPMENT DISTRICT EXPRESSING ITS INTENT TO UTILIZE THE UNIFORM METHOD OF LEVYING, COLLECTING, AND ENFORCING NON-AD VALOREM ASSESSMENTS WHICH MAY BE LEVIED BY THE DARBY COMMUNITY DEVELOPMENT DISTRICT IN ACCORDANCE WITH SECTION 197.3632, FLORIDA STATUTES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Darby Community Development District (“District”) was established pursuant to the provisions of Chapter 190, Florida Statutes, which authorizes the District to levy certain assessments which include benefit and maintenance assessments and further authorizes the District to levy special assessments pursuant to Chapter 170, Florida Statutes, for the acquisition, construction, or reconstruction of assessable improvements authorized by Chapter 190, Florida Statutes; and

WHEREAS, the above referenced assessments are non-ad valorem in nature and, therefore, may be collected under the provisions of Section 197.3632, Florida Statutes, in which the State of Florida has provided a uniform method for the levying, collecting, and enforcing such non-ad valorem assessments; and

WHEREAS, pursuant to Section 197.3632, Florida Statutes, the District has caused notice of a public hearing to be advertised weekly in a newspaper of general circulation within Duval County for four (4) consecutive weeks prior to such hearing.

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

SECTION 1. The District upon conducting its public hearing as required by Section 197.3632, Florida Statutes, hereby expresses its intent to use the uniform method of collecting assessments imposed by the District as provided in Chapters 170 and 190, Florida Statutes, each of which are non-ad valorem assessments which may be collected annually pursuant to the provisions of Chapter 190, Florida Statutes, for the purpose of paying principal and interest on any and all of its indebtedness and for the purpose of paying the cost of operating and maintaining its assessable improvements. The legal description of the boundaries of the real property subject to a levy of assessments is attached and made a part of this Resolution as **Exhibit A**. The non-ad valorem assessments and the District’s use of the uniform method of collecting its non-ad valorem assessment(s) may continue in any given year when the Board of Supervisors determines that use of the uniform method for that year is in the best interests of the District.

SECTION 2. The District’s Secretary is authorized to provide the Property Appraiser and Tax Collector of Duval County and the Department of Revenue of the State of Florida with a copy of this Resolution and enter into any agreements with the Property Appraiser and/or Tax Collector necessary to carry out the provisions of this Resolution.

SECTION 3. If any provision of this Resolution is held to be illegal or invalid, the other provisions shall remain in full force and effect.

SECTION 4. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this 4th day of December, 2023.

ATTEST:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Legal Description

Exhibit A

THAT PART OF FARMS 48 & 49 LYING SOUTH OF PLUMMER ROAD (EXCEPT PART IN OFFICIAL RECORDS BOOK 6511, PAGE 144), SECTION 41, TOWNSHIP 1 SOUTH, RANGE 25 EAST; PART OF FARMS 45, 46, 57, 58, 59, 60, 61 AND 62; ALL OF FARMS 51 TO 56 (EXCEPT OFFICIAL RECORDS BOOK 20521, PAGE 526), SECTIONS 41 AND 11, TOWNSHIP 1 SOUTH, RANGE 25 EAST; ALL ACCORDING TO THE DINSMORE COMPANY'S OFFICIAL MAP OF DINSMORE AND DINSMORE FARMS, PREPARED AUGUST 1933 UNDER DIRECTION OF ROBERT M. ANGUS, CIVIL ENGINEER, ALL IN DUVAL COUNTY, FLORIDA.

FOR A POINT OF BEGINNING, COMMENCE AT THE NORTHWEST CORNER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 25 EAST OF SAID DUVAL COUNTY; THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 11 AND THE SOUTH LINE OF OFFICIAL RECORDS BOOK 13508, PAGE 984 NORTH 89° 04' 50" EAST, A DISTANCE OF 202.11 FEET TO THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING THUS DESCRIBED CONTINUE ALONG THE NORTH LINE OF SAID SECTION 11 AND THE SOUTH LINES OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13508, PAGE 984, OFFICIAL RECORDS BOOK 17675, PAGE 1777 AND OFFICIAL RECORDS BOOK 11752, PAGE 355, NORTH 89° 04' 50" EAST, A DISTANCE OF 379.78 FEET, TO ITS INTERSECTION WITH THE NORTHWEST LINE OF SECTION 41; THENCE NORTHEASTERLY ALONG THE NORTHWEST LINE OF SAID SECTION 41 AND THE SOUTHEASTERLY LINES OF OFFICIAL RECORDS BOOK 11752, PAGE 355 AND OFFICIAL RECORDS BOOK 18325, PAGE 2381, NORTH 45° 00' 54" EAST, A DISTANCE OF 765.06 FEET, TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF PLUMMER ROAD, A VARIABLE WIDTH RIGHT-OF-WAY, SAID POINT REFERRED TO AS REFERENCE POINT "A"; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID PLUMMER ROAD AND THE NORTHEASTERLY LINE OF OFFICIAL RECORDS BOOK 6508, PAGE 1628 THE FOLLOWING THREE (3) COURSES AND DISTANCES; COURSE NO. 1: SOUTH 67° 05' 14" EAST, A DISTANCE OF 304.38 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 506.96 FEET, A CENTRAL ANGLE OF 11° 10' 54" AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 61° 29' 47" EAST, 98.78 FEET; COURSE NO. 2: THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 98.94 FEET TO A POINT OF TANGENCY; COURSE NO. 3: SOUTH 55° 54' 20" EAST, A DISTANCE OF 432.34 FEET TO THE MOST NORTHERLY CORNER OF TRACT "A", AS SHOWN ON THE PLAT OF BRANDON CHASE, AS RECORDED IN PLAT BOOK 55, PAGE 13 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTHWESTERLY ALONG THE NORTHWEST LINE OF SAID TRACT "A", SOUTH 34° 05' 15" WEST, A DISTANCE OF 131.51 FEET TO A POINT ON THE NORTH LINE OF LOT 1 AS SHOWN ON THE PLAT OF SAID BRANDON CHASE; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 1, SOUTH 89° 36' 31" WEST, A DISTANCE OF 405.07 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH ALONG THE WEST LINE OF LOTS 1 THROUGH 18 AS SHOWN ON THE PLAT OF SAID BRANDON CHASE AND LOTS 19 THROUGH 23 AS SHOWN ON THE PLAT OF BRANDON CHASE UNIT TWO, AS RECORDED IN PLAT BOOK 56, PAGE 13 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY, SOUTH 00° 10' 43" WEST, A DISTANCE OF 3,226.43 FEET, TO THE SOUTHWEST CORNER OF SAID LOT 23; THENCE ALONG THE SOUTH LINE OF SAID LOT 23, SOUTH 89° 49' 17" EAST, A DISTANCE OF 325.00 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'54" AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 45° 10' 43" EAST, 35.36 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 39.28 FEET, TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF BRANDON CHASE DRIVE, A 50 FOOT RIGHT-OF-WAY; THENCE SOUTH ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID BRANDON CHASE DRIVE; THENCE SOUTH 00° 10' 43" WEST, A DISTANCE OF 110.00 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'54" AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 44° 49' 17" WEST, 35.36 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND THE NORTH LINE OF LOT 24 OF SAID BRANDON CHASE UNIT TWO AN ARC LENGTH OF 39.28 FEET TO A POINT OF TANGENCY; THENCE ALONG THE NORTH LINE OF SAID LOT 24, NORTH 89° 49' 17" WEST, A DISTANCE OF 325.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 24; THENCE ALONG THE WEST LINES OF LOTS 24 THROUGH 26 OF SAID BRANDON CHASE UNIT TWO, SOUTH 00° 10' 43" WEST, A DISTANCE OF 678.45 FEET TO THE SOUTHWEST CORNER OF SAID LOT 26, SAID POINT LYING ON THE NORTH LINE OF OFFICIAL RECORDS BOOK 17358, PAGE 1190; THENCE WEST ALONG THE NORTH LINE OF OFFICIAL RECORDS BOOK 18992, PAGE 1210, OFFICIAL RECORDS BOOK 15464, PAGE 9, OFFICIAL RECORDS BOOK 17215, PAGE 220, OFFICIAL RECORDS BOOK 15464, PAGE 11 AND OFFICIAL RECORDS BOOK 11930, PAGE 2217, SOUTH 89° 25' 13" WEST, A DISTANCE OF 1,184.75 FEET TO THE SOUTHEAST CORNER OF LANDS CONVEYED TO JACKSONVILLE ELECTRIC AUTHORITY AS RECORDED IN OFFICIAL RECORDS BOOK 20521, PAGE 526; THENCE WITH THE EASTERLY LINE OF SAID JACKSONVILLE ELECTRIC AUTHORITY LANDS NORTH 00° 25' 55" EAST, A DISTANCE OF 3,949.70 FEET TO THE POINT OF BEGINNING.

LAND THUS DESCRIBED CONTAINS 116.09 ACRES, MORE OR LESS.

PART OF FARMS 57, 58, 59, 60, 61 AND 62, SECTION 11, TOWNSHIP 1 SOUTH, RANGE 25 EAST; PART OF FARMS 7, 8, 57 AND 58 SECTION 41, TOWNSHIP 1 SOUTH, RANGE 25 EAST; PART OF FARMS 7, 8, 18, 30, 31, 44, 53 AND 54, SECTION 10 TOWNSHIP 1 SOUTH, RANGE 25 EAST; ALL OF FARMS 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 37, 38 AND 43, SECTION 10 TOWNSHIP 1 SOUTH, RANGE 25 EAST, ALL ACCORDING TO THE DINSMORE COMPANY'S OFFICIAL MAP OF DINSMORE AND DINSMORE FARMS, PREPARED AUGUST 1933 UNDER DIRECTION OF ROBERT M. ANGUS, CIVIL ENGINEER, ALL IN DUVAL COUNTY, FLORIDA.

FOR A POINT OF BEGINNING, COMMENCE AT THE NORTHWEST CORNER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 25 EAST OF SAID DUVAL COUNTY; THENCENORTH 89° 04' 50" EAST ALONG THE NORTH LINE OF SAID SECTION 11 AND THE SOUTH LINE OF OFFICIAL RECORDS BOOK 8632, PAGE 2236 AS RECORDED IN THE CURRENT PUBLIC RECORDS OF SAID COUNTY, A DISTANCE OF 52.07 FEET TO A POINT ON THE WESTERLY LINE OF LANDS CONVEYED TO JACKSONVILLE ELECTRIC AUTHORITY AS RECORDED IN OFFICIAL RECORDS BOOK 20521, PAGE 526, SAME LINE BEING THE EASTERLY LINE OF A 100 FOOT JACKSONVILLE ELECTRIC AUTHORITY ELECTRICAL TRANSMISSION LINE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 20521 PAGE 532; THENCE DEPART NORTH LINE OF SAID SECTION 11, SOUTH 00° 25' 55" WEST ALONG THE WEST LINE OF SAID JACKSONVILLE ELECTRIC AUTHORITY LANDS AND THE EAST LINE OF SAID JACKSONVILLE ELECTRIC AUTHORITY TRANSMISSION LINE EASEMENT, A DISTANCE OF 3,948.81 FEET TO THE NORTHEAST CORNER OF OFFICIAL RECORDS BOOK 17694, PAGE 2336; THENCE DEPART EAST LINE OF SAID JACKSONVILLE ELECTRIC AUTHORITY LANDS, SOUTH 89° 22' 25" WEST, ALONG THE NORTH LINE OF OFFICIAL RECORDS BOOK 17694, PAGE 2336, OFFICIAL RECORDS BOOK 15043, PAGE 1557, OFFICIAL RECORDS BOOK 6913, PAGE 557, A DISTANCE OF 1,323.99 FEET TO THE NORTHWEST CORNER OF OFFICIAL RECORD BOOK 6913, PAGE 557; THENCE ALONG THE WEST LINES OF OFFICIAL RECORDS BOOK 6913, PAGE 557, OFFICIAL RECORDS BOOK 11614, PAGE 1973 AND THE WESTERLY TERMINUS OF SYCAMORE LANE, SOUTH 00° 18' 17" EAST, A DISTANCE OF 661.23 FEET, TO THE NORTHEAST CORNER OF OFFICIAL RECORDS BOOK 18248, PAGE 694; THENCE ALONG THE NORTH LINE OF OFFICIAL RECORDS BOOK 18248, PAGE 694, SOUTH 89° 21' 40" WEST, A DISTANCE OF 402.01 FEET TO A POINT ON THE NORTHEAST RIGHT-OF-WAY LINE OF NORFOLK SOUTHERN RAILROAD; THENCE NORTHWEST ALONG THE NORTHEAST RIGHT-OF-WAY LINE OF SAID NORFOLK SOUTHERN RAILROAD AND THE SOUTHWEST LINE OF OFFICIAL RECORDS BOOK 6508, PAGE 1628 LYING NORTH OF SAID NORFOLK SOUTHERN RAILROAD, NORTH 40° 54' 59" WEST, A DISTANCE OF 1418.80 FEET TO A POINT IN THE WESTERLY LINE OF LOT NUMBER 30 AND THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF SECTION 10 AND THE EAST LINE OF OFFICIAL RECORD BOOK 13037, PAGE 174; THENCE DEPARTING NORTHEAST RIGHT-OF-WAY LINE OF SAID NORFOLK SOUTHERN RAILROAD, NORTH ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 10 AND THE EAST LINE OF OFFICIAL RECORDS BOOK 13037, PAGE 174, NORTH 00° 15' 29" WEST, A DISTANCE OF 902.17 FEET, TO THE CENTERLINE OF A 60 FOOT UNRECORDED ROAD, THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 10 AND THE NORTHEAST CORNER OF OFFICIAL RECORDS BOOK 13037, PAGE 174; THENCE WEST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 10, THE NORTH LINE OF SAID OFFICIAL RECORDS BOOK 13037, PAGE 174 AND THE SOUTH LINE OF LOTS NUMBERED 37 AND 44, SOUTH 89° 25' 06" WEST, A DISTANCE OF 771.14 FEET, TO A POINT ON THE NORTHEAST RIGHT-OF-WAY LINE OF SAID NORFOLK SOUTHERN RAILROAD, SAID POINT REFERRED TO AS REFERENCE POINT "C"; THENCE NORTHWEST ALONG THE NORTHEAST RIGHT-OF-WAY LINE OF SAID NORFOLK SOUTHERN RAILROAD AND THE SOUTHWEST LINE OF OFFICIAL RECORDS BOOK 6508, PAGE 1628 LYING NORTH OF SAID NORFOLK SOUTHERN RAILROAD, NORTH 40° 56' 14" WEST, A DISTANCE OF 1,733.86 FEET, TO THE NORTH LINE OF LOT NUMBER 54, THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10 AND TO ITS INTERSECTION WITH THE SOUTH LINE OF OFFICIAL RECORDS BOOK 18597, PAGE 1797; THENCE EAST ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10 AND THE SOUTH LINE OF SAID OFFICIAL RECORDS BOOK 18597, PAGE 1797, NORTH 89° 30' 02" EAST, A DISTANCE OF 1,901.31 FEET, TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10 AND THE SOUTHWEST CORNER OF LOT NUMBER 26; THENCE NORTH ALONG THE EAST LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10 AND THE EAST LINE OF SAID OFFICIAL RECORDS BOOK 18597, PAGE 1997, NORTH 00° 15' 29" WEST, A DISTANCE OF 1,318.69 FEET, TO A POINT ON THE NORTH LINE OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 25 EAST, SAID POINT BEING THE NORTHEAST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 10 AND THE SOUTH LINE OF OFFICIAL RECORDS BOOK 18884, PAGE 1268; THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 10 AND THE SOUTH LINES OF OFFICIAL RECORDS BOOK 18884, PAGE 1268, OFFICIAL RECORDS BOOK 7972, PAGE 1471 AND OFFICIAL RECORDS BOOK 8632, PAGE 2236, NORTH 89° 38' 33" EAST, A DISTANCE OF 2,645.33 FEET, TO THE POINT OF BEGINNING.

LAND THUS DESCRIBED CONTAINS 291.81 ACRES, MORE OR LESS.

B.

Darby

Community Development District

FY23 and FY24 Approved Budget

December 4, 2023



Darby

Community Development District

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Budget

Narrative

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Darby

Community Development District

Description	Approved Budget FY 2023 ⁽¹⁾	Approved Budget FY 2024
Revenues		
Developer Contributions	\$ 36,280	\$ 109,393
Total Revenues	\$ 36,280	\$ 109,393
Expenditures		
Administrative		
Supervisors Fees	\$ 3,000	\$ 12,000
FICA Expense	\$ 230	\$ 918
Engineering	\$ 3,000	\$ 12,000
Attorney	\$ 6,250	\$ 25,000
Assessment Administration	\$ -	\$ 5,000
Management Fees	\$ 9,000	\$ 36,000
Information Technology	\$ 450	\$ 1,800
Website Creation/ADA Compliance	\$ 1,750	\$ -
Website Maintenance	\$ 300	\$ 1,200
Telephone	\$ 200	\$ 500
Postage	\$ 500	\$ 1,500
Insurance	\$ 2,500	\$ 5,500
Printing & Binding	\$ 500	\$ 1,200
Legal Advertising	\$ 8,000	\$ 5,000
Other Current Charges	\$ 200	\$ 600
Office Supplies	\$ 250	\$ 1,000
Dues, Licenses & Subscriptions	\$ 150	\$ 175
Total Expenditures	\$ 36,280	\$ 109,393
Excess Revenues/(Expenditures)	\$ -	\$ -

(1) All expenses prorated amount represents 3 months of fiscal year.

Darby
Community Development District
General Fund Budget

REVENUES:

Developer Contributions

It is presently anticipated that the District will enter into a Funding Agreement with the Developer to fund all General Fund Expenditures for the Fiscal Year.

EXPENDITURES:

Administrative:

Supervisors Fees

Chapter 190, The Florida Statutes, allows each Board member to receive \$200 per meeting not to exceed \$4,800 per year per supervisor for the time devoted to District business and meetings.

FICA Expense

Represents the Employer's share of Social Security and Medicare taxes withheld from the Board of Supervisors checks.

Engineering

The District will be providing general engineering services to the District, e.g., attendance and preparation for monthly board meetings, review invoices, etc.

Attorney

The District's legal counsel will be provide general legal services to the District, i.e. attendance and preparation for monthly meetings, review operating & maintenance contracts, etc.

Management Fees

The District will contract to receive management, accounting and administrative services as part of a management agreement.

Information Technology

Represents various cost of information technology for the District such as video conferencing, cloud storage and servers, positive pay implementation and programming for fraud protection, accounting software, tablets for meetings, Adobe, Microsoft Office, etc.

Website Creation/ADA Compliance

Costs to create the initial District website and ensure the District meets ADA compliance guidelines.

Website Maintenance

Represents the costs associated with monitoring and maintaining the District's website created in accordance with Chapter 189, Florida Statutes. These services include site performance assessments, security and firewall maintenance, updates, document uploads, hosting and domain renewals, website backups, etc.

Darby
Community Development District
General Fund Budget

Telephone

Telephone conference costs for District meetings, workshops and committee meetings.

Postage

Mailing of agenda packages, overnight deliveries, correspondence, etc.

Insurance

The District's General Liability & Public Officials Liability Insurance policy is with Florida Insurance Alliance. FIA specializes in providing insurance coverage to governmental agencies.

Printing & Binding

Printing of documents for board meetings, invoices, computerized checks, stationary and envelopes, etc.

Legal Advertising

The District is required to advertise various notices for monthly Board meetings, public hearings etc. in a newspaper of general circulation.

Other Current Charges

Estimated bank charges and any other miscellaneous expenses that incurred during the year.

Office Supplies

Miscellaneous office supplies.

Dues, Licenses & Subscriptions

The District is required to pay an annual fee to the Department of Economic Opportunity for \$175. This is the only expense under this category for the District.

1.

RESOLUTION 2024-07

THE ANNUAL APPROPRIATION RESOLUTION OF THE DARBY COMMUNITY DEVELOPMENT DISTRICT RELATING TO THE ANNUAL APPROPRIATIONS AND ADOPTING THE BUDGET FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; AUTHORIZING BUDGET AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the District Manager has submitted to the Board of Supervisors (“**Board**”) of the Darby Community Development District (“**District**”) proposed budget (“**Proposed Budget**”) for the fiscal year which began June 14, 2023 and ending September 30, 2023 (“**Fiscal Year 2022/2023**”) along with an explanatory and complete financial plan for each fund of the District, pursuant to the provisions of Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, at least sixty (60) days prior to the adoption of the Proposed Budget, the District filed a copy of the Proposed Budget with the local governing authorities having jurisdiction over the area included in the District pursuant to the provisions of Section 190.008(2)(b), *Florida Statutes*; and

WHEREAS, the Board set a public hearing thereon and caused notice of such public hearing to be given by publication pursuant to Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, the District Manager posted the Proposed Budget on the District’s website at least two days before the public hearing; and

WHEREAS, Section 190.008(2)(a), *Florida Statutes*, requires that each year, the Board, by passage of the Annual Appropriation Resolution, shall adopt a budget for the ensuing fiscal year and appropriate such sums of money as the Board deems necessary to defray all expenditures of the District during the ensuing fiscal year; and

WHEREAS, the District Manager has prepared a Proposed Budget, whereby the budget shall project the cash receipts and disbursements anticipated during a given time period, including reserves for contingencies for emergency or other unanticipated expenditures during the fiscal year.

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

SECTION 1. BUDGET

- a. The Board has reviewed the Proposed Budget, a copy of which is on file with the office of the District Manager and at the District’s Local Records Office, and hereby approves certain amendments thereto, as shown in Section 2 below.

- b. The Proposed Budget, attached hereto as **Exhibit A**, as amended by the Board, is hereby adopted in accordance with the provisions of Section 190.008(2)(a), *Florida Statutes* ("**Adopted Budget**"), and incorporated herein by reference; provided, however, that the comparative figures contained in the Adopted Budget may be subsequently revised as deemed necessary by the District Manager to reflect actual revenues and expenditures.
- c. The Adopted Budget, as amended, shall be maintained in the office of the District Manager and at the District's Local Records Office and identified as "The Budget for the Darby Community Development District for the Fiscal Year Ending September 30, 2023."
- d. The Adopted Budget shall be posted by the District Manager on the District's official website within thirty (30) days after adoption and shall remain on the website for at least 2 years.

