

BOYETTE PARK

COMMUNITY DEVELOPMENT DISTRICT

February 28, 2022

BOARD OF SUPERVISORS

REGULAR MEETING

AGENDA

Boyette Park Community Development District
OFFICE OF THE DISTRICT MANAGER
2300 Glades Road, Suite 410W•Boca Raton, Florida 33431
Phone: (561) 571-0010•Toll-free: (877) 276-0889•Fax: (561) 571-0013

February 21, 2022

Board of Supervisor
Boyette Park Community Development District

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

Dear Board Members:

The Board of Supervisors of the Boyette Park Community Development District will hold a Regular Meeting on February 28, 2022 at 6:00 p.m., at the Hilton Garden Inn Tampa/Riverview/Brandon, 4328 Garden Vista Drive, Riverview, Florida 33578. The agenda is as follows:

1. Call to Order/Roll Call
2. Public Comments
3. Ratification of HGS Transition Letter
 - Consideration of Kutak Rock LLP Retention and Fee Agreement
4. Discussion: Statutory Changes from 2021 Legislative Session
 - A. Wastewater and Stormwater Needs Analysis
 - Consideration of Clearview Land Design, P.L., Proposal to Provide 20-Year Stormwater Needs Analysis Report
 - B. Prompt Payment Policies
 - Consideration of Resolution 2022-01, Adopting Prompt Payment Policies and Procedures Pursuant to Chapter 218, Florida Statutes; Providing a Severability Clause; and Providing an Effective Date
5. Update: First Amendment to Agreement Between the Boyette Park Community Development District and Boyette Park Homeowners Association, Inc., for Facility Management, Operation, and Maintenance Services
6. Acceptance of Unaudited Financial Statements as of January 31, 2022
7. Approval of September 21, 2021 Regular Meeting Minutes

8. Staff Reports

- A. District Counsel: *Kutak Rock LLP*
- B. District Engineer: *Clearview Land Design, P.L.*
- C. District Manager: *Wrathell, Hunt and Associates, LLC*
 - NEXT MEETING DATE: April 25, 2022 at 6:00 P.M.
 - QUORUM CHECK

ANITA POELLNITZ	<input type="checkbox"/>	IN PERSON	<input type="checkbox"/>	PHONE	<input type="checkbox"/>	No
DAVID R ALLEN	<input type="checkbox"/>	IN PERSON	<input type="checkbox"/>	PHONE	<input type="checkbox"/>	No
ROBERT WINDHEUSER	<input type="checkbox"/>	IN PERSON	<input type="checkbox"/>	PHONE	<input type="checkbox"/>	No
DAVID PUZZO	<input type="checkbox"/>	IN PERSON	<input type="checkbox"/>	PHONE	<input type="checkbox"/>	No
GEORGE BERTRAM	<input type="checkbox"/>	IN PERSON	<input type="checkbox"/>	PHONE	<input type="checkbox"/>	No

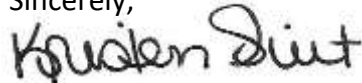
9. Board Members' Comments/Requests

10. Public Comments

11. Adjournment

Should have any questions or concerns, please do not hesitate to contact me directly at (410) 207-1802.

Sincerely,



Kristen Suit
 District Manager

FOR BOARD MEMBERS AND STAFF TO ATTEND BY TELEPHONE:

CALL-IN NUMBER: 1-888-354-0094

PARTICIPANT PASSCODE: 943 865 3730

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

3

Hopping Green & Sams

Attorneys and Counselors

October 15, 2021

VIA EMAIL

Cindy Cerbone

cerbonec@whhassociates.com

Anita Poellnitz

apoellnitz@boyetteparkcdd.net

RE: Boyette Park 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 Cindy/Anita,

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 in one or more matter(s) ("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.

 10/19/2021

(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]

RETENTION AND FEE AGREEMENT

I. PARTIES

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

A. Boyette Park Community Development District (“**Client**”)
c/o Wrathell, Hunt & Associates, LLC
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431

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:

Lindsay Whelan	\$305
Associates	\$250 - \$275
Paralegals	\$160

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:

**BOYETTE PARK COMMUNITY
DEVELOPMENT DISTRICT**

KUTAK ROCK LLP

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

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.

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

4A

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.



PROPOSAL / AUTHORIZATION FOR WORK

February 25, 2022

To: Boyette Park CDD
c/o Caryn Kupiec
Director of Administrative Services
Wrathell, Hunt and Associates, LLC
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431

Project Name: Boyette Park CDD
Stormwater Needs Analysis

CLD Job Number: CDD-BP-002

We hereby propose to do the following work:

Provide the District with a Stormwater Needs Analysis Report in accordance with sections 403.9301 and 403.9302 of Florida Statutes. The report will be submitted to Hillsborough County by June 30th, 2022. The county will then submit to the Department of Environmental Protection (EDR) by July 31st, 2022. EDR will publish an analysis of the submissions in the 2023 edition of the Annual Assessments of Florida’s Water Resources and Conservation Lands. The next report will be due in 2027.

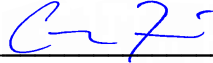
All work herein is subject to the conditions described in Attachment “A” attached herewith and made a part of this “Authorization for Work”.

Fees for the above will be billed as follows:

Lump Sum \$7,500

ACCEPTANCE:
Boyette Park CDD
c/o Wrathell, Hunt and Associates, LLC

CLEARVIEW LAND DESIGN, P.L.



Chris M. Fisher, P.E.
Senior Project Manager

Client Signature

Date

Please return one signed copy to: Clearview Land Design, P.L. attn: maryrobin.thiele@clearviewland.com
P:\Archived\Goolsby\CDD\DRAFTS\2022.02.23 CDD BP 002 Boyette Park CDD Stormwater Report Work Order.docx
CC: Toxey Hall
File

ATTACHMENT "A"

In addition to the fees in this Work Order, we charge all out-of-pocket expenses such as printing, photocopying, long distance telephone calls and postage. These expenses will be charged to you at our cost. Consultant Fees and permit fees, (if necessary), etc. will be charged at our cost plus 15%. Client shall pay the following items in advance: (a) all review/permit fees required by governmental agencies, and (b) any fees or other charges to be imposed upon Clearview Land Design, P.L., by its insurance carriers in excess of those necessary to obtain a standard certificate of insurance (including, without limitation, for earmarking of policy coverage to the project or for a waiver of subrogation). In the event such items are paid by Clearview Land Design, P.L. fees shall be reimbursed by Client in addition to the contract prices stated herein.

Any work requested which is not included in the stated fees shall be performed only after the execution of an "Authorization for Work" form. Fees for the additional work shall be at the rates prevailing at the time of the additional service.

Work will be billed at the end of each month under the terms of this Work Order, and we shall expect payment by the tenth of the following month. Client shall pay the invoice and statement in accordance with the terms of this Work Order and the terms of said statement and invoice. If Client fails to make any payment due Clearview Land Design, P.L. for services within 30 days of the invoice date, the amount(s) due shall include an interest charge at the rate of 1 ½ percent per month for the thirtieth day.

