

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT
DISTRICT**

**PUBLIC HEARING AND
REGULAR MEETING
AGENDA**

September 9, 2013

Moody River Estates Community Development District

6131 Lyons Road, Suite 100 • Coconut Creek, Florida 33073

Phone (954) 426-2105 • Fax (954) 426-2147 • Toll-free: (877) 276-0889

September 3, 2013

Board of Supervisors
Moody River Estates Community Development District

Dear Board Members:

The Board of Supervisors of the Moody River Estates Community Development District will hold a Public Hearing and Regular Meeting on **Monday, September 9, 2013 at 1:00 p.m.**, in the **Clubhouse at Moody River Estates, 3050 Moody River Blvd., North Fort Myers, Florida 33903**. The agenda is as follows:

1. Call to Order/Roll Call
2. Administration of Oath of Office to Newly Appointed Supervisor, Frank Reynolds (Seat 4) *(the following to be provided in a separate package)*
 - A. Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees
 - B. Membership, Obligations and Responsibilities
 - C. Financial Disclosure Forms
 - i. Form 1: Statement of Financial Interests
 - ii. Form 1X: Amendment to Form 1, Statement of Financial Interests
 - iii. Form 1F: Final Statement of Financial Interests
3. Affidavit of Publication
4. **Public Hearing to Consider Resolution 2013-10, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2013, and Ending September 30, 2014**
5. Consideration of **Resolution 2013-11**, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll
6. Consideration of Award of Contract: Lake & Wetland Maintenance

ATTENDEES:

Please identify yourself each time you speak to facilitate accurate transcription of meeting minutes.

NOTE: Meeting Location

7. Consideration of Publication of Notices of Rule Development and Rulemaking Relating to Updated Rules of Procedure
 - A. Memorandum Regarding Updated Provisions
 - B. Updated Rules of Procedure
 - C. Notice of Rule Development
 - D. Notice of Rulemaking
8. Approval of **May 16, 2013** Regular Meeting Minutes
9. Other Business
10. Staff Reports
 - A. Attorney
 - B. Engineer
 - C. Manager
 - i. Approval of Unaudited Financial Statements as of July 31, 2013
 - ii. Fiscal Year 2014 Proposed Meeting Schedule
11. Audience Comments/Supervisors' Requests
12. Adjournment

Should you have any questions and/or concerns, please contact me directly at 239-464-7114.

Sincerely,



Chesley E. Adams, Jr.
District Manager

FOR BOARD MEMBERS AND STAFF TO ATTEND BY TELEPHONE:

CALL IN NUMBER: 1-888-354-0094

CONFERENCE ID: 8593810

THE NEWS-PRESS
Published every morning
Daily and Sunday
Fort Myers, Florida
Affidavit of Publication
STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared **Kathy Allebach** who on oath says that he/she is the **Legal Assistant** of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of:

Hearing on September 9, 2013

In the court was published in said newspaper in the issues of

August 18, 25, 2013

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County; Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

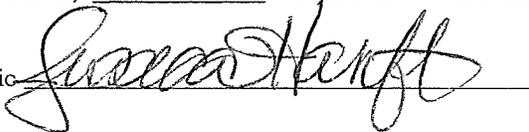


Sworn to and subscribed before me this 26th day of August, 2013.

by **Kathy Allebach**
personally known to me

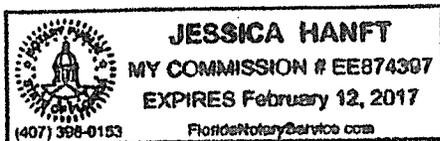
as identification, and who did or did not take an oath.

Notary Public



Print Name: **Jessica Hanft**

My commission Expires: **February 12, 2017**



**MOODY RIVER
ESTATES
COMMUNITY
DEVELOPMENT
DISTRICT**
**NOTICE OF PUBLIC
HEARING TO CONSIDER THE ADOPTION OF THE FISCAL YEAR 2013/2014 BUDGET; AND NOTICE OF REGULAR BOARD OF SUPERVISORS MEETING**

The Board of Supervisors of the Moody River Estates Community Development District will hold a public hearing on Monday, September 9, 2013 at 1:00 p.m., at the Clubhouse at Moody River Estates, 3050 Moody River Blvd., North Fort Myers, Florida 33903 for the purpose of hearing comments and objections on the adoption of the budget of the District for Fiscal Year 2013/2014. A regular board meeting of the District will also be held at that time where the Board may consider any other business that may properly come before it.

A copy of the agenda and budget may be obtained at the offices of the District Manager
WRATHELL HUNT AND ASSOCIATES, L.L.C., 6131 Lyons Road, Suite 100, Coconut Creek, Florida, 33073, (954) 426-2105, during normal business hours.

The public hearing and meeting are open to the public and will be conducted in accordance with the provisions of Florida law for Community Development Districts. The public hearing and meeting may be continued to a date, time, and place to be specified on the record at the meeting.

There may be occasions when staff or other individuals may participate by speaker telephone.

Any person requiring special accommodations at this meeting because of a disability or physical impairment should contact the District Office at (954) 426-2105 at least forty-eight (48) hours prior to the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service at 1-800-955-8770, for aid in contacting the District Office.

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the public hearing or meeting is advised that person will need a record of 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 such appeal is to be based.
District Manager
No.1477293
August 18, 25, 2013

RESOLUTION 2013-10

THE ANNUAL APPROPRIATION RESOLUTION OF THE MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT (THE “DISTRICT”) RELATING TO THE ANNUAL APPROPRIATIONS AND ADOPTING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2013, AND ENDING SEPTEMBER 30, 2014

WHEREAS, the District Manager has, prior to the fifteenth (15th) day in June, 2013, submitted to the Board of Supervisors (the “Board”) a proposed budget for the next ensuing budget year along with an explanatory and complete financial plan for each fund of the Moody River Estates Community Development 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 annual budget (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 September 9, 2013, as the date for 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 or transmitted the Proposed Budget to the manager or administrator of Lee County for posting on its website; and

WHEREAS, Section 190.008(2)(a), Florida Statutes, requires that, prior to October 1st of each year, the District 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 MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT:

Section 1. Budget

- a. That the Board of Supervisors has reviewed the District Manager’s Proposed Budget, a copy of which is on file with the office of the District Manager and at the District’s

Records Office, and hereby approves certain amendments thereto, as shown in Section 2 below.

- b. That the District Manager’s 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, 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 for Fiscal Year 2013 and/or revised projections for Fiscal Year 2014.
- c. That the adopted budget, as amended, shall be maintained in the office of the District Manager and at the District’s Records Office and identified as “The Budget for the Moody River Estates Community Development District for the Fiscal Year Ending September 30, 2014,” as adopted by the Board of Supervisors on September 9, 2013.
- d. The final adopted budget shall be posted by the District Manager on the District’s official website within thirty (30) days after adoption or shall be transmitted to the manager or administrator of Lee County for posting on its website.

Section 2. Appropriations

There is hereby appropriated out of the revenues of the Moody River Estates Community Development District, for the fiscal year beginning October 1, 2013, and ending September 30, 2014, the sum of \$1,002,942 to be raised by the levy of assessments and otherwise, which sum is deemed by the Board of Supervisors 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	\$ <u>250,543</u>
DEBT SERVICE FUND, SERIES 2005	\$ <u>752,399</u>
CAPITAL PROJECTS FUND	\$ <u>0</u>
TOTAL ALL FUNDS	\$ <u>1,002,942</u>

Section 3. Supplemental Appropriations

The Board may authorize by resolution, supplemental appropriations or revenue changes for any lawful purpose from funds on hand or estimated to be received within the fiscal year as follows:

- a. Board may authorize a transfer of the unexpended balance or portion thereof of any appropriation item.
- b. Board may authorize an appropriation from the unappropriated balance of any fund.

- c. Board may increase any revenue or income budget amount to reflect receipt of any additional unbudgeted monies and make the corresponding change to appropriations or the unappropriated balance.

The District Manager and Treasurer shall have the power within a given fund to authorize the transfer of any unexpected balance of any appropriation item or any portion thereof, provided such transfers do not exceed Ten Thousand (\$10,000) Dollars or have the effect of causing more than 10% of the total appropriation of a given program or project to be transferred; previously approved transfers included. Such transfer shall not have the effect of causing a more than \$10,000 or 10% increase, previously approved transfers included, to the original budget appropriation for the receiving program. Transfers within a program or project may be approved by the Board of Supervisors. The District Manager or Treasurer must establish administrative procedures which require information on the request forms proving that such transfer requests comply with this section.

Introduced, considered favorably, and adopted this 9th day of September, 2013.

ATTEST:

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

By: _____

Its: _____

Exhibit "A": Fiscal Year 2013/2014 Budget

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2014
PROPOSED BUDGET
AUGUST 15, 2013**

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
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**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND BUDGET
FISCAL YEAR 2014**

	Fiscal Year 2011			Total Revenue and Expenditures	Proposed Budget FY 2014
	Adopted Budget FY 2013	Actual through 3/31/13	Projected through 9/30/2013		
REVENUES					
Assessment levy: gross	\$ 268,936				\$ 250,543
Allowable discounts (4%)	(10,757)				(10,022)
Assessment levy: net	258,179	\$ 261,710	\$ -	\$ 261,710	240,521
Interest and miscellaneous	-	4,197	-	4,197	-
Total revenues	258,179	265,907	-	265,907	240,521
EXPENDITURES					
Professional & admin					
Supervisors	6,459	1,938	4,521	6,459	6,459
Management/recording	44,802	22,401	22,401	44,802	44,802
Legal - general counsel	15,000	6,694	8,306	15,000	15,000
Legal - litigation	10,000	14,679	1,000	15,679	-
Engineering	5,000	580	2,500	3,080	5,000
Audit	6,300	2,000	4,300	6,300	6,300
Accounting	8,742	4,371	4,371	8,742	8,742
Assessment roll preparation	12,875	6,437	6,438	12,875	12,875
Arbitrage rebate calculation	1,200	-	1,200	1,200	1,200
Dissemination agent	1,000	1,000	-	1,000	1,000
Trustee	3,150	-	3,150	3,150	3,150
Telephone	500	250	250	500	500
Computer services	500	-	-	-	-
Postage	1,250	560	690	1,250	1,250
Printing & binding	1,100	550	550	1,100	1,100
Legal advertising	1,000	927	500	1,427	1,500
Office supplies	223	-	-	-	-
Annual district filing fee	175	175	-	175	175
Insurance	5,775	5,750	-	5,750	6,038
Other current charges	750	432	432	864	1,000
Total professional & admin	125,801	68,744	60,609	129,353	116,091
Water management					
Other contractual	87,500	15,942	71,558	87,500	97,500
Aquascaping	7,500	-	7,500	7,500	7,500
Utilities	40,000	18,964	21,036	40,000	40,000
Total water management	135,000	34,906	100,094	135,000	145,000

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND BUDGET
FISCAL YEAR 2014**

	Fiscal Year 2011			Total Revenue and Expenditures	Proposed Budget FY 2014
	Adopted Budget FY 2013	Actual through 3/31/13	Projected through 9/30/2013		
Other fees and charges					
Property appraiser	991	815	176	991	856
Tax collector	1,487	1,069	418	1,487	1,284
Total other fees and charges	<u>2,478</u>	<u>1,884</u>	<u>594</u>	<u>2,478</u>	<u>2,140</u>
Total expenditures	<u>263,279</u>	<u>105,534</u>	<u>161,297</u>	<u>266,831</u>	<u>263,231</u>
Excess/(deficiency) of revenues over/(under) expenditures	(5,100)	160,373	(161,297)	(924)	(22,710)
Fund balance - beginning	103,511	102,629	263,002	102,629	101,705
Fund balance- ending (projected)	<u>\$ 98,411</u>	<u>\$ 263,002</u>	<u>\$ 101,705</u>	<u>\$ 101,705</u>	<u>\$ 78,995</u>

Assessment Summary

	Units	Proposed		Total Revenue
		FY 2013 Assessment	FY 2014 Assessment	
Single family	787	\$ 308.16	\$ 308.16	\$ 242,521.92
Multi family - east	69	\$ 129.48	\$ 116.24	8,020.56
Total	<u>856</u>			<u>\$ 250,542.48</u>