SECTION 2. APPROPRIATIONS

There is hereby appropriated out of the revenues of the District, for Fiscal Year 2022/2023, the sum of \$_____ to be raised by the levy of assessments and/or otherwise, which sum is deemed by the Board to be necessary to defray all expenditures of the District during said budget year, to be divided and appropriated in the following fashion:

TOTAL GENERAL FUND	\$ _____
TOTAL ALL FUNDS	\$ _____

SECTION 3. BUDGET AMENDMENTS

Pursuant to Section 189.016, *Florida Statutes*, the District at any time within Fiscal Year 2022/2023, or within 60 days following the end of the Fiscal Year 2022/2023, may amend its Adopted Budget for that fiscal year as follows:

- a. A line-item appropriation for expenditures within a fund may be decreased or increased by motion of the Board recorded in the minutes, and approving the expenditure, if the total appropriations of the fund do not increase.
- b. The District Manager or Treasurer may approve an expenditure that would increase or decrease a line-item appropriation for expenditures within a fund if the total appropriations of the fund do not increase and if either (i) the aggregate change in the original appropriation item does not exceed the greater of \$15,000 or 15% of the original appropriation, or (ii) such expenditure is authorized by separate disbursement or spending resolution.

- c. Any other budget amendments shall be adopted by resolution and consistent with Florida law.

The District Manager or Treasurer must ensure that any amendments to the budget under paragraph c. above are posted on the District's website within 5 days after adoption and remain on the website for at least 2 years.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 4TH DAY OF DECEMBER, 2023.

ATTEST:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Fiscal Year 2022/2023 Budget

2.

RESOLUTION 2024-08

THE ANNUAL APPROPRIATION RESOLUTION OF THE DARBY COMMUNITY DEVELOPMENT DISTRICT RELATING TO THE ANNUAL APPROPRIATIONS AND ADOPTING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; AUTHORIZING BUDGET AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the District Manager has submitted to the Board of Supervisors (“**Board**”) of the Darby Community Development District (“**District**”) proposed budget (“**Proposed Budget**”) for the fiscal year beginning on October 1, 2023 and ending September 30, 2024 (“**Fiscal Year 2023/2024**”) along with an explanatory and complete financial plan for each fund of the District, pursuant to the provisions of Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, at least sixty (60) days prior to the adoption of the Proposed Budget, the District filed a copy of the Proposed Budget with the local governing authorities having jurisdiction over the area included in the District pursuant to the provisions of Section 190.008(2)(b), *Florida Statutes*; and

WHEREAS, the Board set a public hearing thereon and caused notice of such public hearing to be given by publication pursuant to Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, the District Manager posted the Proposed Budget on the District’s website at least two days before the public hearing; and

WHEREAS, Section 190.008(2)(a), *Florida Statutes*, requires that each year, the Board, by passage of the Annual Appropriation Resolution, shall adopt a budget for the ensuing fiscal year and appropriate such sums of money as the Board deems necessary to defray all expenditures of the District during the ensuing fiscal year; and

WHEREAS, the District Manager has prepared a Proposed Budget, whereby the budget shall project the cash receipts and disbursements anticipated during a given time period, including reserves for contingencies for emergency or other unanticipated expenditures during the fiscal year.

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

SECTION 1. BUDGET

- a. The Board has reviewed the Proposed Budget, a copy of which is on file with the office of the District Manager and at the District’s Local Records Office, and hereby approves certain amendments thereto, as shown in Section 2 below.

- b. The Proposed Budget, attached hereto as **Exhibit A**, as amended by the Board, is hereby adopted in accordance with the provisions of Section 190.008(2)(a), *Florida Statutes* ("**Adopted Budget**"), and incorporated herein by reference; provided, however, that the comparative figures contained in the Adopted Budget may be subsequently revised as deemed necessary by the District Manager to reflect actual revenues and expenditures.
- c. The Adopted Budget, as amended, shall be maintained in the office of the District Manager and at the District's Local Records Office and identified as "The Budget for the Darby Community Development District for the Fiscal Year Ending September 30, 2024."
- d. The Adopted Budget shall be posted by the District Manager on the District's official website within thirty (30) days after adoption and shall remain on the website for at least 2 years.

SECTION 2. APPROPRIATIONS

There is hereby appropriated out of the revenues of the District, for Fiscal Year 2023/2024, the sum of \$_____ to be raised by the levy of assessments and/or otherwise, which sum is deemed by the Board to be necessary to defray all expenditures of the District during said budget year, to be divided and appropriated in the following fashion:

TOTAL GENERAL FUND	\$ _____
TOTAL ALL FUNDS	\$ _____

SECTION 3. BUDGET AMENDMENTS

Pursuant to Section 189.016, *Florida Statutes*, the District at any time within Fiscal Year 2023/2024, or within 60 days following the end of the Fiscal Year 2023/2024, may amend its Adopted Budget for that fiscal year as follows:

- a. A line-item appropriation for expenditures within a fund may be decreased or increased by motion of the Board recorded in the minutes, and approving the expenditure, if the total appropriations of the fund do not increase.
- b. The District Manager or Treasurer may approve an expenditure that would increase or decrease a line-item appropriation for expenditures within a fund if the total appropriations of the fund do not increase and if either (i) the aggregate change in the original appropriation item does not exceed the greater of \$15,000 or 15% of the original appropriation, or (ii) such expenditure is authorized by separate disbursement or spending resolution.

- c. Any other budget amendments shall be adopted by resolution and consistent with Florida law.

The District Manager or Treasurer must ensure that any amendments to the budget under paragraph c. above are posted on the District's website within 5 days after adoption and remain on the website for at least 2 years.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 4TH DAY OF DECEMBER, 2023.

ATTEST:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Fiscal Year 2023/2024 Budget

C.

RESOLUTION 2024-09

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE DARBY COMMUNITY DEVELOPMENT DISTRICT ADOPTING RULES OF PROCEDURE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Darby Community Development District (“**District**”) is a local unit of special purpose government created and existing pursuant to Chapter 190, *Florida Statutes*; and

WHEREAS, Chapter 190, *Florida Statutes*, authorizes the District to adopt rules to govern the administration of the District and to adopt resolutions as may be necessary for the conduct of District business; and

WHEREAS, to provide for efficient and effective District operations and to maintain compliance with recent changes to Florida law, the Board of Supervisors finds that it is in the best interests of the District to adopt by resolution the Rules of Procedure attached hereto as **Exhibit A** for immediate use and application; and

WHEREAS, the Board of Supervisors has complied with applicable Florida law concerning rule development and adoption.

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

SECTION 1. The attached Rules of Procedure are hereby adopted pursuant to this resolution as necessary for the conduct of District business. These Rules of Procedure replace all prior versions of the Rules of Procedure, and shall stay in full force and effect until such time as the Board of Supervisors may amend these rules in accordance with Chapter 190, *Florida Statutes*.

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

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

PASSED AND ADOPTED this 4th day of December, 2023.

ATTEST:

DARBY COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Rules of Procedure

EXHIBIT A:
RULES OF PROCEDURE

**RULES OF PROCEDURE
DARBY COMMUNITY DEVELOPMENT DISTRICT**

EFFECTIVE AS OF DECEMBER 4, 2023

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Rule 1.0 General.

- (1) The Darby Community Development District (the “District”) was created pursuant to the provisions of Chapter 190 of the Florida Statutes, and was established to provide for the ownership, operation, maintenance, and provision of various capital facilities and services within its jurisdiction. The purpose of these rules (the “Rules”) is to describe the general operations of the District.
- (2) Definitions located within any section of these Rules shall be applicable within all other sections, unless specifically stated to the contrary.
- (3) Unless specifically permitted by a written agreement with the District, the District does not accept documents filed by electronic mail or facsimile transmission. Filings are only accepted during normal business hours.
- (4) A Rule of the District shall be effective upon adoption by affirmative vote of the District Board. After a Rule becomes effective, it may be repealed or amended only through the rulemaking procedures specified in these Rules. Notwithstanding, the District may immediately suspend the application of a Rule if the District determines that the Rule conflicts with Florida law. In the event that a Rule conflicts with Florida law and its application has not been suspended by the District, such Rule should be interpreted in the manner that best effectuates the intent of the Rule while also complying with Florida law. If the intent of the Rule absolutely cannot be effectuated while complying with Florida law, the Rule shall be automatically suspended.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 190.011(5), 190.011(15), Fla. Stat.

Rule 1.1 Board of Supervisors; Officers and Voting.

- (1) Board of Supervisors. The Board of Supervisors of the District (the “Board”) shall consist of five (5) members. Members of the Board (“Supervisors”) appointed by ordinance or rule or elected by landowners must be citizens of the United States of America and residents of the State of Florida. Supervisors elected or appointed by the Board to elector seats must be citizens of the United States of America, residents of the State of Florida and of the District and registered to vote with the Supervisor of Elections of the county in which the District is located and for those elected, shall also be qualified to run by the Supervisor of Elections. The Board shall exercise the powers granted to the District under Florida law.
 - (a) Supervisors shall hold office for the term specified by Section 190.006 of the Florida Statutes. If, during the term of office, any Board member(s) vacates their office, the remaining member(s) of the Board shall fill the vacancies by appointment for the remainder of the term(s). If three or more vacancies exist at the same time, a quorum, as defined herein, shall not be required to appoint replacement Board members.
 - (b) Three (3) members of the Board shall constitute a quorum for the purposes of conducting business, exercising powers and all other purposes. A Board member shall be counted toward the quorum if physically present at the meeting, regardless of whether such Board member is prohibited from, or abstains from, participating in discussion or voting on a particular item.
 - (c) Action taken by the Board shall be upon a majority vote of the members present, unless otherwise provided in the Rules or required by law. Subject to Rule 1.3(10), a Board member participating in the Board meeting by teleconference or videoconference shall be entitled to vote and take all other action as though physically present.
 - (d) Unless otherwise provided for by an act of the Board, any one Board member may attend a mediation session on behalf of the Board. Any agreement resulting from such mediation session must be approved pursuant to subsection (1)(c) of this Rule.
- (2) Officers. At the first Board meeting held after each election where the newly elected members take office, the Board shall select a Chairperson, Vice-Chairperson, Secretary, Assistant Secretary, and Treasurer.
 - (a) The Chairperson must be a member of the Board. If the Chairperson resigns from that office or ceases to be a member of the Board, the Board shall select a Chairperson. The Chairperson serves at the pleasure of the Board. The Chairperson shall be authorized to execute resolutions and contracts on the District’s behalf. The Chairperson shall convene and conduct all meetings of the Board. In the event the Chairperson is unable to attend a

meeting, the Vice-Chairperson shall convene and conduct the meeting. The Chairperson or Vice-Chairperson may delegate the responsibility of conducting the meeting to the District's manager ("District Manager") or District Counsel, in whole or in part.

- (b) The Vice-Chairperson shall be a member of the Board and shall have such duties and responsibilities as specifically designated by the Board from time to time. The Vice-Chairperson has the authority to execute resolutions and contracts on the District's behalf in the absence of the Chairperson. If the Vice-Chairperson resigns from office or ceases to be a member of the Board, the Board shall select a Vice-Chairperson. The Vice-Chairperson serves at the pleasure of the Board.
- (c) The Secretary of the Board serves at the pleasure of the Board and need not be a member of the Board. The Secretary shall be responsible for maintaining the minutes of Board meetings and may have other duties assigned by the Board from time to time. An employee of the District Manager may serve as Secretary. The Secretary shall be bonded by a reputable and qualified bonding company in at least the amount of one million dollars (\$1,000,000), or have in place a fidelity bond, employee theft insurance policy, or a comparable product in at least the amount of one million dollars (\$1,000,000) that names the District as an additional insured.
- (d) The Treasurer need not be a member of the Board but must be a resident of the State of Florida. The Treasurer shall perform duties described in Section 190.007(2) and (3) of the Florida Statutes, as well as those assigned by the Board from time to time. The Treasurer shall serve at the pleasure of the Board. The Treasurer shall either be bonded by a reputable and qualified bonding company in at least the amount of one million dollars (\$1,000,000), or have in place a fidelity bond, employee theft insurance policy, or a comparable product in at least the amount of one million dollars (\$1,000,000) that names the District as an additional insured.
- (e) In the event that both the Chairperson and Vice-Chairperson are absent from a Board meeting and a quorum is present, the Board may designate one of its members or a member of District staff to convene and conduct the meeting. In such circumstances, any of the Board members present are authorized to execute agreements, resolutions, and other documents approved by the Board at such meeting. In the event that the Chairperson and Vice-Chairperson are both unavailable to execute a document previously approved by the Board, the Secretary or any Assistant Secretary may execute such document.
- (f) The Board may assign additional duties to District officers from time to time, which include, but are not limited to, executing documents on behalf of the District.

- (g) The Chairperson, Vice-Chairperson, and any other person authorized by District Resolution may sign checks and warrants for the District, countersigned by the Treasurer or other persons authorized by the Board.
- (3) Committees. The Board may establish committees of the Board, either on a permanent or temporary basis, to perform specifically designated functions. Committees may include individuals who are not members of the Board. Such functions may include, but are not limited to, review of bids, proposals, and qualifications, contract negotiations, personnel matters, and budget preparation.
- (4) Record Book. The Board shall keep a permanent record book entitled "Record of Proceedings," in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, and corporate acts. The Records of Proceedings shall be located at a District office and shall be available for inspection by the public.
- (5) Meetings. For each fiscal year, the Board shall establish a schedule of regular meetings, which shall be published in a newspaper of general circulation in the county in which the District is located and filed with the local general-purpose governments within whose boundaries the District is located. All meetings of the Board and Committees serving an advisory function shall be open to the public in accord with the provisions of Chapter 286 of the Florida Statutes.
- (6) Voting Conflict of Interest. The Board shall comply with Section 112.3143 of the Florida Statutes, so as to ensure the proper disclosure of conflicts of interest on matters coming before the Board for a vote. For the purposes of this section, "voting conflict of interest" shall be governed by the Florida Constitution and Chapters 112 and 190 of the Florida Statutes, as amended from time to time. Generally, a voting conflict exists when a Board member is called upon to vote on an item which would inure to the Board member's special private gain or loss or the Board member knows would inure to the special private gain or loss of a principal by whom the Board member is retained, the parent organization or subsidiary of a corporate principal, a business associate, or a relative including only a father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law.
 - (a) When a Board member knows the member has a conflict of interest on a matter coming before the Board, the member should notify the Board's Secretary prior to participating in any discussion with the Board on the matter. The member shall publicly announce the conflict of interest at the meeting. This announcement shall appear in the minutes.

If the Board member was elected at a landowner's election or appointed to fill a vacancy of a seat last filled at a landowner's election, the Board member may vote or abstain from voting on the matter at issue. If the Board member was elected by electors residing within the District, the Board

member is prohibited from voting on the matter at issue. In the event that the Board member intends to abstain or is prohibited from voting, such Board member shall not participate in the discussion on the item subject to the vote.

The Board's Secretary shall prepare a Memorandum of Voting Conflict (Form 8B) which shall then be signed by the Board member, filed with the Board's Secretary, and provided for attachment to the minutes of the meeting within fifteen (15) days of the meeting.

- (b) If a Board member inadvertently votes on a matter and later learns he or she has a conflict on the matter, the member shall immediately notify the Board's Secretary. Within fifteen (15) days of the notification, the member shall file the appropriate Memorandum of Voting Conflict, which will be attached to the minutes of the Board meeting during which the vote on the matter occurred. The Memorandum of Voting Conflict shall immediately be provided to other Board members and shall be read publicly at the next meeting held subsequent to the filing of the Memorandum of Voting Conflict. The Board member's vote is unaffected by this filing.
- (c) It is not a conflict of interest for a Board member, the District Manager, or an employee of the District to be a stockholder, officer or employee of a landowner or of an entity affiliated with a landowner.
- (d) In the event that a Board member elected at a landowner's election or appointed to fill a vacancy of a seat last filled at a landowner's election, has a continuing conflict of interest, such Board member is permitted to file a Memorandum of Voting Conflict at any time in which it shall state the nature of the continuing conflict. Only one such continuing Memorandum of Voting Conflict shall be required to be filed for each term the Board member is in office.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.
Law Implemented: §§ 112.3143, 190.006, 190.007, Fla. Stat.

Rule 1.2 District Offices; Public Information and Inspection of Records; Policies; Service Contract Requirements; Financial Disclosure Coordination.

- (1) District Offices. Unless otherwise designated by the Board, the official District office shall be the District Manager's office identified by the District Manager. If the District Manager's office is not located within the county in which the District is located, the Board shall designate a local records office within such county which shall at a minimum contain, but not be limited to, the following documents:
 - (a) Agenda packages for prior 24 months and next meeting;
 - (b) Official minutes of meetings, including adopted resolutions of the Board;
 - (c) Names and addresses of current Board members and District Manager, unless such addresses are protected from disclosure by law;
 - (d) Adopted engineer's reports;
 - (e) Adopted assessment methodologies/reports;
 - (f) Adopted disclosure of public financing;
 - (g) Limited Offering Memorandum for each financing undertaken by the District;
 - (h) Proceedings, certificates, bonds given by all employees, and any and all corporate acts;
 - (i) District policies and rules;
 - (j) Fiscal year end audits; and
 - (k) Adopted budget for the current fiscal year.

The District Manager shall ensure that each District records office contains the documents required by Florida law.

- (2) Public Records. District public records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business of the District. All District public records not otherwise restricted by law may be copied or inspected at the District Manager's office during regular business hours. Certain District records can also be inspected and copied at the District's local records office during regular business hours. All written public records requests shall be directed to the Secretary who by these rules is appointed as the

District's records custodian. Regardless of the form of the request, any Board member or staff member who receives a public records request shall immediately forward or communicate such request to the Secretary for coordination of a prompt response. The Secretary, after consulting with District Counsel as to the applicability of any exceptions under the public records laws, shall be responsible for responding to the public records request. At no time can the District be required to create records or summaries of records, or prepare opinions regarding District policies, in response to a public records request.

- (3) Service Contracts. Any contract for services, regardless of cost, shall include provisions required by law that require the contractor to comply with public records laws. The District Manager shall be responsible for initially enforcing all contract provisions related to a contractor's duty to comply with public records laws.
- (4) Fees; Copies. Copies of public records shall be made available to the requesting person at a charge of \$0.15 per page for one-sided copies and \$0.20 per page for two-sided copies if not more than 8 ½ by 14 inches. For copies of public records in excess of the sizes listed in this section and for outside duplication services, the charge shall be equal to the actual cost of reproduction. Certified copies of public records shall be made available at a charge of one dollar (\$1.00) per page. If the nature or volume of records requested requires extensive use of information technology resources or extensive clerical or supervisory assistance, the District may charge, in addition to the duplication charge, a special service charge that is based on the cost the District incurs to produce the records requested. This charge may include, but is not limited to, the cost of information technology resource, employee labor, and fees charged to the District by consultants employed in fulfilling the request. In cases where the special service charge is based in whole or in part on the costs incurred by the District due to employee labor, consultant fees, or other forms of labor, those portions of the charge shall be calculated based on the lowest labor cost of the individual(s) who is/are qualified to perform the labor, taking into account the nature or volume of the public records to be inspected or copied. The charge may include the labor costs of supervisory and/or clerical staff whose assistance is required to complete the records request, in accordance with Florida law. For purposes of this Rule, the word "extensive" shall mean that it will take more than 15 minutes to locate, review for confidential information, copy and re-file the requested material. In cases where extensive personnel time is determined by the District to be necessary to safeguard original records being inspected, the special service charge provided for in this section shall apply. If the total fees, including but not limited to special service charges, are anticipated to exceed twenty-five dollars (\$25.00), then, prior to commencing work on the request, the District will inform the person making the public records request of the estimated cost, with the understanding that the final cost may vary from that estimate. If the person making the public records request decides to proceed with the request, payment of the estimated cost is required in advance. Should the person fail to pay the estimate, the District is under no duty to produce the requested records. After the request has been fulfilled, additional payments or credits may be

due. The District is under no duty to produce records in response to future records requests if the person making the request owes the District for past unpaid duplication charges, special service charges, or other required payments or credits.

- (5) Records Retention. The Secretary of the District shall be responsible for retaining the District's records in accordance with applicable Florida law.
- (6) Policies. The Board may adopt policies related to the conduct of its business and the provision of services either by resolution or motion.
- (7) Financial Disclosure Coordination. Unless specifically designated by Board resolution otherwise, the Secretary shall serve as the Financial Disclosure Coordinator ("Coordinator") for the District as required by the Florida Commission on Ethics ("Commission"). The Coordinator shall create, maintain and update a list of the names, e-mail addresses, physical addresses, and names of the agency of, and the office or position held by, all Supervisors and other persons required by Florida law to file a statement of financial interest due to his or her affiliation with the District ("Reporting Individual"). The Coordinator shall provide this list to the Commission by February 1 of each year, which list shall be current as of December 31 of the prior year. Each Supervisor and Reporting Individual shall promptly notify the Coordinator in writing if there are any changes to such person's name, e-mail address, or physical address. Each Supervisor and Reporting Individual shall promptly notify the Commission in the manner prescribed by the Commission if there are any changes to such person's e-mail address.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 112.31446(3), 112.3145(8)(a)1., 119.07, 119.0701, 190.006, Fla. Stat.

Rule 1.3 Public Meetings, Hearings, and Workshops.