Additionally, notwithstanding any other terms or conditions herein to the contrary, it is expressly understood and agreed that Clearview Land Design, P.L., at its sole discretion, shall have the right to cease work on the project and withhold all information and documents concerning the project in the event until any amounts then due have been outstanding for more than 30 days from the date of the invoice. It is further agreed that Client shall hold Clearview Land Design, P.L. harmless for any and all damages resulting from ceasing work and/or withholding information or documents concerning the project.

All rates and fees are subject to renegotiation after a one month period from the date of this Work Order if it has not been accepted.

Unless otherwise agreed to in this contract, all sketches, tracings, drawings, computations, details, design calculations, permits, and other documents and plans prepared by Clearview Land Design, P.L., pursuant to this contract are instruments of service and are the property of Clearview Land Design, P.L. Client may not use or modify such documents on other projects or extensions of this project without the prior written approval of Clearview Land Design, P.L. Notwithstanding any provision in this contract to the contrary, in the event of a default by Client (including, without limitation, any failure to pay amounts due within 30 days of invoice date), Clearview Land Design, P.L., shall be entitled to exclusive ownership and possession of any and all documents prepared pursuant to this contract.

In the event this contract is terminated prior to completion, Clearview Land Design, P.L. shall be entitled to payment for services performed as of the date of termination, plus out-of-pocket expenses.

Client shall indemnify, defend and hold harmless Clearview Land Design, P.L., from and against any claims, liability, damages, penalties and/or costs (including, without limitation, reasonable attorney's fees and expenses) Clearview Land Design, P.L., may incur as a result of claims in any form by third parties (including, without limitation, governmental agencies and departments) relating to or arising out of this contract, except to the extent such claims arise from the gross negligence or intentional misconduct of Clearview Land Design, P.L.

Your acceptance of this proposal shall constitute a contract between the Client and Clearview Land Design, P.L.

The prevailing party in any litigation between the parties relating to or arising out of this contract (including, without limitation, trial, appellate and bankruptcy proceedings) shall recover its reasonable attorney's fees and costs from the non-prevailing party.

Opinions of probable construction costs provided by Clearview Land Design, P.L. represent our best judgment but do not constitute a guarantee since we have no control over contractor pricing.

The scope of services does not include site investigations or other engineering evaluations to determine the presence or extent of hazardous wastes or soil and groundwater contamination. Clearview Land Design, P.L. accepts no responsibility or liability in this regard.

Client acknowledges that the work described herein will constitute a lien against the property. The signature on this Work Order authorizes the work herein described and does so on behalf of the owner in question and warrants that he has the authority to sign this agreement on behalf of the Owner. In the event improvements are dedicated to public use or otherwise alienated by the Owner, then Clearview Land Design, P.L. shall be entitled to a lien on all property abutting said improvements.

Limitation of Liability

To the maximum extent permitted by law, CLEARVIEW LAND DESIGN, P.L.'s liability for CLIENT's damages will not exceed the compensation received by CLEARVIEW LAND DESIGN, P.L. under this Agreement. CLEARVIEW LAND DESIGN, P.L. is not responsible for the duties and responsibilities that belong to the borrower(s), developer(s), construction contractor(s), designer(s), testing laboratories, full-time inspector(s), or other parties associated with the Project (currently, in the past or in the future) not in the employ of or a subcontractor to CLEARVIEW LAND DESIGN, P.L. The limitations of liability and indemnities will apply whether CLEARVIEW LAND DESIGN, P.L.'s liability arises under breach of contract or warranty; tort; including negligence (but not sole negligence); strict liability; statutory liability; or any other causes of action; and shall apply to CLEARVIEW LAND DESIGN, P.L.'s officers, employees, and subcontractors. Due to the inherent risk involved in the type of work in this agreement, at the Client's discretion, and upon payment of an additional fee to be negotiated, CLEARVIEW LAND DESIGN, P.L.'s liability for the work can be increased.

The Client agrees to extend any and all liability limitation and indemnification provided by the Client to the Clearview Land Design, P.L. to those individuals and entities that Clearview Land Design, P.L. retains for performance of the services

under this Agreement, including but limited to the Clearview Land Design , P.L.'s current or former officers and employees and their heirs and assigns.

PURSUANT TO SECTION 558.0035 FLORIDA STATUTES, THE CONSULTANT'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO PROVIDE UNDER THIS AGREEMENT. NO INDIVIDUAL PROFESSIONAL EMPLOYEE, AGENT, DIRECTOR, OFFICER OR PRINCIPAL MAY BE INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THIS CONTRACT.

Revised 09/29/15

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

4B

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

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

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

RESOLUTION 2022-01

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE BOYETTE PARK 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 Boyette Park 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 Hillsborough County, Florida; and

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE BOYETTE PARK 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 28th day of February 2022.

ATTEST:

**BOYETTE PARK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chair/Vice Chair, Board of Supervisors

Exhibit A: Prompt Payment Policies and Procedures

EXHIBIT A

BOYETTE PARK COMMUNITY DEVELOPMENT DISTRICT

Prompt Payment Policies and Procedures

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

February 28, 2022

Boyette Park 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 Boyette Park 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 85-80173079619. 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 (561) 571-0010, email suitk@whhassociates.com).

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**
Boyette Park Community Development District
c/o Wrathell, Hunt and Associates, LLC
2300 Glades Road, #410W
Boca Raton, Florida 33431
2. **Email Address**
boyetteparkcdd@distictap.com

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.).

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

5

**FIRST AMENDMENT TO AGREEMENT BETWEEN THE
BOYETTE PARK COMMUNITY DEVELOPMENT DISTRICT
AND BOYETTE PARK HOMEOWNERS ASSOCIATION, INC.,
FOR FACILITY MANAGEMENT, OPERATION, AND MAINTENANCE SERVICES**

THIS FIRST AMENDMENT (the “Amendment”) is made and entered into this 28th day of February 2022, by and between:

Boyette Park Community Development District, a local unit of special purpose government established pursuant to Chapter 190, *Florida Statutes*, whose address is, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (the “District”); and

Boyette Park Homeowners Association, Inc., a Florida not-for-profit corporation, whose address is 6972 Lake Gloria Blvd., Orlando, Florida 32809 (the “Association” and, together with the District, the “Parties”).

RECITALS

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

WHEREAS, pursuant to the Act, the District is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge and extend, equip, operate, and maintain systems, facilities and infrastructure in conjunction with the development of lands within the District; and

WHEREAS, the Parties previously entered into that certain *Agreement for Facility Management, Operation, and Maintenance Services*, dated August 20, 2018 (the “Agreement”); and

WHEREAS, Section 13 of the Agreement provides that the Parties may amend the Agreement when such amendment is in writing and authorized by both Parties; and

WHEREAS, the Parties now desire to amend the Agreement as set forth in more detail below.

NOW, THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

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

SECTION 2. AMENDMENT OF AGREEMENT. Exhibit A of the Agreement is hereby amended and replaced with the attached **Exhibit A**.