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
DEFINITIONS OF GENERAL FUND EXPENDITURES**

EXPENDITURES

Professional & admin

Supervisors	\$ 6,459
<p>Statutorily set at \$200 (plus applicable taxes) for each meeting of the Board of Supervisors not to exceed \$4,800 for each fiscal year. The District anticipates six (6) meetings during the fiscal year.</p>	
Management/recording	44,802
<p>Wrathell, Hunt and Associates, LLC, specializes in managing Community Development Districts in the State of Florida by combining the knowledge, skills and experience of a team of professionals to ensure compliance with all governmental requirements of the District, develop financing programs, administer the issuance of tax exempt bond financings, and operate and maintain the assets of the community.</p>	
Legal - general counsel	15,000
<p>Hopping Green and Sams provide on-going general counsel and legal representation. These lawyers are confronted with issues relating to public finance, public bidding, rulemaking, open meetings, public records, real property dedications, conveyances and contracts. In this capacity, they provide service as "local government lawyers," realizing that this type of local government is very limited in its scope – providing infrastructure and services to developments.</p>	
Engineering	5,000
<p>The District's engineer provides a broad array of engineering, consulting and construction services to the District. These services assist with the crafting of sustainable solutions for the long term interests of the community while recognizing the needs of government, the environment and maintenance of the District's facilities.</p>	
Audit	6,300
<p>Statutorily required for the District to undertake an independent examination of its books, records and accounting procedures.</p>	
Accounting	8,742
<p>Wrathell, Hunt and Associates, LLC, is responsible for the preparation of all financial work related to the District's governmental funds, including monthly financials and annual budgets.</p>	
Assessment roll preparation	12,875
<p>Wrathell, Hunt and Associates, LLC, is responsible for the preparation and administration of the assessment rolls for all funds of the District.</p>	
Arbitrage rebate calculation	1,200
<p>To ensure the District's compliance with all tax regulations, annual computations are necessary to calculate the arbitrage rebate liability.</p>	
Dissemination agent	1,000
<p>The District must annually disseminate financial information in order to comply with the requirements of Rule 15c2-12 under the Securities & Exchange Act of 1934. The Dissemination Agent for the District is the District's Underwriter - Prager Sealy and Company, LLC.</p>	
Trustee	3,150
<p>Annual fees paid to U.S. Bank for the services they provide as trustee, paying agent and registrar.</p>	

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
DEFINITIONS OF GENERAL FUND EXPENDITURES**

EXPENDITURES (continued)

Telephone		500
Telephone and fax machine.		
Postage		1,250
Mailing of agenda packages, overnight deliveries, correspondence, etc.		
Printing & binding		1,100
Letterhead, envelopes, copies, agendas, etc.		
Legal advertising		1,500
The District advertises for monthly meetings, special meetings, public hearings, bidding, etc.		
Annual district filing fee		175
Annual fee paid to the Department of Economic Opportunity.		
Insurance		6,038
The District carries public officials and general liability insurance with policies written by Preferred Governmental Insurance Trust. The limit of liability is set at \$1,000,000 for general liability (\$2,000,000 general aggregate) and \$1,000,000 for public officials liability limit.		
Other current charges		1,000
Bank charges and other miscellaneous expenses incurred during the year.		
Water management		
Other contractual		97,500
The District contracts with Lakemasters Aquatic Weed Control, Inc. for treatment and maintenance of the lakes and wetlands. This program includes aquatic weed control and wetland treatments for state recognized exotic plant materials.		
It is anticipated that the District will continue it's routine pipe and inlet inspection and cleaning program as well as address lake bank erosion. It is proposed that this program be implemented on a rotational basis and lake banks on a priority basis.		
Lake and wetlands	\$	45,000
Fountain Repairs/Maint		7,500
Pipes/inlets/lake banks		45,000
Total	\$	97,500
Aquascaping		7,500
To address the periodic needs of supplementing the District's aquatic plan program to ensure compliance with the surface water management permit(s).		
Utilities		40,000
Electrical charges for fountains and aerators.		
Other fees & charges		
Property appraiser		856
Fees are \$1.00 per parcel on which the assessment is levied.		
Tax collector		1,284
Fees are \$1.50 per parcel on which the assessment is levied.		
Total expenditures		\$ 263,231

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
DEBT SERVICE FUND BUDGET - SERIES 2005
FISCAL YEAR 2014**

	Fiscal Year 2014				Proposed Budget FY 2014
	Adopted Budget FY 2013	Actual through 3/31/13	Projected through 9/30/2013	Total Revenue & Expenditures	
REVENUES					
Assessment levy: on-roll	\$ 752,399				\$ 752,399
Allowable discount (4%)	(30,096)				(30,096)
Assessment levy - net	722,303	\$ 729,258	\$ -	\$ 729,258	722,303
Interest	-	83	-	83	-
Total revenues	722,303	729,341	-	729,341	722,303
EXPENDITURES					
Debt service					
Principal	205,000	-	205,000	205,000	215,000
Principal prepayment	-	5,000	-	5,000	-
Interest	517,345	258,673	258,672	517,345	506,378
Total debt service	722,345	263,673	463,672	727,345	721,378
Excess/(deficiency) of revenues over/(under) expenditures	(42)	465,668	(463,672)	1,996	925
Beginning fund balance	1,208,150	1,192,772	1,658,440	1,192,772	1,194,768
Ending fund balance (projected)	<u>\$1,208,108</u>	<u>\$1,658,440</u>	<u>\$1,194,768</u>	<u>\$ 1,194,768</u>	<u>1,195,693</u>
Use of fund balance					
Debt service reserve account balance (required)					(648,828)
Interest expense - November 1, 2014					(247,438)
Projected fund balance surplus/(deficit) as of September 30, 2014					<u>\$ 299,427</u>

Moody River

Community Development District

Series 2005

\$10,710,000

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+
11/01/2012	\$ -	-	\$ 258,672.50	\$ 258,672.50
05/01/2013	205,000.00	5.350%	258,672.50	463,672.50
11/01/2013	-	-	253,188.75	253,188.75
05/01/2014	215,000.00	5.350%	253,188.75	468,188.75
11/01/2014	-	-	247,437.50	247,437.50
05/01/2015	225,000.00	5.350%	247,437.50	472,437.50
11/01/2015	-	-	241,418.75	241,418.75
05/01/2016	240,000.00	5.350%	241,418.75	481,418.75
11/01/2016	-	-	234,998.75	234,998.75
05/01/2017	250,000.00	5.350%	234,998.75	484,998.75
11/01/2017	-	-	228,311.25	228,311.25
05/01/2018	265,000.00	5.350%	228,311.25	493,311.25
11/01/2018	-	-	221,222.50	221,222.50
05/01/2019	280,000.00	5.350%	221,222.50	501,222.50
11/01/2019	-	-	213,732.50	213,732.50
05/01/2020	295,000.00	5.350%	213,732.50	508,732.50
11/01/2020	-	-	205,841.25	205,841.25
05/01/2021	310,000.00	5.350%	205,841.25	515,841.25
11/01/2021	-	-	197,548.75	197,548.75
05/01/2022	330,000.00	5.350%	197,548.75	527,548.75
11/01/2022	-	-	188,721.25	188,721.25
05/01/2023	350,000.00	5.350%	188,721.25	538,721.25
11/01/2023	-	-	179,358.75	179,358.75
05/01/2024	365,000.00	5.350%	179,358.75	544,358.75
11/01/2024	-	-	169,595.00	169,595.00
05/01/2025	385,000.00	5.350%	169,595.00	554,595.00
11/01/2025	-	-	159,296.25	159,296.25
05/01/2026	410,000.00	5.350%	159,296.25	569,296.25
11/01/2026	-	-	148,328.75	148,328.75
05/01/2027	430,000.00	5.350%	148,328.75	578,328.75
11/01/2027	-	-	136,826.25	136,826.25
05/01/2028	455,000.00	5.350%	136,826.25	591,826.25
11/01/2028	-	-	124,655.00	124,655.00
05/01/2029	480,000.00	5.350%	124,655.00	604,655.00
11/01/2029	-	-	111,815.00	111,815.00
05/01/2030	505,000.00	5.350%	111,815.00	616,815.00
11/01/2030	-	-	98,306.25	98,306.25
05/01/2031	535,000.00	5.350%	98,306.25	633,306.25
11/01/2031	-	-	83,995.00	83,995.00

Moody River

Community Development District

Series 2005

\$10,710,000

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
05/01/2032	565,000.00	5.350%	83,995.00	648,995.00
11/01/2032	-	-	68,881.25	68,881.25
05/01/2033	595,000.00	5.350%	68,881.25	663,881.25
11/01/2033	-	-	52,965.00	52,965.00
05/01/2034	625,000.00	5.350%	52,965.00	677,965.00
11/01/2034	-	-	36,246.25	36,246.25
05/01/2035	660,000.00	5.350%	36,246.25	696,246.25
11/01/2035	-	-	18,591.25	18,591.25
05/01/2036	695,000.00	5.350%	18,591.25	713,591.25
Total	\$9,670,000.00	-	\$7,759,907.50	\$17,429,907.50

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
PROJECTED ASSESSMENTS
GENERAL FUND AND DEBT SERVICE FUND**

Number of Units	Unit Type	Projected Fiscal Year 2014			FY 13 Assessment
		GF	DSF	GF & DSF	
114	Carriage-Center	\$ 308.16	\$ 439.00	\$ 747.16	\$ 747.16
182	Coach-Center	\$ 308.16	\$ 583.00	\$ 891.16	\$ 891.16
123	Signature 50X135-Center	\$ 308.16	\$ 728.00	\$1,036.16	\$ 1,036.16
95	Estate 71.25X135-Center	\$ 308.16	\$ 920.00	\$1,228.16	\$ 1,228.16
140	Estate 71.25X135-South	\$ 308.16	\$ 1,553.00	\$1,861.16	\$ 1,861.16
56	Signature 50X135-North	\$ 308.16	\$ 1,261.00	\$1,569.16	\$ 1,569.16
77	Estate 71.25X135-North	\$ 308.16	\$ 1,553.00	\$1,861.16	\$ 1,861.16
55	Multifamily-East	\$ 116.24	* \$ 186.26	** \$ 302.50	\$ 218.99
14	Single Family-East	\$ 116.24	* \$ 186.26	** \$ 302.50	\$ 218.99
<u>856</u>					

Note: All units except for those located east of Moody Road ("East Units") pay for all expenditure categories contained in the District's General Fund Budget, including Professional & Administrative, Other Fees and Charges, and Water Management expenditures. All units in the District, except for the East Units, benefit on an equal residential unit basis from the administrative and general governmental functions of the District and the flood protection provided by the proper maintenance of the Water Management system. The proper maintenance and operation of the Water Management system assists in the prevention of damage to property caused by floods, lowers insurance premiums for property constructed on individual lots, and allows for orderly drainage so that property owners can maximize the use and enjoyment of their properties and common areas. The District has determined that the East Units do not receive similar benefits as other units in the District from the existing Water Management system. Therefore, the East Units only pay for the Professional & Administrative and Other Fees and Charges expenditures, and they do so at the same rate as the other units in the District.

* Assessments for GF expenditures for unplatted lands located east of Moody Road are based on 55 multifamily and 14 single family units as contemplated in the District's agreement with the current landowner.

** Assessments for DSF expenditures levied on unplatted lands located east of Moody Road are based on the benefit received by such lands. The "per unit" allocation is an illustration based on a mathematical division of the total annual amount by the 55 multifamily and 14 single family units as contemplated in the District's agreement with the current landowner. See assessment roll for total amounts levied against each unplatted parcel.

RESOLUTION 2013-11

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT MAKING A DETERMINATION OF BENEFIT; IMPOSING SPECIAL ASSESSMENTS; PROVIDING FOR THE COLLECTION AND ENFORCEMENT OF SPECIAL ASSESSMENTS, INCLUDING BUT NOT LIMITED TO PENALTIES AND INTEREST THEREON; CERTIFYING AN ASSESSMENT ROLL; PROVIDING FOR AMENDMENTS TO THE ASSESSMENT ROLL; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Moody River Estates Community Development District (the “District”) is a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes for the purpose of providing, operating and maintaining infrastructure improvements, facilities and services to the lands within the District; and

WHEREAS, the District is located in Lee County, Florida (the “County”); and

WHEREAS, the District has constructed or acquired various infrastructure improvements and provides certain services in accordance with the District’s adopted capital improvement plan and Chapter 190, Florida Statutes; and

WHEREAS, the Board of Supervisors of the District (“Board”) hereby determines to undertake various operations and maintenance activities described in the District’s budgets for Fiscal Year 2013-2014 (“Budget”), attached hereto as Exhibit “A” and incorporated by reference herein; and

WHEREAS, the District must obtain sufficient funds to provide for the operation and maintenance of the services and facilities provided by the District as described in the District’s Budget; and

WHEREAS, the provision of such services, facilities, and operations is a benefit to lands within the District; and

WHEREAS, Chapter 190, Florida Statutes, provides that the District may impose special assessments on benefitted lands within the District; and

WHEREAS, Chapter 197, Florida Statutes, provides a mechanism pursuant to which such special assessments may be placed on the tax roll and collected by the local tax collector (“Uniform Method”); and

WHEREAS, the District has previously evidenced its intention to utilize this Uniform Method; and

WHEREAS, the District has approved an Agreement with the Property Appraiser and Tax Collector of the County to provide for the collection of the special assessments under the Uniform Method; and

WHEREAS, the District has previously levied an assessment for debt service, which the District desires to collect on the tax roll pursuant to the Uniform Method and which is also indicated on Exhibit “A”; and

WHEREAS, it is in the best interests of the District to proceed with the imposition of the special assessments for operations and maintenance in the amount set forth in the Budget; and

WHEREAS, it is in the best interests of the District to adopt the Assessment Roll of the Moody River Estates Community Development District (the “Assessment Roll”) attached to this Resolution as Exhibit “B” and incorporated as a material part of this Resolution by this reference, and to certify the Assessment Roll to the County Tax Collector pursuant to the Uniform Method; and

WHEREAS, it is in the best interests of the District to permit the District Manager to amend the Assessment Roll, certified to the County Tax Collector by this Resolution, as the Property Appraiser updates the property roll for the County, for such time as authorized by Florida law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. BENEFIT. The provision of the services, facilities, and operations as described in Exhibit “A” confers a special and peculiar benefit to the lands within the District, which benefit exceeds or equals the costs of the assessments. The allocation of the costs to the specially benefitted lands is shown in Exhibits “A” and “B” and is hereby found to be fair and reasonable.