- (1) Notice. Except in emergencies, or as otherwise required by statute or these Rules, at least seven (7) days, but no more than thirty (30) days public notice shall be given of any public meeting, hearing or workshop of the Board. Public notice shall be given by publication in a newspaper of general circulation in the District and in the county in which the District is located. "General circulation" means a publication that is printed and published at least once a week for the preceding year, offering at least 25% of its words in the English language, qualifies as a periodicals material for postal purposes in the county in which the District is located, is for sale to the public generally, is available to the public generally for the publication of official or other notices, and is customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public. The annual meeting notice required to be published by Section 189.015 of the Florida Statutes, shall be published in a newspaper not of limited subject matter, which is published at least five days a week, unless the only newspaper in the county is published less than five days a week. Each Notice shall state, as applicable:
- (a) The date, time and place of the meeting, hearing or workshop;
 - (b) A brief description of the nature, subjects, and purposes of the meeting, hearing, or workshop;
 - (c) The District office address for the submission of requests for copies of the agenda, as well as a contact name and telephone number for verbal requests for copies of the agenda; and
 - (d) The following or substantially similar language: "Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting/hearing/workshop is asked to advise the District Office at least forty-eight (48) hours before the meeting/hearing/workshop by contacting the District Manager at (904) 940-5850. If you are hearing or speech impaired, please contact the Florida Relay Service at 1 (800) 955-8770 or 1 (800) 955-8771, who can aid you in contacting the District Office."
 - (e) The following or substantially similar language: "A person who decides to appeal any decision made at the meeting/hearing/workshop with respect to any matter considered at the meeting/hearing/workshop 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."

- (f) The following or substantially similar language: “The meeting [or hearing or workshop] may be continued in progress without additional notice to a time, date, and location stated on the record.”
- (2) Mistake. In the event that a meeting is held under the incorrect assumption that notice required by law and these Rules has been given, the Board at its next properly noticed meeting shall cure such defect by considering the agenda items from the prior meeting individually and anew.
- (3) Agenda. The District Manager, under the guidance of District Counsel and the Chairperson or Vice-Chairperson, shall prepare an agenda of the meeting/hearing/workshop. The agenda and any meeting materials available in an electronic format, excluding any confidential and any confidential and exempt information, shall be available to the public at least seven days before the meeting/hearing/workshop, except in an emergency. Meeting materials shall be defined as, and limited to, the agenda, meeting minutes, resolutions, and agreements of the District that District staff deems necessary for Board approval. Inclusion of additional materials for Board consideration other than those defined herein as “meeting materials” shall not convert such materials into “meeting materials.” For good cause, the agenda may be changed after it is first made available for distribution, and additional materials may be added or provided under separate cover at the meeting. The requirement of good cause shall be liberally construed to allow the District to efficiently conduct business and to avoid the expenses associated with special meetings.

The District may, but is not required to, use the following format in preparing its agenda for its regular meetings:

- Call to order
- Roll call
- Public comment
- Organizational matters
- Review of minutes
- Specific items of old business
- Specific items of new business
- Staff reports
 - (a) District Counsel
 - (b) District Engineer
 - (c) District Manager
 - 1. Financial Report
 - 2. Approval of Expenditures
- Supervisor’s requests and comments
- Public comment
- Adjournment

- (4) Minutes. The Secretary shall be responsible for preparing and keeping the minutes of each meeting of the Board. Minutes shall be corrected and approved by the Board at a subsequent meeting. The Secretary may work with other staff members in preparing draft minutes for the Board's consideration.
- (5) Special Requests. Persons wishing to receive, by mail, notices or agendas of meetings, may so advise the District Manager or Secretary at the District Office. Such persons shall furnish a mailing address in writing and shall be required to pre-pay the cost of the copying and postage.
- (6) Emergency Meetings. The Chairperson, or Vice-Chairperson if the Chairperson is unavailable, upon consultation with the District Manager and District Counsel, if available, may convene an emergency meeting of the Board without first having complied with sections (1) and (3) of this Rule, to act on emergency matters that may affect the public health, safety, or welfare. Whenever possible, the District Manager shall make reasonable efforts to provide public notice and notify all Board members of an emergency meeting twenty-four (24) hours in advance. Reasonable efforts may include telephone notification. Notice of the emergency meeting must be provided both before and after the meeting on the District's website, if it has one. Whenever an emergency meeting is called, the District Manager shall be responsible for notifying at least one newspaper of general circulation in the District. After an emergency meeting, the Board shall publish in a newspaper of general circulation in the District, the time, date and place of the emergency meeting, the reasons why an emergency meeting was necessary, and a description of the action taken. Actions taken at an emergency meeting may be ratified by the Board at a regularly noticed meeting subsequently held.
- (7) Public Comment. The Board shall set aside a reasonable amount of time at each meeting for public comment and members of the public shall be permitted to provide comment on any proposition before the Board. The portion of the meeting generally reserved for public comment shall be identified in the agenda. Policies governing public comment may be adopted by the Board in accordance with Florida law.
- (8) Budget Hearing. Notice of hearing on the annual budget(s) shall be in accord with Section 190.008 of the Florida Statutes. Once adopted in accord with Section 190.008 of the Florida Statutes, the annual budget(s) may be amended from time to time by action of the Board. Approval of invoices by the Board in excess of the funds allocated to a particular budgeted line item shall serve to amend the budgeted line item.
- (9) Public Hearings. Notice of required public hearings shall contain the information required by applicable Florida law and by these Rules applicable to meeting notices and shall be mailed and published as required by Florida law. The District Manager shall ensure that all such notices, whether mailed or published, contain the information required by Florida law and these Rules and are mailed and published

as required by Florida law. Public hearings may be held during Board meetings when the agenda includes such public hearing.

- (10) Participation by Teleconference/Videoconference. District staff may participate in Board meetings by teleconference or videoconference. Board members may also participate in Board meetings by teleconference or videoconference if in the good judgment of the Board extraordinary circumstances exist; provided however, at least three Board members must be physically present at the meeting location to establish a quorum. Such extraordinary circumstances shall be presumed when a Board member participates by teleconference or videoconference, unless a majority of the Board members physically present determines that extraordinary circumstances do not exist.
- (11) Board Authorization. The District has not adopted Robert's Rules of Order. For each agenda item, there shall be discussion permitted among the Board members during the meeting. Unless such procedure is waived by the Board, approval or disapproval of resolutions and other proposed Board actions shall be in the form of a motion by one Board member, a second by another Board member, and an affirmative vote by the majority of the Board members present. Any Board member, including the Chairperson, can make or second a motion.
- (12) Continuances. Any meeting or public hearing of the Board may be continued without re-notice or re-advertising provided that:
 - (a) The Board identifies on the record at the original meeting a reasonable need for a continuance;
 - (b) The continuance is to a specified date, time, and location publicly announced at the original meeting; and
 - (c) The public notice for the original meeting states that the meeting may be continued to a date and time and states that the date, time, and location of any continuance shall be publicly announced at the original meeting and posted at the District Office immediately following the original meeting.
- (13) Attorney-Client Sessions. An Attorney-Client Session is permitted when the District's attorneys deem it necessary to meet in private with the Board to discuss pending litigation to which the District is a party before a court or administrative agency or as may be authorized by law. The District's attorney must request such session at a public meeting. Prior to holding the Attorney-Client Session, the District must give reasonable public notice of the time and date of the session and the names of the persons anticipated to attend the session. The session must commence at an open meeting in which the Chairperson or Vice-Chairperson announces the commencement of the session, the estimated length of the session, and the names of the persons who will be attending the session. The discussion during the session is confined to settlement negotiations or strategy related to

litigation expenses or as may be authorized by law. Only the Board, the District's attorneys (including outside counsel), the District Manager, and the court reporter may attend an Attorney-Client Session. During the session, no votes may be taken and no final decisions concerning settlement can be made. Upon the conclusion of the session, the public meeting is reopened, and the Chairperson or Vice-Chairperson must announce that the session has concluded. The session must be transcribed by a court-reporter and the transcript of the session filed with the District Secretary within a reasonable time after the session. The transcript shall not be available for public inspection until after the conclusion of the litigation.

- (14) Security and Firesafety Board Discussions. Portions of a meeting which relate to or would reveal a security or firesafety system plan or portion thereof made confidential and exempt by section 119.071(3)(a), Florida Statutes, are exempt from the public meeting requirements and other requirements of section 286.011, Florida Statutes, and section 24(b), Article 1 of the State Constitution. Should the Board wish to discuss such matters, members of the public shall be required to leave the meeting room during such discussion. Any records of the Board's discussion of such matters, including recordings or minutes, shall be maintained as confidential and exempt records in accordance with Florida law.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 189.069(2)(a)16, 190.006, 190.007, 190.008, 286.0105, 286.011, 286.0113, 286.0114, Fla. Stat.

Rule 1.4 Internal Controls to Prevent Fraud, Waste and Abuse

- (1) Internal Controls. The District shall establish and maintain internal controls designed to:
- (a) Prevent and detect “fraud,” “waste” and “abuse” as those terms are defined in section 11.45(1), Florida Statutes; and
 - (b) Promote and encourage compliance with applicable laws, rules contracts, grant agreements, and best practices; and
 - (c) Support economical and efficient operations; and
 - (d) Ensure reliability of financial records and reports; and
 - (e) Safeguard assets.
- (2) Adoption. The internal controls to prevent fraud, waste and abuse shall be adopted and amended by the District in the same manner as District policies.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: § 218.33(3), Fla. Stat.

Rule 2.0 Rulemaking Proceedings.

- (1) Commencement of Proceedings. Proceedings held for adoption, amendment, or repeal of a District rule shall be conducted according to these Rules. Rulemaking proceedings shall be deemed to have been initiated upon publication of notice by the District. A “rule” is a District statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the District (“Rule”). Nothing herein shall be construed as requiring the District to consider or adopt rules unless required by Chapter 190 of the Florida Statutes. Policies adopted by the District which do not consist of rates, fees, rentals or other monetary charges may be, but are not required to be, implemented through rulemaking proceedings.
- (2) Notice of Rule Development.
 - (a) Except when the intended action is the repeal of a Rule, the District shall provide notice of the development of a proposed rule by publication of a Notice of Rule Development in a newspaper of general circulation in the District before providing notice of a proposed rule as required by section (3) of this Rule. Consequently, the Notice of Rule Development shall be published at least twenty-nine (29) days prior to the public hearing on the proposed Rule. The Notice of Rule Development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.
 - (b) All rules as drafted shall be consistent with Sections 120.54(1)(g) and 120.54(2)(b) of the Florida Statutes.
- (3) Notice of Proceedings and Proposed Rules.
 - (a) Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, the District shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action, a reference to the specific rulemaking authority pursuant to which the rule is adopted, and a reference to the section or subsection of the Florida Statutes being implemented, interpreted, or made specific. The notice shall include a summary of the District’s statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in Section 120.541(2) of the Florida Statutes, and a statement that any person who wishes to provide the District with a lower cost regulatory alternative as provided by Section 120.541(1), must do so in writing within twenty-one (21) days after publication of the notice. The notice shall additionally include a statement that any affected person may request a public hearing by submitting a written request within twenty-one (21) days after the date

of publication of the notice. Except when intended action is the repeal of a rule, the notice shall include a reference to both the date on which and the place where the Notice of Rule Development required by section (2) of this Rule appeared.

- (b) The notice shall be published in a newspaper of general circulation in the District and each county in which the District is located not less than twenty-eight (28) days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.
 - (c) The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least fourteen (14) days prior to such mailing, have made requests of the District for advance notice of its rulemaking proceedings. Any person may file a written request with the District Manager to receive notice by mail of District proceedings to adopt, amend, or repeal a rule. Such persons must furnish a mailing address and may be required to pay the cost of copying and mailing.
- (4) Rule Development Workshops. Whenever requested in writing by any affected person, the District must either conduct a rule development workshop prior to proposing rules for adoption or the Chairperson must explain in writing why a workshop is unnecessary. The District may initiate a rule development workshop but is not required to do so.
- (5) Petitions to Initiate Rulemaking. All Petitions to Initiate Rulemaking proceedings must contain the name, address, and telephone number of the petitioner, the specific action requested, the specific reason for adoption, amendment, or repeal, the date submitted, the text of the proposed rule, and the facts showing that the petitioner is regulated by the District or has a substantial interest in the rulemaking. Not later than sixty (60) calendar days following the date of filing a petition, the Board shall initiate rulemaking proceedings or deny the petition with a written statement of its reasons for the denial. If the petition is directed to an existing policy that the District has not formally adopted as a rule, the District may, in its discretion, notice and hold a public hearing on the petition to consider the comments of the public directed to the policy, its scope and application, and to consider whether the public interest is served adequately by the application of the policy on a case-by-case basis, as contrasted with its formal adoption as a rule. However, this section shall not be construed as requiring the District to adopt a rule to replace a policy.
- (6) Rulemaking Materials. After the publication of the notice referenced in section (3) of this Rule, the Board shall make available for public inspection and shall provide, upon request and payment of the cost of copies, the following materials:
- (a) The text of the proposed rule, or any amendment or repeal of any existing rules;

- (b) A detailed written statement of the facts and circumstances justifying the proposed rule;
 - (c) A copy of the statement of estimated regulatory costs if required by Section 120.541 of the Florida Statutes; and
 - (d) The published notice.
- (7) Hearing. The District may, or, upon the written request of any affected person received within twenty-one (21) days after the date of publication of the notice described in section (3) of this Rule, shall, provide a public hearing for the presentation of evidence, argument, and oral statements, within the reasonable conditions and limitations imposed by the District to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings. The District shall publish notice of the public hearing in a newspaper of general circulation within the District either in the text of the notice described in section (3) of this Rule or in a separate publication at least seven (7) days before the scheduled public hearing. The notice shall specify the date, time, and location of the public hearing, and the name, address, and telephone number of the District contact person who can provide information about the public hearing. Written statements may be submitted by any person prior to or at the public hearing. All timely submitted written statements shall be considered by the District and made part of the rulemaking record.
- (8) Emergency Rule Adoption. The Board may adopt an emergency rule if it finds that immediate danger to the public health, safety, or welfare exists which requires immediate action. Prior to the adoption of an emergency rule, the District Manager shall make reasonable efforts to notify a newspaper of general circulation in the District. Notice of emergency rules shall be published as soon as possible in a newspaper of general circulation in the District. The District may use any procedure which is fair under the circumstances in the adoption of an emergency rule as long as it protects the public interest as determined by the District and otherwise complies with these provisions.
- (9) Negotiated Rulemaking. The District may use negotiated rulemaking in developing and adopting rules pursuant to Section 120.54(2)(d) of the Florida Statutes, except that any notices required under Section 120.54(2)(d) of the Florida Statutes, may be published in a newspaper of general circulation in the county in which the District is located.
- (10) Rulemaking Record. In all rulemaking proceedings, the District shall compile and maintain a rulemaking record. The record shall include, if applicable:
- (a) The texts of the proposed rule and the adopted rule;
 - (b) All notices given for a proposed rule;

- (c) Any statement of estimated regulatory costs for the rule;
- (d) A written summary of hearings, if any, on the proposed rule;
- (e) All written comments received by the District and responses to those written comments; and
- (f) All notices and findings pertaining to an emergency rule.

(11) Petitions to Challenge Existing Rules.

- (a) Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of the District's authority.
- (b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it.
- (c) The petition shall be filed with the District. Within 10 days after receiving the petition, the Chairperson shall, if the petition complies with the requirements of subsection (b) of this section, designate any member of the Board (including the Chairperson), District Manager, District Counsel, or other person as a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties. The failure of the District to follow the applicable rulemaking procedures or requirements in this Rule shall be presumed to be material; however, the District may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.
- (d) Within 30 days after the hearing, the hearing officer shall render a decision and state the reasons therefor in writing.
- (e) Hearings held under this section shall be de novo in nature. The petitioner has a burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of District authority as to the objections raised. The hearing officer may:
 - (i) Administer oaths and affirmations;
 - (ii) Rule upon offers of proof and receive relevant evidence;

- (iii) Regulate the course of the hearing, including any pre-hearing matters;
 - (iv) Enter orders; and
 - (v) Make or receive offers of settlement, stipulation, and adjustment.
 - (f) The petitioner and the District shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings.
- (12) Variations and Waivers. A “variance” means a decision by the District to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule. A “waiver” means a decision by the District not to apply all or part of a rule to a person who is subject to the rule. Variations and waivers from District rules may be granted subject to the following:
- (a) Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person, and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.
 - (b) A person who is subject to regulation by a District Rule may file a petition with the District, requesting a variance or waiver from the District’s Rule. Each petition shall specify:
 - (i) The rule from which a variance or waiver is requested;
 - (ii) The type of action requested;
 - (iii) The specific facts that would justify a waiver or variance for the petitioner; and
 - (iv) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.
 - (c) The District shall review the petition and may request only that information needed to clarify the petition or to answer new questions raised by or directly related to the petition. If the petitioner asserts that any request for additional information is not authorized by law or by Rule of the District,

the District shall proceed, at the petitioner's written request, to process the petition.

- (d) The Board shall grant or deny a petition for variance or waiver and shall announce such disposition at a publicly held meeting of the Board, within ninety (90) days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. The District's statement granting or denying the petition shall contain a statement of the relevant facts and reasons supporting the District's action.

- (13) Rates, Fees, Rentals and Other Charges. All rates, fees, rentals, or other charges shall be subject to rulemaking proceedings. Policies adopted by the District which do not consist of rates, fees, rentals or other charges may be, but are not required to be, implemented through rulemaking proceedings.

Specific Authority: §§ 190.011(5), 190.011(15), 190.035, Fla. Stat.

Law Implemented: §§ 190.011(5), 190.035(2), Fla. Stat.

Rule 3.0 Competitive Purchase.

- (1) Purpose and Scope. In order to comply with Sections 190.033(1) through (3), 287.055 and 287.017 of the Florida Statutes, the following provisions shall apply to the purchase of Professional Services, insurance, construction contracts, design-build services, goods, supplies, and materials, Contractual Services, and maintenance services.
- (2) Board Authorization. Except in cases of an Emergency Purchase, a competitive purchase governed by these Rules shall only be undertaken after authorization by the Board.
- (3) Definitions.
 - (a) “Competitive Solicitation” means a formal, advertised procurement process, other than an Invitation to Bid, Request for Proposals, or Invitation to Negotiate, approved by the Board to purchase commodities and/or services which affords vendors fair treatment in the competition for award of a District purchase contract.
 - (b) “Continuing Contract” means a contract for Professional Services entered into in accordance with Section 287.055 of the Florida Statutes, between the District and a firm, whereby the firm provides Professional Services to the District for projects in which the costs do not exceed two million dollars (\$2,000,000), for a study activity when the fee for such Professional Services to the District does not exceed two hundred thousand dollars (\$200,000), or for work of a specified nature as outlined in the contract with the District, with no time limitation except that the contract must provide a termination clause (for example, a contract for general District engineering services). Firms providing Professional Services under Continuing Contracts shall not be required to bid against one another.
 - (c) “Contractual Service” means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors. Contractual Services do not include auditing services, Maintenance Services, or Professional Services as defined in Section 287.055(2)(a) of the Florida Statutes, and these Rules. Contractual Services also do not include any contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to Chapter 255 of the Florida Statutes, and Rules 3.5 or 3.6.
 - (d) “Design-Build Contract” means a single contract with a Design-Build Firm for the design and construction of a public construction project.

- (e) “Design-Build Firm” means a partnership, corporation or other legal entity that:
 - (i) Is certified under Section 489.119 of the Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
 - (ii) Is certified under Section 471.023 of the Florida Statutes, to practice or to offer to practice engineering; certified under Section 481.219 of the Florida Statutes, to practice or to offer to practice architecture; or certified under Section 481.319 of the Florida Statutes, to practice or to offer to practice landscape architecture.
- (f) “Design Criteria Package” means concise, performance-oriented drawings or specifications for a public construction project. The purpose of the Design Criteria Package is to furnish sufficient information to permit Design-Build Firms to prepare a bid or a response to the District’s Request for Proposals, or to permit the District to enter into a negotiated Design-Build Contract. The Design Criteria Package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project. Design Criteria Packages shall require firms to submit information regarding the qualifications, availability, and past work of the firms, including the partners and members thereof.
- (g) “Design Criteria Professional” means a firm who holds a current certificate of registration under Chapter 481 of the Florida Statutes, to practice architecture or landscape architecture, or a firm who holds a current certificate as a registered engineer under Chapter 471 of the Florida Statutes, to practice engineering, and who is employed by or under contract to the District to provide professional architect services, landscape architect services, or engineering services in connection with the preparation of the Design Criteria Package.
- (h) “Emergency Purchase” means a purchase necessitated by a sudden unexpected turn of events (for example, acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Board in the normal conduct of its business), where the Board finds that the delay incident to competitive purchase would be detrimental to the interests of the District. This includes, but is not limited to, instances where

the time to competitively award the project will jeopardize the funding for the project, will materially increase the cost of the project, or will create an undue hardship on the public health, safety, or welfare.

- (i) “Invitation to Bid” is a written solicitation for sealed bids with the title, date, and hour of the public bid opening designated specifically and defining the commodity or service involved. It includes printed instructions prescribing conditions for bidding, qualification, evaluation criteria, and provides for a manual signature of an authorized representative. It may include one or more bid alternates.
- (j) “Invitation to Negotiate” means a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or services.
- (k) “Negotiate” means to conduct legitimate, arm’s length discussions and conferences to reach an agreement on a term or price.
- (l) “Professional Services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper, in connection with the firm's or individual's professional employment or practice.
- (m) “Proposal (or Reply or Response) Most Advantageous to the District” means, as determined in the sole discretion of the Board, the proposal, reply, or response that is:
 - (i) Submitted by a person or firm capable and qualified in all respects to perform fully the contract requirements, who has the integrity and reliability to assure good faith performance;
 - (ii) The most responsive to the Request for Proposals, Invitation to Negotiate, or Competitive Solicitation as determined by the Board; and
 - (iii) For a cost to the District deemed by the Board to be reasonable.
- (n) “Purchase” means acquisition by sale, rent, lease, lease/purchase, or installment sale. It does not include transfer, sale, or exchange of goods, supplies, or materials between the District and any federal, state, regional or local governmental entity or political subdivision of the State of Florida.
- (o) “Request for Proposals” or “RFP” is a written solicitation for sealed proposals with the title, date, and hour of the public opening designated and

requiring the manual signature of an authorized representative. It may provide general information, applicable laws and rules, statement of work, functional or general specifications, qualifications, proposal instructions, work detail analysis, and evaluation criteria as necessary.