SECTION 3. 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 Section 2 of this Amendment, nothing herein shall modify the rights and obligations of the Parties under the Agreement. All of the remaining provisions, including, but not limited to, the engagement of services, indemnification, and sovereign immunity provisions, remain in full effect and fully enforceable.

SECTION 4. AUTHORIZATION. The execution of this Amendment has been duly authorized by the appropriate body or official of the Parties, both Parties have complied with all the requirements of law, and both the Parties have full power and authority to comply with the terms and provisions of this Amendment.

SECTION 5. EXECUTION IN 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

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

Attest:

**BOYETTE PARK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

Chairperson, Board of Supervisors

**BOYETTE PARK HOMEOWNERS
ASSOCIATION, INC.**

(Signature of Witness)

By: _____
Title: _____

(Print Name of Witness)

Exhibit A: Description of the Improvements

EXHIBIT A

DESCRIPTION OF THE DISTRICT PROPERTY

- Landscaping along landscape buffers
- Irrigation infrastructure along landscape buffers, and connecting to ponds
- Stormwater management facilities

**AGREEMENT BETWEEN THE
BOYETTE PARK COMMUNITY DEVELOPMENT DISTRICT
AND BOYETTE PARK HOMEOWNERS ASSOCIATION, INC.,
FOR FACILITY MANAGEMENT, OPERATION, AND MAINTENANCE SERVICES**

THIS AGREEMENT (the "Agreement") is made and entered into this 20th day of August, 2018, by and between:

Boyette Park Community Development District, a local unit of special purpose government established pursuant to Chapter 190, *Florida Statutes*, whose address is, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (the "District"); and

Boyette Park Homeowners Association, Inc., a Florida not-for-profit corporation, whose address is 6972 Lake Gloria Blvd., Orlando, Florida 32809 (the "Association").

RECITALS

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

WHEREAS, pursuant to the Act, the District is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge and extend, equip, operate, and maintain systems, facilities and infrastructure in conjunction with the development of lands within the District; and

WHEREAS, the District presently owns and is continuing to construct and/or acquire various systems, facilities and infrastructure including those facilities identified in the attached **Exhibit A** (the "Improvements"), and as graphically depicted in the attached **Exhibit B** (hereinafter, the "District Property") requiring inspection, operation and/or maintenance services for which the District desires to retain an independent contractor; and

WHEREAS, the Association is a Florida not-for-profit corporation owning, operating and maintaining various improvements and facilities for the community that the District serves; and

WHEREAS, for ease of administration, potential cost savings to property owners and residents, and the benefits of on-site inspection, operation and maintenance personnel, the District desires to contract with the Association to manage and maintain the District Property.

NOW, THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

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

SECTION 2. ASSOCIATION'S OBLIGATION.

- A. *General duties.*** The Association shall be responsible for providing, or causing to be provided, the management, operation, and maintenance of the District Property in a lawful manner. All work shall be in a neat and professional manner and in accordance with industry standards.
- B. *Inspection.*** The Association shall conduct regular inspections of all District Property. In the event the Association discovers any irregularities of, or needs of repair to, the District Property, the Association shall report same to the District Manager or its designated representative and shall promptly correct, or cause to be corrected, any such irregularities or repairs.
- C. *Repair and Maintenance.*** The Association shall make, or cause to be made, such routine repair work or normal maintenance to the District Property as may be required for the operation of the District Property, or as required under applicable government permits. The Association, in consultation with the District Engineer, shall promptly cause emergency repairs to be made when such repairs are necessary for the preservation and safety of persons and/or property, or when the repairs are required to be made to avoid the suspension of any service of the District. The Association shall immediately notify the District Engineer and District Manager, or a designated representative, concerning the need for emergency repairs.
- D. *Investigation and Report of Accidents/Claims.*** The Association shall promptly investigate and provide a written report to the District Manager as to all accidents or claims for damage relating to the management, operation, and maintenance of the District Property. Such report shall include a description of any damage or destruction of property and the estimated cost of repair. The Association shall cooperate and make any and all reports required by any insurance company in connection with any accident or claim. The Association shall not file any claims with the District's insurance company without the prior consent of the District's Board of Supervisors, which shall not be unreasonably withheld, conditioned or delayed.
- E. *Compliance with Government Permits, Rules, Regulations, Requirements, and Orders.*** The Association shall comply with any and all permits, rules, regulations, requirements, and orders affecting the District Property placed thereon by any governmental authority having jurisdiction. At the request of the District, and with at least thirty (30) days' prior written notice to the Association unless an earlier time for response by the District is required by any such governmental authority having jurisdiction over the District and in any such event the Association shall respond within a timeframe such as to allow the District to

timely respond to the governmental authority, the Association shall prepare for execution and filing by the District any forms, reports or returns which may be required by law in connection with the Association's maintenance and operation of the District Property. The Association shall notify the District Manager and District Counsel in writing of any contact made with the Association relative to the District Property by any such governmental authority having jurisdiction. The Association shall specifically indemnify the District for any penalties, judgments, or orders levied or imposed against the District for failure to comply with any governmental permits, rules, regulations, requirements, and orders during the term of this Agreement that are due to Association's failure to respond to the District.

- F. *Care of the Property.* The Association shall use commercially reasonable efforts to protect the District Property from damage by the Association, its employees or contractors. The Association agrees to promptly repair any damage to the District Property resulting from the Association's activities and work and to notify the District of the occurrence of such damage caused by the Association's activities within forty-eight (48) hours.
- G. *Staffing and Billing.* The Association shall be solely responsible for the staffing, budgeting, financing, billing and collection of fees, assessments, service charges, etc., necessary to perform the management, operation, and maintenance responsibilities set forth in this Agreement.
- H. *Liens and Claims.* The Association shall promptly and properly pay for all contractors retained, labor employed, materials purchased, and equipment hired by it to perform under this Agreement. The Association shall promptly discharge or cause to be discharged any materialmen's or mechanic's liens and claims or notices in respect to such liens and claims, which arise by reason of the Association's performance under this Agreement.

SECTION 3. COMPENSATION. The District shall pay the Association the sum of Ten Dollars (\$10.00) per year for the provision of management, operation, and maintenance services pursuant to the terms of this Agreement. The Association shall not be entitled, for any reason, to reimbursement or refund of any funds expended in the performance of its obligations under this Agreement.

SECTION 4. TERM.

- A. The term of this Agreement shall commence as of the effective date of this Agreement and shall continue for a period of three (3) years unless otherwise terminated in accordance with this Agreement. Thereafter, this Agreement shall be automatically renewed for additional one (1) year periods unless either party provides at least sixty (60) days' written notice of its intent to not renew the Agreement.

- B.** Notwithstanding the foregoing, the District shall have the right to terminate this Agreement at any time due to Association's failure to perform in accordance with the terms of this Agreement upon thirty (30) days' written notice detailing such alleged failure of the Association; provided, however, the Association shall have the right to cure any such alleged default or failure to perform on or before the expiration of such 30-day period and in the event the Association cures such alleged default or failure to perform during the 30-day cure period, this Agreement shall not be deemed terminated and shall continue in full force and effect. The Association and the District shall both have the right to terminate this Agreement upon (45) forty-five days' written notice without cause. In the event of any termination, the Association and the District shall use commercially reasonable efforts to cooperate with one another to provide a smooth and orderly transition of responsibilities between the parties.