SECTION 2. ASSESSMENT IMPOSITION. Pursuant to Chapter 190 of the Florida Statutes, and using the procedures authorized by Florida law for the levy and collection of special assessments, a special assessment for operation and maintenance is hereby imposed and levied on benefitted lands within the District, and in accordance with Exhibits “A” and “B.” The lien of the special assessments for operations and maintenance imposed and levied by this Resolution shall be effective upon passage of this Resolution.

SECTION 3. COLLECTION. The collection of the operation and maintenance special assessments shall be at the same time and in the same manner as County taxes in accordance with the Uniform Method. The District shall also collect its previously levied debt service assessments pursuant to the Uniform Method, as indicated on Exhibits “A” and “B.” The decision to collect special assessments by any particular method – e.g., on the tax roll or by direct bill – does not mean that such method will be used to collect special assessments in future years, and the District reserves the right in its sole discretion to select collection methods in any

given year, regardless of past practices.

SECTION 4. ASSESSMENT ROLL. The District's Assessment Roll, attached to this Resolution as Exhibit "B," is hereby certified to the County Tax Collector and shall be collected by the County Tax Collector in the same manner and time as County taxes. The proceeds therefrom shall be paid to the Moody River Estates Community Development District.

SECTION 5. ASSESSMENT ROLL AMENDMENT. The District Manager shall keep apprised of all updates made to the County property roll by the Property Appraiser after the date of this Resolution, and shall amend the District's Assessment Roll in accordance with any such updates, for such time as authorized by Florida law, to the County property roll. After any amendment of the Assessment Roll, the District Manager shall file the updates in the District records.

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

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect upon the passage and adoption of this Resolution by the Board of Supervisors of the Moody River Estates Community Development District.

PASSED AND ADOPTED this 9th day of September, 2013.

ATTEST:

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

By:_____

Its:_____

Exhibit A: Budget
Exhibit B: Assessment Roll

MEMORANDUM

Date: August 15, 2013
To: Moody River Estates Board of Supervisors
From: Cleo Crismond – Operations Manager
Subject: Consideration of Award of Contract – Lake & Wetland Maintenance
Cc: File

Your current lake and wetland management contract is set to expire 8/31/13. Staff recently requested bids for this service. Four companies were provided bid packages with three companies submitting bids. The financial tabulation is as follows:

<u>Company:</u>	<u>1st Year Price:</u>	<u>2nd Year Price:</u>
• Aquagenix	\$31,934.00	\$31,934.00
• Lake Masters	\$33,324.00	\$33,324.00
• Clarke Services	\$89,116.50	\$89,116.50

Aquagenix, as well as Lake Masters, have been in the industry for numerous years and have the capability of maintaining the contract. Your current contractor, Lake Masters, has been maintaining your Lakes and Wetlands for the past 7 years with minimal concerns.

The current contract price is \$33,913.00 and Lake Masters has submitted this year's contract with a 1 ½ % decrease, with Aquagenix submitting at a 4% decrease to the current contract price.

Based on the minimal margin between the two contractors, and the fact that Lake Masters has history and knowledge for this community it is staff's recommendation to award the bid to Lake Masters for a first year cost of \$33,324.00 and a second year option in the amount of \$33,324.00.

Hopping Green & Sams

Attorneys and Counselors

MEMORANDUM

TO: Moody River Estates Community Development District
Board of Supervisors

FROM: Michael C. Eckert

RE: Updated Provisions of the District's Rules of Procedure

DATE: August 15, 2013

Please find attached to this memorandum an updated version of the Moody River Estates Community Development District's (the "District's") Rules of Procedure (the "Rules"). Several substantive revisions were made to maintain consistency between the Rules and the current Florida Statutes, as well as to facilitate greater efficiency in the operation of the District. An explanation of each material change to the Rules is provided below. Should you have any questions regarding the revisions to the Rules, please do not hesitate to contact me via e-mail at michaele@hgslaw.com or via phone at 850-222-7500.

Implementation of Rules Conflicting with Florida Law

Rule 1.0(4) has been amended to provide guidance as to how to implement any rule that conflicts with Florida law, which changes from time to time. The Rule previously provided that the District may immediately suspend the application of a Rule if the District determines that the Rule conflicts with Florida law. This Rule has been expanded to provide that 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. This amendment further provides that if the intent of the Rule absolutely cannot be effectuated while complying with Florida law, the Rule shall be automatically suspended.

Board Member Attendance at Mediation Sessions

Rule 1.1(1)(d) was created to allow any one member of the Board of Supervisors (the "Board") to attend mediation sessions on behalf of the Board. This is beneficial to the District because mediation sessions are often scheduled on short notice between Board meetings, and there is often no opportunity for the Board to authorize a representative to attend outside of holding a special meeting. While this provision authorizes any one Board member to attend a mediation session on behalf of the Board, it does not grant that Board member unbridled power

to act on behalf of the Board, as any agreement resulting from the mediation session would still have to be approved by the Board in the same manner as any other District action.

Alternatives to Obtaining Bonds for the Secretary and Treasurer

Rules 1.1(2)(c) & (d) previously required the District's Treasurer and Secretary to be bonded by a reputable and qualified bonding company in the amount of at least \$1,000,000. Such bonds are becoming difficult to obtain, and accordingly, language was added to these provisions to allow the Treasurer and Secretary to obtain other comparable types of coverage, such as employee theft insurance or a fidelity bond. The level of coverage required remains unchanged at \$1,000,000.

Costs Associated With Public Records Requests

Language was added to Rule 1.2(4) to clarify how costs are calculated in the context of public records requests. The clarified language will help minimize expenses incurred by the District in responding to public records requests.

Public Comment at Meetings

Rule 1.3(7) was amended to maintain consistency with legislation that was passed during the 2013 legislative session that provides the public with the opportunity to be heard on any proposition before the Board. The amended rule provides the public with the opportunity to be heard subject to policies adopted by the District in accordance with Florida law. The optional agenda format provided in Rule 1.3(3) was also amended to include a public comment period at the beginning and end of each Board meeting. We intend to formulate and propose policies which further address public comment as contemplated by the new legislation.

Teleconference/Videoconference Participation at Board Meetings

Rule 1.3(10) was amended to provide that Board members may participate in Board meetings by teleconference or videoconference if in the good judgment of the Board extraordinary circumstances exist. The amendment provides that the existence of extraordinary circumstances will be presumed when a Board member participates by phone, unless a majority of the Board members physically present determines otherwise. Additionally, Rule 1.1(1)(c) has been amended to reference Rule 1.3(10).

Contract Provisions Regarding Public Records

Rules 1.2(3), 3.1(6), 3.2(8)(e), 3.5(4), 3.6(3), 3.9(5), and 3.10(2) were added to maintain consistency with legislation passed during the 2013 legislative session that requires each contract for services entered into by the District to include a provision that requires the contractor to comply with public records laws. Additionally, Rule 1.2(3) provides that the District Manager is responsible for initially enforcing each contractor's compliance with such contract provisions.

Bid Opening in Public

Language was added to Rules 3.5(2)(f) & 3.6(2)(c)(ii)4. to maintain consistency with legislation passed during the 2012 legislative session that requires public entities to open at a public meeting any sealed bids received pursuant to a competitive solicitation. The legislation and these provisions further require that the name of each bidder and the price submitted in the bid shall be announced at the meeting and made available upon request.

Payment and Performance Bonds

Rule 3.7 was created to maintain consistency with legislation passed during the 2012 legislative session that requires contractors to execute a payment and performance bond prior to beginning work under certain contracts with public entities. This Rule provides direction on when a payment and performance bond is required and when it is discretionary.

In-State Vendor Preferences

Language was added to Rule 3.8(2)(e) & (g) to maintain consistency with legislation passed during the 2012 legislative session that requires out-of-state vendors to include with any proposal a written opinion of an attorney licensed in their state regarding the existence of any preference given to businesses within that state with respect to the letting of public contracts in that state. These provisions also require that in-state vendors be awarded certain levels of preference against out-of-state vendors, based upon the amount of preference granted to the out-of-state vendors by their state.

Minor Changes

The following minor changes have also been made to the Rules:

Rules 1.1(1)(c) and 1.3(11): These Rules were amended to provide that approval or disapproval of Board action is based upon an affirmative vote of a majority of members present, rather than a majority of members voting.

Rule 1.1(2)(a): This Rule now explicitly authorizes the Chairperson to execute resolutions and contracts on the District's behalf.

Rule 1.1(2)(g): This Rule now explicitly authorizes the Vice-Chairperson and any other person authorized by District Resolution to sign checks and warrants for the District, countersigned by the Treasurer or other persons authorized by the Board.

Rule 1.2(2): Language was added to this Rule to define public records, to clarify that the District is not required to prepare opinions regarding District policies, and to clarify that all forms of public records requests should be forwarded to the Secretary of the District.

Rule 3.0(3)(c): This Rule was amended to clarify the definition of "Contractual Services" and to organize the terms in alphabetical order.

Rule 3.2(8)(c): This Rule was amended to require that any agreement for financial audit services must include a deadline of July 1 for the auditor to submit the final audit report. This Rule previously required that only a draft of the audit report be due by July 1.

Rules 3.5 and 3.6: Rule 3.5 previously included both Design-Build Construction Contracts and Non Design-Build Construction Contracts. The Rules have been modified so that each type of construction contract now comprises a separate Rule. Non Design-Build Construction Contracts are governed by Rule 3.5, while Design-Build Construction Contracts are governed by Rule 3.6. This change is to format only and does not affect the meaning of the Rules.

Rules 3.5(2)(e) & 3.6(2)(c)(ii)3.: Language was added to these Rules to allow the District to exclude from bidding on construction contracts any contractor who has been found guilty of any violation of federal labor or employment tax laws within the past five years.

Rule 3.5(3): Language was added to clarify that the competitive solicitation procedures in this Rule do not apply to the purchase of construction services that are purchased under a federal, state, or local government contract that has been competitively procured by such government, but only if the manner of procurement is consistent with the material procurement requirements of these Rules.

Rule 3.8(4): Language was added to clarify that the competitive solicitation procedures in this Rule do 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 government, but only if the manner of procurement is consistent with the material procurement requirements of these Rules.

Rule 3.9(2)(f): Language was added to clarify that variation in a bid is minor if waiver of the variation does not create a competitive advantage or disadvantage of a material nature, and providing that mistakes in arithmetic extension of pricing may be corrected by the Board.

Rule 1.0 General.

- (1) The _____ Community Development District (the “District”) was created pursuant to the provisions of Chapter 190, Florida Statute 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.

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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, ~~and citizens of the United States.~~ Supervisors elected by resident electors must be citizens of the United States of America, residents of the State of Florida and of the District, registered to vote with the Supervisor of Elections of the county in which the District is located, and qualified. 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, ~~Florida Statute 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 ~~and voting~~, unless otherwise provided in the Rules or required by law. ~~Subject to Rule 1.3(10), Aa~~ Board member participating in the Board ~~meeting~~ Meeting by ~~teleconference or videoconference phone~~ 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. ~~sign checks and warrants for the District,~~

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~~countersigned by the Treasurer or other persons authorized by the Board.~~
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~~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's manager ("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 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), ~~Florida Statute 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 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~~board meeting and a quorum is present, the Board may designate one of its members or a member of ~~District~~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~~Chairman and Vice-~~Chairperson~~Chairman 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 ~~of Supervisors~~ 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.