- (p) “Responsive and Responsible Bidder” means an entity or individual that has submitted a bid that conforms in all material respects to the Invitation to Bid and has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. “Responsive and Responsible Vendor” means an entity or individual that has submitted a proposal, reply, or response that conforms in all material respects to the Request for Proposals, Invitation to Negotiate, or Competitive Solicitation and has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. In determining whether an entity or individual is a Responsive and Responsible Bidder (or Vendor), the District may consider, in addition to factors described in the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, the following:
- (i) The ability and adequacy of the professional personnel employed by the entity/individual;
 - (ii) The past performance of the entity/individual for the District and in other professional employment;
 - (iii) The willingness of the entity/individual to meet time and budget requirements;
 - (iv) The geographic location of the entity’s/individual’s headquarters or office in relation to the project;
 - (v) The recent, current, and projected workloads of the entity/individual;
 - (vi) The volume of work previously awarded to the entity/individual;
 - (vii) Whether the cost components of the bid or proposal are appropriately balanced; and
 - (viii) Whether the entity/individual is a certified minority business enterprise.
- (q) “Responsive Bid,” “Responsive Proposal,” “Responsive Reply,” and “Responsive Response” all mean a bid, proposal, reply, or response which conforms in all material respects to the specifications and conditions in the

Invitation to Bid, Request for Proposals, Invitations to Negotiate, or Competitive Solicitation document and these Rules, and the cost components of which, if any, are appropriately balanced. A bid, proposal, reply or response is not responsive if the person or firm submitting it fails to meet any material requirement relating to the qualifications, financial stability, or licensing of the bidder.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 190.033, 255.20, 287.055, Fla. Stat.

Rule 3.1 Procedure Under the Consultants' Competitive Negotiations Act.

- (1) Scope. The following procedures are adopted for the selection of firms or individuals to provide Professional Services exceeding the thresholds herein described, for the negotiation of such contracts, and to provide for protest of actions of the Board under this Rule. As used in this Rule, "Project" means that fixed capital outlay study or planning activity when basic construction cost is estimated by the District to exceed the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY FIVE, or for a planning study activity when the fee for Professional Services is estimated by the District to exceed the threshold amount provided in Section 287.017 for CATEGORY TWO, as such categories may be amended or adjusted from time to time.

- (2) Qualifying Procedures. In order to be eligible to provide Professional Services to the District, a consultant must, at the time of receipt of the firm's qualification submittal:
 - (a) Hold all required applicable state professional licenses in good standing;
 - (b) Hold all required applicable federal licenses in good standing, if any;
 - (c) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the consultant is a corporation; and
 - (d) Meet any qualification requirements set forth in the District's Request for Qualifications.

Evidence of compliance with this Rule may be submitted with the qualifications, if requested by the District. In addition, evidence of compliance must be submitted any time requested by the District.

- (3) Public Announcement. Except in cases of valid public emergencies as certified by the Board, the District shall announce each occasion when Professional Services are required for a Project or a Continuing Contract by publishing a notice providing a general description of the Project, or the nature of the Continuing Contract, and the method for interested consultants to apply for consideration. The notice shall appear in at least one (1) newspaper of general circulation in the District and in such other places as the District deems appropriate. The notice must allow at least fourteen (14) days for submittal of qualifications from the date of publication. The District may maintain lists of consultants interested in receiving such notices. These consultants are encouraged to submit annually statements of qualifications and performance data. The District shall make reasonable efforts to provide copies of any notices to such consultants, but the failure to do so shall not give such consultants any bid protest or other rights or otherwise disqualify any otherwise valid procurement process. The Board has the right to reject any and all

qualifications, and such reservation shall be included in the published notice. Consultants not receiving a contract award shall not be entitled to recover from the District any costs of qualification package preparation or submittal.

(4) Competitive Selection.

- (a) The Board shall review and evaluate the data submitted in response to the notice described in section (3) of this Rule regarding qualifications and performance ability, as well as any statements of qualifications on file. The Board shall conduct discussions with, and may require public presentation by consultants regarding their qualifications, approach to the Project, and ability to furnish the required services. The Board shall then select and list the consultants, in order of preference, deemed to be the most highly capable and qualified to perform the required Professional Services, after considering these and other appropriate criteria:
 - (i) The ability and adequacy of the professional personnel employed by each consultant;
 - (ii) Whether a consultant is a certified minority business enterprise;
 - (iii) Each consultant's past performance;
 - (iv) The willingness of each consultant to meet time and budget requirements;
 - (v) The geographic location of each consultant's headquarters, office and personnel in relation to the project;
 - (vi) The recent, current, and projected workloads of each consultant; and
 - (vii) The volume of work previously awarded to each consultant by the District.
- (b) Nothing in these Rules shall prevent the District from evaluating and eventually selecting a consultant if less than three (3) Responsive qualification packages, including packages indicating a desire not to provide Professional Services on a given Project, are received.
- (c) If the selection process is administered by any person or committee other than the full Board, the selection made will be presented to the full Board with a recommendation that competitive negotiations be instituted with the selected firms in order of preference listed.
- (d) Notice of the rankings adopted by the Board, including the rejection of some or all qualification packages, shall be provided in writing to all consultants

by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's ranking decisions under this Rule shall be in accordance with the procedures set forth in Rule 3.11.

(5) Competitive Negotiation.

- (a) After the Board has authorized the beginning of competitive negotiations, the District may begin such negotiations with the firm listed as most qualified to perform the required Professional Services at a rate or amount of compensation which the Board determines is fair, competitive, and reasonable.
- (b) In negotiating a lump-sum or cost-plus-a-fixed-fee professional contract for more than the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY FOUR, the firm receiving the award shall be required 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." In addition, any professional service contract under which such a certificate is required, shall contain a provision that "the original contract price and any additions thereto, shall be adjusted to exclude any significant sums by which the Board determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs."
- (c) Should the District be unable to negotiate a satisfactory agreement with the firm determined to be the most qualified at a price deemed by the District to be fair, competitive, and reasonable, then negotiations with that firm shall be terminated and the District shall immediately begin negotiations with the second most qualified firm. If a satisfactory agreement with the second firm cannot be reached, those negotiations shall be terminated and negotiations with the third most qualified firm shall be undertaken.
- (d) Should the District be unable to negotiate a satisfactory agreement with one of the top three (3) ranked consultants, additional firms shall be selected by the District, in order of their competence and qualifications. Negotiations shall continue, beginning with the first-named firm on the list, until an agreement is reached or the list of firms is exhausted.

(6) Contracts; Public Records. In accordance with Florida law, each contract entered into pursuant to this Rule shall include provisions required by law that require the contractor to comply with public records laws.

- (7) Continuing Contract. Nothing in this Rule shall prohibit a Continuing Contract between a consultant and the District.
- (8) Emergency Purchase. The District may make an Emergency Purchase without complying with these Rules. The fact that an Emergency Purchase has occurred or is necessary shall be noted in the minutes of the next Board meeting.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 119.0701, 190.011(3), 190.033, 287.055, Fla. Stat.

Rule 3.2 Procedure Regarding Auditor Selection.

In order to comply with the requirements of Section 218.391 of the Florida Statutes, the following procedures are outlined for selection of firms or individuals to provide Auditing Services and for the negotiation of such contracts. For audits required under Chapter 190 of the Florida Statutes but not meeting the thresholds of Chapter 218 of the Florida Statutes, the District need not follow these procedures but may proceed with the selection of a firm or individual to provide Auditing Services and for the negotiation of such contracts in the manner the Board determines is in the best interests of the District.

(1) Definitions.

- (a) "Auditing Services" means those services within the scope of the practice of a certified public accounting firm licensed under Chapter 473 of the Florida Statutes, and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy.
- (b) "Committee" means the auditor selection committee appointed by the Board as described in section (2) of this Rule.

(2) Establishment of Auditor Selection Committee. Prior to a public announcement under section (4) of this Rule that Auditing Services are required, the Board shall establish an auditor selection committee ("Committee"), the primary purpose of which is to assist the Board in selecting an auditor to conduct the annual financial audit required by Section 218.39 of the Florida Statutes. The Committee shall include at least three individuals, at least one of which must also be a member of the Board. The establishment and selection of the Committee must be conducted at a publicly noticed and held meeting of the Board. The Chairperson of the Committee must be a member of the Board. An employee, a chief executive officer, or a chief financial officer of the District may not serve as a member of the Committee; provided however such individual may serve the Committee in an advisory capacity.

(3) Establishment of Minimum Qualifications and Evaluation Criteria. Prior to a public announcement under section (4) of this Rule that Auditing Services are required, the Committee shall meet at a publicly noticed meeting to establish minimum qualifications and factors to use for the evaluation of Auditing Services to be provided by a certified public accounting firm licensed under Chapter 473 of the Florida Statutes, and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy.

- (a) Minimum Qualifications. In order to be eligible to submit a proposal, a firm must, at all relevant times including the time of receipt of the proposal by the District:

- (i) Hold all required applicable state professional licenses in good standing;
- (ii) Hold all required applicable federal licenses in good standing, if any;
- (iii) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the proposer is a corporation; and
- (iv) Meet any pre-qualification requirements established by the Committee and set forth in the RFP or other specifications.

If requested in the RFP or other specifications, evidence of compliance with the minimum qualifications as established by the Committee must be submitted with the proposal.

- (b) Evaluation Criteria. The factors established for the evaluation of Auditing Services by the Committee shall include, but are not limited to:
 - (i) Ability of personnel;
 - (ii) Experience;
 - (iii) Ability to furnish the required services; and
 - (iv) Such other factors as may be determined by the Committee to be applicable to its particular requirements.

The Committee may also choose to consider compensation as a factor. If the Committee establishes compensation as one of the factors, compensation shall not be the sole or predominant factor used to evaluate proposals.

- (4) Public Announcement. After identifying the factors to be used in evaluating the proposals for Auditing Services as set forth in section (3) of this Rule, the Committee shall publicly announce the opportunity to provide Auditing Services. Such public announcement shall include a brief description of the audit and how interested firms can apply for consideration and obtain the RFP. The notice shall appear in at least one (1) newspaper of general circulation in the District and the county in which the District is located. The public announcement shall allow for at least seven (7) days for the submission of proposals.
- (5) Request for Proposals. The Committee shall provide interested firms with a Request for Proposals (“RFP”). The RFP shall provide information on how proposals are to be evaluated and such other information the Committee determines

is necessary for the firm to prepare a proposal. The RFP shall state the time and place for submitting proposals.

- (6) Committee's Evaluation of Proposals and Recommendation. The Committee shall meet at a publicly held meeting that is publicly noticed for a reasonable time in advance of the meeting to evaluate all qualified proposals and may, as part of the evaluation, require that each interested firm provide a public presentation where the Committee may conduct discussions with the firm, and where the firm may present information, regarding the firm's qualifications. At the public meeting, the Committee shall rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to subsection (3)(b) of this Rule. If fewer than three firms respond to the RFP or if no firms respond to the RFP, the Committee shall recommend such firm as it deems to be the most highly qualified. Notwithstanding the foregoing, the Committee may recommend that any and all proposals be rejected.
- (7) Board Selection of Auditor.
 - (a) Where compensation was not selected as a factor used in evaluating the proposals, the Board shall negotiate with the firm ranked first and inquire of that firm as to the basis of compensation. If the Board is unable to negotiate a satisfactory agreement with the first ranked firm at a price deemed by the Board to be fair, competitive, and reasonable, then negotiations with that firm shall be terminated and the Board shall immediately begin negotiations with the second ranked firm. If a satisfactory agreement with the second ranked firm cannot be reached, those negotiations shall be terminated and negotiations with the third ranked firm shall be undertaken. The Board may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. If the Board is unable to negotiate a satisfactory agreement with any of the selected firms, the Committee shall recommend additional firms in order of the firms' respective competence and qualifications. Negotiations shall continue, beginning with the first-named firm on the list, until an agreement is reached or the list of firms is exhausted.
 - (b) Where compensation was selected as a factor used in evaluating the proposals, the Board shall select the highest-ranked qualified firm or document in its public records the reason for not selecting the highest-ranked qualified firm.
 - (c) In negotiations with firms under this Rule, the Board may allow the District Manager, District Counsel, or other designee to conduct negotiations on its behalf.

- (d) Notwithstanding the foregoing, the Board may reject any or all proposals. The Board shall not consider any proposal, or enter into any contract for Auditing Services, unless the proposed agreed-upon compensation is reasonable to satisfy the requirements of Section 218.39 of the Florida Statutes, and the needs of the District.
- (8) Contract. Any agreement reached under this Rule shall be evidenced by a written contract, which may take the form of an engagement letter signed and executed by both parties. The written contract shall include all provisions and conditions of the procurement of such services and shall include, at a minimum, the following:
- (a) A provision specifying the services to be provided and fees or other compensation for such services;
 - (b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract;
 - (c) A provision setting forth deadlines for the auditor to submit a preliminary draft audit report to the District for review and to submit a final audit report no later than June 30 of the fiscal year that follows the fiscal year for which the audit is being conducted;
 - (d) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed. The maximum contract period including renewals shall be five (5) years. A renewal may be done without the use of the auditor selection procedures provided in this Rule but must be in writing.
 - (e) Provisions required by law that require the auditor to comply with public records laws.
- (9) Notice of Award. Once a negotiated agreement with a firm or individual is reached, or the Board authorizes the execution of an agreement with a firm where compensation was a factor in the evaluation of proposals, notice of the intent to award, including the rejection of some or all proposals, shall be provided in writing to all proposers by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests regarding the award of contracts under this Rule shall be as provided for in Rule 3.11. No proposer shall be entitled to recover any costs of proposal preparation or submittal from the District.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.
Law Implemented: §§ 119.0701, 218.33, 218.391, Fla. Stat.

Rule 3.3 Purchase of Insurance.

- (1) Scope. The purchases of life, health, accident, hospitalization, legal expense, or annuity insurance, or all of any kinds of such insurance for the officers and employees of the District, and for health, accident, hospitalization, and legal expenses upon a group insurance plan by the District, shall be governed by this Rule. This Rule does not apply to the purchase of any other type of insurance by the District, including but not limited to liability insurance, property insurance, and directors and officers insurance. Nothing in this Rule shall require the District to purchase insurance.
- (2) Procedure. For a purchase of insurance within the scope of these Rules, the following procedure shall be followed:
 - (a) The Board shall cause to be prepared a Notice of Invitation to Bid.
 - (b) Notice of the Invitation to Bid shall be advertised at least once in a newspaper of general circulation within the District. The notice shall allow at least fourteen (14) days for submittal of bids.
 - (c) The District may maintain a list of persons interested in receiving notices of Invitations to Bid. The District shall make reasonable efforts to provide copies of any notices to such persons, but the failure to do so shall not give such consultants any bid protest or other rights or otherwise disqualify any otherwise valid procurement process.
 - (d) Bids shall be opened at the time and place noted in the Invitation to Bid.
 - (e) If only one (1) response to an Invitation is received, the District may proceed with the purchase. If no response to an Invitation to Bid is received, the District may take whatever steps are reasonably necessary in order to proceed with the purchase.
 - (f) The Board has the right to reject any and all bids and such reservations shall be included in all solicitations and advertisements.
 - (g) Simultaneously with the review of the submitted bids, the District may undertake negotiations with those companies that have submitted reasonable and timely bids and, in the opinion of the District, are fully qualified and capable of meeting all services and requirements. Bid responses shall be evaluated in accordance with the specifications and criteria contained in the Invitation to Bid; in addition, the total cost to the District, the cost, if any, to the District officers, employees, or their dependents, the geographic location of the company's headquarters and offices in relation to the District, and the ability of the company to guarantee premium stability may be considered. A contract to purchase insurance

shall be awarded to that company whose response to the Invitation to Bid best meets the overall needs of the District, its officers, employees, and/or dependents.

- (h) Notice of the intent to award, including rejection of some or all bids, shall be provided in writing to all bidders by United States Mail, by hand delivery, or by overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's procurement of insurance under this Rule shall be in accordance with the procedures set forth in Rule 3.11.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: § 112.08, Fla. Stat.

Rule 3.4 Pre-qualification

- (1) Scope. In its discretion, the District may undertake a pre-qualification process in accordance with this Rule for vendors to provide construction services, goods, supplies, and materials, Contractual Services, and maintenance services.
- (2) Procedure. When the District seeks to pre-qualify vendors, the following procedures shall apply:
 - (a) The Board shall cause to be prepared a Request for Qualifications.
 - (b) For construction services exceeding the thresholds described in Section 255.20 of the Florida Statutes, the Board must advertise the proposed pre-qualification criteria and procedures and allow at least seven (7) days notice of the public hearing for comments on such pre-qualification criteria and procedures. At such public hearing, potential vendors may object to such pre-qualification criteria and procedures. Following such public hearing, the Board shall formally adopt pre-qualification criteria and procedures prior to the advertisement of the Request for Qualifications for construction services.
 - (c) The Request for Qualifications shall be advertised at least once in a newspaper of general circulation within the District and within the county in which the District is located. The notice shall allow at least seven (7) days for submittal of qualifications for goods, supplies and materials, Contractual Services, maintenance services, and construction services under two hundred fifty thousand dollars (\$250,000). The notice shall allow at least twenty-one (21) days for submittal of qualifications for construction services estimated to cost over two hundred fifty thousand dollars (\$250,000) and thirty (30) days for construction services estimated to cost over five hundred thousand dollars (\$500,000).
 - (d) The District may maintain lists of persons interested in receiving notices of Requests for Qualifications. The District shall make a good faith effort to provide written notice, by electronic mail, United States Mail, hand delivery, or facsimile, to persons who provide their name and address to the District Manager for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any pre-qualification determination or contract awarded in accordance with these Rules and shall not be a basis for a protest of any pre-qualification determination or contract award.
 - (e) If the District has pre-qualified vendors for a particular category of purchase, at the option of the District, only those persons who have been pre-qualified will be eligible to submit bids, proposals, replies or responses in response to the applicable Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.

- (f) In order to be eligible to submit qualifications, a firm or individual must, at the time of receipt of the qualifications:
 - (i) Hold all required applicable state professional licenses in good standing;
 - (ii) Hold all required applicable federal licenses in good standing, if any;
 - (iii) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the vendor is a corporation; and
 - (iv) Meet any special pre-qualification requirements set forth in the Request for Qualifications.

Evidence of compliance with these Rules must be submitted with the qualifications if required by the District. Failure to submit evidence of compliance when required may be grounds for rejection of the qualifications.

- (g) Qualifications shall be presented to the Board, or a committee appointed by the Board, for evaluation in accordance with the Request for Qualifications and this Rule. Minor variations in the qualifications may be waived by the Board. A variation is minor if waiver of the variation does not create a competitive advantage or disadvantage of a material nature.
- (h) All vendors determined by the District to meet the pre-qualification requirements shall be pre-qualified. To assure full understanding of the responsiveness to the requirements contained in a Request for Qualifications, discussions may be conducted with qualified vendors. Vendors shall be accorded fair treatment prior to the submittal date with respect to any opportunity for discussion and revision of qualifications. For construction services, any contractor pre-qualified and considered eligible by the Department of Transportation to bid to perform the type of work the project entails shall be presumed to be qualified to perform the project.
- (i) The Board shall have the right to reject all qualifications if there are not enough to be competitive or if rejection is determined to be in the best interest of the District. No vendor shall be entitled to recover any costs of qualification preparation or submittal from the District.
- (j) Notice of intent to pre-qualify, including rejection of some or all qualifications, shall be provided in writing to all vendors by United States Mail, electronic mail, hand delivery, facsimile, or overnight delivery service. The notice

shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's pre-qualification decisions under this Rule shall be in accordance with the procedures set forth in Rule 3.11; provided however, protests related to the pre-qualification criteria and procedures for construction services shall be resolved in accordance with section (2)(b) of this Rule and Section 255.20(1)(b) of the Florida Statutes.

(3) Suspension, Revocation, or Denial of Qualification

(a) The District, for good cause, may deny, suspend, or revoke a prequalified vendor's pre-qualified status. A suspension, revocation, or denial for good cause shall prohibit the vendor from bidding on any District construction contract for which qualification is required, shall constitute a determination of non-responsibility to bid on any other District construction or maintenance contract, and shall prohibit the vendor from acting as a material supplier or subcontractor on any District contract or project during the period of suspension, revocation, or denial. Good cause shall include the following:

- i. One of the circumstances specified under Section 337.16(2), Fla. Stat., has occurred.
- ii. Affiliated contractors submitted more than one proposal for the same work. In this event the pre-qualified status of all of the affiliated bidders will be revoked, suspended, or denied. All bids of affiliated bidders will be rejected.
- iii. The vendor made or submitted false, deceptive, or fraudulent statements, certifications, or materials in any claim for payment or any information required by any District contract.
- iv. The vendor or its affiliate defaulted on any contract or a contract surety assumed control of financial responsibility for any contract of the vendor.
- v. The vendor's qualification to bid is suspended, revoked, or denied by any other public or semi-public entity, or the vendor has been the subject of a civil enforcement proceeding or settlement involving a public or semi-public entity.
- vi. The vendor failed to comply with contract or warranty requirements or failed to follow District direction in the performance of a contract.
- vii. The vendor failed to timely furnish all contract documents required by the contract specifications, special provisions, or by any state or federal statutes or regulations. If the vendor fails to furnish any of the subject contract documents by the expiration of the period of suspension,

revocation, or denial set forth above, the vendor's pre-qualified status shall remain suspended, revoked, or denied until the documents are furnished.

- viii. The vendor failed to notify the District within 10 days of the vendor, or any of its affiliates, being declared in default or otherwise not completing work on a contract or being suspended from qualification to bid or denied qualification to bid by any other public or semi-public agency.
- ix. The vendor did not pay its subcontractors or suppliers in a timely manner or in compliance with contract documents.
- x. The vendor has demonstrated instances of poor or unsatisfactory performance, deficient management resulting in project delay, poor quality workmanship, a history of payment of liquidated damages, untimely completion of projects, uncooperative attitude, contract litigation, inflated claims or defaults.
- xi. An affiliate of the vendor has previously been determined by the District to be non-responsible, and the specified period of suspension, revocation, denial, or non-responsibility remains in effect.
- xii. The vendor or affiliate(s) has been convicted of a contract crime.
 - 1. The term "contract crime" means any violation of state or federal antitrust laws with respect to a public contract or any violation of any state or federal law involving fraud, bribery, collusion, conspiracy, or material misrepresentation with respect to a public contract.
 - 2. The term "convicted" or "conviction" means a finding of guilt or a conviction of a contract crime, with or without an adjudication of guilt, in any federal or state trial court of record as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

(b) A denial, suspension, or revocation shall prohibit the vendor from being a subcontractor on District work during the period of denial, suspension, or revocation, except when a prime contractor's bid has used prices of a subcontractor who becomes disqualified after the bid, but before the request for authorization to sublet is presented.