SECTION 5. INSURANCE. The Association shall maintain, at its own expense throughout the term of this Agreement, insurance coverage from a reputable insurance carrier, licensed to conduct business in the State of Florida. The Association shall provide the District a copy of the insurance policy, and any endorsements, prior to the commencement of the services contemplated under this Agreement. District shall also receive thirty (30) days' notice of cancellation of any such insurance policy. Policies shall have the following minimum levels of insurance:

- A.** Worker's Compensation Insurance in accordance with the laws of the State of Florida to include Employer's Liability Coverage with limits of at least \$1,000,000 (one million dollars) per accident or disease.
- B.** Commercial General Liability Insurance covering the Association's legal liability for bodily injuries, with limits of not less than \$1,000,000 (one million dollars) combined single limit bodily injury and property damage liability.
- C.** Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 (one million dollars) combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Association of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.
- D.** As may be available, all policies shall name the District, and its staff and supervisors, as additional insureds. This shall be required for the Commercial General Liability Policy without exception, and based on market availability for the other policies referenced above.

SECTION 6.

- A.** The Association agrees to indemnify, defend and hold harmless the District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property

damage or harm of any nature, arising out of, or in connection with, the acts or omissions of the Association, or its officers, employees, representatives, or subcontractors, including litigation or any appellate proceedings with respect thereto, resulting from the Association's maintenance or operation activities, or lack thereof, relative to the Improvements as contemplated in this Agreement.

- B. The District agrees to indemnify, defend and hold harmless the Association and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or harm of any nature, arising out of, or in connection with, the acts or omissions of the District, or its officers, employees, representatives, or subcontractors, including litigation or any appellate proceedings with respect thereto, relative to the District's obligations as contemplated in this Agreement.
- C. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorney fees, paralegal fees, and expert witness fees and costs (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.
- D. The Association agrees to require that, by written contract, any contractor and subcontractors hired in connection with this Agreement indemnify, defend and hold harmless the District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or harm of any nature, arising out of, or in connection with, the acts or omissions of such contractors and subcontractors, including litigation or any appellate proceedings with respect thereto, resulting from the contractor's maintenance or operation activities, or lack thereof, relative to the Improvements.

SECTION 7. RECOVERY OF COSTS AND FEES. In the event either the District or the Association are required to enforce this Agreement or any provision hereof by court proceedings or otherwise then, if prevailing, the District or the Association, as applicable, shall be entitled to recover from the other all fees and costs incurred, including but not limited to reasonable attorneys' fees, paralegal fees and expert witness fees and costs incurred prior to or during any litigation or other dispute resolution and including fees incurred in appellate proceedings.

SECTION 8. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 9. ASSIGNMENT. Neither party may assign this Agreement without the prior written approval of the other.

SECTION 10. INDEPENDENT CONTRACTOR STATUS. In all matters relating to this Agreement, the Association shall be acting as an independent contractor. Neither the Association nor employees of the Association, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Association agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Association, if there are any, in the performance of this Agreement. The Association shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Association shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

SECTION 11. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 12. AGREEMENT. This instrument shall constitute the final and complete expression of this Agreement between the District and the Association relating to the subject matter of this Agreement.

SECTION 13. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Association.

SECTION 14. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Association, both the District and the Association have complied with all the requirements of law in order to effectuate the terms of this Agreement, and both the District and the Association have full power and authority to comply with the terms and provisions of this instrument.

SECTION 15. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to the District: Boyette Park Community Development District
2300 Glades Road, Suite 410W
Boca Raton, Florida 33431
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe, Suite 300
Tallahassee, Florida 32301
Attn: District Counsel

B. If to the Association: Boyette Park Homeowners Association, Inc.
6972 Lake Gloria Blvd.

Orlando, Florida 32809
Attn: Derek Lovett

With a copy to: Mattamy Homes - Tampa/Sarasota Division
4107 Crescent Park Drive,
Riverview, FL 33578
Attn: Thomas Griggs

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Association may deliver Notice on behalf of the District and the Association. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 16. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Association and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Association any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Association and their respective representatives, successors, and assigns.

SECTION 17. CONTROLLING LAW; VENUE. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue shall be in Hillsborough County, Florida.

SECTION 18. PUBLIC RECORDS.

- A. The Association understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and shall be treated as such in accordance with Florida law.
- B. As such, the parties shall comply with any applicable laws regarding public records, including but not limited to the provisions of Section 119.0701, *Florida Statutes*, the terms of which are incorporated herein. Among other requirements, the Association must:

- i. Keep and maintain public records required by the District to perform the services;
- ii. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law;
- iii. Ensure that public records that 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 completion of the Agreement if the Association does not transfer the records to the District; and
- iv. Upon completion of this Agreement, transfer, at no cost to the District all public records in possession of the Association or keep and maintain public records required by the District to perform the service. If the Association transfers all public records to the District upon completion of this Agreement, the Association shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Association keeps and maintains public records upon completion of the Agreement, the Association shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, CRAIG WRATHELL, C/O WRATHELL, HUNT AND ASSOCIATES, LLC, 2300 GLADES ROAD, SUITE 410W, BOCA RATON, FLORIDA 33431, (561) 571-0010, OR WRATHELLC@WHHASSOCIATES.COM.

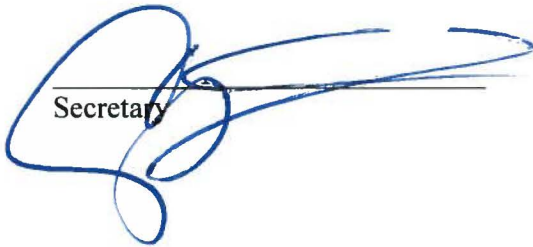
SECTION 19. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.


SECTION 20. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Association as an arm's length transaction. The District and the Association participated fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are each deemed to have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.

