



Rizzetta & Company

Magnolia Creek Community Development District

Board of Supervisors Regular Meeting December 2, 2021

**District Office:
120 Richard Jackson Blvd, Suite 220
Panama City Beach, Florida 32407
850-334-9055**

www.magnoliacreekcdd.org

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT AGENDA

Walton County Coast Branch Library 437 Greenway Trail Santa Rosa Beach, FL 32459
December 2, 2021 at 2:00 p.m.

District Board of Supervisors	Jason Naumann George Roberts William McConnell Tom Hidell Gus Andrews	Chairman Vice Chairman Assistant Secretary Assistant Secretary Assistant Secretary
District Manager	Kimberly O'Mera	Rizzetta & Company, Inc.
District Attorney	Joseph Brown	Kutak Rock LLP
District Engineer	Richard Moore, P.E.	Moore-Bass Consulting, Inc.
Bond Counsel	Cynthia E. Wilhelm	Nabors, Giblin & Nickerson, P.A.

All Cellular phones and pagers must be turned off while in the meeting room.
The District Agenda is comprised of five different sections:

The **regular** meeting will begin promptly at **2:00 p.m.** with the first section which is called **Audience Comments on Agenda Items**. The Audience Comment portion of the agenda is where individuals may comment on matters that concern the District. Each individual is limited to three (3) minutes for such comment. The Board of Supervisors or Staff is not obligated to provide a response until sufficient time for research or action is warranted. **IF THE COMMENT CONCERNS A MAINTENANCE RELATED ITEM, THE ITEM WILL NEED TO BE ADDRESSED BY THE DISTRICT MANAGER OUTSIDE THE CONTEXT OF THIS MEETING.** The second section is called **Business Administration**. The Business Administration section contains items that require the review and approval of the District Board of Supervisors as a normal course of business. The third section is called **Staff Reports**. This section allows the District Manager, Engineer, and Attorney to update the Board of Supervisors on any pending issues that are being researched for Board action. The fourth section is called **Business Items**. The business items section contains items for approval by the District Board of Supervisors that may require discussion, motion and votes on an item-by-item basis. If any member of the audience would like to speak on one of the business items, they will need to register with the District Manager prior to the presentation of that agenda item. Occasionally, certain items for decision within this section are required by Florida Statute to be held as a Public Hearing. During the Public Hearing portion of the agenda item, each member of the public will be permitted to provide one comment on the issue, prior to the Board of Supervisors' discussion, motion and vote. Agendas can be reviewed by contacting the Manager's office at (850) 334-9055 at least seven days in advance of the scheduled meeting. Requests to place items on the agenda must be submitted in writing with an explanation to the District Manager at least fourteen (14) days prior to the date of the meeting. The final section is called **Supervisor Requests and Audience Comments**. This is the section in which the Supervisors may request Staff to prepare certain items in an effort to meet residential needs and provides members of the audience the opportunity to comment on matters of concern to them that were not addressed during the meeting.

Public workshops sessions may be advertised and held in an effort to provide informational services. These sessions allow staff or consultants to discuss a policy or business matter in a more informal manner and allow for lengthy presentations prior to scheduling the item for approval. Typically no motions or votes are made during these sessions.

Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting is asked to advise the District Office at (850) 334-9055, at least 48 hours before the meeting. If you are hearing or speech impaired, please contact the Florida Relay Service at 7-1-1, who can aid you in contacting the District Office.

Any person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that this same 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.

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT
District Office · Panama City Beach, Florida · (850) 334-9055
Mailing Address · 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614

magnoliacreekcdd.org

November 24, 2021

**Board of Supervisors
Magnolia Creek Community
Development District**

AGENDA

Dear Board Members:

The regular meeting of the Board of Supervisors of the Magnolia Creek Community Development District will be held on **Thursday, December 2, 2021, at 2:00 p.m. (Central Time)** at the Walton County Coastal Branch Library, located at 437 Greenway Trail, Santa Rosa Beach, FL 32459. The following is the agenda for the meeting:

- 1. CALL TO ORDER/ROLL CALL**
- 2. AUDIENCE COMMENTS ON AGENDA ITEMS**
- 3. BUSINESS ADMINISTRATION**
 - A.** Consideration of Minutes of the Board of Supervisors Meeting Held October 7, 2021.....Tab 1
 - B.** Ratification of Operation and Maintenance Expenditures for September 2021.....Tab 2
- 4. BUSINESS ITEMS**
 - A.** Consideration of Resolution 2022-03, Certifying Seats Held by Board Following Resignation and Appointments.....Tab 3
 - B.** Consideration of Resolution 2022-04, Authorizing Indenture Amendment.....Tab 4
 - C.** Consideration of Developer Management Agreement.....*under separate cover*
 - D.** Consideration of First Amendment to Agreement for Professional Engineering Services – Moore Bass Consulting, Inc.....Tab 5
 - E.** Ratification of District Engineer Expenditures - Moore Bass Consulting, Inc.....Tab 6
 - F.** Ratification of Infrastructure Maintenance Expenditures
 - i.** Phase 1A Initial Clean Up – BlueGreen Landscape Development.....Tab 7
 - ii.** Phase 1B Initial Clean Up – BlueGreen Landscape Development.....Tab 8
 - iii.** Bush Hogging – Gum Creek Farms, Inc.....Tab 9
 - iv.** Inspection and Assessment of Phase 1A and 1B – Pumping out SS Lift Station.....Tab 10
 - G.** Acceptance of Rizzetta Technology Services Agreement.....Tab 11
- 5. STAFF REPORTS**
 - A.** District Counsel
 - i.** Ratification of Hopping Green & Sams, PA Transition.....Tab 12
 - ii.** Consideration of Kutak Rock Fee Agreement.....Tab 13
 - iii.** Legislative Updates.....Tab 14
 - B.** District Engineer
 - C.** District Manager
 - i.** Review of District Manager Report.....*under separate cover*

6. SUPERVISOR REQUESTS AND AUDIENCE COMMENTS
7. ADJOURNMENT

I look forward to seeing you at the meeting. In the meantime, if you have any questions, please do not hesitate to call me at 850-334-9055.

Sincerely,

Kimberly O'Mera

Kimberly O'Mera
District Manager

Tab 1

MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that 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.

**MAGNOLIA CREEK
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Magnolia Creek Community Development District was held on **Thursday, August 5, 2021, at 2:11 p.m. (CDT)** at The Walton County Coastal Branch Library, located at 437 Greenway Trail, Santa Rosa Beach, FL 32404

Present and constituting a quorum:

Chip Jones	Board Supervisor, Chairman (via speakerphone)
Scott Campbell	Board Supervisor, Vice Chairman
Adam Lerner	Board Supervisor, Assistant Secretary (via speakerphone)
William McConnell	Board Supervisor, Assistant Secretary
Tom Hidell	Board Supervisor, Assistant Secretary

Also present were:

Kimberly O'Mera	District Manager, Rizzetta & Company, Inc.
Tucker Mackie	District Counsel, Hopping Green & Sams, P.A. (via speakerphone)
Roger Wynn	District Engineer, Moore-Bass Consulting, Inc. (via speakerphone)

Audience	Present
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FIRST ORDER OF BUSINESS

Call to Order

Ms. O'Mera called the meeting to order at 2:11 p.m. and read roll call, confirming a quorum for the meeting.

SECOND ORDER OF BUSINESS

Audience Comments on Agenda Items

There were no audience comments

THIRD ORDER OF BUSINESS

**Consideration of Minutes of the
Board of Supervisors Meeting Held
August 5, 2021**

On a Motion by Mr. Campbell, seconded by Mr. Hidell, with all in favor, the Board approved the Minutes of the Board of Supervisors Meeting held on August 5, 2021, for the Magnolia Creek Community Development District.

FOURTH ORDER OF BUSINESS

**Ratification of Operation and
Maintenance Expenditures for July
2021- August 2021**

Ms. O'Mera presented and reviewed the Operations and Maintenance Expenditures for July 2021 – August 2021 with the Board.

On a Motion by Mr. Campbell, seconded by Mr. Hidell, with all in favor, the Board ratified the Operation and Maintenance expenditures for July 2021 in the amount of \$9,911.33 and August 2021 in the amount of \$13,179.63, for the Magnolia Creek Community Development District.

FIFTH ORDER OF BUSINESS

**Acceptance of Board Member
Resignation**

Ms. O'Mera advised that she was presented letters on October 7, 2021, from Mr. Lerner, dated September 14, 2021, and Mr. Jones, dated September 12, 2021, that stated their formal intent to resign.

On a Motion by Mr. Campbell, seconded by Mr. McConnell, with all in favor, the Board of Supervisors accepted the resignation of Chip Jones and Adam Lerner from the Board of Supervisors, for the Magnolia Creek Community Development District.

SIXTH ORDER OF BUSINESS

**Consideration of Board Seat
Appointment**

Ms. O'Mera requested nominations for the vacant Board seats. Mr. Campbell nominated Mr. Gus Andrews and Mr. George Roberts. Ms. O'Mera administered the Oath of Office to the new Board Supervisors after the nominations were accepted by the Board.

On a Motion by Mr. Campbell, seconded by Mr. Hidell, with all in favor, the Board of Supervisors accepted the nominations and appointed Mr. Gus Andrews, and Mr. George Roberts as Board Supervisors, for the Magnolia Creek Community Development District.

SEVENTH ORDER OF BUSINESS

**Administration of Oath of Office to
Newly Elected Supervisors**

Ms. O'Mera administered the oath of office to Mr. Andrews and Mr. Roberts, who both swore and affirmed to the oath as read into the record.

EIGHTH ORDER OF BUSINESS

**Acceptance of Board Member
Resignation**

Mr. Campbell presented Ms. O'Mera with letter dated September 13, 2021, stating his formal intent to resign.

On a Motion by Mr. Hidell, seconded by Mr. Roberts, with all in favor, the Board of Supervisors accepted the resignation of Scott Campbell from the Board of Supervisors, for the Magnolia Creek Community Development District.

NINTH ORDER OF BUSINESS

Consideration of Board Seat Appointment

Ms. O'Mera requested nominations for the vacant Board seat. Mr. Andrews nominated Mr. Jason Naumann.

On a Motion by Mr. Andrews, seconded by Mr. Hidell, with all in favor, the Board of Supervisors accepted the nomination and appointed Mr. Jason Naumann as Board Supervisor, for the Magnolia Creek Community Development District.