(c) The District shall inform the vendor in writing of its intent to deny, suspend, or revoke its pre-qualified status and inform the vendor of its right to a hearing, the procedure which must be followed, and the applicable time limits. If a hearing is requested within 10 days after the receipt of the notice of intent, the

hearing shall be held within 30 days after receipt by the District of the request for the hearing. The decision shall be issued within 15 days after the hearing.

- (d) Such suspension or revocation shall not affect the vendor's obligations under any preexisting contract.
- (e) In the case of contract crimes, the vendor's pre-qualified status under this Rule shall be revoked indefinitely. For all violations of Rule 3.4(3)(a) other than for the vendor's conviction for contract crimes, the revocation, denial, or suspension of a vendor's pre-qualified status under this Rule shall be for a specific period of time based on the seriousness of the deficiency.

Examples of factors affecting the seriousness of a deficiency are:

- i. Impacts on project schedule, cost, or quality of work;
- ii. Unsafe conditions allowed to exist;
- iii. Complaints from the public;
- iv. Delay or interference with the bidding process;
- v. The potential for repetition;
- vi. Integrity of the public contracting process;
- vii. Effect on the health, safety, and welfare of the public.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.
Law Implemented: §§ 190.033, 255.0525, 255.20, Fla. Stat.

Rule 3.5 Construction Contracts, Not Design-Build.

- (1) Scope. All contracts for the construction or improvement of any building, structure, or other public construction works authorized by Chapter 190 of the Florida Statutes, the costs of which are estimated by the District in accordance with generally accepted cost accounting principles to be in excess of the threshold amount for applicability of Section 255.20 of the Florida Statutes, as that amount may be indexed or amended from time to time, shall be let under the terms of these Rules and the procedures of Section 255.20 of the Florida Statutes, as the same may be amended from time to time. A project shall not be divided solely to avoid the threshold bidding requirements.
- (2) Procedure. When a purchase of construction services is within the scope of this Rule, the following procedures shall apply:
 - (a) The Board shall cause to be prepared an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.
 - (b) Notice of the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation shall be advertised at least once in a newspaper of general circulation in the District and in the county in which the District is located. The notice shall also include the amount of the bid bond, if one is required. The notice shall allow at least twenty-one (21) days for submittal of sealed bids, proposals, replies, or responses, unless the Board, for good cause, determines a shorter period of time is appropriate. Any project projected to cost more than five hundred thousand dollars (\$500,000) must be noticed at least thirty (30) days prior to the date for submittal of bids, proposals, replies, or responses. If the Board has previously pre-qualified contractors pursuant to Rule 3.4 and determined that only the contractors that have been pre-qualified will be permitted to submit bids, proposals, replies, and responses, the Notice of Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation need not be published. Instead, the Notice of Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation shall be sent to the pre-qualified contractors by United States Mail, hand delivery, facsimile, or overnight delivery service.
 - (c) The District may maintain lists of persons interested in receiving notices of Invitations to Bid, Requests for Proposals, Invitations to Negotiate, and Competitive Solicitations. The District shall make a good faith effort to provide written notice, by electronic mail, United States Mail, hand delivery, or facsimile, to persons who provide their name and address to the District Manager for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any contract awarded in accordance with this Rule and shall not be a basis for a protest of any contract award.

- (d) If the District has pre-qualified providers of construction services, then, at the option of the District, only those persons who have been pre-qualified will be eligible to submit bids, proposals, replies, or responses to Invitations to Bid, Requests for Proposals, Invitations to Negotiate, and Competitive Solicitations.
- (e) In order to be eligible to submit a bid, proposal, reply, or response, a firm or individual must, at the time of receipt of the bids, proposals, replies, or responses:
 - (i) Hold all required applicable state professional licenses in good standing;
 - (ii) Hold all required applicable federal licenses in good standing, if any;
 - (iii) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the bidder is a corporation; and
 - (iv) Meet any special pre-qualification requirements set forth in the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.

Any contractor that has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects including but not limited to, reemployment assistance, safety, tax withholding, worker's compensation, unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years may be considered ineligible by the District to submit a bid, response, or proposal for a District project.

Evidence of compliance with these Rules must be submitted with the bid, proposal, reply, or response, if required by the District. Failure to submit evidence of compliance when required may be grounds for rejection of the bid, proposal, reply, or response.

- (f) Bids, proposals, replies, and responses, or the portions of which that include the price, shall be publicly opened at a meeting noticed in accordance with Rule 1.3, and at which at least one district representative is present. The name of each bidder and the price submitted in the bid shall be announced at such meeting and shall be made available upon request. Minutes should be taken at the meeting and maintained by the District. Bids, proposals, replies, and responses shall be evaluated in accordance with the respective Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation and these Rules. Minor variations in the bids,

proposals, replies, or responses may be waived by the Board. A variation is minor if waiver of the variation does not create a competitive advantage or disadvantage of a material nature. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified or supplemented after opening; provided however, additional information may be requested and/or provided to evidence compliance, make non-material modifications, clarifications, or supplementations, and as otherwise permitted by Florida law.

- (g) The lowest Responsive Bid submitted by a Responsive and Responsible Bidder in response to an Invitation to Bid shall be accepted. In relation to a Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, the Board shall select the Responsive Proposal, Reply, or Response submitted by a Responsive and Responsible Vendor which is most advantageous to the District. To assure full understanding of the responsiveness to the solicitation requirements contained in a Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, discussions may be conducted with qualified vendors. Vendors shall be accorded fair treatment prior to the submittal date with respect to any opportunity for discussion, preparation, and revision of bids, proposals, replies, and responses.
- (h) The Board shall have the right to reject all bids, proposals, replies, or responses because they exceed the amount of funds budgeted for the purchase, if there are not enough to be competitive, or if rejection is determined to be in the best interest of the District. No contractor shall be entitled to recover any costs of bid, proposal, response, or reply preparation or submittal from the District.
- (i) The Board may require potential contractors to furnish bid bonds, performance bonds, and/or other bonds with a responsible surety to be approved by the Board.
- (j) Notice of intent to award, including rejection of some or all bids, proposals, replies, or responses, shall be provided in writing to all contractors by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's purchase of construction services under this Rule shall be in accordance with the procedures set forth in Rule 3.11.
- (k) If less than three (3) Responsive Bids, Proposals, Replies, or Responses are received, the District may purchase construction services or may reject the bids, proposals, replies, or responses for a lack of competitiveness. If no Responsive Bid, Proposal, Reply, or Response is received, the District may

proceed with the procurement of construction services, in the manner the Board determines is in the best interests of the District, which may include but is not limited to a direct purchase of the construction services without further competitive selection processes.

- (3) Sole Source; Government. Construction services that are only available from a single source are exempt from this Rule. Construction services provided by governmental agencies are exempt from this Rule. This Rule shall not apply to the purchase of construction services, which may include goods, supplies, or materials, that are purchased under a federal, state, or local government contract that has been competitively procured by such federal, state, or local government in a manner consistent with the material procurement requirements of these Rules. A contract for construction services is exempt from this Rule if state or federal law prescribes with whom the District must contract or if the rate of payment is established during the appropriation process.
- (4) Contracts; Public Records. In accordance with Florida law, each contract entered into pursuant to this Rule shall include provisions required by law that require the contractor to comply with public records laws.
- (5) Emergency Purchases. The District may make an Emergency Purchase without complying with these rules. The fact that an Emergency Purchase has occurred or is necessary shall be noted in the minutes of the next Board Meeting.
- (6) Exceptions. This Rule is inapplicable when:
 - (a) The project is undertaken as repair or maintenance of an existing public facility;
 - (b) The funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent;
 - (c) The District has competitively awarded a project and the contractor has abandoned the project or the District has terminated the contract; or
 - (d) The District, after public notice, conducts a public meeting under Section 286.011 of the Florida Statutes, and finds by a majority vote of the Board that it is in the public's best interest to perform the project using its own services, employees, and equipment.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 119.0701, 189.053, 190.033, 255.0518, 255.0525, 255.20, 287.055, Fla. Stat.

Rule 3.6 Construction Contracts, Design-Build.

- (1) Scope. The District may utilize Design-Build Contracts for any public construction project for which the Board determines that use of such contract is in the best

interest of the District. When letting a Design-Build Contract, the District shall use the following procedure:

(2) Procedure.

- (a) The District shall utilize a Design Criteria Professional meeting the requirements of Section 287.055(2)(k) of the Florida Statutes, when developing a Design Criteria Package, evaluating the proposals and qualifications submitted by Design-Build Firms, and determining compliance of the project construction with the Design Criteria Package. The Design Criteria Professional may be an employee of the District, may be the District Engineer selected by the District pursuant to Section 287.055 of the Florida Statutes, or may be retained pursuant to Rule 3.1. The Design Criteria Professional is not eligible to render services under a Design-Build Contract executed pursuant to the Design Criteria Package.
- (b) A Design Criteria Package for the construction project shall be prepared and sealed by the Design Criteria Professional. If the project utilizes existing plans, the Design Criteria Professional shall create a Design Criteria Package by supplementing the plans with project specific requirements, if any.
- (c) The Board may either choose to award the Design-Build Contract pursuant to the competitive proposal selection process set forth in Section 287.055(9) of the Florida Statutes, or pursuant to the qualifications-based selection process pursuant to Rule 3.1.
 - (i) Qualifications-Based Selection. If the process set forth in Rule 3.1 is utilized, subsequent to competitive negotiations, a guaranteed maximum price and guaranteed completion date shall be established.
 - (ii) Competitive Proposal-Based Selection. If the competitive proposal selection process is utilized, the Board, in consultation with the Design Criteria Professional, shall establish the criteria, standards and procedures for the evaluation of Design-Build Proposals based on price, technical, and design aspects of the project, weighted for the project. After a Design Criteria Package and the standards and procedures for evaluation of proposals have been developed, competitive proposals from qualified firms shall be solicited pursuant to the design criteria by the following procedure:
 - 1. A Request for Proposals shall be advertised at least once in a newspaper of general circulation in the county in which the District is located. The notice shall allow at least twenty-one (21) days for submittal of sealed proposals, unless the Board,

for good cause, determines a shorter period of time is appropriate. Any project projected to cost more than five hundred thousand dollars (\$500,000) must be noticed at least thirty (30) days prior to the date for submittal of proposals.

2. The District may maintain lists of persons interested in receiving notices of Requests for Proposals. The District shall make a good faith effort to provide written notice, by electronic mail, United States Mail, hand delivery, or facsimile, to persons who provide their name and address to the District Manager for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any contract awarded in accordance with this Rule and shall not be a basis for a protest of any contract award.
3. In order to be eligible to submit a proposal, a firm must, at the time of receipt of the proposals:
 - a. Hold the required applicable state professional licenses in good standing, as defined by Section 287.055(2)(h) of the Florida Statutes;
 - b. Hold all required applicable federal licenses in good standing, if any;
 - c. Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the proposer is a corporation;
 - d. Meet any special pre-qualification requirements set forth in the Request for Proposals and Design Criteria Package.

Any contractor that has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects including but not limited to reemployment assistance, safety, tax withholding, worker's compensation, unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years may be considered ineligible by the District to submit a bid, response, or proposal for a District project.

Evidence of compliance with these Rules must be submitted with the proposal if required by the District. Failure to

submit evidence of compliance when required may be grounds for rejection of the proposal.

4. The proposals, or the portions of which that include the price, shall be publicly opened at a meeting noticed in accordance with Rule 1.3, and at which at least one district representative is present. The name of each bidder and the price submitted in the bid shall be announced at such meeting and shall be made available upon request. Minutes should be taken at the meeting and maintained by the District. In consultation with the Design Criteria Professional, the Board shall evaluate the proposals received based on evaluation criteria and procedures established prior to the solicitation of proposals, including but not limited to qualifications, availability, and past work of the firms and the partners and members thereof. The Board shall then select no fewer than three (3) Design-Build Firms as the most qualified.
5. The Board shall have the right to reject all proposals if the proposals are too high, or rejection is determined to be in the best interest of the District. No vendor shall be entitled to recover any costs of proposal preparation or submittal from the District.
6. If less than three (3) Responsive Proposals are received, the District may purchase design-build services or may reject the proposals for lack of competitiveness. If no Responsive Proposals are received, the District may proceed with the procurement of design-build services in the manner the Board determines is in the best interests of the District, which may include but is not limited to a direct purchase of the design-build services without further competitive selection processes.
7. Notice of the rankings adopted by the Board, including the rejection of some or all proposals, shall be provided in writing to all consultants by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's rankings under this Rule shall be in accordance with the procedures set forth in Rule 3.11.

8. The Board shall negotiate a contract with the firm ranking the highest based on the evaluation standards and shall establish a price which the Board determines is fair, competitive and reasonable. Should the Board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that firm must be terminated. The Board shall then undertake negotiations with the second most qualified firm, based on the ranking by the evaluation standards. Should the Board be unable to negotiate a satisfactory contract with the firm considered to be the second most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that firm must be terminated. The Board shall then undertake negotiations with the third most qualified firm. Should the Board be unable to negotiate a satisfactory contract with the firm considered to be the third most qualified at a price considered by the Board to be fair, competitive, and reasonable, negotiations with that firm must be terminated. Should the Board be unable to negotiate a satisfactory contract with any of the selected firms, the Board shall select additional firms in order of their rankings based on the evaluation standards and continue negotiations until an agreement is reached or the list of firms is exhausted.
 9. After the Board contracts with a firm, the firm shall bring to the Board for approval, detailed working drawings of the project.
 10. The Design Criteria Professional shall evaluate the compliance of the detailed working drawings and project construction with the Design Criteria Package and shall provide the Board with a report of the same.
- (3) Contracts; Public Records. In accordance with Florida law, each contract entered into pursuant to this Rule shall include provisions required by law that require the contractor to comply with public records laws.
 - (4) Emergency Purchase. The Board may, in case of public emergency, declare an emergency and immediately proceed with negotiations with the best qualified Design-Build Firm available at the time. The fact that an Emergency Purchase has occurred shall be noted in the minutes of the next Board meeting.
 - (5) Exceptions. This Rule is inapplicable when:

- (a) The project is undertaken as repair or maintenance of an existing public facility;
- (b) The funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent;
- (c) The District has competitively awarded a project and the contractor has abandoned the project or the District has terminated the contractor; or
- (d) The District, after public notice, conducts a public meeting under Section 286.011 of the Florida Statutes, and finds by a majority vote of the Board that it is in the public's best interest to perform the project using its own services, employees, and equipment.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 119.0701, 189.053, 190.033, 255.0518, 255.0525, 255.20, 287.055, Fla. Stat.

Rule 3.7 Payment and Performance Bonds.

- (1) Scope. This Rule shall apply to contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work and shall be construed in addition to terms prescribed by any other Rule that may also apply to such contracts.

- (2) Required Bond. Upon entering into a contract for any of the services described in section (1) of this Rule in excess of \$200,000, the Board should require that the contractor, before commencing the work, execute and record a payment and performance bond in an amount equal to the contract price. Notwithstanding the terms of the contract or any other law, the District may not make payment to the contractor until the contractor has provided to the District a certified copy of the recorded bond.

- (3) Discretionary Bond. At the discretion of the Board, upon entering into a contract for any of the services described in section (1) of this Rule for an amount not exceeding \$200,000, the contractor may be exempted from executing a payment and performance bond.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: § 255.05, Fla. Stat.

Rule 3.8 Goods, Supplies, and Materials.

- (1) Purpose and Scope. All purchases of goods, supplies, or materials exceeding the amount provided in Section 287.017 of the Florida Statutes, for CATEGORY FOUR, shall be purchased under the terms of this Rule. Contracts for purchases of “goods, supplies, and materials” do not include printing, insurance, advertising, or legal notices. A contract involving goods, supplies, or materials plus maintenance services may, in the discretion of the Board, be treated as a contract for maintenance services. However, a purchase shall not be divided solely in order to avoid the threshold bidding requirements.
- (2) Procedure. When a purchase of goods, supplies, or materials is within the scope of this Rule, the following procedures shall apply:
 - (a) The Board shall cause to be prepared an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.
 - (b) Notice of the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation shall be advertised at least once in a newspaper of general circulation within the District and within the county in which the District is located. The notice shall also include the amount of the bid bond, if one is required. The notice shall allow at least seven (7) days for submittal of bids, proposals, replies, or responses.
 - (c) The District may maintain lists of persons interested in receiving notices of Invitations to Bid, Requests for Proposals, Invitations to Negotiate, or Competitive Solicitations. The District shall make a good faith effort to provide written notice, by electronic mail, United States Mail, hand delivery, or facsimile, to persons who provide their name and address to the District Manager for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any contract awarded in accordance with this Rule and shall not be a basis for a protest of any contract award.
 - (d) If the District has pre-qualified suppliers of goods, supplies, and materials, then, at the option of the District, only those persons who have been pre-qualified will be eligible to submit bids, proposals, replies, or responses.
 - (e) In order to be eligible to submit a bid, proposal, reply, or response, a firm or individual must, at the time of receipt of the bids, proposals, replies, or responses:
 - (i) Hold all required applicable state professional licenses in good standing;
 - (ii) Hold all required applicable federal licenses in good standing, if any;

- (iii) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the vendor is a corporation; and
- (iv) Meet any special pre-qualification requirements set forth in the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.

Evidence of compliance with these Rules must be submitted with the bid, proposal, reply or response if required by the District. Failure to submit evidence of compliance when required may be grounds for rejection of the bid, proposal, reply, or response.

Any firm or individual whose principal place of business is outside the State of Florida must also submit a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that foreign state to business entities whose principal places of business are in that foreign state, in the letting of any or all public contracts. Failure to submit such a written opinion or submission of a false or misleading written opinion may be grounds for rejection of the bid, proposal, reply, or response.

- (f) Bids, proposals, replies, and responses shall be publicly opened at the time and place noted on the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation. Bids, proposals, replies, and responses shall be evaluated in accordance with the respective Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, and this Rule. Minor variations in the bids, proposals, replies, or responses may be waived by the Board. A variation is minor if waiver of the variation does not create a competitive advantage or disadvantage of a material nature. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified or supplemented after opening; provided however, additional information may be requested and/or provided to evidence compliance, make non-material modifications, clarifications, or supplementations, and as otherwise permitted by Florida law.
- (g) The lowest Responsive Bid, after taking into account the preferences provided for in this subsection, submitted by a Responsive and Responsible Bidder in response to an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation shall be accepted. If the lowest Responsive Bid is submitted by a Responsive and Responsible Bidder whose principal place of business is located in a foreign state which does not grant a preference in competitive purchase to businesses whose principal place of business are in that foreign state, the lowest Responsible and Responsive Bidder whose principal place of business is in the State of

Florida shall be awarded a preference of five (5) percent. If the lowest Responsive Bid is submitted by a Responsive and Responsible Bidder whose principal place of business is located in a foreign state which grants a preference in competitive purchase to businesses whose principal place of business are in that foreign state, the lowest Responsible and Responsive Bidder whose principal place of business is in the State of Florida shall be awarded a preference equal to the preference granted by such foreign state.

To assure full understanding of the responsiveness to the solicitation requirements contained in an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, discussions may be conducted with qualified vendors. Vendors shall be accorded fair treatment prior to the submittal date with respect to any opportunity for discussion, preparation, and revision of bids, proposals, replies, and responses.

- (h) The Board shall have the right to reject all bids, proposals, replies, or responses because they exceed the amount of funds budgeted for the purchase, if there are not enough to be competitive, or if rejection is determined to be in the best interest of the District. No vendor shall be entitled to recover any costs of bid, proposal, reply, or response preparation or submittal from the District.
 - (i) The Board may require bidders and proposers to furnish bid bonds, performance bonds, and/or other bonds with a responsible surety to be approved by the Board.
 - (j) Notice of intent to award, including rejection of some or all bids, proposals, replies, or responses shall be provided in writing to all vendors by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's purchase of goods, supplies, and materials under this Rule shall be in accordance with the procedures set forth in Rule 3.11.
 - (k) If less than three (3) Responsive Bids, Proposals, Replies, or Responses are received, the District may purchase goods, supplies, or materials, or may reject the bids, proposals, replies, or responses for a lack of competitiveness. If no Responsive Bid, Proposal, Reply, or Response is received, the District may proceed with the procurement of goods, supplies, and materials, in the manner the Board determines is in the best interests of the District, which may include but is not limited to a direct purchase of the goods, supplies, and materials without further competitive selection processes.
- (3) Goods, Supplies, and Materials included in a Construction Contract Awarded Pursuant to Rule 3.5 or 3.6. There may be occasions where the District has

undergone the competitive purchase of construction services which contract may include the provision of goods, supplies, or materials. In that instance, the District may approve a change order to the contract and directly purchase the goods, supplies, and materials. Such purchase of goods, supplies, and materials deducted from a competitively purchased construction contract shall be exempt from this Rule.

- (4) Exemption. Goods, supplies, and materials that are only available from a single source are exempt from this Rule. Goods, supplies, and materials provided by governmental agencies are exempt from this Rule. A contract for goods, supplies, or materials is exempt from this Rule if state or federal law prescribes with whom the District must contract or if the rate of payment is established during the appropriation process. This Rule shall not apply to the purchase of goods, supplies or materials that are purchased under a federal, state, or local government contract that has been competitively procured by such federal, state, or local government in a manner consistent with the material procurement requirements of these Rules.
- (5) Renewal. Contracts for the purchase of goods, supplies, and/or materials subject to this Rule may be renewed for a maximum period of five (5) years.
- (6) Emergency Purchases. The District may make an Emergency Purchase without complying with these rules. The fact that an Emergency Purchase has occurred or is necessary shall be noted in the minutes of the next Board meeting.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 189.053, 190.033, 287.017, 287.084, Fla. Stat.

Rule 3.9 Maintenance Services.