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(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.

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(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 ~~and the Florida Department of Community Affairs~~. 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, Florida Statute of the Florida Statutes.

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(6) Voting Conflict of Interest. ~~The Board shall comply with Section 112.3143, Florida Statute of the Florida Statutes~~, so as to ensure the proper disclosure of conflicts of ~~interest~~ interests on matters coming before the Board for a vote. For the purposes of this section, "voting conflict of interest" shall be governed by Chapters 112 and 190, ~~Florida Statute 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 official'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.

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(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

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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~~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~~filling of the Memorandum of Voting Conflict. ~~written memorandum.~~ 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~~memorandum of ~~Voting Conflict~~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, ~~112.3143~~, Fla. Stat.

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

- (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; ~~and~~
 - (b) Official minutes of meetings, including adopted resolutions of the Board; ~~and~~
 - (c) Names and addresses of current Board members and District Manager, unless such addresses are protected from disclosure by law; ~~and~~
 - (d) Adopted engineer's reports;
 - (e) Adopted assessment methodologies/reports; ~~and~~
 - (f) Adopted disclosure of public financing; ~~and~~
 - (g) Limited Offering Memorandum for each financing undertaken by the District; ~~and~~
 - (h) Proceedings, certificates, bonds given by all employees, and any and all corporate acts; ~~and~~
 - (i) District policies and rules; ~~and~~
 - (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 ~~within the meaning of Chapter 119, Florida Statutes, and~~ not otherwise restricted by law; ~~including the "Record of Proceedings,"~~ 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.

(34) 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~~above~~ 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 an individual who is qualified to perform the labor. For purposes of this Rule~~fee of \$30 per hour for supervisory assistance, \$20 per hour for clerical assistance, and the actual cost incurred for the use of information technology resources. 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 ~~above~~ special service charge provided for in the section~~fees~~ shall apply. If the total fees, including but not limited to special service ~~charges~~fees, are anticipated to exceed twenty-five dollars (\$25.00), then, prior to commencing work on the request, the District will inform~~payment in advance~~ by 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. After the request has been fulfilled, additional payments or credits may be due.-

(45) Records Retention. The Secretary of the District shall be responsible for retaining the District's records in accordance with applicable Florida law.

(56) Policies. The Board may adopt policies related to the conduct of its business and the provision of services either by resolution or motion.

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

Law Implemented: §§ ~~119.0701~~, 190.006, 119.07, 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~~section 189.417 ~~of the Florida Statute 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 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 _____. If you are hearing or speech impaired, please contact the Florida Relay Service at 1 (800) 955-8770, who can aid you in contacting the District Office."
- (e) The following 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 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 a notice and an agenda of the meeting/hearing/workshop. The notice and agenda shall be available to the public at least seventy-two (72) hours before the meeting/hearing/workshop except in an emergency. For good cause, the agenda may be changed after it is first made available for distribution. 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~~ **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
~~Audience questions and comments~~
 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, may convene an emergency meeting of the Board without first having complied with ~~sections (1) and (3) of this Rule,~~ subsections (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 audience public comment shall be identified in the agenda. At the Chairperson's discretion, or at the discretion of the Vice-Chairman or Board member appointed pursuant to Rule 1.1(2)(e) above, each person wishing to address the Board may be subject to a three (3) minute time limit for their comments, in the interest of time and fairness to other speakers. 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~~ section 190.008 ~~of the Florida Statute of the Florida Statutes.~~ Once adopted in accord with ~~Section~~ section 190.008 ~~of the Florida Statute 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~~ 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. ~~and Board members~~ Board members may also participate in Board meetings by teleconference or videoconference if in the good judgment of the Board extraordinary circumstances exist~~may participate in board meetings by teleconference~~; 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. 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~~voting~~. 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;~~and~~
 - (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 ~~District's~~ 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 attorneys 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

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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.

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

Law Implemented: §§ 190.006, 190.007, 190.008, 286.0105, [286.011](#), [286.0114](#), 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 Statute~~ 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 ~~Noticenotice~~ Notice of ~~Rule Developmentrule development~~ in a newspaper of general circulation in the District before providing notice of a proposed rule as required by ~~sectionparagraph~~ section (3) ~~of this Rule.~~ Consequently, the ~~Noticenotice~~ Notice of ~~Rule Developmentrule development~~ shall be published at least twenty-nine (29) days prior to the public hearing on the proposed Rule. The ~~Noticenotice~~ Notice of ~~Rule Developmentrule 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 ~~Sectionssections~~ Sections 120.54(1)(g) and 120.54(2)(b) ~~of the Florida Statute~~ 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 ~~Sectionsection~~ Section 120.541(2), ~~Florida Statute~~ 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 to~~ the date on which and ~~to~~ the place where the ~~Notice~~notice of ~~Rule Development~~rule development that is required by ~~sections~~subsection (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. Notice will then be mailed to all persons whom, at least fourteen (14) days prior to such mailing, have made requests of the District for advance notice of its proceedings.
- (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~~~~petitions for the initiation of 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 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~~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~~Rule. However,

this ~~section~~subsection 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~~3, above, 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, ~~Florida Statute~~ 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 (paragraph 3) of this Rule~~ above, 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~~ paragraph 3 above 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), ~~Florida Statute of the Florida Statutes~~, except that any notices required under Section 120.54(2)(d), ~~Florida Statute 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.

~~(12)~~ (11) Petitions to Challenge Existing Rules.

- (a) Any person substantially affected by a ~~rule~~ Rule may seek an administrative determination of the invalidity of the ~~rule~~ 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 ~~District's~~ Chairperson shall, if the petition complies with the requirements of ~~subsection paragraph~~ (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)a.~~ Administer oaths and affirmations;

~~(ii)~~ ~~b.~~ Rule upon offers of proof and receive relevant evidence;

~~(iii)~~ ~~c.~~ Regulate the course of the hearing, including any pre-hearing matters;

~~(iv)~~ ~~d.~~ Enter orders; and

~~(v)~~ ~~e.~~ 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.

~~(1213)~~ 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 ruleRule to a person who is subject to the ruleRule. A “waiver” means a decision by the District not to apply all or part of a ruleRule to a person who is subject to the ruleRule. 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 thea 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~~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 ~~District's~~ 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 sixty (60) 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.

(+14) (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~~sections 190.033(1) through (3), 287.055 and 287.017, ~~Florida Statute of the Florida Statutes~~, the following provisions shall apply to the purchase of Professional Services, ~~professional services~~, insurance, construction contracts, design-build services, goods, supplies, and materials, Contractual Services~~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~~section 287.055, ~~of the Florida Statutes, F.S.~~, between the District and a firm, whereby the firm provides Professional Services to the District for projects in which the costs do not exceed one million dollars (\$1,000,000), for a study activity when the fee for such Professional Services~~professional services~~ to the District does not exceed fifty thousand dollars (\$50,000), 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 ~~legal (including attorneys, paralegals, court reporters and expert witnesses, including appraisers), artistic, auditing services, health, Maintenance Services, or academic program services,~~ or Professional Services (as defined in Section 287.055(2)(a) ~~Florida Statute of the Florida Statutes~~, and these Rules.) ~~or maintenance services.~~ 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~~Chapter 255 of the Florida Statute 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.

~~(d)~~(e) A “Design-Build Firm” means a partnership, corporation or other legal entity that:

1. (i) Is certified under ~~Section~~section 489.119 of the Florida Statute 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

2. (ii) Is certified under ~~Section~~section 471.023 of the Florida Statute of the Florida Statutes, to practice or to offer to practice engineering; certified under ~~Section~~section 481.219 of the Florida Statute of the Florida Statutes, to practice or to offer to practice architecture; or certified under ~~Section~~section 481.319 of the Florida Statute of the Florida Statutes, to practice or to offer to practice landscape architecture.

~~(e)~~ A “Design-Build Contract” means a single contract with a Design-Build Firm for the design and construction of a public construction project.

(f) A “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~~request for ~~Proposals~~proposal, 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) A “Design Criteria Professional” means a firm who holds a current certificate of registration under ~~Chapter~~chapter 481 of the Florida Statute of the Florida Statutes, to practice architecture or landscape architecture,

or a firm who holds a current certificate as a registered engineer under ~~Chapter~~ Chapter 471 of the Florida Statute of the Florida Statutes, to practice engineering, and who is employed by or under contract to the ~~District to provide~~ agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the Design Criteria Package ~~design criteria package~~.

- (h) “Emergency Purchase” means a purchase necessitated by a sudden unexpected turn of events (~~for example, e.g.~~ 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 bidding-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) — “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 Proposal, 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 Proposal, Invitation to Negotiate or Competitive Solicitation, the following:~~

1. ~~The ability and adequacy of the professional personnel employed by the entity/individual.~~
2. ~~The past performance of the entity/individual for the District and in other professional employment.~~
3. ~~The willingness of the entity/individual to meet time and budget requirements.~~
4. ~~The geographic location of the entity's/individual's headquarters or office in relation to the project.~~
5. ~~The recent, current and projected workloads of the entity/individual.~~
6. ~~The volume of work previously awarded to the entity/individual.~~
7. ~~Whether the cost components of the bid or proposal are appropriately balanced.~~
8. ~~Whether the entity/individual is a certified minority business enterprise.~~

~~(k)~~ “Negotiate” means to conduct legitimate, ~~arm’s~~ ~~arms~~ 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:

~~(n)~~ (i) ~~Submitted~~ 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) which is for a cost to the District deemed reasonable by the Board.~~

(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,

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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.

- (p) ~~“Request for Proposal” 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.~~
- (q) “Responsive Bid,” “Responsive Proposal,” “Responsive Reply,”[”] and “Responsive Response” all mean~~means~~ 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~~Proposal, Invitations to Negotiate, or ~~other Competitive Solicitation~~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~~providing~~ for protest of actions of the Board under this Rule ~~3.1~~. As used in this Rule ~~3.1~~, “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, ~~Florida Statute 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 federal licenses in good standing, if any;
 - (b) Hold all required applicable state professional licenses in good standing;
 - (c) ~~Hold~~If the consultant is a corporation, hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute 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. Consultants who provide their

name and address to the District Manager for inclusion on the list shall receive notices by mail. 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~~^{above} 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)1.~~ The ability and adequacy of the professional personnel employed by each consultant~~;~~

~~(ii)2.~~ Whether a consultant is a certified minority business enterprise~~;~~

~~(iii)3.~~ Each consultant's past performance~~;~~

~~(iv)4.~~ The willingness of each consultant to meet time and budget requirements~~;~~

~~(v)5.~~ The geographic location of each consultant's headquarters, office and personnel in relation to the project~~;~~

~~(vi)6.~~ The recent, current, and projected workloads of each consultant~~;~~
~~and~~

~~(vii)7.~~ 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) 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 3.119 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 3.119.

(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, [Florida Statute 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.

(78) 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: §§ ~~119.070~~119.07, 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~~ ~~section~~ 218.391 ~~of the Florida Statute 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.

(1) Definitions.

- (a) "Auditing Services" means those services within the scope of the practice of a certified public accounting firm licensed under Chapter 473, ~~Florida Statute 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 audit selection committee appointed by the Board as described in ~~section~~ ~~Subsection 3.2~~(2) of this Rule.

(2) Establishment of Audit Committee. Prior to a public announcement under ~~section~~ ~~subsection 3.2~~(4) of this Rule that Auditing Services are required, the Board shall establish an audit 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~~ ~~section~~ 218.39 ~~of the Florida Statute of the Florida Statutes~~. The Committee should include at least three individuals, some or all of whom may also serve as members of the ~~District's~~ Board ~~of Supervisors~~. The establishment and selection of the Committee must be conducted at a publicly noticed and held meeting of the Board.

(3) Establishment of Minimum Qualifications and Evaluation Criteria. Prior to a public announcement under ~~section~~ ~~Subsection 3.2~~(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~~ ~~audit services~~ to be provided by a certified public accounting firm ~~duly~~ licensed under ~~Chapter~~ ~~chapter~~ 473 ~~of the Florida Statute of the Florida Statutes~~, and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy.