TENTH ORDER OF BUSINESS

Administration of Oath of Office to Newly Elected Supervisors

Ms. O'Mera administered the oath of office to Mr. Naumann, who swore and affirmed to the oath as read into the record.

ELEVENTH ORDER OF BUSINESS

Consideration of Resolution 2022-01, Designating the Officers of the District

Ms. O'Mera presented and reviewed Resolution 2022-01, Designating the Officers of the District with the Board.

Ms. Mackie reviewed the importance of the officers with the Board. Mr. Naumann was nominated for Chairman, Mr. Roberts was nominated as Vice Chairman, and Mr. Andrews was nominated as Assistant Secretary.

On a Motion by Mr. Hidell, seconded by Mr. Roberts, with all in favor, the Board of Supervisors approved Resolution 2022-01, Designating the Officers of the District, for the Magnolia Creek Community Development District.

TWELFTH ORDER OF BUSINESS

Consideration of Resolution 2022-02, Adopting Annual Meeting Schedule

Ms. O'Mera presented and reviewed Resolution 2022-02, Adopting Annual Meeting Schedule. Ms. Mackie explained that if no changes are requested the meeting schedule will remain as is. The Board made no changes to the meeting schedule.

THIRTEENTH ORDER OF BUSINESS

Ratification of Insurance Proposal – Egis Insurance

Ms. O'Mera presented and reviewed the insurance proposal by Egis Insurance for District Insurance Policy for the 2021-2022 Fiscal Year with the Board. The proposal was accepted and executed by Mr. Campbell and became effective October 1, 2021.

On a Motion by Mr. Hidell, seconded by Mr. Andrews, with all in favor, the Board of Supervisors Ratified the acceptance of the Insurance Proposal by Egis Insurance, for the Magnolia Creek Community Development District.

FOURTEENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

Ms. Mackie reviewed Florida Sunshine Laws with the Board of Supervisors.

B. District Engineer

The District Engineer is actively accessing the infrastructure.

C. District Manager

Ms. O'Mera welcomed the new Supervisors. Ms. O'Mera advised the next regular meeting of the Board of Supervisors will be held November 4, 2021, at 2:00 p.m.

FIFTEENTH ORDER OF BUSINESS

Supervisor Requests and Audience Comments

There were no supervisor requests.

SIXTEENTH ORDER OF BUSINESS

Adjournment

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT

**October 7, 2021
Minutes of Meeting
Page 5**

On a Motion by Mr. Andrews, seconded by Mr. Naumann, with all in favor, the Board of Supervisors adjourned the meeting at 2:33 p.m. for the Magnolia Creek Community Development District.

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Secretary/Assistant Secretary

Chairman/Vice Chairman

DRAFT

Tab 2

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT

DISTRICT OFFICE · PANAMA CITY BEACH, FL 32407

MAILING ADDRESS · 3434 COLWELL AVENUE, SUITE 200 · TAMPA, FLORIDA 33614

WWW.MAGNOLIACREEKCDD.ORG

Operation and Maintenance Expenditures September 2021 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from September 1, 2021 through September 30, 2021. This does not include expenditures previously approved by the Board.

The total items being presented: **\$12,312.51**

Approval of Expenditures:

_____ Chairperson

_____ Vice Chairperson

_____ Assistant Secretary

Magnolia Creek Community Development District

Paid Operation & Maintenance Expenditures

September 1, 2021 Through September 30, 2021

<u>Vendor Name</u>	<u>Check Number</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Amount</u>
Egis Insurance Advisors LLC	431	14033	General/POL Liability Insurance FY 21/22	\$ 5,875.00
Hopping Green & Sams	432	125102	General/Monthly Legal Services 08/21	\$ 2,304.18
Rizzetta & Company, Inc.	429	INV0000061138	District Management Fees 09/21	\$ 4,033.33
Rizzetta Technology Services, LLC	430	INV0000007910	Email/Website Hosting Services 09/21	\$ 100.00
Report Total				<u>\$ 12,312.51</u>

Tab 3

RESOLUTION 2022-03

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT DETERMINING AND CERTIFYING SEATS AND TERMS FOR MEMBERS OF THE BOARD OF SUPERVISORS, AND PROVIDING FOR AN EFFECTIVE DATE

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

WHEREAS, at the District’s duly noticed October 7, 2021 Board of Supervisors meeting, several Supervisors tendered resignations creating vacancies on the Board of Supervisors which were duly filled by vote and appointment of the remaining Board of Supervisors; and

WHEREAS, the District’s Board of Supervisors desires to determine and certify the seats and terms held by such appointed Supervisors.

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

Section 1. The following are determined and certified to have been appointed to the following seats and associated terms in connection with the resignations and appointments accepted and made by the District’s Board of Supervisors at their duly noticed meeting on October 7, 2021:

Oct. 7 Supervisor Resignation	Seat	Remaining Term	Successor Appointed Oct. 7
Chip Jones	4	November 2022	Gus Andrews
Adam Lerner	3	November 2024	George Roberts
Scott Campbell	5	November 2022	Jason Naumann

Section 2. The seats and remaining terms of Supervisors William McConnell and Tom Hidell are not affected by this resolution.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED THIS 2nd DAY OF DECEMBER, 2021.

**MAGNOLIA CREEK COMMUNITY
DEVELOPMENT DISTRICT**

Attest:

Secretary/Assistant Secretary

Chair/Vice Chair

Tab 4

RESOLUTION NO. 2022-04

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING CERTAIN AMENDMENTS TO THE DISTRICT'S MASTER TRUST INDENTURE AND FIRST SUPPLEMENTAL TRUST INDENTURE WITH U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE MASTER TRUST INDENTURE AND FIRST SUPPLEMENTAL TRUST INDENTURE TO EVIDENCE SUCH AMENDMENTS; AUTHORIZING THE SOLICITATION OR CONFIRMATION OF CONSENT FROM THE BENEFICIAL OWNERS OF THE DISTRICT'S 2007A BONDS AND 2007B BONDS TO EFFECT SUCH AMENDMENTS; AUTHORIZING THE PROPER OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH THE MATTERS AUTHORIZED BY THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Magnolia Creek Community Development District ("District") is a local unit of special-purpose government established by ordinance adopted by the City Commission in and for the City of Freeport, Florida, pursuant to Chapter 190, Florida Statutes (the "Act"), for the purpose of providing, operating and maintaining infrastructure improvements, facilities and services to the lands within the District; and

WHEREAS, the District issued its Magnolia Creek Community Development District Special Assessment Bonds, Series 2007A (\$7,635,000 aggregate principal amount) (the "Series 2007A Bonds") and of Magnolia Creek Community Development District Special Assessment Bonds, Series 2007B (\$14,005,000 aggregate principal amount) (the "Series 2007B Bonds" and together with the Series 2007A Bonds, the "Series 2007 Bonds") pursuant to the Act and the Master Trust Indenture, dated as of July 1, 2007 ("Master Indenture"), by and between the District and U.S. Bank National Association ("Trustee"), as supplemented by that certain First Supplemental Trust Indenture dated as of July 1, 2007 (the "First Supplemental Indenture," and with the Master Indenture, the "Indenture"); and

WHEREAS, any capitalized term used in this resolution and not otherwise defined herein shall have the meaning ascribed to such term in the Indenture; and

WHEREAS, in connection with the issuance of the Series 2007 Bonds, the District duly levied non-ad valorem special assessments against property benefitting from the infrastructure improvements and facilities to be funded by the proceeds of the Series 2007 Bonds as security for the Series 2007 Bonds ("Debt Assessments"); and

WHEREAS, subsequent to the issuance of the Series 2007 Bonds, certain landowners within the District failed to pay all or a portion of the Debt Assessments allocated to their respective lands (the "Delinquent Property"), resulting in insufficient amounts available to fund the debt service payments then due, constituting an Event of Default under the Indenture; and

WHEREAS, upon the occurrence of an Event of Default under the Indenture, any entities or individuals collectively constituting or representing the holders of a majority in aggregate principal amount of the Bonds (the “Majority Owners”) have certain rights to direct remedial proceedings and to request the District to undertake or refrain from undertaking remedial actions, to which the District may have a right as the assessing entity; and

WHEREAS, upon the direction and consent of the Majority Owners, the District filed two suits seeking foreclosure of its liens for Debt Assessments on the Delinquent Property and certain operations and maintenance non-ad valorem assessments; and

WHEREAS, the Majority Owners and the Trustee requested that the District form the Company (defined below) solely to own, manage and maintain the Delinquent Property for the benefit of the District, which, in turn, acts for the benefit of the holders of the Bonds (the “Bondholders”) with respect to the Delinquent Property;

WHEREAS, in furtherance of the foregoing, the District, on behalf of and at the direction of the Majority Owners, caused to be created a Special Purpose Entity, Magnolia Creek CDD Holdings, Inc. (the “Company”), to own, manage, and dispose of the Delinquent Property; and

WHEREAS, the District entered into that certain Tri-Party Agreement with the Trustee and the Company dated as of September 4, 2014, whereby the District, the Company, and the Trustee, acting on behalf of the Bondholders, acknowledged and agreed that it was in their respective and collective best interests for the Company to own, maintain, sell and/or dispose of the acquired Delinquent Property; and

WHEREAS, the Trustee, acting at the direction of the Bondholders, has now cancelled all outstanding Series 2007B Bonds after previously making a final distribution with respect thereto; and

WHEREAS, because the Company has subsequently sold all Delinquent Property for the benefit of the Bondholders, such that the only real property remaining is secured by Debt Assessments that are performing, the Bondholders previously consented to and directed the Trustee as of a date even herewith to distribute proceeds as accrued interest, and as of a date even herewith consented to and directed the right-sizing of the outstanding amount of Series 2007A Bonds, leaving \$950,000 aggregate principal amount of Series 2007A Bonds Outstanding; and

WHEREAS, in connection with the foregoing, the Bondholders have requested the amendment of the Original Indenture to adjust the 2007A Reserve Account Requirement to \$87,173; and

WHEREAS, pursuant to Section 1102 of the Master Indenture, the Indenture may be amended with the consent of the Majority Owners; and

WHEREAS, District is amenable to the Bondholders’ requested amendment upon consent of the Majority Owners.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors (the “Board”) of the Magnolia Creek Community Development District, as follows:

Section 1: Bondholders’ Consent. Pursuant to the provisions of the Indenture, the Board hereby authorizes the confirmation or solicitation of consent of the Majority Owners to an amendment to the Indenture in substantially the form attached here to as **Exhibit A**. Such consent of the Majority Owners shall be evidence as required by the Indenture.