- (1) Scope. All contracts for maintenance of any District facility or project shall be set under the terms of this Rule if the cost exceeds the amount provided in Section 287.017 of the Florida Statutes, for CATEGORY FOUR. A contract involving goods, supplies, and materials plus maintenance services may, in the discretion of the Board, be treated as a contract for maintenance services. However, a purchase shall not be divided solely in order to avoid the threshold bidding requirements.
- (2) Procedure. When a purchase of maintenance services is within the scope of this Rule, the following procedures shall apply:
 - (a) The Board shall cause to be prepared an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.
 - (b) Notice of the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation shall be advertised at least once in a newspaper of general circulation within the District and within the county in which the District is located. The notice shall also include the amount of the bid bond, if one is required. The notice shall allow at least seven (7) days for submittal of bids, proposals, replies, or responses.
 - (c) The District may maintain lists of persons interested in receiving notices of Invitations to Bid, Requests for Proposals, Invitations to Negotiate, and Competitive Solicitations. The District shall make a good faith effort to provide written notice, by electronic mail, United States Mail, hand delivery, or facsimile, to persons who provide their name and address to the District Manager for inclusion on the list. However, failure of a person to receive the notice shall not invalidate any contract awarded in accordance with this Rule and shall not be a basis for a protest of any contract award.
 - (d) If the District has pre-qualified suppliers of maintenance services, then, at the option of the District, only those persons who have been pre-qualified will be eligible to submit bids, proposals, replies, and responses.
 - (e) In order to be eligible to submit a bid, proposal, reply, or response, a firm or individual must, at the time of receipt of the bids, proposals, replies, or responses:
 - (i) Hold all required applicable state professional licenses in good standing;
 - (ii) Hold all required applicable federal licenses in good standing, if any;

- (iii) Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607 of the Florida Statutes, if the vendor is a corporation; and
- (iv) Meet any special pre-qualification requirements set forth in the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation.

Evidence of compliance with these Rules must be submitted with the bid, proposal, reply, or response if required by the District. Failure to submit evidence of compliance when required may be grounds for rejection of the bid, proposal, reply, or response.

- (f) Bids, proposals, replies, and responses shall be publicly opened at the time and place noted on the Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation. Bids, proposals, replies, and responses shall be evaluated in accordance with the respective Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, and these Rules. Minor variations in the bids, proposals, replies, and responses may be waived by the Board. A variation is minor if waiver of the variation does not create a competitive advantage or disadvantage of a material nature. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified or supplemented after opening; provided however, additional information may be requested and/or provided to evidence compliance, make non-material modifications, clarifications, or supplementations, and as otherwise permitted by Florida law.
- (g) The lowest Responsive Bid submitted in response to an Invitation to Bid by a Responsive and Responsible Bidder shall be accepted. In relation to a Request for Proposals, Invitation to Negotiate or Competitive Solicitation the Board shall select the Responsive Proposal, Reply, or Response submitted by a Responsive and Responsible Vendor which is most advantageous to the District. To assure full understanding of the responsiveness to the solicitation requirements contained in a Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, discussions may be conducted with qualified vendors. Vendors shall be accorded fair treatment prior to the submittal date with respect to any opportunity for discussion, preparation, and revision of bids, proposals, replies, or responses.
- (h) The Board shall have the right to reject all bids, proposals, replies, or responses because they exceed the amount of funds budgeted for the purchase, if there are not enough to be competitive, or if rejection is determined to be in the best interest of the District. No Vendor shall be

entitled to recover any costs of bid, proposal, reply, or response preparation or submittal from the District.

- (i) The Board may require bidders and proposers to furnish bid bonds, performance bonds, and/or other bonds with a responsible surety to be approved by the Board.
 - (j) Notice of intent to award, including rejection of some or all bids, proposals, replies, or responses shall be provided in writing to all vendors by United States Mail, hand delivery, facsimile, or overnight delivery service. The notice shall include the following statement: "Failure to file a protest within the time prescribed in Rule 3.11 of the Rules of the District shall constitute a waiver of proceedings under those Rules," or wording to that effect. Protests of the District's procurement of maintenance services under this Rule shall be in accordance with the procedures set forth in Rule 3.11.
 - (k) If less than three (3) Responsive Bids, Proposals, Replies, or Responses are received, the District may purchase the maintenance services or may reject the bids, proposals, replies, or responses for a lack of competitiveness. If no Responsive Bid, Proposal, Reply, or Response is received, the District may proceed with the procurement of maintenance services, in the manner the Board determines is in the best interests of the District, which may include but is not limited to a direct purchase of the maintenance services without further competitive selection processes.
- (3) Exemptions. Maintenance services that are only available from a single source are exempt from this Rule. Maintenance services provided by governmental agencies are exempt from this Rule. A contract for maintenance services is exempt from this Rule if state or federal law prescribes with whom the District must contract or if the rate of payment is established during the appropriation process.
 - (4) Renewal. Contracts for the purchase of maintenance services subject to this Rule may be renewed for a maximum period of five (5) years.
 - (5) Contracts; Public Records. In accordance with Florida law, each contract entered into pursuant to this Rule shall include provisions required by law that require the contractor to comply with public records laws.
 - (6) Emergency Purchases. The District may make an Emergency Purchase without complying with these rules. The fact that an Emergency Purchase has occurred or is necessary shall be noted in the minutes of the next Board meeting.

Specific Authority: §§ 190.011(5), 190.011(15), 190.033, Fla. Stat.
Law Implemented: §§ 119.0701, 190.033, 287.017, Fla. Stat.

Rule 3.10 Contractual Services.

- (1) Exemption from Competitive Purchase. Pursuant to Section 190.033(3) of the Florida Statutes, Contractual Services shall not be subject to competitive purchasing requirements. If an agreement is predominantly for Contractual Services, but also includes maintenance services or the purchase of goods and services, the contract shall not be subject to competitive purchasing requirements. Regardless of whether an advertisement or solicitation for Contractual Services is identified as an Invitation to Bid, Request for Proposals, Invitation to Negotiate, or Competitive Solicitation, no rights or remedies under these Rules, including but not limited to protest rights, are conferred on persons, firms, or vendors proposing to provide Contractual Services to the District.

- (2) Contracts; Public Records. In accordance with Florida law, each contract for Contractual Services shall include provisions required by law that require the contractor to comply with public records laws.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 119.0701, 190.011(3), 190.033, Fla. Stat.

Rule 3.11 Protests with Respect to Proceedings under Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, and 3.9.

The resolution of any protests with respect to proceedings under Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, and 3.9 shall be in accordance with this Rule.

(1) Filing.

- (a) With respect to a protest regarding qualifications, specifications, documentation, or other requirements contained in a Request for Qualifications, Request for Proposals, Invitation to Bid, or Competitive Solicitation issued by the District, the notice of protest shall be filed in writing within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after the first advertisement of the Request for Qualifications, Request for Proposals, Invitation to Bid, or Competitive Solicitation. A 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. For purposes of this Rule, wherever applicable, filing will be perfected and deemed to have occurred upon receipt by the District. Failure to file a notice of protest shall constitute a waiver of all rights to protest the District's intended decision. Failure to file a formal written protest shall constitute an abandonment of the protest proceedings and shall automatically terminate the protest proceedings.
- (b) Except for those situations covered by subsection (1)(a) of this Rule, any firm or person who is affected adversely by a District's ranking or intended award under Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, or 3.9 and desires to contest the District's ranking or intended award, shall file with the District a written notice of protest within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after receipt of the notice of the District's ranking or intended award. A 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. For purposes of this Rule, wherever applicable, filing will be perfected and deemed to have occurred upon receipt by the District. Failure to file a notice of protest shall constitute a waiver of all rights to protest the District's ranking or intended award. Failure to file a formal written protest shall constitute an abandonment of the protest proceedings and shall automatically terminate the protest proceedings.
- (c) If the requirement for the posting of a protest bond and the amount of the protest bond, which may be expressed by a percentage of the contract to be awarded or a set amount, is disclosed in the District's competitive solicitation documents for a particular purchase under Rules 3.1, 3.2, 3.3,

3.4, 3.5, 3.6, 3.8, or 3.9, any person who files a notice of protest must post the protest bond. The amount of the protest bond shall be determined by District staff after consultation with the Board and within the limits, if any, imposed by Florida law. In the event the protest is successful, the protest bond shall be refunded to the protestor. In the event the protest is unsuccessful, the protest bond shall be applied towards the District's costs, expenses, and attorney's fees associated with hearing and defending the protest. In the event the protest is settled by mutual agreement of the parties, the protest bond shall be distributed as agreed to by the District and protestor.

- (d) The District does not accept documents filed by electronic mail or facsimile transmission. Filings are only accepted during normal business hours.
- (2) Contract Execution. Upon receipt of a notice of protest which has been timely filed, the District shall not execute the contract under protest until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances showing that delay incident to protest proceedings will jeopardize the funding for the project, will materially increase the cost of the project, or will create an immediate and serious danger to the public health, safety, or welfare, the contract may be executed.
 - (3) Informal Proceeding. If the Board determines a protest does not involve a disputed issue of material fact, the Board may, but is not obligated to, schedule an informal proceeding to consider the protest. Such informal proceeding shall be at a time and place determined by the Board. Notice of such proceeding shall be sent via facsimile, United States Mail, or hand delivery to the protestor and any substantially affected persons or parties not less than three (3) calendar days prior to such informal proceeding. Within thirty (30) calendar days following the informal proceeding, the Board shall issue a written decision setting forth the factual, legal, and policy grounds for its decision.
 - (4) Formal Proceeding. If the Board determines a protest involves disputed issues of material fact or if the Board elects not to use the informal proceeding process provided for in section (3) of this Rule, the District shall schedule a formal hearing to resolve the protest. The Chairperson shall designate any member of the Board (including the Chairperson), District Manager, District Counsel, or other person as a hearing officer to conduct the hearing. The hearing officer may:
 - (a) Administer oaths and affirmations;
 - (b) Rule upon offers of proof and receive relevant evidence;
 - (c) Regulate the course of the hearing, including any pre-hearing matters;
 - (d) Enter orders; and

- (e) Make or receive offers of settlement, stipulation, and adjustment.

The hearing officer shall, within thirty (30) days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and a recommendation for final District action. The District shall allow each party fifteen (15) days in which to submit written exceptions to the recommended order. The District shall issue a final order within sixty (60) days after the filing of the recommended order.

- (5) Intervenors. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings.
- (6) Rejection of all Qualifications, Bids, Proposals, Replies and Responses after Receipt of Notice of Protest. If the Board determines there was a violation of law, defect, or an irregularity in the competitive solicitation process, the Bids, Proposals, Replies, and Responses are too high, or if the Board determines it is otherwise in the District's best interest, the Board may reject all qualifications, bids, proposals, replies, and responses and start the competitive solicitation process anew. If the Board decides to reject all qualifications, bids, proposals, replies, and responses and start the competitive solicitation process anew, any pending protests shall automatically terminate.
- (7) Settlement. Nothing herein shall preclude the settlement of any protest under this Rule at any time.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: § 190.033, Fla. Stat.

Rule 4.0 Effective Date.

These Rules shall be effective December 4, 2023, except that no election of officers required by these Rules shall be required until after the next regular election for the Board.

Specific Authority: §§ 190.011(5), 190.011(15), Fla. Stat.

Law Implemented: §§ 190.011(5), 190.011(15), Fla. Stat.

SEVENTH ORDER OF BUSINESS



Grau & Associates
CERTIFIED PUBLIC ACCOUNTANTS

951 Yamato Road • Suite 280
Boca Raton, Florida 33431
(561) 994-9299 • (800) 299-4728
Fax (561) 994-5823
www.graucpa.com

October 17, 2023

Board of Supervisors
Darby Community Development District
475 West Town Place, Suite 114
St. Augustine, FL 32092

We are pleased to confirm our understanding of the services we are to provide Darby Community Development District, City of Jacksonville, Florida ("the District") for the fiscal year ended September 30, 2023, with the option of two (2) additional one-year renewals. We will audit the financial statements of the governmental activities and each major fund, including the related notes to the financial statements, which collectively comprise the basic financial statements of Darby Community Development District as of and for the fiscal year ended September 30, 2023, with the option of two (2) additional one-year renewals. In addition, we will examine the District's compliance with the requirements of Section 218.415 Florida Statutes.

Accounting principles generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the District's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the District's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.
- 2) Budgetary comparison schedule

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that information:

- 1) Compliance with FL Statute 218.39 (3) (c)

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records of the District and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the District's financial statements. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or add emphasis-of-matter or other-matter paragraphs. If our opinion on the financial statements is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or issue a report or may withdraw from this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the results of that testing, and not to provide an opinion on the effectiveness of the District's internal control on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the District is

subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

Examination Objective

The objective of our examination is the expression of an opinion as to whether the District is in compliance with Florida Statute 218.415 in accordance with Rule 10.556(10) of the Auditor General of the State of Florida. Our examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and will include tests of your records and other procedures we consider necessary to enable us to express such an opinion. We will issue a written report upon completion of our examination of the District's compliance. The report will include a statement that the report is intended solely for the information and use of management, those charged with governance, and the Florida Auditor General, and is not intended to be and should not be used by anyone other than these specified parties. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or add emphasis-of-matter or other-matter paragraphs. If our opinion on the District's compliance is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the examination or are unable to form or have not formed an opinion, we may decline to express an opinion or issue a report or may withdraw from this engagement.

Other Services

We will assist in preparing the financial statements and related notes of the District in conformity with U.S. generally accepted accounting principles based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for the financial statements and all accompanying information as well as all representations contained therein. Further, management is responsible for compliance with Florida Statute 218.415 and will provide us with the information required for the examination. The accuracy and completeness of such information is also management's responsibility. As part of the audit, we will assist with preparation of your financial statements and related notes in conformity with U.S. generally accepted accounting principles based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. You agree to assume all management responsibilities relating to the financial statements and related notes and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and related notes and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. In addition, you will be required to make certain representations regarding compliance with Florida Statute 218.415 in the management representation letter. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; following laws and regulations; and ensuring that management is reliable and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles, for the preparation and fair presentation of the financial statements and all accompanying information in conformity with U.S. generally accepted accounting principles, and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. As part of our engagement, we may propose standard adjusting, or correcting journal entries to your financial statements. You are responsible for reviewing the entries and understanding the nature of the proposed entries and the impact they have on the financial statements.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government

received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that we report.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. Our responsibility as auditors is limited to the period covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the District's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

The audit documentation for this engagement is the property of Grau & Associates and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a cognizant or oversight agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Grau & Associates personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies. Notwithstanding the foregoing, the parties acknowledge that various documents reviewed or produced during the conduct of the audit may be public records under Florida law. The District agrees to notify Grau & Associates of any public record request it receives that involves audit documentation.

Furthermore, Grau & Associates agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Auditor acknowledges that the designated public records custodian for the District is the District Manager ("Public Records Custodian"). Among other requirements and to the extent applicable by law, Grau & Associates shall 1) keep and maintain public records required by the District to perform the service; 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 contract term and following the contract term if Auditor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Grau & Associate'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 Grau & Associates, Grau & Associates 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 GRAU & ASSOCIATES HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT:

**GMS-NF, LLC
475 WEST TOWN PLACE, SUITE 114
ST. AUGUSTINE, FL 32092
TELEPHONE: 904-940-5850**

This agreement provides for a contract period of one (1) year with the option of two (2) additional, one-year renewals upon the written consent of both parties. Our fee for these services will not exceed \$3,200 for the September 30, 2023 audit. The fees for the fiscal years 2024 and 2025 will not exceed \$3,300 and \$3,400, respectively, unless there is a change in activity by the District which results in additional audit work or if Bonds are issued.

We will complete the audit within prescribed statutory deadlines, which requires the District to submit its annual audit to the Auditor General no later than nine (9) months after the end of the audited fiscal year, with the understanding that your employees will provide information needed to perform the audit on a timely basis.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date. If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. Invoices will be submitted in sufficient detail to demonstrate compliance with the terms of this agreement. In accordance with our firm policies, work may be suspended if your account becomes 60 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate.

The District may terminate this agreement, with or without consent, upon thirty (30) days written notice of termination to Grau & Associates. Upon any termination of this agreement, Grau & Associates shall be entitled to payment of all work and/or services rendered up until the date of the notice of termination subject to any offsets the District may have against Grau & Associates.

We will provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2023 peer review report accompanies this letter.

We appreciate the opportunity to be of service to Darby Community Development District and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

Grau & Associates



Antonio J. Grau

RESPONSE:

This letter correctly sets forth the understanding of Darby Community Development District.

By: 

Title: Secretary

Date: 10/18/23



FICPA Peer Review Program
Administered in Florida
by The Florida Institute of CPAs



Peer Review
Program

AICPA Peer Review Program
Administered in Florida
by the Florida Institute of CPAs

March 17, 2023

Antonio Grau
Grau & Associates
951 Yamato Rd Ste 280
Boca Raton, FL 33431-1809

Dear Antonio Grau:

It is my pleasure to notify you that on March 16, 2023, the Florida Peer Review Committee accepted the report on the most recent System Review of your firm. The due date for your next review is December 31, 2025. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the report had a peer review rating of pass. The Committee asked me to convey its congratulations to the firm.

Thank you for your cooperation.

Sincerely,

FICPA Peer Review Committee

Peer Review Team
FICPA Peer Review Committee

850.224.2727, x5957

cc: Daniel Hevia, Racquel McIntosh

Firm Number: 900004390114

Review Number: 594791

EIGHTH ORDER OF BUSINESS

Prepared by and return recorded original to:
Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, FL 32202

**INTERLOCAL AGREEMENT BY AND AMONG
DUVAL COUNTY PROPERTY APPRAISER,
DUVAL COUNTY TAX COLLECTOR, AND
DARBY COMMUNITY DEVELOPMENT DISTRICT
FOR UNIFORM COLLECTION AND ENFORCEMENT
OF NON-AD VALOREM ASSESSMENT**

THIS INTERLOCAL AGREEMENT (the “Agreement”), made and entered into on this _____ day of _____, 2023, by and among the Duval County Property Appraiser, whose principal office is located at 231 East Forsyth Street, Suite 270, Jacksonville, Florida 32202 (the “Property Appraiser”); the Duval County Tax Collector, whose principal office is located at 231 East Forsyth Street, Suite 200, Jacksonville, Florida 32202 (the “Tax Collector”); and the Darby Community Development District, an independent special district established in accordance with Chapter 190, Florida Statutes, whose principal address is Darby Community Development District, c/o James Oliver, 475 W. Town Place, Suite 114, St. Augustine, Florida 32092 (the “District”).

WITNESSETH:

WHEREAS, Chapter 190, Florida Statutes, authorizes the establishment of a community development district, that is a special district created by ordinance of a county or municipal governing body having jurisdiction over the special district and that has such powers as established by ordinance of the county or municipality creating the special district; and

WHEREAS, Sections 190.021 and 190.022, Florida Statutes, allows the District to provide for the collection and enforcement of non-ad valorem assessments in accordance with Chapter 197, Florida Statutes; and

WHEREAS, in accordance with Chapter 190, Florida Statutes, the City Council enacted Ordinances 2023-301-E, establishing the District for the limited purpose of constructing, acquiring, financing, equipping, maintaining and/or operating certain infrastructure improvements within the boundaries of the District, including special powers to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses, and authorizing the District to levy a special assessment on real property within the District to provide for the same; and

WHEREAS, Section 197.3632, Florida Statutes, requires the District to enter into an agreement with the Property Appraiser and the Tax Collector for reimbursement of necessary administrative costs incurred by the Property Appraiser and the Tax Collector in the levy, collection and enforcement of non-ad valorem assessments; and

WHEREAS, Section 92.21, Jacksonville Ordinance Code, authorizes the Property Appraiser and Tax Collector to execute a contract in a form approved by the Office of General Counsel; and

WHEREAS, the District, in accordance with the requirements of Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, adopted Resolution No. 2023-35 on September 29, 2023 respectively, expressing its intent to use the uniform method of levy, collection and enforcement; and the District agrees to perform all requirements of law for utilizing the uniform method of levying and collecting non-ad valorem assessments;

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the sufficiency of the sums, covenants and other valuable consideration being hereby acknowledged by the parties, the absence of any of which this Agreement would not be executed, the Property Appraiser, the Tax Collector and the District agree as follows:

1. **Term.** The term of this Agreement shall commence upon execution, to be effective for the 2024 tax year, and, thereafter, to continue from year to year, for one-year periods, until any party provides thirty (30) days' notice, in accordance with this Agreement, in writing to the other parties of its intent to terminate for future tax years, or until the District provides notice of its intent to discontinue using the uniform method of collecting the Assessment.

2. **Duties and Responsibilities of the District, the Property Appraiser, and the Tax Collector.**

2.1 The District, by January 10 of the first year that the special assessment is to be collected, shall provide to the Property Appraiser and the Tax Collector by United States mail a copy of the District's resolution adopting the uniform method of collecting its non-ad valorem assessment (the "Assessment"), unless the parties agree to an extension of time in accordance with section 197.3632(3)(a), Florida Statutes. If the District intends to discontinue using the uniform method of collecting the Assessment in any subsequent tax year, the District shall notify the Property Appraiser, the Tax Collector and the Department of Revenue, in writing by January 10, in accordance with Section 197.3632(6), Florida Statutes, and Rule 12D-18.006(3), Florida Administrative Code.

2.2 The District, by January 10, shall provide to the Property Appraiser the legal description of the District's boundaries on which the Assessment is to be levied for that tax year, unless the parties agree to an extension of time in accordance with Section 197.3632(3)(a), Florida Statutes. The District shall also identify those land areas within the District's geographical boundaries that are to be excluded from the Assessment based upon government ownership or other exemption.

2.3 The Property Appraiser, by June 1, shall provide to the District the names and addresses of the owners of all parcels within the District's boundaries, a brief legal description of the property, and the real estate or property identification number, using the uniform method pursuant to Section 197.3632(3)(b), Florida Statutes. The Property Appraiser is not required to provide any information that is not on the ad valorem roll submitted by the Property Appraiser to the Department of Revenue each year. If the District determines that the information supplied by the

Property Appraiser is insufficient for the District's purpose, the District shall obtain additional information from any other source, at no expense to the Property Appraiser or the Tax Collector. The Property Appraiser is not responsible for incorporating any additional information into its assessment roll certified to the Tax Collector.