~~a.~~ (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.~~ (i) Hold all required applicable federal licenses in good standing, if any;

~~ii.~~ (ii) Hold all required applicable state professional licenses in good standing;

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~~iii.~~ (iii) ~~HoldIf the proposer is a corporation, hold~~ a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute of the Florida Statutes, if the proposer is a corporation; and~~

~~iv.~~ (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.~~ (b) Evaluation Criteria. The factors established for the evaluation of Auditing Services by the Committee shall include, but are not limited to:

~~i.~~ (i) ~~Ability~~ability of personnel;

(ii) Experience;

~~ii.~~ (iii) ~~Understanding~~experience,

~~iii.~~ understanding of scope of work;

~~iv.~~ (iv) ~~Ability~~ability to furnish the required services; and

~~v.~~ (v) ~~Such~~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 Subsection 3.2(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~~Proposal~~. The Committee shall provide interested firms with a Request~~request~~ for Proposals~~proposal~~ (“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 (Subsection 3)(2)(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.~~ (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 most qualified~~ firm. If a satisfactory agreement with the second ranked firm cannot be reached, those negotiations shall be terminated and negotiations with the third ~~ranked most qualified~~ 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.~~ (b) Where compensation was selected as a factor used in evaluating the proposals, the Board shall select the highest-ranked qualified firm.

~~e.~~ (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.~~ (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~~ section

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218.39 ~~of the Florida Statute~~ 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) A provision specifying the services to be provided and fees or other compensation for such services;

b. (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. (c) A provision setting forth ~~the deadlines~~ for the auditor to submit a preliminary draft audit report to the District for review and to submit a final audit report, which, unless it is in the best interests of the District to establish a different deadline, shall be no later than July 1 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. No contract shall continue, or allow the contract to be renewed, for a period of more than three years from the date of its execution. A renewal may be done without the use of the auditor selection procedures provided in this Rule, but must be in writing.

d. (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 3.119 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 RuleSection shall be as provided for in Rule 3.119. 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: §§ ~~119.070~~119.07, 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. Persons who provide their name and address to the District ManagerOffice for inclusion on the list shall receive notices by mail.
 - (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 3.119 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 3.119.

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, ~~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~~ section 255.20 ~~of the Florida Statute~~ 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, ~~contractual services~~, maintenance services, and construction services under two hundred fifty thousand dollars (\$250,000). The notice shall allow at least ~~(twenty-one (21))~~ 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:

~~1.~~ (i) Hold the required applicable state professional licenses in good standing;

(ii) ~~2.~~ Hold all required applicable federal licenses in good standing, if any;

(iii) ~~3.~~ Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute~~ of the Florida Statutes, if the vendor is a corporation; ~~and.~~

(iv) ~~4.~~ 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 ~~of Supervisors~~, 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~~interests 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, 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 3.119 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 3.119; provided however, protests related to the pre-qualification criteria and procedures for construction services shall be resolved in accordance with ~~section Rule 3.4~~(2)(b) of this Rule and Section 255.20(1)(b) of the Florida Statutes.

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) I. CONSTRUCTION CONTRACTS (NOT DESIGN BUILD)

4) Scope. All contracts for the construction or improvement of any building, structure, or other public construction works authorized by Chapter 190, Florida Statute 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, Florida Statute 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, Florida Statute 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~~Proposal~~, 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

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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, reply or responses response:
- (i)1. Hold the required applicable state professional licenses in good standing;:-
 - (ii)2. Hold all required applicable federal licenses in good standing, if any;:-
 - (iii)3. Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute of the Florida Statutes~~, if the bidder is a corporation; and-
 - (iv)4. Meet any special pre-qualification requirements set forth in the Invitation to Bid, Request for ~~Proposals~~Proposal, 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 such as 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 bidderthe time 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, 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, 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 ProposalsProposal, 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 ProposalsProposal, 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 interestinterests 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 3.119 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 3.119.

- (k) If less than three ~~(3) Responsive Bids, Proposals, Replies,~~ ~~responsive bids, proposals, replies~~ or ~~Responses~~ ~~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,~~ ~~responsive bid, proposal, reply~~ or ~~Response~~ ~~response~~ is received, the District may take whatever steps reasonably necessary in order to proceed with the procurement of construction services, which steps may include a direct purchase of the construction services without further competitive selection processes.

- (3) Sole Source; Government. Construction ~~services~~ Services that are only available from a single source are exempt from this Rule. Construction ~~services~~ 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~~ 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.

- (45) Emergency Purchases. The District may make an Emergency Purchase ~~emergency purchase~~ without complying with these rules. The fact that an Emergency Purchase ~~emergency purchase~~ has occurred or is necessary shall be noted in the minutes of the next Board Meeting.

- (56) Exceptions. This Rule 3.5 is inapplicable when:
 - (-a) The ~~the~~ project is undertaken as repair or maintenance of an existing public facility;

 - (-b) The ~~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 ~~the~~ District has competitively awarded a project and the contractor has abandoned the project or the District has terminated the contractor; or, or d) when 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.~~

- (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: §§ ~~419.070~~119.07, 189.4221, 190.033, 255.0518, 255.0525, 255.20, 287.055, Fla. Stat.

Rule 3.6 Construction Contracts, Design-Build~~II. DESIGN BUILD CONTRACTS.~~

(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~~subsection~~ 287.055(2)(k) ~~of the Florida Statute 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~~section~~ 287.055 ~~of the Florida Statute of the Florida Statutes,~~ or may be retained pursuant to Rule using Section 3.1, Procedure under Consultants' Competitive Negotiations Act. 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~~subsection~~ 287.055(9) ~~of the Florida Statute of the Florida Statutes,~~ or pursuant to the qualifications based selection process pursuant to Rule 3.1.

(i)1. 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)2. 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:

1a. 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.

2b. 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.

3e. In order to be eligible to submit a proposal, a firm must, at the time of receipt of the proposals:

a.(i) Hold the required applicable state professional licenses~~license(s)~~ in good standing, as defined by Section~~subsection~~ 287.055(2)(h) ~~of the Florida Statute of the Florida Statutes~~;

b.(ii) Hold all required applicable federal licenses in good standing, if any;

c.(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, Florida Statute of the Florida Statutes, if the proposer is a corporation;

d.(iv) 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 such as 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.

4d. 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.

5e. The Board shall have the right to reject all proposals if rejection is determined to be in the best interestinterests of the District. No vendor shall be entitled to recover any costs of proposal preparation or submittal from the District.

6f. If less than three (3) proposals are received, the District may purchase design-build services or may reject the

proposals for lack of competitiveness. If no proposals are received, the District may take whatever steps reasonably necessary in order to proceed with the procurement of design-build services, which steps may include a direct purchase of the design-build services without further competitive selection processes.

7g. 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 3.119 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 3.119.

8h. 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~~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~~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. Failing accord with the second most qualified firm, the Board must terminate negotiations. The Board shall then undertake negotiations with the third most qualified firm. 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.

9g. After the Board contracts with a firm, the firm shall bring to the Board for approval, detailed working drawings of the project.

10h. 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.

(34) 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~~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~~119.07, 189.4221, 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.

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Rule 3.86 Goods, Supplies, and Materials.

- (1) Purpose and Scope. All purchases of goods, supplies, or materials exceeding the amount provided in Section 287.017, ~~Florida Statute 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, ~~a~~Request for Proposals, ~~an~~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 the required applicable state professional licenses in good standing;

~~(ii)2.~~ Hold all required applicable federal licenses in good standing, if any;

~~(iii)3.~~ Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute of the Florida Statutes~~, if the vendor is a corporation; and.

~~(iv)4.~~ 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 after opening.~~ 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 ~~in response to an Invitation to Bid~~ by a Responsive and Responsible Bidder in response to an Invitation to Bid, shall be accepted. ~~In relation to a~~ Request for Proposals, Invitation

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to Negotiate, or Competitive Solicitation, ~~the Board~~ shall be accepted. ~~If~~select the lowest Responsive Bid is Proposal, Reply or Response submitted by a Responsive and Responsible Bidder whose principal place of business is located in a foreign state Vendor which does not grant a preference in competitive purchase to businesses whose principal place of business are in that foreign state, the lowest Responsive 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 is most advantageous to businesses whose principal place of business are in that foreign state, the lowest Responsive 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.

~~the District.~~ To assure full understanding of the responsiveness to the solicitation requirements contained in an Invitation to Bid, a Request for Proposals Proposal, 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 interests interests of the District. No vendor 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 3.119 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 3.119.

- (k) If less than three (3) 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, responsive bid, proposal, reply or Response is received, the District may take whatever steps reasonably necessary in order to proceed with the procurement of goods, supplies, and materials, which steps may include 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 3.6 may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer.
- (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: §§ 189.4221, 190.033, 287.017, 287.084, Fla. Stat.

Rule 3.97 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, ~~Florida Statute~~ 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, ~~a~~ Request for Proposals, ~~an~~ 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)1.~~ Hold the required applicable state professional licenses in good standing;
 - ~~(ii)2.~~ Hold all required applicable federal licenses in good standing, if any;

(iii)3. Hold a current and active Florida corporate charter or be authorized to do business in the State of Florida in accordance with Chapter 607, ~~Florida Statute of the Florida Statutes~~, if the vendor is a corporation; and.

(iv)4. 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~~Proposal, 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.~~ 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 after opening.~~ 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~~Proposal, 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~~interests 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 3.119 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 3.119.
 - (k) If less than three ~~(3) Responsive Bids, Proposals, Replies,~~responsive bids, proposals, replies or ~~Responses~~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,~~responsive bid, proposal, reply or ~~Response~~response is received, the District may take whatever steps reasonably necessary in order to proceed with the procurement of maintenance services, which steps may include a direct purchase of the maintenance services without further competitive selection processes.
- (3) Exemptions. Maintenance ~~services~~Services that are only available from a single source are exempt from this Rule. Maintenance ~~services~~Services provided by governmental agencies are exempt from this Rule. A contract for maintenance services is exempt from this ~~Rule~~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 3.7 may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer.
- (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.

(56) Emergency Purchases. The District may make an Emergency Purchase~~emergency purchase~~ without complying with these rules. The fact that an Emergency Purchase~~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: §§ ~~19.070~~119.07, 190.033, 287.017, Fla. Stat.

Rule 3.10 Contractual Services.

(1) Exemption from Competitive Purchase. ~~Rule 3.8 Contractual Services.~~

Pursuant to ~~Section~~section 190.033(3) ~~of the Florida Statute~~ 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, ~~a~~ Request for Proposals, ~~Proposal~~, ~~an~~ Invitation to Negotiate, ~~or~~ ~~a~~ 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: §§ ~~19.070~~119.07, 190.011(3), 190.033, Fla. Stat.

Rule 3.119 Protests With Respect To Proceedings under Rules 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, and 3.97.

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 3.97 shall be in accordance with this Rule 3.9.

(1) Filing.

- (a) With respect to a protest regarding qualifications, specifications, documentation, or other requirements contained in a Request for Qualifications, Request for Proposals~~Proposal~~, 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~~Proposal~~, 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~~above~~, 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 3.97 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 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 3.97, the

Board may require any person who files a notice of protest to post a protest bond in the amount equal to 1% of the anticipated contract amount that is the subject of the protest. 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~~ the 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~~ signed.

(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, above (if available)~~, 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, 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 _____, ~~2013~~200, except that no election of officers required by these Rules shall be required until after the next regular election for the Board ~~of Supervisors.~~

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

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**NOTICE OF RULE DEVELOPMENT BY
THE MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT**

In accord with Chapters 120 and 190, Florida Statutes, the Moody River Estates Community Development District (“District”) hereby gives notice of its intention to repeal its existing Rules of Procedure in total and to develop new Rules of Procedure to govern the operations of the District.

The Rules of Procedure address such areas as the Board of Supervisors, officers and voting, district offices, public information and inspection of records, policies, public meetings, hearings and workshops, rulemaking proceedings and competitive purchase including procedure under the Consultants Competitive Negotiation Act, procedure regarding auditor selection, purchase of insurance, pre-qualification, construction contracts, goods, supplies and materials, maintenance services, contractual services and protests with respect to proceedings, as well as any other area of the general operation of the District.

The purpose and effect of the Rules of Procedure is to provide for efficient and effective District operations. The purpose and effect of the repeal of the District’s current Rules of Procedure is to, among other things, repeal rules rendered obsolete by statutory changes. Specific legal authority for the repeal of the existing Rules of Procedure and the adoption of the proposed Rules of Procedure includes Sections 190.011(5), 190.011(15) and 190.035, Florida Statutes (2012). The specific laws implemented in the Rules of Procedure include, but are not limited to, Sections 112.08, 112.3143, 119.07, 189.4221, 190.006, 190.007, 190.008, 190.011(3), 190.011(5), 190.011(15), 190.033, 190.035, 218.931, 255.05, 255.0518, 255.0525, 255.20, 286.0105, 286.011, 287.017, 287.055 and 287.084, Florida Statutes (2012), and Ch. 2013-227, Laws of Florida.

A copy of the proposed Rules of Procedure may be obtained by contacting the District Manager at 6131 Lyons Road, Suite 100, Coconut Creek, Florida 33073, or by calling (877) 276-0889.