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

Attest:

**BOYETTE PARK COMMUNITY
DEVELOPMENT DISTRICT**


Secretary


Chairman, Board of Supervisors

**BOYETTE PARK HOMEOWNERS
ASSOCIATION, INC.**

(Signature of Witness)

By: _____

Its: _____

(Print Name of Witness)

- Exhibit A:** Description of the Improvements
- Exhibit B:** Graphic Depiction of the District Property

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

Attest:

**BOYETTE PARK COMMUNITY
DEVELOPMENT DISTRICT**


Name: Craig Wrathell
Title: Secretary

Name: Tim Murray
Title: Chairman, Board of Supervisors

**BOYETTE PARK HOMEOWNERS
ASSOCIATION, INC.**



(Signature of Witness)



By: Derek Lovett
Title: President



(Print Name of Witness)

- Exhibit A:** Description of the Improvements
- Exhibit B:** Graphic Depiction of the District Property

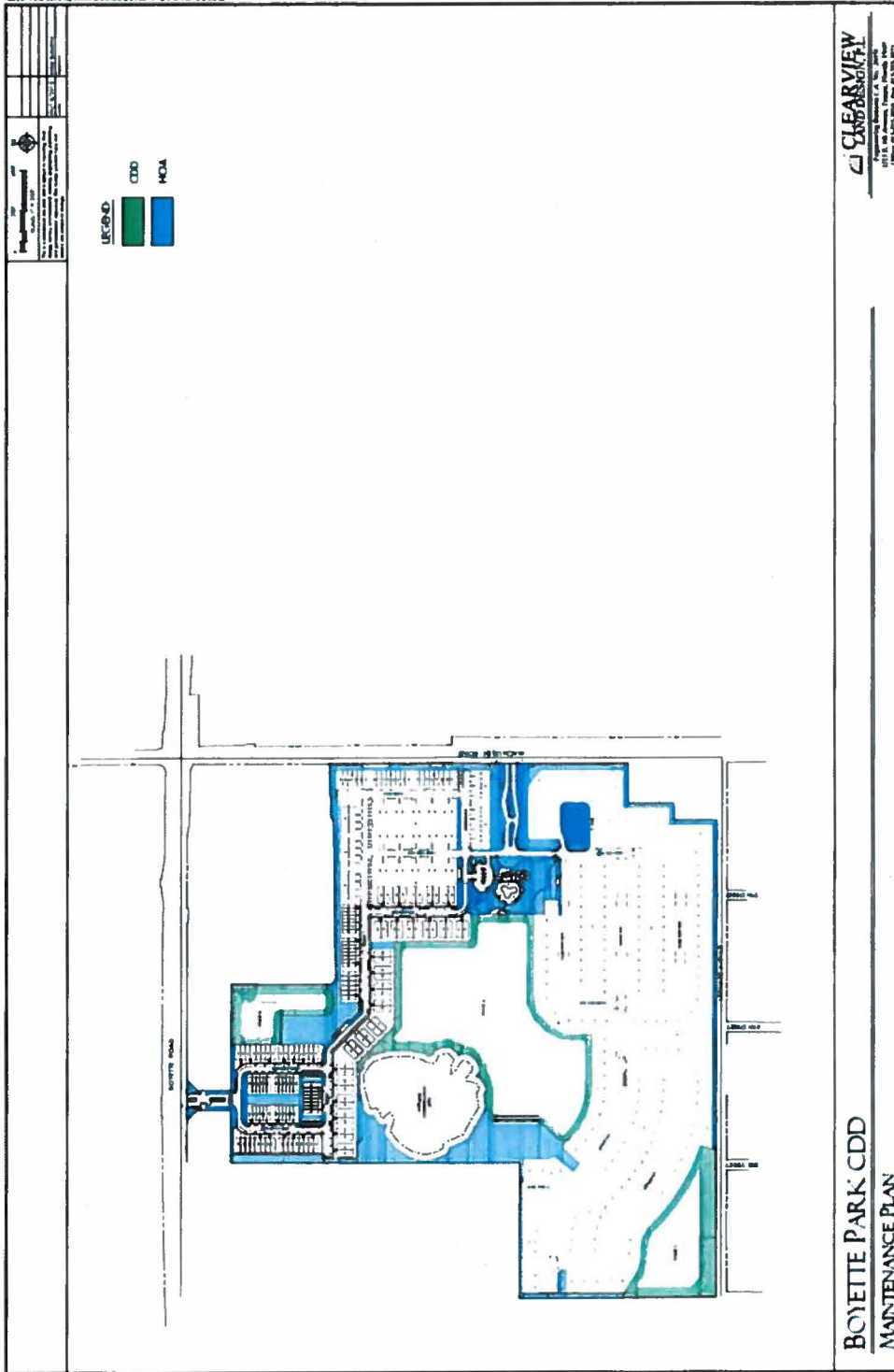
EXHIBIT A

DESCRIPTION OF THE DISTRICT PROPERTY

- Landscaping at development entry and along landscape buffers
- Irrigation infrastructure at development entry, along landscape buffers, and connecting to ponds
- Stormwater management facilities

EXHIBIT B

GRAPHIC DEPICTION OF THE DISTRICT PROPERTY



BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

6

**BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT
FINANCIAL STATEMENTS
UNAUDITED
JANUARY 31, 2022**

**BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT
BALANCE SHEET
GOVERNMENTAL FUNDS
JANUARY 31, 2022**

	<u>General Fund</u>	<u>Debt Service Fund</u>	<u>Total Governmental Funds</u>
ASSETS			
Cash	\$ 96,905	\$ -	\$ 96,905
Investments			
Revenue	-	370,271	370,271
Reserve	-	192,056	192,056
Cost of issuance	-	2	2
Due from general fund	-	22,439	22,439
Total assets	<u>\$ 96,905</u>	<u>\$ 584,768</u>	<u>\$ 681,673</u>
LIABILITIES AND FUND BALANCES			
Liabilities:			
Due to debt service fund	\$ 22,439	\$ -	\$ 22,439
Total liabilities	<u>22,439</u>	<u>-</u>	<u>22,439</u>
Fund balances:			
Assigned			
Working capital	18,270	-	18,270
Debt service	-	584,768	584,768
Unassigned	56,196	-	56,196
Total fund balances	<u>74,466</u>	<u>584,768</u>	<u>659,234</u>
Total liabilities and fund balances	<u>\$ 96,905</u>	<u>\$ 584,768</u>	<u>\$ 681,673</u>

**BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
FOR THE PERIOD ENDED JANUARY 31, 2022**

	Current Month	Year to Date	Budget	% of Budget
REVENUES				
Assessment levy: on-roll - net	\$ 1,375	\$ 82,378	\$ 86,388	95%
Total revenues	<u>1,375</u>	<u>82,378</u>	<u>86,388</u>	95%
EXPENDITURES				
Professional & administrative				
Management/accounting/recording	4,000	16,000	48,000	33%
Legal	-	249	14,750	2%
Engineering	-	645	2,000	32%
Audit	-	-	4,600	0%
Arbitrage rebate calculation	-	-	750	0%
Dissemination agent	83	333	1,000	33%
Trustee	-	-	3,750	0%
Telephone	17	66	200	33%
Postage	31	31	500	6%
Printing & binding	42	167	500	33%
Legal advertising	-	464	1,150	40%
Annual special district fee	-	175	175	100%
Insurance	-	5,570	5,800	96%
Contingencies/bank charges	-	67	500	13%
Website maintenance	-	-	705	0%
ADA website compliance	-	210	210	100%
Tax collector	28	1,577	1,798	88%
Total professional & administrative	<u>4,201</u>	<u>25,554</u>	<u>86,388</u>	30%
Excess/(deficiency) of revenues over/(under) expenditures	(2,826)	56,824	-	
Fund balances - beginning	77,292	17,642	29,375	
Assigned	-			
Working capital	18,270	18,270	18,270	
Unassigned	56,196	56,196	11,105	
Fund balances - ending	<u>\$ 74,466</u>	<u>\$ 74,466</u>	<u>\$ 29,375</u>	

**BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2018
FOR THE PERIOD ENDED JANUARY 31, 2022**

	<u>Current Month</u>	<u>Year To Date</u>	<u>Budget</u>	<u>% of Budget</u>
REVENUES				
Assessment levy: on-roll - net	\$ 6,238	\$ 373,758	\$ 392,400	95%
Interest	2	8	-	N/A
Total revenues	<u>6,240</u>	<u>373,766</u>	<u>392,400</u>	95%
EXPENDITURES				
Principal	-	-	105,000	0%
Principal prepayments	-	15,000	-	N/A
Interest	-	139,436	278,873	50%
Tax collector	126	7,149	8,175	87%
Total debt service	<u>126</u>	<u>161,585</u>	<u>392,048</u>	41%
Excess/(deficiency) of revenues over/(under) expenditures	6,114	212,181	352	
Fund balances - beginning	578,654	372,587	356,343	
Fund balances - ending	<u>\$ 584,768</u>	<u>\$ 584,768</u>	<u>\$ 356,695</u>	

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

7

DRAFT

**MINUTES OF MEETING
BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the Boyette Park Community Development District held a Regular Meeting on September 21, 2021 at 6:00 p.m., at the Hilton Garden Inn Tampa/Riverview/Brandon, 4328 Garden Vista Drive, Riverview, Florida 33578.

Present at the meeting, were:

Thomas Griggs	Chair
Mac McCraw	Vice Chair
Bob Windheuser	Assistant Secretary
George Bertram	Assistant Secretary

Also present, were:

Cindy Cerbone	District Manager
Kristen Suit	Wrathell, Hunt and Associates, LLC (WHA)
Jamie Sanchez	Wrathell, Hunt and Associates, LLC (WHA)
Lindsay Whelan	District Counsel
Chris Fisher (via telephone)	District Engineer
Anita Poellnitz (via telephone)	Resident
David Puzzo	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Ms. Cerbone called the meeting to order at 6:01 p.m. Supervisors Griggs, McCraw, Windheuser and Bertram were present, in person. Supervisor Allen was not present.

SECOND ORDER OF BUSINESS

Public Comments

There were no public comments.

Ms. Cerbone stated that the purpose of this meeting is to complete the transition of Landowner-held Seats to homeowners, as the Mattamy Corporation felt it would be in the best interest of the community to vacate its Board Seats early, if any homeowners are interested in being appointed to the Board.

- 39 ▪ **Acceptance of Resignation of Supervisor Mac McCraw, SEAT 1, Term Expires**
40 **November 2022**

41 **This item, previously the Fifth Order of Business, was presented out of order.**

42 Mr. Mac McCraw resigned verbally from Seat 1. He would provide Ms. Cerbone with his
43 resignation letter after the meeting.

44

45 **On MOTION by Mr. Griggs and seconded by Mr. Bertram, with all in favor, the**
46 **resignation of Mr. Mac McCraw from Seat 1, term expires November 2022, was**
47 **accepted.**

48

49

- 50 ▪ **Consider Appointment of Fill Unexpired Term of Vacant Seat 1**

51 **This item, previously the Sixth Order of Business, was presented out of order.**

52 Mr. Windheuser nominated Ms. Anita Poellnitz to fill Seat 1. No other nominations
53 were made.

54

55 **On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in**
56 **favor, the appointment of Ms. Anita Poellnitz to fill Seat 1, was approved.**

57

58

- 59 ▪ **Administration of Oath of Office to Newly Appointed Supervisor**

60 Ms. Sanchez, a Notary of the State of Florida and duly authorized, administered the
61 Oath of Office to Ms. Poellnitz.

62 Ms. Cerbone stated that Supervisors Windheuser, Griggs, Poellnitz and Bertram
63 constitute a quorum.

64

65 **THIRD ORDER OF BUSINESS**

65 **Acceptance of Resignation of Supervisor**
66 **Thomas Griggs, SEAT 4, Term Expires**
67 **November 2024**

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69 Mr. Thomas Griggs resigned verbally from Seat 4. He would provide Ms. Cerbone with
70 his resignation letter after the meeting.

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On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in favor, the resignation of Mr. Griggs from Seat 4, term expires November 2024, was accepted.

FOURTH ORDER OF BUSINESS **Consider Appointment of Fill Unexpired Term of Vacant Seat 4**

Mr. Windheuser nominated Mr. David Puzzo to fill Seat 4. No other nominations were made.

On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in favor, the appointment of Mr. David Puzzo, to fill Seat 4, was approved.

The former Supervisors were reminded to file Form 1F with the Supervisors of Elections office. Mr. Murray left his contact information available to the new Board Members, should they have any questions about the development or its history.

FIFTH ORDER OF BUSINESS **Acceptance of Resignation of Supervisor Mac McCraw, SEAT 1, Term Expires November 2022**

This item was presented following the Second Order of Business.

SIXTH ORDER OF BUSINESS **Consider Appointment of Fill Unexpired Term of Vacant Seat 1**

This item was presented following the Second Order of Business.

SEVENTH ORDER OF BUSINESS **Administration of Oath of Office to Newly Appointed Supervisor(s) *(the following will be provided in a separate package)***

Ms. Sanchez, a Notary of the State of Florida and duly authorized, administered the Oath of Office to Mr. Puzzo.

Ms. Cerbone and Ms. Whelan provided and briefly explained the following items:

109 **A. Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees**

110 **B. Membership, Obligations and Responsibilities**

111 **C. Financial Disclosure Forms**

112 **I. Form 1: Statement of Financial Interests**

113 **II. Form 1X: Amendment to Form 1, Statement of Financial Interests**

114 **III. Form 1F: Final Statement of Financial Interests**

115 **D. Form 8B – Memorandum of Voting Conflict**

116 Instructions to receive the Supervisors' stipend, filing Form 1, the Sunshine Law and how
117 to handle public records requests were discussed. All Supervisors were encouraged to use their
118 CDD email address for CDD business and keep business and personal records separate from
119 CDD files.

120

121 **EIGHTH ORDER OF BUSINESS**

**Consideration of Resolution 2021-10
Designating Certain Officers of the District,
and Providing for an Effective Date**

122

123

124

125 Ms. Cerbone presented Resolution 2021-10. Ms. Cerbone and Ms. Whelan discussed the
126 purpose and tasks for each designated position.