2.4 The District, by August 1, shall provide to the Property Appraiser, on a compatible electronic medium approved by the Property Appraiser, the official per-unit or per-parcel Assessment as adopted by the District. If the District is levying more than one Assessment per unit or parcel, the District must provide the Property Appraiser with one total amount per unit or parcel. The Property Appraiser is only responsible for certifying to the Tax Collector one total Assessment amount per unit or parcel located within the District.

2.5 The Property Appraiser, by October 30, shall prepare an assessment roll containing the District's Assessment and certify same to the Tax Collector.

2.6 The Tax Collector shall collect the Assessment in accordance with Sections 197.3632 and 197.3635, Florida Statutes.

3. The District's Payment for Administrative Costs.

3.1 The District shall pay the Tax Collector two percent (2%) of the total Assessment collected for the Tax Collector's administrative costs, and shall pay such additional amounts as may be authorized by statute, which shall be withheld from the Assessment collected by the Tax Collector prior to distribution to the District.

3.2 The District shall pay the Property Appraiser one and one-half percent (1.5%) of the total Assessment collected by the Tax Collector for the Property Appraiser's administrative costs, and shall pay such additional amounts as may be authorized by statute, which shall be withheld from the Assessment collected by the Tax Collector prior to distribution to the District.

3.3 If the Assessment cannot be merged into a combined notice for ad valorem taxes and non-ad valorem assessments, as provided in Section 197.3632(7), Florida Statutes, the District shall be liable for all costs associated with separate notice, which costs shall be in addition to those payments to the Tax Collector and the Property Appraiser for administrative costs, as set forth above. The District shall reimburse the Tax Collector within ten (10) days of receipt of invoices for the additional costs of separate notice, or the Tax Collector may withhold same from the Assessment collected prior to distribution to the District and provide the District with documentation of the additional costs. Alternatively, the Tax Collector may direct the District to mail separate notices. The District shall also be liable for all costs associated with any errors or omissions by the District that necessitate a correction to the roll.

3.4 If the District does not notify the Property Appraiser and the Tax Collector by January 10 of its intent to discontinue the uniform method of collecting the Assessment, the District shall pay the Property Appraiser and the Tax Collector for the cost of administration, up to the time of notification and termination of this Agreement, an amount as determined by the Property Appraiser

and Tax Collector, but no greater than the amounts paid by the District to the Property Appraiser and the Tax Collector for the prior tax year.

4. **Notice.** Whenever written notice is required pursuant to this Agreement, such notice shall be in writing; delivered by one of the following methods: (1) in person with receipt confirmation, (2) by certified United States Mail, return receipt requested, or (3) by recognized courier service with receipt confirmation; and delivered to the following:

Property Appraiser:	Duval County Property Appraiser 231 E. Forsyth Street, Suite 270 Jacksonville, FL 32202
Tax Collector:	Duval County Tax Collector 231 E. Forsyth Street, Suite 200 Jacksonville, FL 32202
District:	Darby Community Development District c/o James Oliver 475 W. Town Place, Suite 114 St. Augustine, Florida 32092

Notice shall be effective when received at an address as specified above. Changes in the respective addresses to which such notice is directed may be made by written notice.

5. **Indemnification.** To the extent allowed by law, the District shall indemnify, defend and hold harmless the Property Appraiser and the Tax Collector, and their respective officers, employees and agents, from claims, demands, suits, actions, costs and expenses on account of injury or damage to person or property arising out of the negligent acts or omissions of the District and its directors, officers, employees and agents in connection with or resulting from the performance or attempted performance of its duties and responsibilities under this Agreement. This indemnification is subject to and governed by the provisions and limitations of Section 768.28, Florida Statutes, and shall not be considered a further waiver of the limited waiver of sovereign immunity contained therein.

6. **Entire Agreement and Amendment.** This Agreement constitutes the entire agreement between the parties hereto. No statement, representation, writing, understanding, agreement, course of action or course of conduct made by any party, or any representative of any party, shall be binding against any other party unless expressed herein. No change, amendment, waiver or discharge to this Agreement, or any of the terms, provisions and conditions hereof, shall be valid and binding unless in writing and signed by an authorized officer or representative of the parties against whom such change, amendment, waiver or discharge is sought to be enforced.

7. **Preparation of Agreement.** The parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement; therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement.

8. **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Florida. The venue of any legal action brought or filed relating to any matter arising under this Agreement will be exclusively in the federal and state courts sitting in Duval County, Florida, having jurisdiction.

9. **Severability.** In the event any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any provision is held invalid by a court with jurisdiction over the parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable laws. The remainder of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, the provisions of this section will not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

10. **Nonwaiver.** Failure by a party at any time to require strict performance by another party of any provisions hereof does not release that party from its obligations under the Agreement and does not affect the right of a party, thereafter, to enforce the same.

11. **Force Majeure.** "Force Majeure" means any event beyond the control of a party which results in the failure of some performance under this Agreement including, but not limited to: drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage or strike. No party shall be considered to be in breach in respect of any obligation hereunder (other than the obligation to pay amounts due to another party under or pursuant to this Agreement) to the extent such failure of performance shall be due to a Force Majeure event. The party affected by a Force Majeure event shall give written notice to the other parties, within five (5) days of the commencement of non-performance due to a Force Majeure event, identifying the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect.

12. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of and shall be binding upon the Property Appraiser, the Tax Collector and the District, and no right, privilege, claim or cause of action shall accrue upon, to or for the benefit of any third party.

13. **Incorporation of Recitals.** The recitals set forth above and all applicable laws, rules and regulations are incorporated into and constitute a part of this Agreement.

14. **Section Headings.** Section headings appearing in this Agreement are inserted for convenience of reference only and shall not be construed as interpretation of text.

15. **Execution in Counterparts.** This instrument may be executed in any number of counterparts, each of which, when executed and delivered, constitutes an original, and such counterparts together 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.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers, duly authorized, as of the day and year first written above.

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Christian “Andy” Allen

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by Christian “Andy” Allen, as (title) Chairman, who is personally known to me or produced _____ as identification.

(Print name) _____
Notary Public, State of Florida at Large

**DUVAL COUNTY
PROPERTY APPRAISER**

Joyce Morgan
Property Appraiser

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2023, by Joyce Morgan, Duval County Property Appraiser, who is personally known to me or produced _____ as identification.

(Print name) _____
Notary Public, State of Florida at Large

**DUVAL COUNTY
TAX COLLECTOR**

Jim Overton
Tax Collector

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by Jim Overton, Duval County Tax Collector, who is personally known to me or produced _____ as identification.

(Print name) _____
Notary Public, State of Florida at Large

Form Approved

Office of General Counsel

TWELFTH ORDER OF BUSINESS

RESOLUTION 2024-11

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE DARBY COMMUNITY DEVELOPMENT DISTRICT APPROVING IN SUBSTANTIAL FORM THE; COMPLETION AGREEMENT; COLLATERAL ASSIGNMENT AGREEMENT, AND TRUE AGREEMENT FOR THE DISTRICT'S SERIES 2023 BONDS; AUTHORIZING THE CHAIRPERSON TO EXECUTE THE COMPLETION AGREEMENT, COLLATERAL ASSIGNMENT AGREEMENT, AND TRUE AGREEMENT FOR THE SERIES 2023 BONDS; PROVIDING GENERAL AUTHORIZATION; AND ADDRESSING CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

RECITALS

WHEREAS, the Darby Community Development District ("**District**") is a local unit of special purpose government created and existing pursuant to Chapter 190, Florida Statutes; and

WHEREAS, Chapter 190, Florida Statutes, authorizes the District to construct, install, operate, and/or maintain systems and facilities for certain basic infrastructure; and

WHEREAS, the District has adopted a report of its District Engineer, as may be amended and/or supplemented ("**Engineer's Report**"), which sets forth the scope of the District's capital improvement plan and the improvements which are to be constructed therewith ("**Improvements**"); and

WHEREAS, the District intends on financing a portion of the Improvements through the issuance of its special assessment bonds as described in more detail in Resolution 2023-35 (the "**2023 Bonds**"); and

WHEREAS, in connection with the issuance of the 2023 Bonds, the District will enter into the Completion Agreement, Collateral Assignment Agreement, and True-Up Agreement (collectively the "**Developer Agreements**"), copies of which are attached hereto as Composite Exhibit A; and

WHEREAS, the Board has reviewed, considered, and desires to approve forms of the Developer Agreements, and finds that the execution of the Developer Agreements is in the best interest of the District, its landowners, and future residents; and

WHEREAS, the District desires to authorize the Chairperson, in connection with the recommendation of District Staff, to negotiate, finalize, and execute the Developer Agreements on the District's behalf.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE DARBY COMMUNITY DEVELOPMENT

DISTRICT:

1. FINDINGS. The recitals as stated above are true and correct and by this reference are incorporated into and form a material part of this Resolution.

2. APPROVAL OF THE DEVELOPER AGREEMENTS. The Developer Agreements, attached hereto as **Composite Exhibit A**, are hereby approved in substantial form, subject to any further revisions that may be made by the District's Chairperson, in consultation with District Staff.

3. EXECUTION OF DEVELOPER AGREEMENTS. The Chairperson is authorized to execute the Developer Agreements at a time to be determined by the Chairperson, in consultation with District Staff.

4. ADDITIONAL AUTHORIZATION. The Vice Chair shall be authorized to undertake any action herein authorized to be taken by the Chairperson, in the absence or unavailability of the Chairperson, and any Assistant Secretary shall be authorized to undertake any action herein authorized to be taken by the Secretary, in the absence or unavailability of the Secretary.

5. CONFLICTS. If any provision of this Resolution is held to be in conflict with another resolution of the District, the resolutions shall be read to harmony to the extent possible, and, otherwise, the terms of this Resolution shall control with respect to the subject matter addressed herein.

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

7. EFFECTIVE DATE. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this 4th day of December, 2023.

WITNESS:

**DARBY COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

Chairperson/Vice Chairperson

Composite Exhibit A: Developer Agreements

**AGREEMENT BETWEEN DARBY COMMUNITY DEVELOPMENT
DISTRICT AND PLUMMER JV, LLC REGARDING THE COMPLETION
OF CERTAIN IMPROVEMENTS
SERIES 2023 PROJECT**

This Agreement (the “Agreement”) is made and entered into as of this ____ day of _____, 2023, by and between:

DARBY COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the City of Jacksonville, Florida, whose address is 475 West Town Place, Suite 114, St. Augustine, Florida 32092 (the “District”); and

PLUMMER JV, LLC, a Florida limited liability company and developer of lands within the boundaries of the District, whose address is 1819 Godwin Street, Jacksonville, Florida 32204, its successors and assigns (the “Landowner” and together with the District, each a "Party" and collectively the “Parties”).

RECITALS

WHEREAS, the District was established for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure; and,

WHEREAS, the Landowner is the owner and/or developer of certain lands located within the boundaries of the District (the “Development”); and,

WHEREAS, the District has adopted an engineer’s report for the planning, design, acquisition, construction, and installation of various infrastructure improvements and facilities serving the Development as described in that certain *Supplemental Engineer’s Report for Darby Subdivision Phase 1 & 2 and Offsite Improvements*, dated September 15, 2023, and attached hereto as **Exhibit A** (the “Project Improvements”); and,

WHEREAS, the District has imposed special assessments on the property within the District to secure financing for the planning, design, permitting, construction and/or acquisition of the Project Improvements described in **Exhibit A**; and,

WHEREAS, the District intends to finance a portion of the Project Improvements through the use of proceeds from the sale of its Special Assessment Revenue Bonds, Series 2023 (the “Bonds”) and,

WHEREAS, in order to ensure that the Project Improvements are completed and funding is available in a timely manner to provide for their completion, the Landowner will make provision for any additional funds that may be needed in the future for the completion of the Project Improvements including, but not limited to, all administrative, legal, warranty, engineering,

permitting or other related soft costs to the extent such costs are not funded from the Bonds or debt subsequently issued by the District for the Project Improvements.

NOW THEREFORE, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the Landowner agree as follows:

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

2. COMPLETION OF PROJECT IMPROVEMENTS. The Landowner and the District agree and acknowledge that the District's proposed Bonds may provide only a portion of the funds necessary to complete the Project Improvements. In the event that the cost of the Project Improvements is such that the construction funds available from the Bonds and any debt subsequently issued by the District to fund the Project Improvements are insufficient to complete the Project Improvements, which determination shall be in the sole and exclusive discretion of the District, the Landowner hereby agrees to complete, cause to be completed, or provide funds to the District in an amount sufficient to allow the District to complete or cause to be completed, those portions of the Project Improvements which remain unfunded including, but not limited to, all administrative, legal, warranty, engineering, permitting or other related soft costs (the "Remaining Project Improvements") whether pursuant to existing contracts, including change orders thereto, contracts assigned by the Landowner to the District, or future contracts. Nothing herein shall cause or be construed to require the District to issue additional notes, bonds or indebtedness to provide funds for any portion of the Remaining Project Improvements nor shall this Agreement preclude the District from issuing such additional debt. The District and the Landowner hereby acknowledge and agree that the District's execution of this Agreement constitutes the manner and means by which the District has elected to provide any and all portions of the Remaining Project Improvements not funded by District notes, bonds or other indebtedness.

(a) When all or any portion of the Remaining Project Improvements is the subject of an existing District contract, the Landowner shall provide funds directly to the District in an amount sufficient to complete the Remaining Project Improvements pursuant to such contract, including change orders thereto.

(b) When any portion of the Remaining Project Improvements is not the subject of an existing District contract, the Landowner may choose to complete, cause to be completed, or provide funds to the District in an amount sufficient to allow the District to complete or cause to be completed, those Remaining Project Improvements, subject to a formal determination by the District that the option selected by the Landowner will not adversely impact the District, and is in the District's best interests.

3. OTHER CONDITIONS AND ACKNOWLEDGMENTS

(a) The District and the Landowner agree and acknowledge that the exact location, size, configuration and composition of the Project Improvements may change from that described in **Exhibit A**, depending upon final design of the development, permitting or other regulatory requirements over time, or other factors. Material changes to the Project Improvements shall be made by a written amendment to **Exhibit A**, which shall include an estimate of the cost of the changes.

(b) The District and the Landowner agree and acknowledge that for any and all portions of the Remaining Project Improvements which are constructed, or caused to be constructed, by the Landowner for the benefit of the District shall be conveyed to the District or such other appropriate unit of local government as is designated in **Exhibit A** or required by governmental regulation or development approval. All conveyances to another governmental entity shall be in accordance with and in the same manner as provided in any agreement between the District and the appropriate unit of local government. All conveyances to the District shall be in accordance with an agreement or agreements governing conveyances between the Landowner and the District.

4. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either Party under this Agreement shall entitle the other Party to all remedies available at law or in equity, which may include, but not be limited to, the right of damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

5. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Landowner.

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

7. NOTICES. 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 Landowner:** Plummer JV, LLC
1819 Godwin Street
Jacksonville, Florida 32204
Attn: _____

(b) **If to District:** Darby Community Development District
475 West Town Place, Suite 114

St. Augustine, Florida 32092
Attn: District Manager

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: Wesley S. Haber

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 Landowner may deliver Notice on behalf of the District and the Landowner. 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.

8. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Landowner as an arm's length transaction. Both Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Landowner.

9. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Landowner and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal Party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Landowner any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Landowner and their respective representatives, successors, and assigns.

10. ASSIGNMENT. No Party may assign its rights, duties or obligations under this Agreement or any monies to become due hereunder without the prior written consent of each other Party, which consent shall not be unreasonably withheld; provided, however, the Landowner may assign this Agreement to any developer or sub-developer of all or a significant portion of the lands within the Development without obtaining the prior written consent of the District.

11. CONTROLLING LAW; VENUE. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue shall be in Duval County, Florida.

12. ENFORCEMENT. A default by either Party under this Agreement shall entitle any other Party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

13. RECOVERY OF COSTS AND FEES. In the event either Party is required to enforce this Agreement by court proceedings or otherwise, then each substantially prevailing Party, as determined by the applicable court or other dispute resolution provider, shall be entitled to recover from the non-prevailing Party all fees and costs incurred, including reasonable attorneys' fees and costs incurred prior to or during any litigation or other dispute resolution and including all fees and costs incurred in appellate proceedings.

14. PUBLIC RECORDS. The Landowner understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and may be treated as such in accordance with Florida law.

15. 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.

16. SOVEREIGN IMMUNITY. The Landowner agrees that nothing in this Agreement shall constitute or be construed as a waiver of the District's limitations on liability contained in Section 768.28, Florida Statutes, as amended, or other statutes or law.

17. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

18. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but 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.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year first written above.

Attest:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

_____, Chairman

PLUMMER JV, LLC,
a Florida limited liability company

Name: _____

Name: _____

Title: _____

Exhibit A: *Supplemental Engineer's Report for Darby Subdivision Phase 1 & 2 and Offsite Improvements, dated September 15, 2023*

Exhibit A

Engineer's Report

Prepared by and return to:
Wesley S. Haber, Esq.
Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301

**COLLATERAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AND
CONTRACT RIGHTS RELATING TO THE LANDS BENEFITTED BY THE
SERIES 2023 PROJECT**

This Assignment (the “Assignment”) is made and entered into this ____ day of _____, 2023, by and between:

PLUMMER JV, LLC, a Florida limited liability company and developer of lands within the boundaries of the District, whose address is 1819 Godwin Street, Jacksonville, Florida 32204, its successors and assigns (the “Landowner” or “Assignor”); and

DARBY COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the City of Jacksonville, Florida, whose address is 475 West Town Place, Suite 114, St. Augustine, Florida 32092 (the “District” or “Assignee”).

RECITALS

WHEREAS, the District proposes to issue Special Assessment Revenue Bonds, Series 2023 (the “Bonds”) to finance certain public infrastructure (the “2023 Project”) which will provide special benefit to the developable lands (the “Lands”) located within the geographical boundaries of the District; and

WHEREAS, the Landowner is the owner and developer of the Lands, which are more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, the security for the repayment of the Bonds is the special assessments levied against the Lands (the “Special Assessments”); and

WHEREAS, the District and the Landowner anticipate that the Lands will be developed in accordance with the *Supplemental Engineer’s Report for Darby Subdivision Phase 1 & 2 and Offsite Improvements*, dated September 15, 2023 (the “Engineer’s Report”) and the *Series 2023 Supplemental Special Assessment Methodology Report*, dated [REDACTED], 2023 (the “Assessment Report”) until such time as the Lands subject to the Special Assessments have been developed and sold to homebuilders and/or end-users (the “Development Completion”); and

WHEREAS, the failure to achieve Development Completion may increase the likelihood that the purchasers of the Bonds will not receive the full benefit of their investment in the Bonds; and

WHEREAS, during the period in which the Lands are being developed and the 2023 Project has yet to reach Development Completion, there is an increased likelihood that adverse changes to local or national economic conditions may result in a default in the payment of the Special Assessments securing the Bonds; and

WHEREAS, in the event of default in the payment of the Special Assessments securing the Bonds, the District has certain remedies with respect to the lien of the Special Assessments as more particularly set forth herein; and

WHEREAS, if the Special Assessments are directly billed, the sole remedy available to the District for non-payment of the Special Assessments is an action in foreclosure; if the Special Assessments are collected pursuant to Florida's uniform method of collection, the sole remedy available to the District for non-payment of the Special Assessments is the sale of tax certificates (collectively, the "Remedial Rights"); and

WHEREAS, in the event the District exercises its Remedial Rights, the District will require the assignment of certain Development & Contract Rights (defined below), to complete development of the Lands to the extent that prior to such exercise, such Development & Contract Rights have not been previously assigned, transferred, or otherwise conveyed to an end-user or homebuilder resulting from the sale of certain Lands in the ordinary course of business, Duval County, the District, any applicable homeowner's association or other governing entity or association as may be required by applicable permits, approvals, plats, entitlements or regulations affecting the 2023 Project (a "Prior Transfer"); and

WHEREAS, this Assignment is not intended to impair or interfere with the development of the 2023 Project and shall only be inchoate until becoming an effective and absolute assignment and assumption of the Development & Contract Rights, as defined below, upon failure of the Assignor to pay the Special Assessments levied against the Lands owned by the Assignor; provided, however, that such assignment shall only be effective and absolute to the extent that this Assignment has not been terminated earlier pursuant to the terms of this Assignment or to the extent that a Prior Transfer has not already occurred with respect to the Development & Contract Rights; and

WHEREAS, in the event of a transfer, conveyance or sale of any portion of the Lands (excluding a Prior Transfer), any and all affiliated entities or successors-in-interest to the Lands shall be subject to this Assignment, which shall be recorded in the Official Records of Duval County, Florida; and

WHEREAS, the rights assigned to the District hereunder shall be exercised in a manner which will not materially affect the intended development of the 2023 Project; and

WHEREAS, absent this Assignment becoming effective and absolute, it shall automatically terminate upon the earliest to occur of the following: (i) payment of the Bonds in full; (ii) Development Completion; or (iii) upon occurrence of a Prior Transfer, but only to the extent that such Development & Contract Rights are subject to the Prior Transfer (the period from execution of this Assignment to any such termination or absolute effectiveness being referred to herein as the "Term").

NOW, THEREFORE, in consideration of the above recitals which the parties hereby agree are true and correct and are hereby incorporated by reference and other good and valuable consideration, the sufficiency of which is acknowledged, Assignor and Assignee agree as follows:

SECTION 1. COLLATERAL ASSIGNMENT. Assignor hereby collaterally assigns to Assignee, to the extent assignable and to the extent that they are solely owned or controlled by Assignor at execution of this Assignment or acquired in the future, all of Assignor's development rights and contract rights relating to the portion of Lands that comprise Phase 1 and Phase 2 as more particularly described in the Engineer's Report (herein the "Development & Contract Rights") as security for Assignor's payment and performance and discharge of its obligation to pay the Special Assessments levied against the Lands. This assignment shall become effective and absolute upon failure of the Assignor to pay the Special Assessments levied against the Lands owned by the Assignor and the acquisition of such Lands by the District or its assignee. The Development & Contract Rights shall include the following as they pertain to the 2023 Project, but shall specifically exclude any such portion of the Development & Contract Rights which are subject to a Prior Transfer:

(a) Any declaration of covenants of a homeowner's association governing the portion of the Lands that comprise Phase 1 and Phase 2 as more particularly described in the Engineer's Report (the "Phases 1 & 2 Lands"), as recorded in the Official Records of Duval County, Florida, and as the same may be amended and restated from time to time, including, without limitation, all of the right, title, interest, powers, privileges, benefits and options controlled by the "Developer" or "Declarant" thereunder.