Section 2: Authorization of Execution and Delivery of Amendment to Indenture. The Board hereby authorizes and approves the execution by the Chairperson, or in the absence of the Chairperson, the Vice Chairperson, or any other member of the Board, and the delivery of an amendment to the Indenture between the District and the Trustee in substantially the form thereof attached hereto and marked **Exhibit A**, and such Indenture amendment is hereby approved, with such changes therein as shall be approved by the Chairperson (or in the absence of the Chairperson, the Vice Chairperson or any other member of the Board in the absence of the Vice Chairperson) executing the same, with such execution to constitute conclusive evidence of such officer's approval and the District's approval of any changes therein from the form of amendment to the Indenture attached hereto; provided, however, that the amendment to the Indenture shall not be effective unless and until necessary consent of the Majority Owners has been obtained as required by the Indenture.

Section 3: Designation of Attesting Members. Each Assistant Secretary of the Board and the Secretary are hereby designated and authorized on behalf of the Board to attest to the seal of the Board and to the signature of the Chairperson or Vice Chairperson or any other member of the Board as they appear on the amendment to the Indenture and any other documents which may be necessary or helpful in connection with the intent of this resolution.

Section 4: Authorization and Ratification of Prior and Subsequent Acts. The members of the Board, the officers of the District and the agents and employees of the District are hereby authorized and directed to do all such acts and things and to execute all such documents, including, without limitation, the execution and delivery of any documents as may be necessary to carry out and comply with the provisions of this resolution and the amendment to the Indenture, and all of the acts and doings of such members of the Board, the officers of the District and the agents and employees of the District which are in conformity with the intent and purposes of this resolution, whether heretofore or hereafter taken or done, shall be and are hereby ratified, confirmed and approved.

Section 5: Severability. If any section, paragraph, clause or provision of this resolution shall be held to be invalid or ineffective for any reason, the remainder of this resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

Section 6: Effective Date. This resolution shall take effect immediately upon its adoption, and any provisions of any previous resolutions in conflict with the provisions hereof are hereby superseded.

PASSED AND ADOPTED this 2nd day of December, 2021.

ATTEST:

**MAGNOLIA CREEK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

By:_____

Its:_____

Exhibit A : Form of Amendment to Indenture

EXHIBIT A

AMENDMENT

Dated as of December 1, 2021

TO

**MASTER TRUST INDENTURE
dated as of July 1, 2007**

And

• To

**FIRST SUPPLEMENTAL TRUST INDENTURE
dated as of July 1, 2007**

between

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT

and

**U.S. BANK NATIONAL ASSOCIATION
As Trustee**

relating to

**MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT
SPECIAL ASSESSMENT BONDS
\$7,635,000 SERIES 2007A
\$14,005,000 SERIES 2007B**

THIS AMENDMENT dated as of December 1, 2021 (this “Amendment”), is made and entered into by and between the **MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government organized and existing under the laws of the State of Florida (the “District”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”) under the Master Trust Indenture dated as of July 1, 2007 (the “Master Indenture”), as supplemented by a First Supplemental Trust Indenture dated as of July 1, 2007 (the “First Supplemental Indenture” and together with the Master Indenture, the “Original Indenture”), each between the District and the Trustee. Capitalized terms used and not defined herein shall have the meanings given in the Original Indenture.

WITNESSETH:

WHEREAS, pursuant to the Indenture, the District issued \$7,635,000 aggregate principal amount of Magnolia Creek Community Development District Special Assessment Bonds, Series 2007A (the “Series 2007A Bonds”) and \$14,005,000 aggregate principal amount of Magnolia Creek Community Development District Special Assessment Bonds, Series 2007B (the “Series 2007B Bonds” and together with the Series 2007A Bonds, the “Series 2007 Bonds”); and

WHEREAS, as of the date hereof, the Series 2007A Bonds are the only Series of Bonds Outstanding under the Original Indenture; and

WHEREAS, pursuant to the provisions of the Act and Chapter 170, Florida Statutes, as amended, the District has levied 2007 Assessments, and pursuant to the terms and provisions of the Original Indenture pledged the same for the payment of the Series 2007 Bonds; and

WHEREAS, pursuant to the provisions of the Act and Chapter 170, Florida Statutes, as amended, the District has the statutory authority to levy maintenance 2007 Assessments (the “O&M Assessments”) to fund the operational and administrative costs of the District (herein, the “O&M Obligations”); and

WHEREAS, subsequent to the issuance of the Series 2007 Bonds, certain landowners within the District failed to pay all or a portion of the 2007 Assessments allocated to their respective lands (the “Delinquent Property”), resulting in insufficient amounts available to fund the debt service payments then due, constituting an Event of Default under the Indenture; and

WHEREAS, upon the occurrence of an Event of Default under the Trust Indenture, any entities or individuals collectively constituting or representing the holders of a majority in aggregate principal amount of the Bonds (the “Majority Owners”) have certain rights to direct remedial proceedings and to request the District to undertake or refrain from undertaking remedial actions, to which the District may have a right as the assessing entity; and

WHEREAS, upon the direction and consent of the Majority Owners, the District filed two suits seeking foreclosure of its liens for Assessments and certain operations and maintenance 2007 Assessments; and

WHEREAS, the Majority Owners and the Trustee requested that the District form the Company solely to own, manage and maintain the Delinquent Property for the benefit of the District, which, in turn, acts for the benefit of the holders of the Bonds (the “Bondholders”) with respect to the Delinquent Property;

WHEREAS, in furtherance of the foregoing, the District, on behalf of and at the direction of the Majority Owners, caused to be created a Special Purpose Entity (SPE), Magnolia Creek CDD Holdings, Inc. (the “Company”), to own, manage, and dispose of the Delinquent Property; and

WHEREAS, the District entered into that certain Tri-Party Agreement with the Trustee and the Company dated as of September 4, 2014, whereby the District, the Company and the Trustee, acting on behalf of the Bondholders, acknowledged and agreed that it was in their respective and collective best interests for the Company to own, maintain, sell and/or dispose of the acquired Delinquent Property; and

WHEREAS, on [], 2021, the Trustee, acting at the direction of the Bondholders, cancelled all outstanding Series 2007B Bonds after previously making a final distribution with respect thereto; and

WHEREAS, because the Company has subsequently sold all Delinquent Property for the benefit of the Bondholders, such that the only real property remaining is secured by 2007 Assessments that are performing, the Bondholders previously consented to and directed the Trustee as of a date even herewith to distribute proceeds as accrued interest, and as of a date even herewith consented to and directed the right-sizing of the outstanding amount of Series 2007A Bonds, leaving \$950,000 aggregate principal amount of Series 2007A Bonds Outstanding; and

WHEREAS, in connection with the foregoing, the Bondholder seeks the amendment of the Original Indenture to adjust the 2007A Reserve Account Requirement to \$87,173; and

WHEREAS, pursuant to Section 1102 of the Master Indenture, the Original Indenture may be amended with the consent of the Owners of at least a majority in aggregate principal amount of the Outstanding Series 2007 Bonds (herein, the “Majority Owners”); and

NOW THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Trustee hereby agree as follows:

Definitions. Capitalized terms used, but not defined, in this Amendment including, without limitation, the recitals hereto, shall have the meanings assigned to such terms in the Original Indenture.

Application. This Amendment shall amend certain provisions of the Master Indenture and First Supplemental Indenture without the necessity of amending each such instrument separately.

Incorporation. All statements set forth in the recitals stated above are true and correct and are incorporated into this Amendment and such statements form the basis for the Trustee to join in the execution and delivery of this Amendment with the District and for the Majority Owners to approve and consent to the amendments herein contemplated.

Amendments. The definition of “2007A Reserve Account Requirement” in the Original Indenture shall be amended to read as follows:

“2007A Reserve Account Requirement” shall mean \$87,173 (eighty seven thousand one hundred seventy three dollars).

Applicability of Remaining Provisions; Ratification; Acknowledgment of Status of Remaining Outstanding Bonds. Except as expressly modified as stated above, all provisions of the Original Indenture shall remain unaffected and in full force and effect, and the Original Indenture as amended by this Amendment is in all respects hereby ratified and confirmed. The District acknowledges that the remaining outstanding Bonds are payable from and secured by 2007A Assessments imposed, levied and collected by the District with respect to 72 specific lots of property benefited by the 2007 Project.

Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

No Personal Liability or Accountability. No covenant or agreement contained in this Amendment shall be deemed to be the covenant or agreement of any present, past or future member, agent or employee of the District or the Trustee, in his or her individual capacity, and neither the members of the District or the Trustee, nor any official, agent or employee of the District or the Trustee, shall be liable personally on the Series 2007 Bonds or be subject to any personal liability or accountability by reason of this Amendment.

Binding Effect. This Amendment shall inure to the benefit of, and shall be binding upon, the District, the Trustee, and the owners of the Series 2007 Bonds and their respective successors and assigns.

Severability. If any provisions of this Amendment shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Effective Date. This Amendment shall become effective upon the execution by the District and the Trustee and the receipt by the Trustee of the written consent and direction approving this Amendment signed by the owners of at least a majority in aggregate principal amount of the Outstanding Series 2007 Bonds as required by Section 1102 of the Master Indenture.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Magnolia Creek Community Development District has caused this Amendment to be executed by the Chairman of its Board of Supervisors and its corporate seal to be hereunto affixed and attested by the Secretary of its Board of Supervisors and U.S. Bank National Association has caused this Amendment to be executed by one of its Authorized Agents, all as of the day and year first above written.