Chuck Adams
District Manager

Run Date: _____

PUBLISH: [AT LEAST 29 DAYS PRIOR TO ADOPTION DATE; AT LEAST ONE DAY PRIOR TO NOTICE OF RULEMAKING]

NOTICE OF RULEMAKING REGARDING THE RULES OF PROCEDURE OF THE MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT

A public hearing will be conducted by the Board of Supervisors of the Moody River Estates Community Development District on _____, _____, 2013 at _____ a.m. at the _____.

In accord with Chapters 120 and 190, Florida Statutes, the Moody River Estates Community Development District ("the District") hereby gives the public notice of its intent to repeal its existing Rules of Procedure in total and to adopt its proposed Rules of Procedure.

The purpose and effect of the proposed Rules of Procedure is to provide for efficient and effective District operations. Prior notice of rule development was published in _____ on _____, 2013. The purpose and effect of the repeal of the District's current Rules of Procedure is to, among other things, repeal rules rendered obsolete by statutory changes.

The Rules of Procedure may address such areas as the Board of Supervisors, officers and voting, district offices, public information and inspection of records, policies, public meetings, hearings and workshops, rulemaking proceedings and competitive purchase including procedure under the Consultants Competitive Negotiation Act, procedure regarding auditor selection, purchase of insurance, pre-qualification, construction contracts, goods, supplies and materials, maintenance services, contractual services and protests with respect to proceedings, as well as any other area of the general operation of the District.

Specific legal authority for the repeal of the existing Rules of Procedure and the adoption of the proposed Rules of Procedure includes Sections 190.011(5), 190.011(15) and 190.035, Florida Statutes (2012). The specific laws implemented in the Rules of Procedure include, but are not limited to, Sections 112.08, 112.3143, 119.07, 189.4221, 190.006, 190.007, 190.008, 190.011(3), 190.011(5), 190.011(15), 190.033, 190.035, 218.931, 255.05, 255.0518, 255.0525, 255.20, 286.0105, 286.011, 287.017, 287.055 and 287.084, Florida Statutes (2012), and Ch. 2013-227, Laws of Florida.

Any person who wishes to provide the District with a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), Florida Statutes, must do so in writing within twenty-one (21) days after publication of this notice.

IF REQUESTED WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING MAY NOT BE HELD):

TIME AND DATE: _____

PLACE: _____

A request for a public hearing on the District's intent to repeal its existing Rules of Procedure and adopt its proposed Rules of Procedure must be made in writing to the District Manager at 6131 Lyons Road, Suite 100, Coconut Creek, Florida 33073, and received within twenty-one (21) days after the date of this Notice.

If a public hearing is requested, this public hearing may be continued to a date, time, and place to be specified on the record at the hearing. If anyone chooses to appeal any decision of the Board with respect to any matter considered at a public hearing held in response to a request for such a public hearing, such person will need a record of the proceedings and should accordingly ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which such appeal is to be based. At the hearing, one or more Supervisors may participate in the public hearing by telephone. At the above location, if a public hearing is requested, there will be present a speaker telephone so that any interested party can physically attend the public hearing at the above location and be fully informed of the discussions taking place either in person or by speaker telephone device.

Any person requiring special accommodations at this meeting because of a disability or physical impairment should contact the District Office at (877) 276-0889 at least five (5) calendar days prior to the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service at 1-800-955-8770, for aid in contacting the District Office.

A copy of the proposed Rules of Procedure may be obtained by contacting the District Manager at 6131 Lyons Road, Suite 100, Coconut Creek, Florida 33073, or by calling (877) 276-0889.

PUBLISH: [AT LEAST 28 DAYS PRIOR TO ADOPTION DATE]

1 **MINUTES OF MEETING**
2 **MOODY RIVER ESTATES**
3 **COMMUNITY DEVELOPMENT DISTRICT**
4

5 A Regular Meeting of the Moody River Estates Community Development District's
6 Board of Supervisors was held on **Thursday, May 16, 2013 at 1:00 p.m.**, at the **Clubhouse at**
7 **Moody River Estates, 3050 Moody River Blvd., North Fort Myers, Florida 33903.**
8

9 **Present and constituting a quorum were:**

10
11 Ilse Mayer Chair
12 Kathy Shea (*via telephone*) Vice Chair
13 Terry Pye Assistant Secretary
14 Jeff Berry Assistant Secretary
15

16 **Also present were:**

17
18 Chuck Adams District Manager
19 Cleo Crismond Assistant Regional Manager
20 Mike Eckert (*via telephone*) District Counsel
21 Carl Barraco District Engineer
22 Rebecca Sarver Association Manager
23 John Sekora Resident
24 Tom Ferguson Resident
25 Norman Massey Resident
26 Mike Geml Resident
27 Dan Miracle Resident
28 Tamera Greider Resident
29 June Gabel Resident
30

31
32 **FIRST ORDER OF BUSINESS**

Call to Order/Roll Call

33
34 Mr. Adams called the meeting to order at 1:04 p.m., and noted, for the record, that
35 Supervisors Mayer, Berry and Pye were present, in person. Supervisor Shea was attending via
36 telephone. One (1) seat remains vacant.
37

38 **SECOND ORDER OF BUSINESS**

**Acceptance of Resignation from
Supervisor Rolfsrud; Consideration of
Replacement Candidate to Fill Unexpired
Term (Seat 4)**
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40
41
42

43 Mr. Adams presented Supervisor Rolfsrud’s resignation letter, effective March 27, 2013,
44 for the Board’s consideration.

45

46 **On MOTION by Mr. Pye and seconded by Ms. Mayer with all**
47 **in favor, the resignation of Supervisor Rolfsrud from Seat 4,**
48 **term expires November, 2016, was accepted.**

49

50

51 Mr. Adams explained that the Board has an obligation to appoint a replacement for the
52 remainder of the term. He advised that Seat 4 is a four (4)-year landowner elected seat and the
53 appointee must be a citizen of the United States and of the State of Florida.

54 Mr. Adams asked the Board for nominations for Seat 4. Mr. Berry nominated Mr. Frank
55 Reynolds. No other nominations were made.

56

57 **On MOTION by Mr. Berry and seconded by Mr. Pye with all**
58 **in favor, the appointment of Mr. Frank Reynolds to Seat 4,**
59 **term expires November, 2016, was approved.**

60

61

62 **A. Administration of Oath of Office to Newly Appointed Supervisor (*the following to be***
63 ***provided in a separate package*)**

- 64 **i. Guide to Sunshine Amendment and Code of Ethics for Public Officers and**
- 65 **Employees**
- 66 **ii. Membership, Obligations and Responsibilities**
- 67 **iii. Financial Disclosure Forms**
- 68 **iv. Form 1: Statement of Financial Interests**
- 69 **v. Form 1X: Amendment to Form 1, Statement of Financial Interests**
- 70 **vi. Form 1F: Final Statement of Financial Interests**

71 Mr. Adams noted that Mr. Reynolds was not present; thus, administration of the Oath of
72 Office will take place at the next meeting.

73

74 **THIRD ORDER OF BUSINESS** **Consideration of Resolution 2013-8,**
75 **Electing Officers of the District**

76
77 Mr. Adams presented Resolution 2013-8 for the Board’s consideration. He explained
78 that, following an election or appointment, the Board is required to consider its slate of officers.
79 Mr. Adams stated that, currently, Ms. Mayer serves as Chair, Ms. Shea serves as Vice Chair and

80 the remaining Board Members serve as Assistant Secretaries. Mr. Adams serves as Secretary
81 and Mr. Wrathell serves as Treasurer and as an Assistant Secretary. Mr. Adams indicated that
82 the Board may reorganize or retain its current slate of officers and appoint Mr. Reynolds as an
83 Assistant Secretary.

84 Mr. Adams requested nominations.

85 Mr. Pye nominated the current slate of officers. No other nominations were made.

86

**On MOTION by Mr. Berry and seconded by Mr. Pye, with all
in favor, Resolution 2013-8, Electing Officers of the District, as
nominated, was adopted.**

87
88
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91

FOURTH ORDER OF BUSINESS

**Consideration of Resolution 2013-9,
Approving Proposed Budgets for Fiscal
Year 2013/2014 and Setting a Public
Hearing Thereon Pursuant to Florida
Law**

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93
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95
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97

98 Mr. Adams presented Resolution 2013-9 for the Board’s consideration. He explained
99 that, as a governmental entity, in accordance with Florida Statutes, the District is required to
100 approve a draft budget, each year, prior to June 15, for the purpose of setting the public hearing
101 and distribution to local municipalities. Mr. Adams advised that the public hearing for the final
102 adoption of the budget cannot occur earlier than 60 days from the date the proposed budget is
103 approved. Prior to the public hearing, the proposed budget may be reviewed and revised;
104 approval of the proposed budget does not fix the service or appropriation levels.

105 Mr. Adams explained that the budget is comprised of two (2) components. One (1)
106 portion includes debt service for repayment of the bonds related to the initial infrastructure. He
107 noted that, in this community, the bonds were primarily for the stormwater management system
108 and acquisition of lands, interconnecting pipes, control structures and certain utilities, which
109 were passed on to Lee County. Mr. Adams advised that debt service is similar to a mortgage,
110 with principal and interest components. The District makes payments on the property owners’
111 behalf, each year, with an interest only payment on November 1 and interest and principal
112 payment on May 1.

113 Mr. Adams stated that the other component of the budget is operations, for administrative
114 and professional, as well as the physical operations of the District. The physical operations

115 include operation and maintenance of the stormwater management system, which includes the
116 lakes, wetlands and interconnecting pipes. Mr. Adams pointed out that the District entered into a
117 Facilities Maintenance Agreement with the Master Association to manage certain perimeter
118 improvements, such as landscaping and a well field.

119 Mr. Adams noted that the proposed budget does not anticipate any significant changes,
120 year over year, in terms of appropriation levels, with the exception of “other contractual”, under
121 “Water management”. Under “Professional and admin”, he observed that there were minor
122 adjustments, based upon current year actuals. With regard to “legal – litigation”, Mr. Adams
123 indicated that \$10,000 was budgeted for the current year; however, \$14,679 was expended
124 through the end of March. He stated that the primary reduction is in this category, as no
125 significant legal issues are anticipated, going forward.

126 Referring to “Other contractual”, under “Water management”, Mr. Adams pointed out
127 that this line item increased by \$10,000. On Page 4, he noted that “Pipes/inlets/lake bank”
128 increased by \$10,000, over the current year, to address lake bank erosion issues that were
129 identified last summer. Going forward, funds will be budgeted until lake bank erosion repair
130 requirements are completed. Mr. Adams stated that the South Florida Water Management
131 District (SFWMD) and Lee County recognize that the District is moving forward in good faith
132 and, as a result, are allowing the project to be completed in a multiple year program.

133 On Page 2, Mr. Adams noted that, in Fiscal Year 2013, operating assessments were
134 \$308.16. With the adjustment in appropriations for the lake bank erosion program, the
135 assessment will increase to \$329.58. Mr. Adams explained that a portion of fund balance may be
136 used to offset the increase, bringing the assessment level down to, or slightly below, last year’s
137 level, which would eliminate the requirement of the mailed notice process. He recommended
138 that the Board authorize Staff to utilize fund balance to offset the assessment increase.

139 Mr. Berry asked if the amount budgeted for lake bank erosion is sufficient. Mr. Adams
140 replied affirmatively and reiterated that the work is being completed in phases. Mr. Berry asked
141 if the phasing system is adequate for D.R. Horton to complete their work. Mr. Adams pointed
142 out that, as lots are developed and lake banks are regraded, D.R. Horton will be required to
143 address the erosion issues as a part of regrading lot fronts along the lakes, which will reduce the
144 District’s expenses each year.

145 In response to a question from Mr. John Sekora, a resident, Mr. Adams advised that, in
146 the next four (4) weeks, a contractor will begin repairs on the first two (2) lakes. Mr. Sekora

147 voiced his understanding that the project will take about eight (8) years to complete, at two (2)
148 lakes per year. Mr. Adams clarified that not all of the lake banks are eroded as significantly as
149 the first two (2), which are widespread along the residential side and have substantial linear
150 footage attached.

151 Referring to an email posted by the HOA with regard to the irrigation system, Mr. Berry
152 stated that lawns are about to die as a result of the broken sprinkler system, due to the pump. Mr.
153 Berry advised that the HOA indicated that the pump is the CDD’s responsibility. Mr. Adams
154 confirmed that the pump was assigned to the association through a Facilities Maintenance
155 Agreement.