127 Mr. Windheuser nominated the following slate of officers:

128	Chair	Anita Poellnitz
129	Vice Chair	George Bertram
130	Secretary	Craig Wrathell
131	Assistant Secretary	Bob Windheuser
132	Assistant Secretary	David Puzzo
133	Assistant Secretary	Dave Allen
134	Assistant Secretary	Cindy Cerbone
135	Assistant Secretary	Kristen Suit
136	Treasurer	Craig Wrathell
137	Assistant Treasurer	Jeff Pinder

138 No other nominations were made.

139

140 **On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in**
141 **favor, Resolution 2021-10 Designating Certain Officers of the District, as**
142 **nominated, and Providing for an Effective Date, was adopted.**

143
144

145 **NINTH ORDER OF BUSINESS**

**Discussion: Amended and Restated Report
of District Engineer**

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147

148 The District Engineer's Amended and Restated Report dated February 2018 was
149 presented to allow the new Board Members the opportunity to ask questions about the Capital
150 Improvement Plan (CIP), funding, the Developer's role and the conveyance of certain
151 improvements to other governmental entities, such as to the City or County. Ms. Cerbone, Mr.
152 Fisher and Ms. Whelan answered questions on the following items:

153 ➤ Costs: Exhibit C - Summary of Estimated Project Costs outlined the construction of the
154 CIP for the CDD by infrastructure category, which totaled \$7,328,978.24. The Developer
155 decided on how much to borrow and how much they would contribute to complete the CIP.

156 ➤ Responsibilities: Page 9 of the Report outlined the ownership and maintenance
157 responsibilities of the proposed infrastructure improvements. Regarding where reclaimed
158 water that supplies sprinkler systems for the townhomes and villas fell in this category, it was
159 explained that this does not involve the CDD because the CDD would not construct
160 infrastructure on private lots; the CDD would do so only on items such as an Amenity Center or
161 at a tract at the perimeter entrance of the community.

162 The Board Members were directed to review PDF Page 40 of 65, which depicts the
163 management and operation and maintenance (O&M) responsibilities for the CDD and HOA
164 infrastructure. Ms. Whelan discussed scenarios for addressing emergency issues and stated that
165 the function of the agreement with the HOA is to allow the HOA to take on certain roles on
166 behalf of the CDD, such as the need to regrade one of the ponds, handle budget, etc.

167 ➤ Regarding a request to install an opposite turning lane to allow traffic to enter the new
168 entrance from Boyette Road to prevent having to U-turn, it was noted that the option was
169 considered while designing the subdivision; however, the County deemed that there is not

170 sufficient room to install a left turning lane, due to future construction of another development.
171 As this is a County-owned road, the CDD could ask the County to reconsider.

172 ➤ Regarding the actual cost of the CIP, the amount is unknown because the Developer's
173 portion is unknown but the estimated cost is a fairly educated guess of 7% to 10% of the CIP.
174 The amount of bonds issued is not available at this time but the amount is typically less than
175 the estimated cost of the project, due to Developer contributions. The requisition review and
176 acquisition process, which is significant, and the funding process were discussed.

177 ➤ Bond Repayment: Homeowners can prepay the 30-year principal bond debt service
178 assessment portion attached to their property, subject to certain constraints, but they cannot
179 prepay the general fund O&M assessment portion, which is an ongoing expense.

180 The Board was directed to review PDF Page 49 of 65, which depicts the Assessment
181 Comparison Projected Fiscal Year 2022 Assessments by Product/Parcel type. Ms. Cerbone gave
182 an overview of the factors, process and parties involved in creating and obtaining financing to
183 construct the CDD, which is required to ensure homeowners will have no issue making those
184 debt payments over the life of the loan. Ms. Whelan explained that the CDD's debt is levied
185 based on the special benefits to each parcel, via the tax roll. The Series 2018 Amortization
186 Schedule indicated the principal amount of bonds was about \$5,725,000, which includes
187 ancillary costs, such as the costs of issuance. Ultimately, there is a significant cost savings to the
188 homeowner to have a CDD government-based loan versus a Developer's construction loan.

189 ➤ Regarding the assessment theory, the Proposed Fiscal Year 2022 budget was presented
190 to explain that most costs associated with the O&M field operations budget line items
191 fluctuate, so O&M assessments fluctuate accordingly. Some Admin costs fluctuate but it is
192 minimal, as other under budget line items would be used to offset those with an overage. It
193 was noted that unassigned funds would be used to offset the Supervisors fees expense that is
194 unbudgeted. How working capital is estimated, revenues, defaults and how unpaid assessments
195 would be collected through tax certificate sales were discussed.

196 Mr. Fisher researched the plans and confirmed there is no reclaimed water in the
197 subdivision; the water to irrigate in the area would be from a well or two.

198

199 **TENTH ORDER OF BUSINESS**

200 **Discussion: Agreement with Boyette Park**
201 **Homeowners Association, Inc., for Facility**
202 **Management, Operation and Maintenance**
203 **Services**

204 Ms. Cerbone presented the Agreement to contract with the HOA to manage and
205 maintain the CDD assets, which is why these operational expenses are not included in the CDD
206 budget. A Board Member asked for clarification of Exhibit A pertaining to the irrigation
207 infrastructure description as there were none adjacent to the ponds. Ms. Whelan
208 recommended amending Exhibit A to avoid confusion, clarifying that “The landscaping and
209 irrigation at the development entry improvements were eligible to be funded by the CDD but
210 was not ultimately constructed by the CDD, after the development plan commenced.”

211 The following change was made:

212 Exhibit A-Description of the District Property: Amend Exhibit A with verbiage provided
213 by Ms. Whelan and replace the existing page.

214 This item would be presented for ratification at the next meeting.

215

216 **On MOTION by Mr. Puzzo and seconded by Mr. Bertram, with all in favor, the**
217 **Agreement with Boyette Park Homeowners Association, Inc., for Facility**
218 **Management, Operation and Maintenance Services, as amended, to amend**
219 **Exhibit A as described by Ms. Whelan, and authorizing the Chair or Vice Chair**
220 **to execute, pending HOA acceptance of the change, was approved.**

221

222

223 Ms. Cerbone stated that District Management discussed and felt this is the best time to
224 officially assign Ms. Suit as the CDD District Manager. Ms. Suit would facilitate all future
225 meetings but Ms. Cerbone would also attend the next few meetings.

226

227 **ELEVENTH ORDER OF BUSINESS**

228 **Discussion: Fiscal Year 2022 Adopted**
229 **Budget**

230 Ms. Cerbone presented the Fiscal Year 2022 budget, which was unchanged from the
231 Fiscal Year 2021 budget. She discussed the following:

232 ➤ The CDD Fiscal Year 2023 budget deliberation process would commence in May 2022.

233 Ms. Whelan stated that her firm monitors legislation that may affect CDDs. She
234 discussed new legislation presented over the last 15 years that was just approved and would
235 allow certain legal advertising to be electronic, via the newspaper portal, instead of in the
236 physical newspaper. She would present an update at the next meeting.

237 ➤ The CDD website is compliant with the Americans with Disabilities Act (ADA). The
238 website only contains statutorily required documents.

239 ➤ Unassigned Surplus Funds: If there is a healthy balance, the Board can consider using
240 unassigned surplus funds to offset assessments.

241 ➤ Liability Insurance/Potential Lawsuits: Board Members are insured as a public official.
242 The CDD also has sovereign immunity which caps the amount of a claim against the CDD.

243 Discussion ensued regarding how a claim is processed, along with the CDD Insurance
244 Carrier site visits every two to three years to tour the CDD and make recommendations of how
245 to mitigate risk, such as having signage and location of signage. The Board can then decide
246 whether to follow the recommendations to prevent potential incidents. Ms. Cerbone stated she
247 would schedule a visit.