[SEAL]

**MAGNOLIA CREEK COMMUNITY
DEVELOPMENT DISTRICT**

Attest:

By: _____
Chairman, Board of Supervisors

By: _____
Secretary, Board of Supervisors

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Agent

STATE OF FLORIDA)
) SS:
COUNTY OF WALTON)

On this 2nd day of December 2021, before me, a notary public in and for the State and County aforesaid, personally appeared _____ and _____, Chairman and Secretary, respectively, of MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT (the “District”), who acknowledged that they did so sign the foregoing instrument as such officers, respectively, for and on behalf of said District; that the same is their free act and deed as such officers, respectively, and the free act and deed of said District; and that the seal affixed to said instrument is the seal of said District; that they respectively appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said District, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public, Print, Stamp or Type as
Commissioned)

- ☐ Personally known to me, or
☐ Produced identification:

(Type of Identification Produced)

STATE OF MINNESOTA)
) SS:
COUNTY OF SCOTT)

On this ____ day of _____, 2021, before me, a notary public in and for the State and County aforesaid, personally appeared _____, an Authorized Agent of U.S. BANK NATIONAL ASSOCIATION, as Trustee, who acknowledged that he/she did so sign said instrument as such officer for and on behalf of said corporation; that the same is his/her free act and deed as such officer and the free act and deed of said corporation; that he/she appeared before me on this day in person and acknowledged that he/she, being thereunto duly authorized, signed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

NOTARY PUBLIC, STATE OF MINNESOTA

(Name of Notary Public, Print, Stamp or Type as
Commissioned)

- ☐ Personally known to me, or
☐ Produced identification:

(Type of Identification Produced)

Tab 5

**AMENDMENT TO THE AGREEMENT BETWEEN THE MAGNOLIA CREEK
COMMUNITY DEVELOPMENT DISTRICT AND
MOORE BASS CONSULTING, INC., FOR PROFESSIONAL ENGINEERING
SERVICES**

THIS AMENDMENT is made and entered into this 2nd day of December, 2021, by and between:

MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, and located in City of Freeport, Florida, and whose mailing address is 120 Richard Jackson Blvd., Suite 220, Panama City Beach, Florida 32407 (the “**District**”); and

MOORE BASS CONSULTING, INC., a Florida corporation, whose address is 805 N. Gadsden Street, Tallahassee, Florida 32303 (“**Engineer**”).

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

WHEREAS, the District previously entered into that certain *Agreement between the Magnolia Creek Community Development District and Moore Bass Consulting of Destin, Inc., for Professional Engineering Services* dated December 14, 2006 (the “**Agreement**” attached hereto as **Exhibit A**) with Moore Bass Consulting of Destin, Inc.; and

WHEREAS, Moore Bass Consulting of Destin, Inc., ceased to conduct business and all active contracts for engineering services were assigned to its affiliated company Moore Bass Consulting, Inc.; and

WHEREAS, Moore Bass Consulting of Destin, Inc., is listed as a named insured on current professional liability insurance for Moore Bass Consulting, Inc.; and

WHEREAS, Moore Bass Consulting, Inc., desires to assume all rights and obligations under the Agreement, as amended by this instrument, and accept the assignment of the Agreement, and the District desires to express that it agrees with and has no objection to such assignment; and

WHEREAS, pursuant to the Agreement, the Agreement may be amended by an instrument in writing which is executed by both parties; and

WHEREAS, the District and Engineer desire to modify the hourly rates identified in “Schedule A” to the Agreement; and

WHEREAS, the District and Engineer each represent that it has the requisite authority to execute this Amendment and to perform its obligations and duties hereunder, and each has satisfied all conditions precedent to the execution of this Amendment so that this Amendment constitutes a legal and binding obligation of each party hereto.

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

1. RECITALS. The recitals stated above are true and correct and by this reference are incorporated herein and form a material part of this Amendment.

2. AFFIRMATION OF THE AGREEMENT. The Agreement is hereby affirmed and continues to constitute a valid and binding agreement between the parties. Except as described in this Amendment, nothing herein shall modify the rights and obligations of the parties under the Agreement.

3. DISTRICT CONSENT TO ASSIGNMENT OF THE AGREEMENT. The District consents to the assignment of the Agreement to Engineer on the condition that the District receive new insurance certificates naming the District, its staff, consultants, agents, and supervisors as additional insured. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District.

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

IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT 850-334-9055, KO'MERA@RIZZETTA.COM, 813-991-4014, DISTRICT MANAGER, RIZZETTA & COMPANY, INC., 3434 COLWELL AVENUE, SUITE 200, TAMPA, FLORIDA 33614.

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

6. E-VERIFY. The Engineer shall comply with and perform all applicable provisions of Section 448.095, *Florida Statutes*. Accordingly, beginning January 1, 2021, to the extent required by Florida Statute, Engineer shall register with and use the United States Department of Homeland Security's E-Verify system to verify the work authorization status of all newly hired employees. The District may terminate this Agreement immediately for cause if there is a good faith belief that the Engineer has knowingly violated Section 448.091, Florida Statutes.

If the Engineer anticipates entering into agreements with a subcontractor for the Work, Engineer will not enter into the subcontractor agreement without first receiving an affidavit from the subcontractor regarding compliance with Section 448.095, *Florida Statutes*, and stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Engineer shall maintain a copy of such affidavit for the duration of the agreement and provide a copy to the District upon request.

In the event that the District has a good faith belief that a subcontractor has knowingly violated Section 448.095, *Florida Statutes*, but the Engineer has otherwise complied with its obligations hereunder, the District shall promptly notify the Engineer. The Engineer agrees to immediately terminate the agreement with the subcontractor upon notice from the District. Further, absent such notification from the District, the Engineer or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1), Florida Statutes, shall promptly terminate its agreement with such person or entity.

By entering into this Agreement, the Engineer represents that no public employer has terminated a contract with the Engineer under Section 448.095(2)(c), *Florida Statutes*, within the year immediately preceding the date of this Agreement.

7. PURSUANT TO FS 558.0035, EMPLOYEES OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

8. AFFIRMATION OF AGREEMENT. The Agreement is hereby affirmed and continues to constitute a valid and binding agreement between the Parties. Except as described herein, all remaining terms and conditions of the Agreement are hereby adopted, reaffirmed and incorporated as if restated herein.

9. HOURLY RATES. The hourly rates attached to the Agreement are hereby modified and replaced in their entirety with the hourly rates identified and attached hereto as **Exhibit B**.

10. COUNTERPARTS. This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument.

11. EFFECTIVE DATE. This Amendment shall be effective on the date and year first written above.

IN WITNESS WHEREOF, the parties execute this Amendment to be effective the day and year first written above.

ATTEST:

**MAGNOLIA CREEK
COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

Vice/Chairperson, Board of Supervisors

WITNESS:

MOORE BASS CONSULTING, INC., a
Florida corporation

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A

AGREEMENT BETWEEN THE MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT AND MOORE BASS CONSULTING OF DESTIN, INC., FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT, made and entered into this 14 day of DECEMBER, 2006,
by and between:

Magnolia Creek Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the City of Freeport, Florida ("District"); and

Moore Bass Consulting of Destin, Inc., a Florida corporation, whose mailing address is 1221 Airport Road, Suite 205, Destin, Florida 32541 ("Engineer").

WHEREAS, the District is a local unit of special-purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, Florida Statutes ("Uniform Act"), by Ordinance 06-26 of the City Council of the City of Freeport, Florida; and

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

WHEREAS, the District intends to employ Engineer to perform engineering, surveying, planning, landscaping, construction administration, environmental management and permitting, financial and economic studies, as defined by a separate work authorization; and

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

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

Article 1. Scope of Services

- A. The Engineer will provide general engineering services, including:
1. Preparation of any necessary reports and attendance at meetings of the District's Board of Supervisors.
 2. Assistance in meeting with necessary parties involving bond issues, special reports, feasibility studies, or other tasks.

hereunder. The District, or its authorized representative, shall have the right to audit such books and records at all reasonable times upon prior notice to Engineer.

Article 8. Ownership of Documents.

A. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement (the "Work Product") shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

B. The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for Engineer in the District's sole discretion, to retain possession for a longer period of time. Upon early termination of Engineer's services hereunder, Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the Project. If said work product is used by the District for any purpose other than that purpose which is intended by this Agreement, the District shall indemnify Engineer from any and all claims and liabilities which may result from such re-use, in the event Engineer does not consent to such use.

C. The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Engineer hereby assigns to the District any and all rights Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

Article 9. Accounting Records. Records of Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times.

Article 10. Reuse of Documents. All documents including drawings and specifications furnished by Engineer pursuant to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by District or others on extensions

3. Any other items requested by the Board of Supervisors.

Article 2. Method of Authorization. Each service or project shall be authorized in writing by the District. The written authorization shall be incorporated in a Work Authorization which shall include the scope of work, compensation, project schedule, and special provisions or conditions specific to the service or project being authorized. Authorization of services or projects under the contract shall be at the sole option of the District.

Article 3. Compensation. It is understood and agreed that the services rendered by Engineer under this contract shall not exceed the amounts contained in the District's adopted annual budget. It is further understood and agreed that the payment of compensation for services under this contract shall be stipulated in each Work Authorization. One of the following methods will be utilized:

- A. Lump Sum Amount-The District and Engineer shall mutually agree to a lump sum amount for the services to be rendered payable monthly in direct proportion to the work accomplished.
- B. Hourly Personnel Rates-For services or projects where scope of services is not clearly defined, or recurring services or other projects where the District desires the use of the hourly compensation rates outlined in **Schedule "A."**

Article 4. Reimbursable Expenses. Reimbursable expenses consist of actual expenditures made by Engineer, its employees, or its consultants in the interest of the project for the incidental expenses as listed as follows:

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

Article 5. Term of Contract. It is understood and agreed that this contract is for engineering services. It is further understood and agreed that the term of this contract will be from the time of execution of this contract by the parties until such time as the District notifies Engineer that it has entered into a subsequent agreement for engineering services.

Article 6. Special Consultants. When authorized in writing by the District, additional special consulting services may be utilized by Engineer and paid for on a cost basis.

Article 7. Books and Records. Engineer shall maintain comprehensive books and records relating to any services performed under this Agreement, which shall be retained by Engineer for a period of at least four (4) years from and after completion of any services

of the work for which they were provided or on any other project. Any reuse without specific written consent by Engineer will be at the District's sole risk and without liability or legal exposure to Engineer.

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

Article 12. Insurance. Engineer shall, at its own expense, maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$500,000/\$1,000,000
Property Damage (including Contractual)	\$500,000/\$1,000,000
Automobile Liability	
Bodily Injury	\$500,000/\$1,000,000
Property Damage	\$100,000
Professional Liability for Errors and Omissions	\$1,000,000

Engineer shall provide District with a certificate evidencing compliance with the above terms and naming the District and its supervisors, employees, agents and staff as additional insureds. Engineer shall provide the District with thirty (30) days notice of cancellation. At no time shall Engineer be without insurance in the above amounts.