156

On MOTION by Mr. Pye and seconded by Ms. Mayer, with all in favor, Resolution 2013-9, Approving Proposed Budgets for Fiscal Year 2013/2014 and Setting a Public Hearing for August 15, 2013 at 1:00 p.m., and authorizing utilization of fund balance to offset an assessment increase, was adopted.

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FIFTH ORDER OF BUSINESS

Discussion/Consideration: Location of Future Board Meetings

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Mr. Eckert asked if a protocol is in place to allow members of the public to attend future Board meetings at the location being considered. Mr. Adams requested clarification of the term “protocol”. Mr. Eckert asked if a Lee County Commissioner can attend the meeting if he or she does not live in the District. Mr. Adams replied affirmatively. Mr. Eckert asked if there is a gate to restrict access. Mr. Adams confirmed that there is a gate and the gatehouse will have orders to allow entry to anyone indicating that they are attending the meeting.

174

On MOTION by Ms. Mayer and seconded by Mr. Berry, with all in favor, holding future Board Meetings at the Clubhouse at Moody River Estates, 3050 Moody River Blvd., North Fort Myers, Florida 33903, was approved.

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SIXTH ORDER OF BUSINESS

Discussion: Bond Refinancing

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Mr. Eckert reported that he discussed refinancing the bonds with MBS. MBS indicated that it does not make sense, economically, for the District to refinance until May 1, 2014; however, they will continue to monitor the situation.

185 Mr. Adams stated that the supplemental indenture clearly indicates that May 1, 2014 is
186 the first opportunity, without penalty, to refund the bonds. He pointed out that the current
187 interest rate is fairly favorable, for an initial bond issue, at 5.35%. If the bonds were rated, which
188 is not currently possible, the interest rate would be in the mid 3's; unrated bonds would be in the
189 mid 4's. Mr. Adams advised that approximately 300 units are not constructed, on a total build
190 out of about 850, so there is a large concentration of risk in terms of one (1) owner owning a
191 large portion of the assessments and potentially not being able to make the assessment payments.
192 Mr. Adams indicated that other options will be reviewed next January or February.

193

194 **SEVENTH ORDER OF BUSINESS**

**Discussion/Update: Contractor Lake and
Wetland Maintenance Activities and Lake
Bank Erosion Repairs**

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199 Mr. Adams noted concern among the residents with regard to wetland activities,
200 particularly those that took place in early spring, around the eagle nesting area. He explained
201 that the activities that occurred were hand tool activities; no power or heavy equipment was used.
202 Mr. Adams indicated that, technically, the activities should not have occurred; however, because
203 it was hand work and it was at the tail end of the season, the county does not view it as a
violation issue.

204

205 Mr. Adams stated that he spoke with the county about wetland activities that take place
206 semiannually to remove exotics and invasives that are specified by the state. To date, the two (2)
207 months of the year in which the work is performed by the contractor were not specified. Since
208 the contract is going to be rebid, Staff will specify two (2) months, outside of the eagle nesting
periods, for the activity to take place.

209

210 With regard to lake bank erosion, Mr. Adams reported that, last year, while going through
211 the permit transfer process and completing an inventory of the lake banks, several areas were
212 identified that exceeded a 9" vertical drop. He explained that, if an area along the edge of a lake
213 has a greater than a 9" vertical drop, the District is out of compliance and is required to fill the
214 area and restore it. SFWMD realizes that they are partially responsible because it was
215 discovered as a part of the permit transfers and, as a result, they are very receptive to completing
the work in phases.

216

217 Mr. Adams advised that, this year, Lakes 1 and 2 will be addressed. He reiterated that, as
development occurs in other areas and lots are cleared, the District will have the benefit of a

218 builder finishing off the lots; if there is a drop of more than 9”, the builder will be required to
219 level it off, at no cost to the community.

220 Mr. Adams explained that the contractor will recover soil from the bottom of the lake and
221 pump it into a microfiber tube. The water will bleed through the tube, leaving only soil. Once
222 the tube is filled and the soil is dry, the contractor will slice the top, break it open and rake off
223 the soil. Turf will be installed down to the control elevation, which is the designed high water
224 level of the lake. Mr. Adams indicated that, on the water’s edge, below the control elevation,
225 beneficial aquatic plants, which are approved by the agencies, will be planted. In the installation
226 phase, the formula is one (1) plant per linear foot, with the long-term requirement being 80%
227 survivorship on the littoral shelf itself. Mr. Adams voiced his opinion that plant selection is part
228 of the reason that some of the lakes fall short of that requirement. The lakes in the community
229 draw down significantly and some of the plant selections, on the upper side of the shelf, cannot
230 take being dried out for an extended period of time.

231 Mr. Adams stated that, on the upper shelf, Bacopa will be planted, which is a low
232 growing ground cover that grows in a mass; it is very thick and has a solid root mass, which is
233 critical. Below the upper 4’ to 6’ feet, more of the vertical growing plants will be introduced,
234 such as Golden Canna, Arrowhead, Purple Pickerelweed, Blue Flag Iris and Spike Rush. Mr.
235 Adams explained that the benefits of these plants are erosion control and improved water quality.
236 They also provide forage for fish and wading birds. Mr. Adams advised that he made a
237 commitment to Lee County that, when Lakes 1 and 2 are repaired, Lake 9, which has the eagle’s
238 nest, will also be planted.

239 Mr. Berry inquired about responsibility for the eagles in the forest preserve and who
240 owns the land. Mr. Adams indicated that the CDD controls the land and has the title. Lee
241 County verified that the CDD owns the property. Mr. Barraco noted that those areas are part of
242 the requirement of the state Environmental Resource permit, which the District is responsible
243 for. Mr. Berry asked if the District is in compliance. Mr. Adams replied yes, according to Lee
244 County’s inspections. The only thing they asked is for the District to time the activity in the
245 wetland differently. With regard to lake bank erosion, the county inspected every lake based
246 upon the resident concerns they received. The county understands that the District is completing
247 the repairs in a phased program and requested photos of the finished product, as the repairs are
248 completed each year.

249 Referring to the bald eagle nesting plan, Mr. Berry voiced his opinion that the District is
 250 held to a different standard for things such as fishery and water quality. Mr. Adams noted the
 251 concern regarding the lack of fish, particularly in Lake 2. He commented that, when there are
 252 predatory birds in large populations, eventually, the fish disappear. Mr. Adams advised that the
 253 District has the ability to stock the lakes with sport fish, which the eagles are after, for a minimal
 254 cost. He stated that, after reviewing the nesting plan, he feels that there are number of standards,
 255 on private property, that are not being kept up; however; those are out of the District’s control.
 256 The District’s responsibilities are the lake, the preserve and the water quality.

257
 258 **EIGHTH ORDER OF BUSINESS** **Approval of March 21, 2013 Regular**
 259 **Meeting Minutes**
 260

261 Mr. Adams presented the March 21, 2013 Regular Meeting Minutes and asked for any
 262 additions, deletions or corrections.

264 **On MOTION by Ms. Mayer and seconded by Mr. Berry, with**
 265 **all in favor, the March 21, 2013 Regular Meeting Minutes, as**
 266 **presented, were approved.**

267
 268
 269 **NINTH ORDER OF BUSINESS** **Other Business**

270
 271 There being no other business to discuss, the next item followed.

272
 273 **TENTH ORDER OF BUSINESS** **Staff Reports**

274
 275 **A. Attorney**

276 Mr. Eckert recalled that, at previous Board meetings, he advised the Board that several
 277 bills were being considered by the Florida Legislature that could have an impact on the District,
 278 one of which was a bill to require the consolidation of certain special districts. The bill did not
 279 pass. Mr. Eckert indicated that a bill was proposed to raise the limits of liability for all local
 280 governments, including cities, counties and CDDs, which would have had a significant impact on
 281 the insurance rates. That bill did not pass either. Mr. Eckert noted that, while it may not be a
 282 concern for this year, it will be presented next year, for discussion.

283 Mr. Eckert reported that a bill was passed that provides for more public input
 284 opportunities at public board meetings. He advised that there may be a need, under the new law,

285 for the District to provide a different agenda or sign up process to allow the public to speak to
286 individual items. Once the law is reviewed, District Counsel will provide the Board with revised
287 rules of procedure.

288 Mr. Eckert indicated that an ethics bill was passed that is geared towards reforming ethics
289 procedures and requirements for state legislators; however, the definitions in the provisions of
290 state law regarding local government officials, which include the Board of Supervisors, were
291 changed. Mr. Eckert reiterated that, at the next meeting, proposed revisions to the rules of
292 procedure will be presented to the Board.

293 **B. Engineer**

294 With regard to lake banks, Mr. Barraco clarified that the criteria is a 9” vertical drop and
295 3.5” horizontal to 1” vertical, on the slopes.

296 Mr. Barraco reported that he is working on the final certifications and will contact
297 District Counsel, in this regard.

298 **C. Manager**

299 **i. Approval of Unaudited Financial Statements as of March 31, 2013**

300 Mr. Adams presented the Unaudited Financial Statements as of March 31, 2013. He
301 pointed out that assessment levy collections were at 101%. He noted the amount of interest and
302 miscellaneous revenue, year-to-date.

303 Mr. Adams indicated that “Professional and admin” expenses, which should be 50%,
304 were at 55%, year-to-date, due to legal litigation and a one (1)-time insurance expense.
305 Regarding “Water management”, “Other contractual” was at 18%, year-to-date, a large portion
306 being related to lake bank erosion and aquascaping, which will be conducted over the next month
307 to six (6) weeks. Mr. Adams noted that, by the next meeting, the amount will be more in line
308 with the actual year-to-date prorated expenses. He advised that utilities were on track, at 47%.

309 **ii. 516 Registered Voters in District as of April 15, 2013**

310 Mr. Adams reported that there were 516 registered voters residing within the boundaries
311 of the District as of April 15, 2013.

312 **iii. NEXT MEETING DATE: June 20, 2013 at 1:00 P.M.**

313 Mr. Adams indicated that the next meeting is scheduled for June 20, 2013 at 1:00 p.m.;
314 however, there may not be any business to discuss at that meeting. If that is the case, a
315 cancellation notice will be circulated and the next meeting date will be August 15.

316 For the benefit of residents who were present, Mr. Adams noted that the public hearing
317 date is August 15, 2013, at 1:00 p.m., at this location.

318
319 **ELEVENTH ORDER OF BUSINESS** **Audience** **Comments/Supervisors’**
320 **Requests**

321
322 In response to a question from Mr. Sekora, Mr. Adams advised that he believes the CDD
323 owns the irrigation system; however, it is maintained and operated through a Facilities
324 Maintenance Agreement with the Master Association. Mr. Sekora asked if the CDD owns and
325 maintains the road system. Mr. Adams indicated it does not. Mr. Sekora asked about the pipes
326 in the ground. Mr. Adams clarified that the pipes are collection facilities for the roadway itself
327 and go with the road. He explained that the CDD owns the lakes and the interconnecting pipes
328 between the lakes; if an interconnecting pipe between two (2) lakes goes under the road and there
329 are catch boxes on the pipes, they are the CDD’s responsibility; otherwise, the catch boxes go
330 with the road and the curbing gutter and collect the water from the road and send it to the lakes.

331 A resident asked if the CDD owns and maintains the playground. Mr. Adams indicated it
332 does not. The resident asked about the CDD’s responsibilities. Mr. Adams stated that the CDD
333 is primarily responsible for stormwater management; the lakes, wetlands, interconnecting pipes
334 and control structures are its ongoing operation. The resident asked if there are CDDs that do not
335 have that responsibility. Mr. Adams advised that the majority of the CDDs that he manages are
336 stormwater management CDDs; however, Chapter 190 authorizes many different community
337 infrastructure and services that the CDD can become involved in and some CDDs provide
338 everything from security services to street sweeping.

339 Mr. Tom Ferguson, a resident, voiced his understanding that the pumps for the fountains
340 are part of the CDD but the pumps for the irrigation are not. Mr. Adams indicated that the water
341 features, which are the fountains, were transferred to the District. He explained that, at any time,
342 the community has an opportunity to make strategic business decisions. If they wish to consider
343 undoing the agreements and give the facility operations back to the District, it can be done. For
344 example, the District would add management of the irrigation pumps to the budget and the
345 assessments will be collected through the property tax bill.

346 Mr. Norman Massey, a resident, requested an overview of the CDD. Mr. Adams
347 explained that, initially, CDDs are established by the sole landowner, the primary purpose being
348 to finance the infrastructure and to manage and operate some of the infrastructure, going

349 forward. In this case, Colonial Homes established the district by county ordinance, as it is under
350 1,000 acres in size. If a district is over 1,000 acres, it must be established by rule through the
351 state. The initial Board is appointed as a part of the petition to create the district; however,
352 within 90 days, a landowner election is required to be held. Landowner elections are held every
353 other year for the first six (6) years of the existence of the district, at a minimum.