248 ➤ The Series 2018 bond has a 10-year call provision; typically, the Underwriter would
249 notify the CDD in 2028, if it is financially beneficial to refinance the bonds.

250 ➤ The Amortization Schedule is calculated every year. Homeowners are charged the max
251 annual cost of the debt service payment; however, any accrued interest would be applied to
252 the amount on the last payment, and ultimately reduce assessments.

253

254 **TWELFTH ORDER OF BUSINESS**

Discussion/Update: Fiscal Year 2022 Meeting Schedule

255

256

257 Ms. Whelan stated that a motion formalizing the Fiscal Year 2022 Meeting Schedule
258 would be sufficient; a Resolution is not necessary.

259 The Fiscal Year 2022/2023 Meeting Schedule was as follows:

260 DATES: February 28, 2022, April 25, 2022, and July 25, 2022

261 TIME: 6:00 p.m.

262 LOCATION: Hilton Garden Inn Tampa/Riverview/Brandon, 4328 Garden Vista Drive,
263 Riverview, Florida 33578, if available.

264

On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in favor, Designating Dates, Time and Locations for Regular Meetings of the Board of Supervisors of the District for Fiscal Year 2022, as specified, was approved.

268

269

270 **THIRTEENTH ORDER OF BUSINESS**

Acceptance of Unaudited Financial Statements as of July 31, 2021

271

272

273 Ms. Cerbone presented the Unaudited Financial Statements as of July 31, 2021. She
274 explained that the purpose of an amended budget, if expenses exceed budget, is to prevent a
275 finding in the audit.

276 In response to a question about the need to increase assessments due to a significant
277 expense overage, Ms. Cerbone discussed the process and stated it involves notifying the Board
278 and holding a special meeting to approve the unbudgeted expense and discuss options of how
279 to pay it. Payment might be made using unassigned funds, a payment plan with the vendor or
280 obtaining a bank loan.

281 Ms. Cerbone stated that the CDD is statutorily required to send a Mailed Notice to
282 property owners, based on the property appraiser’s website and the mailing address of every
283 parcel in the CDD, notifying them of the assessment increase, as well as the date, time and
284 location of the public hearing to adopt the budget and to adopt assessments. A scenario of the
285 HOA terminating the O&M contract and conveying responsibilities back to the CDD was
286 discussed.

287

On MOTION by Mr. Windheuser and seconded by Mr. Bertram, with all in favor, the Unaudited Financial Statements as of July 31, 2021, were accepted.

288

289

290

291

292 **FOURTEENTH ORDER OF BUSINESS**

Approval of August 16, 2021 Public Hearing and Regular Meeting Minutes

293

294

295 Ms. Cerbone presented the August 16, 2021 Public Hearing and Regular Meeting
296 Minutes.

297 A Board Member referred to the statement on Line 130 about dissolving the CDD since
298 maintenance was transferred to the HOA. Ms. Cerbone stated it is possible but the CDD would
299 have to pay off the bonds before it can be considered. Ms. Cerbone and Ms. Whelan discussed
300 the financial benefits of the CDD, in that it is easier for governmental entities to obtain a loan to
301 cover a catastrophic unbudgeted expense than it is for an HOA and banks consider CDDs a more
302 bankable entity, even if the bonds are paid off or it is an older community.

303

304 **On MOTION by Mr. Puzzo and seconded by Mr. Bertram, with all in favor, the**
305 **August 16, 2021 Public Hearing and Regular Meeting Minutes, as presented,**
306 **were approved.**

307

308

309 **FIFTEENTH ORDER OF BUSINESS**

Staff Reports

310

311 **A. District Counsel: *Hopping Green & Sams, P.A.***

312 Ms. Whelan stated she typically attends meetings via telephone to save costs but she
313 will attend the proposed Fiscal Year 2023 budget meeting in person, along with those with
314 heavily legal agenda items.

315 **B. District Engineer: *Clearview Land Design, P.L.***

316 Mr. Puzzo stated his concerns about erosion issues on the big and smaller pond banks.
317 He felt that the condition of the north one, at the southwest corner pond behind the single-
318 family residences, is in worse condition. Mr. Puzzo stated that, in his email exchanges with Mr.
319 Fisher, removing the sod and installing compact dirt and relaying the sod was recommended;
320 however, he believed that would not solve the issue. He asked Mr. Fisher how this would work.

321 Mr. Fisher stated the process would resolve the issues, as long as the dirt is compacted
322 properly. He explained that the landscaper typically points out issues while maintaining the
323 area, which should be monitored throughout the life of the pond. He felt that the repair costs
324 would be a few thousand dollars and take two days to complete, if a smaller contractor is

325 engaged. Mr. Puzzo would provide photographs of the small pond lake banks to Mr. Fisher so
326 Mr. Fisher can make recommendations.

327 **C. District Manager: *Wrathell, Hunt and Associates, LLC***

- 328 • **NEXT MEETING DATE: TBD**

- 329 ○ **QUORUM CHECK**

330 The next meeting will be held on February 28, 2022 at 6:00 p.m.

331

332 **SIXTEENTH ORDER OF BUSINESS**

Board Members’ Comments/Requests

333

334 Mr. Windheuser asked what CDD information is considered public and what information
335 he can relay to residents without concern of violating the Sunshine Law. Ms. Whelan replied
336 that everything and anything because the CDD meetings are open to the public. The primary
337 concern is that Board Members should not communicate with each other on matters that will
338 or could potentially come before the Board. She recommended that any CDD Board Member
339 who attends an HOA meeting excuse themselves when a CDD-related business item or topic is
340 discussed.

341 A Board Member asked about blind copies of emails sent to the Board. Ms. Cerbone
342 stated that the purpose is to prevent recipients from sending a “reply to all” response to all of
343 the recipients, as that constitutes a Sunshine Law violation.

344

345 **SEVENTEENTH ORDER OF BUSINESS**

Public Comments

346

347 There were no public comments.

348

349 **EIGHTEENTH ORDER OF BUSINESS**

Adjournment

350

351

352 **On MOTION by Mr. Bertram and seconded by Mr. Windheuser, with all in**
353 **favor, the meeting adjourned at 8:48 p.m.**

354

355

356

357

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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360
361
362
363
364

Secretary/Assistant Secretary

Chair/Vice Chair

BOYETTE PARK
COMMUNITY DEVELOPMENT DISTRICT

8C

BOYETTE PARK COMMUNITY DEVELOPMENT DISTRICT

BOARD OF SUPERVISORS FISCAL YEAR 2021/2022 MEETING SCHEDULE

LOCATION

Hilton Garden Inn Tampa/Riverview/Brandon, 4328 Garden Vista Dr. Riverview, Florida 33578

DATE	POTENTIAL DISCUSSION/FOCUS	TIME
February 28, 2022	Regular Meeting	6:00 PM
April 25, 2022	Regular Meeting <i>(presentation of FY2023 proposed budget)</i>	6:00 PM
July 25, 2022	Public Hearing and Regular Meeting <i>(adoption of FY2023 budget)</i>	6:00 PM