Article 13. Contingent Fee. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for

the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Article 14. Audit. The Engineer agrees that the District or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of all work under the Agreement.

Article 15. Indemnification. The Engineer agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the District harmless of and from any and all liabilities, claims, causes of action, demands, suits, or losses arising from the negligent acts, errors or omissions of the Engineer, Engineer's agents or employees, in the performance of professional services under this Agreement. Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of the District's sovereign immunity pursuant to section 768.28, Florida Statutes.

The District agrees, to the extent permitted by section 768.28, Florida Statutes, and other applicable law, to indemnify and hold the Engineer harmless from any damage, liability or cost to the extent caused by the District's own negligent acts, errors or omissions and those of the District's agents or employees arising from the obligations and duties of the District under this Agreement.

Article 16. Public Records. The Engineer shall allow access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the owner in conjunction with this Agreement.

Article 17. Employment Verification. The Engineer agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.

Article 18. Controlling Law. Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida.

Article 19. Assignment. Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Engineer from employing such independent professional associates and consultants as Engineer deems appropriate, pursuant to Article 5 herein.

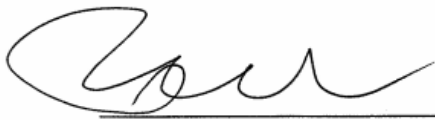
Article 20. Termination. The District and the Engineer may terminate this Agreement without cause upon notice. At such time as Engineer receives notification by the

District to terminate the contract, Engineer shall not perform any further services unless directed to do so by the Board of Supervisors. In the event of any termination, Engineer will be paid for services rendered to the date of termination and all reimbursable expenses incurred to the date of termination.

Article 21. Recovery of Costs and Fees. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees.

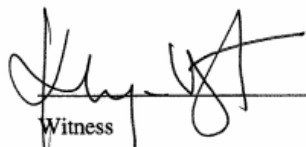
Article 22. Acceptance. Acceptance of this Agreement is indicated by the signature of the authorized representative of the District and the Engineer in the spaces provided below.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed the day and year first above written.



Secretary

**MAGNOLIA CREEK
COMMUNITY DEVELOPMENT DISTRICT**


Chairman, Board of Supervisors


Witness

**MOORE BASS CONSULTING OF DESTIN, INC.,
a Florida corporation**


By: James A. Mortelli
Its: Managing Partner

SCHEDULE A

Moore Bass Consulting of Destin, Inc. Hourly Rates

Engineering Services

Senior Partner	\$220.00	Engineer Intern IV	\$115.00
Principal / Professional Engineer	\$185.00	Engineer Intern III	\$102.00
Sr. Project Manager	\$165.00	Engineer Intern II	\$88.00
Sr. Professional Engineer	\$149.00	Engineer Intern I	\$66.00
Sr. Project Engineer	\$132.00	CAD Designer II	\$88.00
Professional Engineer	\$115.00	CAD Designer I	\$77.00
Transportation Planner	\$138.00	CAD Technician II	\$82.00
Civil Designer IV	\$121.00	CAD Technician I	\$70.00
Civil Designer III	\$110.00	CAD Draftsman II	\$55.00
Civil Designer II	\$102.00	CAD Draftsman I	\$44.00
Civil Designer I	\$94.00	Construction Administrator	\$75.00

Landscape Architecture and Planning Services

Landscape Architect	\$132.00	Landscape Technician	\$66.00
Land Planner II	\$120.00		
Land Planner I	\$105.00		
Landscape Designer II	\$90.00		
Landscape Designer I	\$82.00		

Environmental Services

Sr. Biologist	\$132.00	Biological Scientist III	\$105.00
Certified Erosion Control Specialist	\$105.00	Biological Scientist II	\$82.00
Biological Technician	\$55.00	Biological Scientist I	\$71.00

Survey Services

Survey Department Manager	\$165.00	Survey Party Chief IV	\$100.00
Sr. Registered Land Surveyor	\$140.00	Survey Party Chief III	\$85.00
Registered Land Surveyor	\$110.00	Survey Party Chief II	\$75.00
Sr. Survey Project Manager	\$130.00	Survey Party Chief I	\$65.00
Survey Project Manager	\$100.00	Survey Field Coordinator II	\$100.00
Survey Office Technician V	\$120.00	Survey Field Coordinator I	\$85.00
Survey Office Technician IV	\$100.00	Survey Field Technician III	\$60.00
Survey Office Technician III	\$85.00	Survey Field Technician II	\$55.00
Survey Office Technician II	\$70.00	Survey Field Technician I	\$50.00
Survey Office Technician I	\$60.00		

Survey Specialties

GPS (2-man)	\$175.00
GPS (1-man)	\$130.00
Robotics (1-man)	\$120.00

Production Services

Permit Manager	\$80.00
Permit Specialist II	\$75.00
Permit Specialist I	\$55.00
Production Manager	\$135.00
Production Assistant II	\$50.00
Production Assistant I	\$40.00

Specialized Services

Expert Witness	\$350.00
CDD Engineer	\$230.00

Specialized Equipment

Polaris ATV	\$100.00 per day
Boston Whaler Boat	\$750.00 per day

Travel and per diem expenses shall be reimbursed in accordance with Chapter 112, Florida Statutes, and other applicable law. For services in court, a minimum of eight hours will be charged for each day of appearance.
For use of Specialized Equipment, fee shown is per day.

Effective Date October 1, 2006

EXHIBIT B

Moore Bass Consulting, Inc. Hourly Rates

Engineering Services			
Principal	295.00	Civil/CAD Designer VIII	175.00
Senior Partner	250.00	Civil/CAD Designer VII	165.00
Project Manager IV	240.00	Civil/CAD Designer VI	157.00
Project Manager III	225.00	Civil/CAD Designer V	145.00
Project Manager II	215.00	Civil/CAD Designer IV	137.00
Project Manager I	195.00	Civil/CAD Designer III	116.00
Planner III	156.00	Civil/CAD Designer II	107.00
Planner II	145.00	Civil/CAD Designer I	92.00
Planner I	100.00	Engineer Intern IV	121.00
Professional Engineer IV	175.00	Engineer Intern III	107.00
Professional Engineer III	160.00	Engineer Intern II	92.00
Professional Engineer II	145.00	Engineer Intern I	69.00
Professional Engineer I	130.00	CAD Draftsman V	86.00
Project / Production Manager II	175.00	CAD Draftsman IV	75.00
Project / Production Manager I	142.00	CAD Draftsman III	64.00
		CAD Draftsman II	58.00
		CAD Draftsman I	46.00
Landscape Architecture Services			
Landscape Architect II	139.00	Landscape Designer II	95.00
Landscape Architect I	116.00	Landscape Designer I	86.00
		Landscape Technician	69.00
Standard Surveying Services			
Sr. Registered Land Surveyor III	173.00	Survey Office Technician V	105.00
Sr. Registered Land Surveyor II	152.00	Survey Office Technician IV	95.00
Sr. Registered Land Surveyor I	137.00	Survey Office Technician III	85.00
Survey Project Manager III	131.00	Survey Office Technician II	75.00
Survey Project Manager II	121.00	Survey Office Technician I	60.00
Survey Project Manager I	105.00	Survey Party Chief VI	109.00
Survey Field Coordinator II	74.00	Survey Party Chief V	99.00
Survey Field Coordinator I	58.00	Survey Party Chief IV	89.00
Survey Field Technician V	75.00	Survey Party Chief III	74.00
Survey Field Technician IV	69.00	Survey Party Chief II	63.00
Survey Field Technician III	64.00	Survey Party Chief I	53.00
Survey Field Technician II	59.00		
Survey Field Technician I	55.00		
Expedited/Overtime Surveying Services			
Sr. Registered Land Surveyor III	208.00	Survey Office Technician V	126.00
Sr. Registered Land Surveyor II	182.00	Survey Office Technician IV	114.00
Sr. Registered Land Surveyor I	164.00	Survey Office Technician III	102.00
Survey Project Manager III	157.00	Survey Office Technician II	90.00
Survey Project Manager II	145.00	Survey Office Technician I	72.00
Survey Project Manager I	126.00	Survey Party Chief VI	131.00
Survey Field Coordinator II	89.00	Survey Party Chief V	119.00
Survey Field Coordinator I	70.00	Survey Party Chief IV	107.00
Survey Field Technician V	90.00	Survey Party Chief III	89.00
Survey Field Technician IV	83.00	Survey Party Chief II	76.00
Survey Field Technician III	77.00	Survey Party Chief I	64.00
Survey Field Technician II	71.00		
Survey Field Technician I	66.00		
Production Services			
Production Assistant V	85.00	Permit Specialist II	85.00
Production Assistant IV	75.00	Permit Specialist I	80.00
Production Assistant III	62.00		
Production Assistant II	53.00		
Production Assistant I	47.00		
Other Consulting Services			
Expert Witness	395.00		
Land Use Expert	395.00		

Plus all direct expenses including travel, subsistence, and out-of-pocket expenses, times 1.20.
For services in court, a minimum of eight hours will be charged for each day of appearance.

Updated 9/1/2021

Tab 6



- LAND USE PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING
- LANDSCAPE ARCHITECTURE
- CONSTRUCTION ADMINISTRATION
- DRONE LIDAR SURVEYING & MAPPING

ATLANTA | 770.914.9394
TALLAHASSEE | 850.222.5678
moorebass.com

INVOICE: 0074812

CLIENT: Magnolia Creek CDD
c/o Rizzetta & Company
3434 Colwell Ave, Suite 200
Tampa, FL 33614

Project Name: Owls Head - Naumann

Project No: T1900.0025.00

Invoice Date: September 01, 2021

Services from: July 28, 2021 to August 25, 2021

TASK #	BASIC SERVICES TASK	CONTRACT FEE	PERCENT COMPLETE	AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities	7,750.00	100.00%	7,750.00	7,750.00	0.00	
E9002	Misc. Consulting Services	0.00		3,059.00		N/A	3,059.00
Subtotal		7,750.00		10,809.00	7,750.00		3,059.00

TASK #	REIMBURSABLES	CONTRACT FEE		AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities		N/A	658.64	658.64	N/A	
Subtotal				658.64	658.64		

Remit to: Moore Bass Consulting, Inc.
805 North Gadsden Street
Tallahassee, Florida 32303

Please indicate invoice numbers on check(s)
If you have questions, please call (850) 222-3367 Accounting Dept.