(b) Engineering and construction plans and specifications for grading, roadways, site drainage, stormwater drainage, signage, water distribution, wastewater collection, and other improvements necessary to develop the Phases 1 & 2 Lands, including any required offsite improvements.

(c) Preliminary and final site plans related to the Phases 1 & 2 Lands.

(d) Architectural plans and specifications for buildings and other improvements to the Phases 1 & 2 Lands.

(e) Permits, approvals, resolutions, variances, licenses, impact fees and franchises granted by governmental authorities, or any of their respective agencies, for or affecting the Phases 1 & 2 Lands and construction of improvements thereon including, but not limited to, the following:

(i) Any and all approvals, extensions, amendments, rezoning and development orders rendered by governmental authorities, including Duval County, relating to the Phases 1 & 2 Lands.

(ii) Any and all service agreements relating to utilities, water and/or wastewater for the Phases 1 & 2 Lands.

(iii) Permits, more particularly described in the Engineer's Report for the Phases 1 & 2 Lands.

(f) Contracts with engineers, architects, land planners, landscape architects, consultants, contractors, and suppliers for or relating to the construction of the Phases 1 & 2 Lands or the construction of improvements thereon.

(g) Notwithstanding anything contained herein to the contrary, contracts and agreements with private utility providers to provide utility services to the Phases 1 & 2 Lands, including the lots.

(h) All future creations, changes, extensions, revisions, modifications, substitutions, and replacements of any of the foregoing.

SECTION 2. WARRANTIES BY ASSIGNOR. Assignor represents and warrants to Assignee that:

(a) Any transfer, conveyance or sale of the Phases 1 & 2 Lands (excluding any Prior Transfer) shall subject any and all affiliated entities or successors-in-interest of the Landowner to this Assignment.

(b) Assignor is not prohibited under any agreement with any other person or under any judgment or decree from the execution and delivery of this Assignment.

(c) No action has been brought or threatened which would in any way interfere with the right of Assignor to execute this Assignment and perform all of Assignor's obligations herein contained.

SECTION 3. COVENANTS. Assignor covenants with Assignee that during the Term (as defined above):

(a) Assignor will use reasonable, good faith efforts to: (i) fulfill, perform, and observe each and every material condition and covenant of Assignor relating to the Development & Contract Rights and (ii) give notice to Assignee of any claim of default relating to the Development & Contract Rights given to or by Assignor, together with a complete copy of any such claim.

(b) The Development & Contract Rights include all of Assignor's right to modify the Development & Contract Rights, to terminate the Development & Contract Rights, and to waive or release the performance or observance of any obligation or condition of the Development & Contract Rights; provided that no such modification, termination, waiver or release affects any of the Development & Contract Rights which pertain to lands outside of the District not relating to development of the Phases 1 & 2 Lands.

(c) Assignor agrees to perform any and all actions necessary and use good faith efforts relating to any and all future creations, changes, extensions, revisions, modifications, substitutions, and replacements of the Development & Contract Rights.

SECTION 4. EVENT(S) OF DEFAULT. Any breach of the Assignor's warranties contained in Section 2 hereof or breach of covenants contained in Section 3 hereof will, after the

giving of notice and an opportunity to cure (which cure period shall be at least sixty (60) days) shall constitute an Event of Default under this Assignment.

SECTION 5. REMEDIES UPON EVENT OF DEFAULT. Upon an Event of Default, Assignee may, as Assignee's sole and exclusive remedies, take any or all of the following actions, at Assignee's option:

(a) Perform any and all obligations of Assignor relating to the Development & Contract Rights and exercise any and all rights of Assignor therein as fully as Assignor could.

(b) Initiate, appear in, or defend any action arising out of or affecting the Development & Contract Rights.

SECTION 6. AUTHORIZATION. Upon the occurrence and during the continuation of an Event of Default, Assignor does hereby authorize and shall direct any party to any agreement relating to the Development & Contract Rights to tender performance thereunder to Assignee upon written notice and request from Assignee. Any such performance in favor of Assignee shall constitute a full release and discharge to the extent of such performance as fully as though made directly to Assignor.

SECTION 7. MISCELLANEOUS. Unless the context requires otherwise, whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The terms "person" and "party" shall include individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups and combinations. Titles of paragraphs contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Assignment or the intent of any provisions hereunder. This Assignment shall be construed under Florida law.

SECTION 8. THIRD PARTY BENEFICIARIES. The Trustee for the Bonds, on behalf of the bondholders, shall be a direct third party beneficiary of the terms and conditions of this Assignment and shall be entitled to cause the District to enforce the Landowner's obligations hereunder. In the event that the District does not promptly take Trustee's written direction under this Assignment, or the District is otherwise in default under the Indenture, the Trustee shall have the right to enforce the District's rights hereunder directly. This Assignment is solely for the benefit of the parties set forth in this Section, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any other third party. The Trustee shall not be deemed to have assumed any obligations hereunder.

SECTION 9. ASSIGNMENT. No party may assign its rights, duties or obligations under this Assignment or any monies to become due hereunder without the prior written consent of each other party, which consent shall not be unreasonably withheld; provided, however, the Landowner may assign this Assignment to any developer or sub-developer of all or a significant portion of the Phases 1 & 2 Lands without obtaining the prior written consent of the District.

SECTION 10. ENFORCEMENT. A default by either party under this Assignment shall entitle any other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed and delivered on the day and year first written above.

WITNESSES:

ASSIGNOR:

PLUMMER JV, LLC,
a Florida limited liability company

Name: _____
Address: _____

By: _____
Name: _____
Title: _____

Name : _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2023, by _____, as _____ of Plummer JV, LLC, on its behalf. He [] is personally known to me or [] produced _____ as identification.

Print Name: _____
Notary Public, State of Florida

WITNESSES:

ASSIGNEE:

Attest:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

_____, Chairman

Witness:

Name: _____

Address: _____

**STATE OF FLORIDA
COUNTY OF _____**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2023, by _____, as Chairman of the Board of Supervisors of Darby Community Development District, for and on behalf of the District. He [] is personally known to me or [] produced _____ as identification.

Print Name: _____
Notary Public, State of Florida

EXHIBIT A
Description of the Lands

Prepared by and return to:
Wesley S. Haber, Esq.
Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301

**AGREEMENT BETWEEN DARBY COMMUNITY DEVELOPMENT DISTRICT AND
PLUMMER JV, LLC REGARDING THE TRUE UP AND PAYMENT OF SPECIAL
ASSESSMENTS FOR SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2023**

This Agreement (the “Agreement”) is made and entered into as of this ____ day of _____, 2023, by and between:

DARBY COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the City of Jacksonville, Florida, whose address is 475 West Town Place, Suite 114, St. Augustine, Florida 32092 (the “District”); and

PLUMMER JV, LLC, a Florida limited liability company and developer of lands within the boundaries of the District, whose address is 1819 Godwin Street, Jacksonville, Florida 32204, its successors and assigns (the “Landowner” and together with the District, each a "Party" and collectively the “Parties”).

RECITALS

WHEREAS, the District was established for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

WHEREAS, the Landowner is currently the owner of certain lands within the District identified in **Exhibit A**, which is attached hereto and incorporated herein (the “Lands”); and

WHEREAS, the District, pursuant to Florida law, is authorized to levy such taxes, special assessments, fees and other charges as may be necessary in furtherance of the District’s activities and services; and

WHEREAS, the District is presently in the process of issuing Darby Community Development District (City of Jacksonville, Florida) Special Assessment Revenue Bonds, Series 2023 (the “2023 Bonds”), in the par amount of \$_____ to finance the acquisition and/or construction of certain infrastructure improvements (the “Project”); and

WHEREAS, the Project is more specifically described and identified in that certain *Supplemental Engineer’s Report for Darby Subdivision Phase 1 & 2 and Offsite Improvements*, dated September 15, 2023 (the “Engineer’s Report”); and

WHEREAS, the District has taken certain steps necessary to impose special assessments upon the benefited lands within the District, including the Lands, as security for the 2023 Bonds (the “2023 Assessments”); and

WHEREAS, the Landowner agrees that the Lands benefit from the timely acquisition and construction of the Project; and

WHEREAS, the Landowner agrees that the 2023 Assessments have been validly imposed and constitute valid, legal and binding liens upon the Lands; and

WHEREAS, the Landowner waives any rights it may have under Section 170.09, Florida Statutes, to prepay the 2023 Assessments without interest within thirty (30) days after completion of the Project; and

WHEREAS, the Landowner waives any defect in notice or publication or in the proceedings to levy, impose and collect the 2023 Assessments on the Lands; and

WHEREAS, the Landowner will develop the property within the Lands based on then-existing market conditions, and the actual densities developed within the development or subdivision may be at some density less than the densities assumed in the District’s Assessment Report (hereinafter defined); and

WHEREAS, the District’s lien anticipates a mechanism by which the Landowner shall make certain payments to the District to satisfy, in whole or in part, the assessments allocated and the liens imposed pursuant to applicable resolutions, the amount of such payments being determined generally by a comparison of the units actually developed within the Lands and the units the Landowner had initially intended to develop within the Lands as described in the District’s Assessment Report (which payments shall collectively be referenced as the “True Up Payment”); and

WHEREAS, the Landowner and the District desire to enter into an agreement to confirm the Landowner’s intentions and obligations to make True Up Payments and payment of all 2023 Assessments imposed on the Lands when due.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt of which and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. VALIDITY OF ASSESSMENTS. The Landowner agrees that Resolutions 2023-29, 2023-30, 2023-34 and 2024- , and any resolution supplemental thereto, have been duly adopted by the District subject to all applicable legal requirements. The Landowner

further agrees that the 2023 Assessments imposed as a lien by the District are legal, valid and binding liens. The Landowner hereby waives and relinquishes any rights it may have to challenge, object to or otherwise fail to pay such 2023 Assessments.

SECTION 3. COVENANT TO PAY. The Landowner will timely pay all such 2023 Assessments levied and imposed by the District on the Lands within the District, whether the 2023 Assessments are collected by the Duval County Tax Collector pursuant to Section 197.3632, Florida Statutes, by the District or by any other method allowable by law. The Landowner further waives any rights it may have under Section 170.09, Florida Statutes, to prepay the 2023 Assessments without interest within thirty (30) days of completion of the Project.

SECTION 4. SPECIAL ASSESSMENT REALLOCATION.

(i). The 2023 Assessments will be allocated in accordance with the District's Assessment Report (defined below.)

(ii). To preclude the Lands from being fully subdivided without all of the debt being allocated, a "True Up Test" will be conducted in accordance with the District's Master Trust Indenture and First Supplemental Trust Indenture (collectively the "Indentures"), the *Master Special Assessment Methodology Report*, dated July 26, 2023 (the "Master Assessment Report") and the *Series 2023 Supplemental Special Assessment Methodology Report*, dated [REDACTED], 2023 (the "Supplemental Assessment Report," and together with the Master Assessment Report, the "Assessment Report"). If in the course of conducting a True Up Test the District determines that the debt per unplatted acre of land exceeds the ceiling level of debt established pursuant to the Indentures and the Assessment Report, a debt reduction payment in the amount sufficient to reduce the remaining debt per unplatted acre to the ceiling level shall become due and payable by the Landowner. The District will ensure collection of such amounts in a timely manner to meet its debt service obligations under the Indentures. The District shall record all True Up Payments in its Improvement Lien book.

(iii). The foregoing is based on the District's understanding with the Landowner that the Landowner will ultimately construct on a portion of the Lands the development program as identified in the Supplemental Assessment Report, and it is intended to provide a formula to ensure that the appropriate ratio of the debt for the 2023 Assessments to gross acres is maintained if less than the indicated residential units are developed. However, the District agrees that nothing herein prohibits more residential units or commercial development from being developed. In no event shall the District collect 2023 Assessments in excess of the total debt service for the Lands related to the Project, including all costs of financing and interest. If a True Up Payment for the Lands pursuant to application of the District's Assessment Report would result in assessments collected in excess of the District's total debt service obligation for the Project, the District agrees to take appropriate action by resolution to equitably reallocate the assessments or provide for an equitable refund.

SECTION 5. ENFORCEMENT. This Agreement is intended to be an additional method of enforcement of the Landowner's obligation to pay the 2023 Assessments and to abide

by the requirements of the application of True-Up Payments. A default by either Party under this Agreement shall entitle any other Party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

SECTION 6. RECOVERY OF COSTS AND FEES. In the event either Party is required to enforce this Agreement by court proceedings or otherwise, then each substantially prevailing Party, as determined by the applicable court or other dispute resolution provider, shall be entitled to recover from the non-prevailing Party all fees and costs incurred, including reasonable attorneys' fees and costs incurred prior to or during any litigation or other dispute resolution and including all fees and costs incurred in appellate proceedings.

SECTION 7. NOTICE. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied or hand delivered to the Parties, as follows:

(a) **If to Landowner:** Plummer JV, LLC
1819 Godwin Street
Jacksonville, Florida 32204
Attn: _____

(b) **If to District:** Darby Community Development District
475 West Town Place, Suite 114
St. Augustine, Florida 32092
Attn: District Manager

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: Wesley S. Haber

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. If mailed as provided above, Notices shall be deemed delivered on the third business day unless actually received earlier. Notices hand 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 Parties may deliver Notice on behalf of the Parties. 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. Notwithstanding the foregoing, to the extent Florida law requires notice to enforce the collection of assessments placed on property by the District, then the provision of such notice shall be in lieu of any additional notice required by this Agreement.

SECTION 8. ASSIGNMENT. No Party may assign its rights, duties or obligations under this Agreement or any monies to become due hereunder without the prior written consent of each other Party, which consent shall not be unreasonably withheld; provided, however, the Landowner may assign this Agreement to any developer or sub-developer of all or a significant portion of the lands within the Project without obtaining the prior written consent of the District.

SECTION 9. AMENDMENT. This Agreement shall constitute the entire agreement between the Parties and may be modified in writing only by the mutual agreement of all Parties.

SECTION 10. TERMINATION. This Agreement shall continue in effect until it is rescinded in writing by the mutual assent of each Party.

SECTION 11. NEGOTIATION AT ARM'S LENGTH. This Agreement has been negotiated fully between the Parties as an arm's length transaction. All Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all Parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against either Party.

SECTION 12. BENEFICIARIES. This Agreement is solely for the benefit of the formal Parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal Party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors and assigns.

SECTION 13. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability that may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 14. APPLICABLE LAW. This Agreement and the provisions contained in this Agreement shall be construed, interpreted and controlled according to the laws of the State of Florida.

SECTION 15. 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.

SECTION 16. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or

construction of any of the provisions of this Agreement.

SECTION 17. EXECUTION IN 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.

SECTION 18. EFFECTIVE DATE. This Agreement shall become effective after execution by the Parties hereto on the date reflected above.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year first written above.

Attest:

**DARBY COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

_____, Chairman

Witness:

Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2023, by _____, as Chairman of the Board of Supervisors of Darby Community Development District, for and on behalf of the District. He [___] is personally known to me or [___] produced _____ as identification.

Print Name: _____
Notary Public, State of Florida

WITNESSES:

PLUMMER JV, LLC,
a Florida limited liability company

Name: _____
Address: _____

By: _____
Name: _____
Title: _____

Name : _____
Address: _____

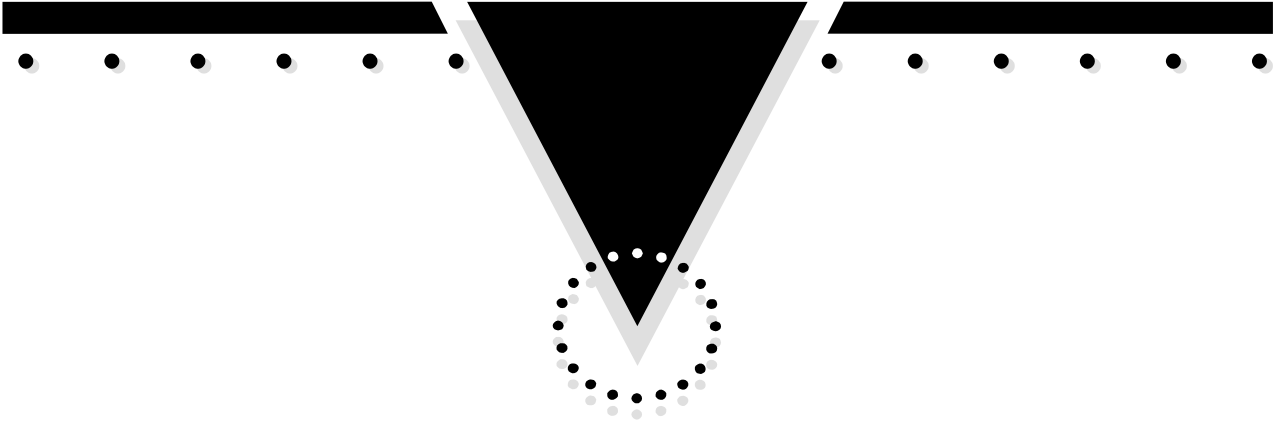
STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2023, by _____, as _____ of Plummer JV, LLC, on its behalf. He [] is personally known to me or [] produced _____ as identification.

Print Name: _____
Notary Public, State of Florida

Exhibit A

SIXTEENTH ORDER OF BUSINESS



**Darby
Community Development District**

Unaudited Financial Reporting

October 31, 2023



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DARBY
COMMUNITY DEVELOPMENT DISTRICT
BALANCE SHEET
October 31, 2023

		General
ASSETS:		
CASH		\$14,139
PREPAID		\$0
DUE FROM DEVELOPER		\$23,285
TOTAL ASSETS		\$37,425
LIABILITIES:		
ACCOUNTS PAYABLE		\$20,670
TOTAL LIABILITIES		\$20,670
FUND BALANCES:		
UNRESTRICTED		\$16,754
TOTAL FUND BALANCES		\$16,754
TOTAL LIABILITIES & FUND EQUITY		\$37,425

DARBY
Community Development District

GENERAL FUND

Statement of Revenues & Expenditures

For The Period Ending
October 31, 2023

	APPROVED BUDGET	PRORATED BUDGET 10/31/23	ACTUAL 10/31/23	VARIANCE
REVENUES:				
Developer Contributions	\$109,393	\$9,116	\$11,142	\$2,026
TOTAL REVENUES	\$109,393	\$9,116	\$11,142	\$2,026
EXPENDITURES:				
ADMINISTRATIVE:				
Supervisors Fees	\$12,000	\$1,000	\$0	\$1,000
FICA Expense	\$918	\$77	\$0	\$77
Engineering	\$12,000	\$1,000	\$0	\$1,000
Attorney	\$25,000	\$2,083	\$0	\$2,083
Assessment Administration	\$5,000	\$417	\$0	\$417
Management Fees	\$36,000	\$3,000	\$3,000	\$0
Information Technology	\$1,800	\$150	\$150	\$0
Website Maintenance	\$1,200	\$100	\$100	\$0
Telephone	\$500	\$42	\$7	\$35
Postage	\$1,500	\$125	\$4	\$121
Insurance	\$5,500	\$5,500	\$5,000	\$500
Printing & Binding	\$1,200	\$100	\$34	\$66
Legal Advertising	\$5,000	\$417	\$735	(\$318)
Other Current Charges	\$600	\$50	\$2	\$48
Office Supplies	\$1,000	\$83	\$14	\$69
Dues, Licenses & Subscriptions	\$175	\$175	\$175	\$0
TOTAL ADMINISTRATIVE EXPENDITURES	\$109,393	\$14,318	\$9,220	\$5,299
EXCESS REVENUES (EXPENDITURES)	\$0		\$1,922	
FUND BALANCE - Beginning	\$0		\$14,832	
FUND BALANCE - Ending	\$0		\$16,754	

Darby
Community Development District

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL
REVENUES													
Developer Contributions	\$11,142	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$11,142
TOTAL REVENUES	\$11,142	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$11,142
EXPENDITURES													
Supervisors Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FICA Expense	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Engineering	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Attorney	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Management Fees	\$3,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000
Information Technology	\$150	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$150
Website Maintenance	\$100	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100
Telephone	\$7	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7
Postage	\$4	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4
Insurance	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000
Printing & Binding	\$34	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$34
Legal Advertising	\$735	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$735
Other Current Charges	\$2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2
Office Supplies	\$14	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14
Dues, Licenses & Subscriptions	\$175	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$175
TOTAL EXPENDITURES	\$9,220	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$9,220
EXCESS REVENUES (EXPENDITURES)	\$1,922	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,922

SEVENTEENTH ORDER OF BUSINESS

Darby

Community Development District

FY 24 Funding Request #5

November 28, 2023

PAYEE		GENERAL FUND	
1	GMS, LLC Inv# 5 - Management fees November 2023	(1) \$	3,308.04
Total		\$	3,308.04

(1) Legal ads on this invoice has been already funded by developer FR #1.

Please make check payable to:

Darby Community Development District
475 West Town Place Ste 114
St Augustine FL 32092

Governmental Management Services, LLC1001 Bradford Way
Kingston, TN 37763**Invoice**
Invoice #: 4
Invoice Date: 10/1/23
Due Date: 10/1/23
Case:
P.O. Number:
Bill To:
Darby CDD
475 West Town Place
Suite 114
St. Augustine, FL 32092

Description	Hours/Qty	Rate	Amount
Management Fees - October 2023		3,000.00	3,000.00
Website Administration - October 2023		100.00	100.00
Information Technology - October 2023		150.00	150.00
Office Supplies		13.88	13.88
Postage		3.72	3.72
Copies		33.60	33.60
Telephone		6.84	6.84
Jax Daily Record AMEX Charges - August 2023		547.50	547.50
Jax Daily Record AMEX Charges - September 2023		2,111.48	2,111.48
Total			\$5,967.02
Payments/Credits			\$0.00
Balance Due			\$5,967.02