354 Mr. Adams indicated that the owner of a unit is entitled to one (1) vote; the owner of an
355 acre, or portion thereof, is entitled to one (1) vote. As lots are platted and the district reaches six
356 (6) years of existence, if there are 250 qualified electors residing within the boundaries of the
357 district, the district transitions to a general election process. In the first year of a general
358 election, three (3) seats are up for election, two (2) of which will go to general election, meaning
359 those who are qualified electors living within the boundaries of the district can qualify for one
360 (1) of the open seats on the Board. Mr. Adams stated that the qualifying period is in the
361 June/July timeframe and the election is held on the first Tuesday in November. If, during the
362 qualifying period, no one qualifies to run against a candidate, that candidate will have the seat;
363 however, the candidate may not take the seat until at least two (2) weeks following the
364 November election. If someone else qualifies against a candidate for a seat, their names will be
365 placed on the ballots of those who are registered to vote from within the boundaries of that
366 district.

367 Mr. Adams advised that the Moody River Estates CDD passed the threshold several years
368 ago and is now in a general election process. One (1) seat remains landowner elected/appointed.
369 That seat was taken by Mr. Rolfsrud, at the last meeting, who then resigned; Mr. Reynolds was
370 appointed to the seat today. Mr. Adams noted that, in 2016, that seat will transition out, resulting
371 in a fully general elected board of residents who are registered to vote in Lee County and whose
372 primary residence is within the boundaries of Moody River Estates.

373 With regard to the long-term operation of the District, Mr. Adams reiterated that a district
374 is generally established to finance the infrastructure and it is generally financed with 30-year
375 term bonds. During the course of the term of the bonds, there is an opportunity to call the bonds
376 and, perhaps, refinance. Mr. Adams explained that the bond indentures generally require eight
377 (8) to ten (10) years before refinancing can take place. For Moody River Estates CDD, the
378 earliest the bonds can be refinanced is May, 2014. Mr. Adams was unsure whether the market
379 will support refinancing at that time because the bonds already have a relatively low interest rate,
380 for an initial bond issue, at 5.35%. Bonds are generally refinanced if a district can save 150 to

381 200 basis points and the debt service reserve requirement can be reduced. Mr. Adams clarified
382 that the debt service reserve is security for the bondholder; if a district has difficulty collecting
383 revenues to make the bond payments, the trustee can utilize funds from the debt service reserve
384 to make them. Reducing the debt service reserve helps to pay for the cost of issuance of a new
385 or refinanced bond, which is about \$100,000 to \$150,000.

386 A resident asked Mr. Adams who hired him. Mr. Adams indicated that he works for the
387 Board, as an independent contractor, along with District Counsel and the District Engineer,
388 which allows a small local government to afford to have the professional staff that larger
389 government has. He also noted that there is an assessment roll preparation staff member, a
390 trustee to manage the debt service trust estate and an auditor. Each year, as a governmental
391 entity, the District is required to have a third party audit that must be presented to the Board for
392 acceptance no later than June 30 of each year.

393 With regard to the settlement agreement with Mood Development, Mr. Mike Geml, a
394 resident, recalled that Mood Development's suit addressed two (2) parcels referred to as multi-
395 family and single-family. Mr. Geml asked why the multi-family parcel was not included in the
396 agreement, for payment. He noted that, as of this morning, approximately \$16,000 is owed for
397 unpaid CDD assessments on that parcel and over \$280,000 owed in taxes. Mr. Geml indicated
398 that one parcel was collected and it seems that one parcel was ignored.

399 Mr. Eckert advised that he would have to review the settlement agreement; however, he
400 recalled that the assessments for all of the properties were on the tax roll. There was a question
401 in terms of whether the one property had value that exceeded the amount of the tax liens on it
402 and whether the property would ever be economically viable for anyone. Mr. Eckert stated that
403 the District was never seeking any affirmative relief against the property owner; the assessments
404 were placed on the tax roll for collection by the county tax collector. The District was sued,
405 which resulted in the litigation expenses that were incurred. Mr. Eckert indicated that he will
406 review the agreement and, with the Board's permission, he will provide additional background to
407 Mr. Geml, via telephone.

408 Mr. Geml stated that the settlement agreement required Mood Development Corporation
409 to reimburse the CDD \$150,000 for legal fees and court costs. He asked if the payment was
410 received and if it was considered when preparing the Fiscal Year 2014 budget, as it is a
411 significant amount of money. Mr. Eckert indicated that he will review the agreement and asked

412 Mr. Geml to contact him. Mr. Adams stated that he will provide Mr. Eckert's telephone number
413 to Mr. Geml.

414 Mr. Dan Miracle, a resident, asked who is responsible for aeration of the lakes. Mr.
415 Adams advised that the District is responsible for aeration and fountains. Mr. Miracle asked how
416 important aeration is to the health of the lakes. Mr. Adams explained that aerators are viewed as
417 a valuable tool; they increase the dissolved oxygen in the lake itself, which activates the natural
418 bacteria that help to break down the organics and the impurities that enter into the lake. He
419 noted that higher oxygen levels are very helpful to the fish, as well. Mr. Adams indicated that
420 the diffuser stones are on the bottom of the lake and, as the bubbles rise, they create an upward
421 vortex, pulling the cooler water up from the bottom of the lake and mixing it with the warmer
422 upper layer, which helps to keep the overall water body cooler and keeps the lake from turning
423 over.

424 In response to a comment from Mr. Miracle, Mr. Adams stated that, quite often,
425 complaints are received about the sound of the aerators. He pointed out that aerators are
426 generally no louder than a pool pump or an air conditioner; however, because they run 24/7,
427 residents may become sensitive to the sound. Installing rubber feet underneath the aerators will
428 help to insulate the vibration from the stone that they are sitting on. There are also insulation
429 packages that go inside the cabinets.

430 A resident inquired about the amount of outstanding bond debt. Mr. Adams stated that
431 the outstanding principal, after the May payment, is \$9.4 million and the last payment date is
432 May 1, 2036.

433 Ms. Tamera Greider, a resident, inquired about a dead cypress tree on the lake bank. Mr.
434 Adams advised that it is the adjacent homeowner's or association's responsibility.

435 Ms. June Gabel, a resident, asked who is responsible for the sidewalk outside of the
436 community. She was informed that Lee County indicated it was the HOA's responsibility.

437

438 **TWELFTH ORDER OF BUSINESS**

Adjournment

439

440 There being nothing further to discuss, the meeting adjourned.

441

442

**On MOTION by Ms. Mayer and seconded by Mr. Pye, with all
in favor, the meeting adjourned at 2:12 p.m.**

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Secretary/Assistant Secretary

Chair/Vice Chair

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
FINANCIAL STATEMENTS
UNAUDITED
JULY 31, 2013**

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
BALANCE SHEET
JULY 31, 2013**

	Major Funds			Total Governmental Funds
	General	Debt Service	Capital Projects	
ASSETS				
Cash - SunTrust	\$ 208,106	\$ -	\$ -	\$ 208,106
Investments				
Revenue	-	517,035	-	517,035
Reserve	-	648,880	-	648,880
Deferred cost	-	66,428	-	66,428
Construction	-	-	291	291
Total assets	<u>\$ 208,106</u>	<u>\$ 1,232,343</u>	<u>\$ 291</u>	<u>\$ 1,440,740</u>
LIABILITIES AND FUND BALANCES				
Liabilities:				
Accounts payable	\$ 1,200	\$ -	\$ -	\$ 1,200
Total liabilities	<u>1,200</u>	<u>-</u>	<u>-</u>	<u>1,200</u>
Fund Balances:				
Reserved for:				
Debt service	-	1,232,343	-	1,232,343
Capital projects	-	-	291	291
Unreserved, reported in:				
Unreserved, undesignated	206,906	-	-	206,906
Total fund balances	<u>206,906</u>	<u>1,232,343</u>	<u>291</u>	<u>1,439,540</u>
Total liabilities and fund balances	<u>\$ 208,106</u>	<u>\$ 1,232,343</u>	<u>\$ 291</u>	<u>\$ 1,440,740</u>

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
GENERAL FUND
FOR THE PERIOD ENDED JULY 31, 2013**

	<u>Current Month</u>	<u>Year to Date</u>	<u>Budget</u>	<u>% of Budget</u>
REVENUES				
Assessment levy	\$ -	\$ 275,064	\$ 258,179	107%
Interest and miscellaneous	12	4,255	-	N/A
Total revenues	<u>12</u>	<u>279,319</u>	<u>258,179</u>	108%
EXPENDITURES				
Professional & admin				
Supervisor	-	2,799	6,459	43%
Management	3,733	37,335	44,802	83%
Accounting services	729	7,285	8,742	83%
Audit	-	6,300	6,300	100%
Assessment roll services	1,073	10,729	12,875	83%
Arbitrage rebate calculations	-	-	1,200	0%
Dissemination agent	-	1,000	1,000	100%
Trustee	-	-	3,150	0%
Legal - general counsel	824	12,891	15,000	86%
Legal - litigation	-	15,183	10,000	152%
Engineering	-	5,510	5,000	110%
Computer services	-	474	500	95%
Postage	22	1,111	1,250	89%
Telephone	41	416	500	83%
Insurance	-	5,750	5,775	100%
Printing & binding	92	917	1,100	83%
Legal advertising	241	1,410	1,000	141%
Other current charges	62	669	750	89%
Office supplies	-	-	223	0%
Annual district filing fee	-	175	175	100%
Total professional & admin	<u>6,817</u>	<u>109,954</u>	<u>125,801</u>	87%
Water management				
Other contractual	3,350	31,361	87,500	36%
Utilities	3,211	31,843	40,000	80%
Aquascaping	-	-	7,500	0%
Total water management	<u>6,561</u>	<u>63,204</u>	<u>135,000</u>	47%
Other fees and charges				
Property appraiser	-	815	991	82%
Tax collector	-	1,069	1,487	72%
Total other fees and charges	<u>-</u>	<u>1,884</u>	<u>2,478</u>	76%
Total expenditures	<u>13,378</u>	<u>175,042</u>	<u>263,279</u>	66%
Excess/(deficiency) of revenues over/(under) expenditures	(13,366)	104,277	(5,100)	
Fund balance - beginning	220,272	102,629	103,511	
Fund balance - ending	<u>\$ 206,906</u>	<u>\$ 206,906</u>	<u>\$ 98,411</u>	

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2005
FOR THE PERIOD ENDED JULY 31, 2013**

	Current Month	Year to Date	Budget	% of Budget
REVENUES				
Assessment levy	\$ -	\$ 766,623	\$ 722,303	106%
Interest	16	159	-	N/A
Total revenues	<u>16</u>	<u>766,782</u>	<u>722,303</u>	106%
EXPENDITURES				
Principal	-	205,000	205,000	100%
Principal prepayment	-	5,000	-	N/A
Interest	-	517,211	517,345	100%
Total expenditures	<u>-</u>	<u>727,211</u>	<u>722,345</u>	101%
Excess/(deficiency) of revenues over/(under) expenditures	16	39,571	(42)	
Fund balance - beginning	<u>1,232,327</u>	<u>1,192,772</u>	<u>1,208,150</u>	
Fund balance - ending	<u><u>\$ 1,232,343</u></u>	<u><u>\$ 1,232,343</u></u>	<u><u>\$ 1,208,108</u></u>	

**MOODY RIVER ESTATES
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
CAPITAL PROJECTS FUND SERIES 2005
FOR THE PERIOD ENDED JULY 31, 2013**

	<u>Current Month</u>	<u>Year to Date</u>
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
EXPENDITURES	<u>-</u>	<u>-</u>
Total expenditures	<u>-</u>	<u>-</u>
Excess/(deficiency) of revenues over/(under) expenditures	-	-
Fund balance - beginning	291	291
Fund balance - ending	<u>\$ 291</u>	<u>\$ 291</u>

MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT

FISCAL YEAR 2014 PROPOSED MEETING SCHEDULE

Meeting	Date	Time	Potential Discussion Focus
1	Thursday, October 17, 2013	1:00 PM	Regular Meeting
2	Thursday, January 16, 2014	1:00 PM	Regular Meeting
3	Thursday, March 20, 2014	1:00 PM	Regular Meeting
4	Thursday, May 15, 2014	1:00 PM	Approve Fiscal Year 2015 Proposed Budget
5	Thursday, June 19, 2014	1:00 PM	Regular Meeting
6	Thursday, August 21, 2014	1:00 PM	Adopt Fiscal Year 2015 Final Budget

Meeting Location: **Clubhouse at Moody River Estates, 3050 Moody River Blvd., North Fort Myers, FL 33903**