CURRENT INVOICE TOTAL 3,059.00

PAST AMOUNT DUE 0.00

TOTAL AMOUNT DUE NOW: 3,059.00

Net Due 10 Days: Client agrees to promptly review Consultant's invoices upon receipt and notify Consultant in writing of any disputed amounts within 15 days of date of receipt. If notice of dispute is not received within 15 day period, the invoice shall be deemed undisputed, due and payable.

Billing Backup

Moore Bass Consulting, Inc.

Invoice 0074812 Dated 9/1/2021

Thursday, October 28, 2021

7:52:15 AM

Project	T1900.0025.00	Owls Head - Naumann
Phase	E9002	Misc. Consulting Services

Professional Personnel

			Hours	Rate	Amount	
	Civil/CAD Designer VII					
T011	Chen, Xiaohua	8/19/2021	3.00	165.00	495.00	
	road and alley length and width from pdf files					
	Civil/CAD Designer VI					
T105	Thompson, Alan	7/30/2021	2.00	157.00	314.00	
	legal/plat verification and exhibits					
	Senior Partner					
T045	Wynn, Roger	7/28/2021	.25	250.00	62.50	
	phone with Scott Campbell and coord surveying staff for review					
T045	Wynn, Roger	7/29/2021	.50	250.00	125.00	
	plot and coord with Alan on review of plat and legal					
T045	Wynn, Roger	7/30/2021	1.25	250.00	312.50	
	review legal and deed info from Scott Campbell on transferring ownership from HOA to CDD, coord with Alan on plat, discuss plat correction with Danny					
T045	Wynn, Roger	8/2/2021	.25	250.00	62.50	
	phone with Scott Campbell re: correcting the record plat					
T045	Wynn, Roger	8/4/2021	1.75	250.00	437.50	
	lot count and review					
T045	Wynn, Roger	8/5/2021	1.50	250.00	375.00	
	coord with Jason on board mtg, review and email lot depths for phase 1A and 1B					
T045	Wynn, Roger	8/10/2021	1.75	250.00	437.50	
	work with Jaxon re: lot layout, phases, counts, maps					
T045	Wynn, Roger	8/16/2021	.25	250.00	62.50	
	email record plat for PHase I, phone with Jason					
T045	Wynn, Roger	8/19/2021	1.00	250.00	250.00	
	measure roads and alleys and coord with Xiaohua					
T045	Wynn, Roger	8/20/2021	.50	250.00	125.00	
	check lengths on '08 plans					
	Totals		14.00		3,059.00	
	Total Labor					3,059.00
				Total this Phase		\$3,059.00
				Total this Project		\$3,059.00
				Total this Report		\$3,059.00



- LAND USE PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING
- LANDSCAPE ARCHITECTURE
- CONSTRUCTION ADMINISTRATION
- DRONE LIDAR SURVEYING & MAPPING

ATLANTA | 770.914.9394
TALLAHASSEE | 850.222.5678
moorebass.com

INVOICE: 0075231

CLIENT: Magnolia Creek CDD
c/o Rizzetta & Company
3434 Colwell Ave, Suite 200
Tampa, FL 33614

Project Name: Owls Head - Naumann

Project No: T1900.0025.00

Invoice Date: October 01, 2021

Services from: August 26, 2021 to September 24, 2021

TASK #	BASIC SERVICES TASK	CONTRACT FEE	PERCENT COMPLETE	AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities	7,750.00	100.00%	7,750.00	7,750.00	0.00	
E9002	Misc. Consulting Services	0.00		6,809.00	3,059.00	N/A	3,750.00
Subtotal		7,750.00		14,559.00	10,809.00		3,750.00

TASK #	REIMBURSABLES	CONTRACT FEE		AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities		N/A	658.64	658.64	N/A	
Subtotal				658.64	658.64		

Remit to: Moore Bass Consulting, Inc.
805 North Gadsden Street
Tallahassee, Florida 32303

Please indicate invoice numbers on check(s)
If you have questions, please call (850) 222-3367 Accounting Dept.

CURRENT INVOICE TOTAL 3,750.00

PAST AMOUNT DUE 3,059.00

TOTAL AMOUNT DUE NOW: 6,809.00

Net Due 10 Days: Client agrees to promptly review Consultant's invoices upon receipt and notify Consultant in writing of any disputed amounts within 15 days of date of receipt. If notice of dispute is not received within 15 day period, the invoice shall be deemed undisputed, due and payable.

Billing Backup

Moore Bass Consulting, Inc.

Invoice 0075231 Dated 10/1/2021

Thursday, October 28, 2021

7:52:49 AM

Project	T1900.0025.00	Owls Head - Naumann
Phase	E9002	Misc. Consulting Services

Professional Personnel

			Hours	Rate	Amount
	Senior Partner				
T045	Wynn, Roger	9/1/2021	.50	250.00	125.00
	look through files for old cost estimates				
T045	Wynn, Roger	9/3/2021	.75	250.00	187.50
	find and review cost estimates and send to Jason				
T045	Wynn, Roger	9/9/2021	1.00	250.00	250.00
	look for asbuilts				
T045	Wynn, Roger	9/10/2021	.50	250.00	125.00
	look for asbuilts				
T045	Wynn, Roger	9/16/2021	.50	250.00	125.00
	file research for PUD				
T045	Wynn, Roger	9/17/2021	.75	250.00	187.50
	review asbuilt pdf's and email to Jason with latest plans				
T045	Wynn, Roger	9/21/2021	2.00	250.00	500.00
	review reports, files, etc. for meeting on Thursday, coord with Scott Campbell, coord with Ken, coord mtg				
T045	Wynn, Roger	9/22/2021	.75	250.00	187.50
	review plans, maps, etc. for mtg				
T045	Wynn, Roger	9/23/2021	7.50	250.00	1,875.00
	trip to Owls Head				
T045	Wynn, Roger	9/24/2021	.75	250.00	187.50
	review cad files from Daniel and send plans to David Wilson				
	Totals		15.00		3,750.00
	Total Labor				3,750.00
				Total this Phase	\$3,750.00
				Total this Project	\$3,750.00
				Total this Report	\$3,750.00



- LAND USE PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING
- LANDSCAPE ARCHITECTURE
- CONSTRUCTION ADMINISTRATION
- DRONE LIDAR SURVEYING & MAPPING

ATLANTA | 770.914.9394
TALLAHASSEE | 850.222.5678
moorebass.com

INVOICE: 0075278

CLIENT: Magnolia Creek CDD
c/o Rizzetta & Company
3434 Colwell Ave., Suite 200
Tampa, FL 33614

Project Name: Owls Head - Naumann

Project No: T1900.0025.00

Invoice Date: November 1, 2021

Services from: September 25, 2021 to October 26, 2021

TASK #	BASIC SERVICES TASK	CONTRACT FEE	PERCENT COMPLETE	AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities	7,750.00	100.00%	7,750.00	7,750.00	0.00	
E9002	Misc. Consulting Services	0.00		7,870.25	6,809.00	N/A	1,061.25
Subtotal		7,750.00		15,620.25	14,559.00		1,061.25

TASK #	REIMBURSABLES	CONTRACT FEE		AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
E9000	Due Diligence for Offsite Utilities		N/A	658.64	658.64	N/A	
Subtotal				658.64	658.64		

INTEREST EXPENSE	CONTRACT FEE	PERCENT COMPLETE	AMOUNT COMPLETE	PREVIOUSLY BILLED	BILLING REMAINDER	CURRENT INVOICE
Subtotal				45.89		45.89

Remit to: Moore Bass Consulting, Inc.
805 North Gadsden Street
Tallahassee, Florida 32303

Please indicate invoice numbers on check(s)
If you have questions, please call (850) 222-3367 Accounting Dept.

CURRENT INVOICE TOTAL 1,107.14

PAST AMOUNT DUE 6,809.00

TOTAL AMOUNT DUE NOW: 7,916.14

Net Due 10 Days: Client agrees to promptly review Consultant's invoices upon receipt and notify Consultant in writing of any disputed amounts within 15 days of date of receipt. If notice of dispute is not received within 15 day period, the invoice shall be deemed undisputed, due and payable.

Billing Backup

Moore Bass Consulting, Inc.

Invoice 0075278 Dated 10/28/2021

Thursday, October 28, 2021

2:16:25 PM

Project T1900.0025.00 Owls Head - Naumann

Phase E9002 Misc. Consulting Services

Professional Personnel

			Hours	Rate	Amount	
	Project Manager I					
T052	Hartsfield, Lindsey	10/1/2021	1.50	195.00	292.50	
	file search/obtain old destin files					
T052	Hartsfield, Lindsey	10/4/2021	1.50	195.00	292.50	
	Phase IB Plat file research					
T052	Hartsfield, Lindsey	10/5/2021	.75	195.00	146.25	
	Phase IB Plat file research					
T052	Hartsfield, Lindsey	10/19/2021	1.50	195.00	292.50	
	assemble cad files to send to contractor					
	Production Assistant IV					
T157	Ackerman, Callie	10/1/2021	.50	75.00	37.50	
	Print Plans					
	Totals		5.75		1,061.25	
	Total Labor					1,061.25
				Total this Phase		\$1,061.25
				Total this Project		\$1,061.25
				Total this Report		\$1,061.25

Tab 7

BlueGreen Landscape Development
755 Grand Blvd suite b105-295
destin, FL 32550 US
(850) 797-9160
harry@bluegreenlandscape.net

INVOICE

BILL TO
MAGNOLIA CREEK CDD

SHIP TO
MAGNOLIA CREEK CDD
PHASE 1A

INVOICE # 3045
DATE 10/08/2021
DUE DATE 10/08/2021
TERMS Due on receipt

DATE	DESCRIPTION	QTY	RATE	AMOUNT
10/08/2021	Initial Clean-up BUSH HOG, WEEDEAT, BOBCAT/DIRT WORK, DEBRIS PICK UP, CHEMICAL APPLICATION AROUND UTILITIES, BLOW OFF.	1	10,750.00	10,750.00
	EQUIPMENT EQUIPMENT FEE	1	1,000.00	1,000.00

Make all checks payable to BlueGreen Landscape Development

BALANCE DUE

\$11,750.00

Tab 8

BlueGreen Landscape Development
755 Grand Blvd suite b105-295
destin, FL 32550 US
(850) 797-9160
harry@bluegreenlandscape.net

Estimate

ADDRESS
MAGNOLIA CREEK CDD
PHASE 1B

SHIP TO
MAGNOLIA CREEK CDD
PHASE 1B

ESTIMATE # 1688
DATE 10/27/2021

DATE	ACTIVITY	QTY	RATE	AMOUNT
10/27/2021	Initial Clean-up BUSHHOG , WEEDEAT , CHEMICAL APPLICATION , BLOW OFF	1	12,750.00	12,750.00
	EQUIPMENT EQUIPMENT FEE	1	1,750.00	1,750.00

TOTAL

\$14,500.00

Accepted By

Accepted Date

Tab 9



Invoice

[illegible]

Tab 10

The logo for GCF Inc. is an oval with a yellow background and a black border. Inside the oval, the letters "GCF" are written in a large, bold, black, italicized sans-serif font. To the right of "GCF", the letters "INC" are written in a smaller, black, italicized sans-serif font. A black, stylized swoosh or underline is positioned beneath the "GCF" text, extending from the left and curving under the letters.

10/27/21

[illegible]

Tab 11

**CONSENT TO ASSIGNMENT OF THE
CONTRACT FOR PROFESSIONAL TECHNOLOGY SERVICES BY
AND BETWEEN MAGNOLIA CREEK COMMUNITY DEVELOPMENT DISTRICT
AND RIZZETTA TECHNOLOGY SERVICES, LLC TO
RIZZETTA & COMPANY**

THIS ASSIGNMENT AND AMENDMENT (“Assignment”) is made and entered into this 4th day of November, 2021 by and between, Rizzetta Technology Services, LLC 3434 Colwell Ave, Suite 200, Tampa, FL 33614 (“**Assignor**”); and Rizzetta & Company, a Florida Corporation, whose mailing address is 3434 Colwell Ave, Suite 200, Tampa FL 33614 (“**Assignee**”); and Magnolia Creek Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, located in Walton County, Florida, whose address is 120 Richard Jackson Blvd, Suite 220, Panama City Beach, FL 32407 (the “**District**”).

RECITALS

WHEREAS, Assignor and the District previously entered into that certain Contract for Professional Technology Services, dated August 8, 2019, (the “**Agreement**”); and

WHEREAS, on January 1, 2022, Assignee will consolidate multiple legal entities with common and exclusive ownership under the single organization (Assignee) and Assignor is one such entity resulting in Assignor being assimilated into Assignee, and such assignment requires written approval from the District to be effective; and

WHEREAS, Assignor and the District hereby recognize and agree that the Assignor’s rights and obligations under the Agreement could be assigned to a third party pursuant to Section XIV of the Agreement; and

WHEREAS, Assignor desires to assign all of its rights and obligations under the Agreement, as amended by this instrument, to Assignee, Assignee desires to accept such assignment, and the District desires to express that it agrees with and has no objection to such assignment; and

NOW THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which are hereby acknowledged, the District, Assignee, and Assignor agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals stated above are true and correct and are incorporated herein as a material part of this Assignment.
- 2. DISTRICT CONSENT TO ASSIGNMENT OF THE AGREEMENT.** The District consents to Assignor’s assignment of the Agreement to Assignee.



Rizzetta & Company

3. ASSIGNEE'S ACCEPTANCE OF LIABILITY. Assignee agrees to assume any and all debts, obligations and liabilities of Assignor present and future, arising out of or related to the Agreement.

4. NOTICES. Upon this Assignment, notices pursuant to the Agreement shall be in writing and shall be delivered to the Assignee as follows:

A. If to the District: Magnolia Creek Community Development District
3434 Colwell Ave, Suite 200
Tampa, FL 33614
Attn: District Manager

With a copy to: Hopping Green & Sams, PA
119 South Monroe St, Suite 300 (32301)
PO Box 6526
Attn: District Counsel

B. If to Assignee: Rizzetta & Company, Inc.
3434 Colwell Ave, Suite 200
Tampa, Florida 33614
Attn: CDD Legal

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Rizzetta & Company

IN WITNESS WHEREOF, the parties have executed this Assignment effective as of the date set forth above.

Magnolia Creek Community Development District

By: _____
Print Name: _____
Its: Chairman or Vice Chairman

Assignor: Rizzetta Technology Services, LLC.

By: William J. Rizzetta
Print Name: William J. Rizzetta
Its: President

Assignee: Rizzetta & Company, Inc.

By: William J. Rizzetta
Print Name: William J. Rizzetta
Its: President



Rizzetta & Company

Tab 12

Hopping Green & Sams

Attorneys and Counselors

October 21, 2021

VIA EMAIL

Kim O'Mera
District Manager
Rizzetta & Company, Inc.
KO'Mera@rizzetta.com

RE: Magnolia Creek Community Development District ("Client")

JOINT LETTER BY HOPPING GREEN & SAMS, P.A. AND KUTAK ROCK LLP, ANNOUNCING THE DEPARTURE OF JONATHAN JOHNSON, KATIE BUCHANAN, MIKE ECKERT, TUCKER MACKIE, WES HABER, LINDSAY WHELAN, JOE BROWN, SARAH SANDY, ALYSSA WILLSON AND MICHELLE RIGONI TO KUTAK ROCK LLP

Dear Ms. O'Mera:

As of November 15, 2021, Jonathan Johnson, Katie Buchanan, Mike Eckert, Tucker Mackie, Wes Haber, Lindsay Whelan, Joe Brown, Sarah Sandy, Alyssa Willson and Michelle Rigoni (the "Special District Practice Group") will be withdrawing as attorneys from Hopping Green & Sams, P.A. ("HGS") and will be joining Kutak Rock LLP ("Kutak"). The members of the Special District Practice Group have provided services in connection with HGS's representation of the Client on the above referenced matter(s) (the "Client Matters").

In the coming months, HGS will no longer be providing legal services. Kutak is prepared to continue as the Client's legal counsel with respect to the Client Matters; however, it is the Client's choice as to who should serve as its legal counsel, and whether the Client Matters and all electronic files and active and closed hardcopy files (collectively, the "Files") should be transferred to Kutak.

Please select one of the following alternatives; however, please be advised that as of November 15, 2021, HGS will no longer be competent to provide legal services to the Client; accordingly, representation by HGS will cease on November 15, 2021, whether or not the Client makes an election below:

1. ALTERNATIVE #1. The Client asks that the Client Matters be transferred with the Special District Practice Group to their new firm, Kutak. Please transfer all Files relating to the Client Matters. HGS's legal representation of the Client will cease on the date of HGS's receipt of their written notice. After that date, the Special District Practice Group and their new firm, Kutak, will be responsible for legal representation of the Client in the Client Matters. To the extent that HGS is holding any trust funds or other property of the Client, HGS is further instructed to transfer such funds and/or property to Kutak.

**(Please sign if you want Alternative #1; [DATE]
otherwise, do not sign on this line.)**

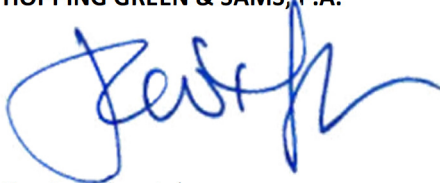
2. ALTERNATIVE #2. If you do not want Alternative #1, please advise us what HGS should do regarding the Client Matters and all Files relating to the Client Matters by December 1, 2021. HGS's legal representation of the Client will cease on November 15, 2021. If HGS does not receive a response by December 1, 2021, that will confirm HGS's understanding that all Files are not needed or desired and HGS will shred them.

(Please sign here if you have [DATE]
given instructions under Alternative
#2; otherwise do not sign on this line.)

After you have completed and signed this form, please send a copy via electronic mail to JasonM@hgslaw.com, MarkS@hgslaw.com, TuckerM@hgslaw.com, and KimH@hgslaw.com.

Thank you for your consideration and assistance.

HOPPING GREEN & SAMS, P.A.



By: Jonathan Johnson

Its: President

Date: October 21, 2021

cc: Jason Naumann (Seat5@MagnoliaCreekCDD.org)

Tab 13

RETENTION AND FEE AGREEMENT

I. PARTIES

THIS RETENTION AND FEE AGREEMENT (“**Agreement**”) is made and entered into by and between the following parties:

- A. Magnolia Creek Community Development District (“**Client**”)
c/o Rizzetta & Company
3434 Colwell Avenue, Suite 200
Tampa, Florida 33614

and

- B. Kutak Rock LLP (“**Kutak Rock**”)
P.O. Box 10230
Tallahassee, Florida 32302

II. SCOPE OF SERVICES

In consideration of the mutual undertakings and agreements contained herein, the parties agree as follows:

- A. The Client agrees to employ and retain Kutak Rock as its attorney and legal representative for general advice, counseling and representation of Client and its Board of Supervisors.
- B. Kutak Rock accepts such employment and agrees to serve as attorney for and provide legal representation to the Client in connection with those matters referenced above. No other legal representation is contemplated by this Agreement. Any additional legal services to be provided under the terms of this Agreement shall be agreed to by Client and Kutak Rock in writing. Unless set forth in a separate agreement to which Client consents in writing, Kutak Rock does not represent individual members of the Client’s Board of Supervisors.

III. CLIENT FILES

The files and work product materials (“**Client File**”) of the Client generated or received by Kutak Rock will be maintained confidentially to the extent permitted by law and in accordance with the Florida Bar rules. At the conclusion of the representation, the Client File will be stored by Kutak Rock for a minimum of five (5) years. After the five (5) year storage period, the Client hereby acknowledges and consents that Kutak Rock may confidentially destroy or shred the Client File. Notwithstanding the prior sentence, if the Client provides Kutak Rock with a written request for the return of the Client File before the end of the five (5) year storage period, then Kutak Rock will return the Client File to Client at Client’s expense.

IV. FEES

- A. The Client agrees to compensate Kutak Rock for services rendered in connection with any matters covered by this Agreement on an hourly rate basis plus actual expenses incurred by Kutak Rock in accordance with the attached Expense Reimbursement Policy (Attachment A, incorporated herein by reference). Time will be billed in increments of one-tenth (1/10) of an hour. Certain work related to issuance of bonds and bond anticipation notes may be performed under a flat fee to be separately established prior to or at the time of bond or note issuance.
- B. Attorneys and staff, if applicable, who perform work for Client will be billed at their regular hourly rates, as may be adjusted from time to time. The regular hourly rates of those initially expected to handle the bulk of Client's work are as follows:

Joseph Brown	\$310
Associates	\$250-275
Paralegals	\$145

Kutak Rock's regular hourly billing rates are reevaluated annually and are subject to change not more than once in a calendar year. Client agrees to Kutak Rock's annual rate increases to the extent hourly rates are not increased beyond \$15/hour.

- C. To the extent practicable and consistent with the requirements of sound legal representation, Kutak Rock will attempt to reduce Client's bills by assigning each task to the person best able to perform it at the lowest rate, so long as he or she has the requisite knowledge and experience.
- D. Upon consent of Client, Kutak Rock may subcontract for legal services in the event that Client requires legal services for which Kutak Rock does not have adequate capabilities.
- E. Kutak Rock will include costs and expenses (including interest charges on past due statements) on its billing statements for Client reimbursement in accordance with the attached Expense Reimbursement Policy.

V. BILLING AND PAYMENT

The Client agrees to pay Kutak Rock's monthly billings for fees and expenses incurred within thirty (30) days following receipt of an invoice, or the time permitted by Florida law, whichever is greater. Kutak Rock shall not be obligated to perform further legal services under this Agreement if any such billing statement remains unpaid longer than thirty (30) days after submittal to and receipt by Client. Non-payment of billing statements shall be a basis for Kutak Rock to immediately withdraw from the representation without regard to remaining actions necessitating attention by Kutak Rock as part of the representation.

VI. DEFAULT; VENUE

In any legal proceeding to collect outstanding balances due under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to costs and outstanding balances due under this Agreement. Venue of any such action shall be exclusive in the state courts of the Second Judicial Circuit in and for Leon County, Florida.

VII. CONFLICTS

It is important to disclose that Kutak Rock represents a number of special districts, trustees ("Trustees"), bondholders, developers, builders, and other entities throughout Florida and the United States of America relating to community development districts, special districts, local governments and land development. Kutak Rock or its attorneys may also have represented the entity which petitioned for the formation of the Client. Kutak Rock understands that Client may enter into an agreement with a Trustee in connection with the issuance of bonds, and that Client may request that Kutak Rock simultaneously represent Client in connection with the issuance of bonds, while Kutak Rock is also representing such Trustee on unrelated matters. By accepting this Agreement Client agrees that (1) Client was provided with an explanation of the implications of the common representation(s) and the advantages and risks involved; (2) Kutak Rock will be able to provide competent and diligent representation of Client, regardless of Kutak Rock's other representations, and (3) there is not a substantial risk that Kutak Rock's representation of Client would be materially limited by Kutak Rock's responsibilities to another client, a former client or a third person or by a personal interest. Acceptance of this Agreement will constitute Client's waiver of any "conflict" with Kutak Rock's representation of various special districts, Trustees, bondholders, developers, builders, and other entities relating to community development districts, special districts, local governments and land development.

VIII. ACKNOWLEDGMENT

Client acknowledges that the Kutak Rock cannot make any promises to Client as to the outcome of any legal dispute or guarantee that Client will prevail in any legal dispute.

IX. TERMINATION

Either party may terminate this Agreement upon providing prior written notice to the other party at its regular place of business. All fees due and payable in accordance with this Agreement shall accrue and become payable pursuant to the terms of this Agreement through the date of termination.

X. EXECUTION OF AGREEMENT

This Agreement shall be deemed fully executed upon its signing by Kutak Rock and the Client. The contract formed between Kutak Rock and the Client shall be the operational contract between the parties.

XI. ENTIRE CONTRACT

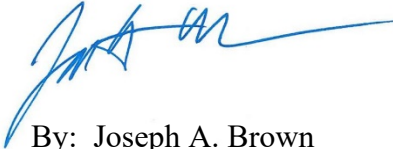
This Agreement constitutes the entire agreement between the parties.

Accepted and Agreed to:

**MAGNOLIA CREEK COMMUNITY
DEVELOPMENT DISTRICT**

KUTAK ROCK LLP

By: _____



By: _Joseph A. Brown

Its: _____

Its: Transition Partner

Date: _____

Date: November 23,2021

ATTACHMENT A

KUTAK ROCK LLP CDD EXPENSE REIMBURSEMENT POLICY

The following is Kutak Rock's expense reimbursement policy for community development district representation. This policy applies unless a different arrangement has been negotiated based on the unique circumstances of a particular client or matter.

All expenses are billed monthly. Billings ordinarily reflect expenses for the most recent month, except where there are delays in receiving bills from third party vendors.

Photocopying and Printing. In-house photocopying and printing are charged at \$0.25 per page (black & white) and \$0.50 per page (color). Outside copying is billed as a pass-through of the outside vendor's charges.

Postage. Postage is billed at actual cost.

Overnight Delivery. Overnight delivery is billed at actual cost.

Local Messenger Service. Local messenger service is billed at 44.5 cents per mile pursuant to Section 112.061, Florida Statutes. Should the State increase the mileage allowance specified in Section 112.061, Florida Statutes, Kutak Rock shall, without further action, be entitled to reimbursement at the increased rate.

Computerized Legal Research. Charges for computerized legal research are billed at an amount approximating actual cost.

Travel. Travel (including air fare, rental cars, taxicabs, hotel, meals, tips, etc.) is billed at actual cost. Where air travel is required, coach class is used wherever feasible. Out-of-town mileage is billed at 44.5 cents per mile pursuant to Section 112.061, Florida Statutes. Should the State increase the mileage allowance specified in Section 112.061, Florida Statutes, Kutak Rock shall, without further action, be entitled to reimbursement at the increased rate. Reasonable travel-related expenses for meals, lodging, gratuities, taxi fares, tolls, and parking fees shall also be reimbursed.

Consultants. Unless prior arrangements are made, consultants are ordinarily employed directly by the client. Where consulting or testifying experts are employed by the firm, their charges are passed through with no mark-up. The client is responsible for notifying the firm of any particular billing arrangements or procedures which the client requires of the consulting or testifying experts.

Other Expenses. Other outside expenses, such as court reporters, agency copies, conference calls, etc. are billed at actual cost.

Tab 14

MEMORANDUM

To: District Manager

From: Hopping Green & Sams P.A.

RE: Wastewater and Stormwater Needs Analysis

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

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

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

What constitutes “wastewater services”?

Wastewater services means providing service to pipelines or conduits, pumping stations, and force mains and associated facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal or to a plant or other works used for the purpose of treating, stabilizing, or holding wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

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

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

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

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

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

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

When must the needs analysis required be complete?

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

What happens to the needs analysis once it is complete?

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

Hopping Green & Sams

Attorneys and Counselors

MEMORANDUM

To: District Manager

From: Hopping Green & Sams P.A.

RE: Prompt Payment Policies

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

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

VII. Resolution of Disputes

* * *

B. Dispute Resolution Procedures

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

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

- ~~34.~~ Absent a written agreement to the contrary, if the Provider refuses or fails to provide the written statement required above, the Agent and/or District Manager is not required to contact the Provider in the investigation. In addition, and absent a written agreement to the contrary, if such written statement is not provided, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider.
- ~~45.~~ The Board shall approve any decision of the District Manager to contract with a third party which would result in: 1) an expenditure above what is budgeted for the Construction Services or Non-Construction Services; or 2) an expenditure which exceeds the original contract amount for the Construction Services or Non-Construction Services by more than ten percent (10%) or Ten Thousand Dollars (\$10,000).
- ~~56.~~ A written explanation of the final decision shall be sent to the Provider, via certified mail, within five (5) business days from the date on which such final decision is made. A copy of the written explanation of the final decision shall be provided to the Chairperson of the Board simultaneously with the certified mailing to the Provider.
- ~~67.~~ If a Provider does not accept in writing the final decision within five (5) days after receipt by the Provider, the District may immediately contract with third parties to provide the goods and services subject to the dispute and deduct the costs of such third party purchases from amounts owed to the Provider. If the costs of the third party purchases exceed the amount the District owes to the Provider, the District may seek to recover such excess from the Provider in a court of law or as otherwise provided in an agreement between the District and the Provider. Nothing contained herein shall limit or affect the District's ability to enforce all of its legal and contractual rights and remedies against the Provider.

X. Late Payment Interest Charges

* * *

B. Related to Construction Services

Prompt Payment Policies

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

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

RESOLUTION 2021-_____

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

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

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

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

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

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

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

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

PASSED AND ADOPTED this ____ day of _____, 2021.

ATTEST:

COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

Exhibit A: Prompt Payment Policies and Procedures

EXHIBIT A



COMMUNITY DEVELOPMENT DISTRICT

Prompt Payment Policies and Procedures

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

_____, 2021

Community Development District
Prompt Payment Policies and Procedures

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I. Purpose

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

II. Scope

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

III. Definitions

A. Agent

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

B. Construction Services

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

C. Contractor or Provider of Construction Services

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

D. Date Stamped

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

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

E. Improper Invoice

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

F. Improper Payment Request

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

G. Non-Construction Goods and Services

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

H. Proper Invoice

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

I. Proper Payment Request

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

J. Provider

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

K. Purchase

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

L. Vendor

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

IV. Proper Invoice/Payment Request Requirements

A. General

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

B. Sales Tax

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

C. Federal Identification and Social Security Numbers

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

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

D. Proper Invoice for Non-Construction Goods and Services

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

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

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

E. Proper Payment Request Requirements for Construction Services

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

V. Submission of Invoices and Payment Requests

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

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

1. Mailing and Drop Off Address

	Community Development District

2. Email Address

--

VI. Calculation of Payment Due Date

A. Non-Construction Goods and Services Invoices

1. Receipt of Proper Invoice

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

2. Receipt of Improper Invoice

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

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

3. Rejection of an Improper Invoice

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

The District's rejection of an Improper Invoice must:

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

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

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

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

4. Payment of Undisputed Portion of Invoice

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

B. Payment Requests for Construction Services

1. Receipt of Proper Payment Request

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

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

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

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

2. Receipt and Rejection of Improper Payment Request

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

3. Payment of Undisputed Portion of Payment Request

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

VII. Resolution of Disputes

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

A. Dispute between the District and a Provider

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

B. Dispute Resolution Procedures

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

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

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

VIII. Purchases Involving Federal Funds or Bond Funds

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

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

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

X. Late Payment Interest Charges

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

A. Related to Non-Construction Goods and Services

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

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

B. Related to Construction Services

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

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

C. Report of Interest

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