



**SAIL HARBOUR
COMMUNITY DEVELOPMENT
DISTRICT**

**LEE COUNTY
REGULAR BOARD MEETING
MARCH 13, 2017
6:00 P.M.**

Special District Services, Inc.
The Oaks Center
2501A Burns Road
Palm Beach Gardens, FL 33410

www.sailharbourcdd.org
561.630.4922 Telephone
877.SDS.4922 Toll Free
561.630.4923 Facsimile

AGENDA
SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT
Hilton Garden Inn
12600 University Drive
Fort Myers, Florida 33907
REGULAR BOARD MEETING
March 13, 2017
6:00 p.m.

- A. Call to Order
- B. Proof of Publication.....Page 1
- C. Establish Quorum
- D. Additions or Deletions to Agenda
- E. Comments from the Public for Items Not on the Agenda
- F. Approval of Minutes
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News-Press, The

Sept. 26, 2016

Miscellaneous Notices

SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT FISCAL YEAR 2016/2017 REGULAR MEETING SCHEDULE NOTICE IS HEREBY GIVEN that the Board of Supervisors of the Sail Harbour Community Development District will hold Regular Meetings in a Meeting Room at the Hilton Garden Inn located at 12600 University Drive, Fort Myers, Florida 33907 at 6:00 p.m. on the following dates: October 10, 2016 November 14, 2016 December 12, 2016 January 11, 2017 February 13, 2017 March 13, 2017 April 10, 2017 May 8, 2017 June 12, 2017 July 10, 2017 August 14, 2017 September 11, 2017 The purpose of the meetings is to conduct any business coming before the Board. Meetings are open to the public and will be conducted in accordance with the provisions of Florida law. Copies of the Agendas for any of the meetings may be obtained from the District's website or by contacting the District Manager at (561) 630-4922 and/or toll free at 1-877-737-4922 five (5) days prior to the date of the particular meeting. From time to time one or more Supervisors may participate by telephone; therefore a speaker telephone will be present at the meeting location so that Supervisors may be fully informed of the discussions taking place. Meetings may be continued as found necessary to a time and place specified on the record. If any person decides to appeal any decision made with respect to any matter considered at these meetings, such person will need a record of the proceedings and such person may need to insure that a verbatim record of the proceedings is made at his or her own expense and which record includes the testimony and evidence on which the appeal is based. In accordance with the provisions of the Americans with Disabilities Act, any person requiring special accommodations or an interpreter to participate at any of these meetings should contact the District Manager at (561) 630-4922 and/or toll-free at 1-877-737-4922 at least seven (7) days prior to the date of the particular meeting. Meetings may be cancelled from time to time without advertised notice. SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT www.sailharbourcdd.org PUBLISH: FT. MYERS NEWS-PRESS 09/26/16 Ad# 1602645 September 26, 2016

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SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT
 REGULAR BOARD MEETING
 FEBRUARY 13, 2017

A. CALL TO ORDER

The February 13, 2017, Regular Board Meeting of the Sail Harbour Community Development District was called to order at 6:00 p.m. in a meeting room of the Hilton Garden Inn located at 12600 University Drive, Fort Myers, Florida 33907.

B. PROOF OF PUBLICATION

Proof of publication was presented that notice of the Regular Board Meeting had been published in the *Fort Myers News-Press* on September 26, 2016, as part of the District's Fiscal Year 2016/2017 Regular Meeting Schedule, as legally required.

C. ESTABLISH A QUORUM

It was noted that a quorum was established by the presence of:

Chairperson	Marge Howerton	Present
Vice Chairperson	Susan Balaun	Present
Supervisor	Richard Balaun	Present
Supervisor	Aaron Roeth	Present
Supervisor	June Gill	Present

Staff members in attendance were:

District Manager	Kathleen Dailey	Special District Services
District Counsel	Gerald Knight (via conference call)	Billing, Cochran, Lyles, Mauro & Ramsey, P.A.
Interim Engineer	Dave Robson	Johnson Engineering

Also present was District resident, John Gill.

D. ADDITIONS OR DELETIONS TO AGENDA

There were no additions or deletions to the agenda.

E. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA

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

F. APPROVAL OF MINUTES

1. January 11, 2017, Regular Board Meeting

SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD MEETING
FEBRUARY 13, 2017

The minutes of the January 11, 2017, Regular Board Meeting were presented for approval. Ms. Gill stated that the minutes should not show that Todd Wodraska, Steve Sanford or Dave Robson were in attendance. It should also show that attorney Gerald Knight attended via telephone, not in person. She also stated that in the first paragraph of Item “D” the word “was” should be “is,” as in “Ms. Gill went over her background and stated that she is...” Ms. Gill also asked that in Item I-1, 3rd sentence in, the word “the” should be added. “This is the process...”

A **motion** was then made by Mrs. Balaun, seconded by Ms. Howerton and passed unanimously approving the minutes of the January 11, 2017, Regular Board Meeting, as amended.

G. OLD BUSINESS

1. Consider Selection of District Engineer

- Johnson Engineering – David Robson

Mr. Robson gave his background of serving with the District for the past eleven years and the fact that he had inspected the infrastructure of the District before it had been turned over by the developer. He went over Johnson Engineering’s capabilities and explained that he walks the Sail Harbour property once a year to do an annual report for the bond holders. Mr. Knight asked if the common areas work as retention areas for stormwater. Mr. Robson responded that they do not, but rather they are percolation areas with only a minimal amount of retention. Mr. Knight asked if it was necessary to keep these areas pervious and Mr. Robson responded in the affirmative. There was a general discussion regarding the fee structure for the engineer and Ms. Dailey indicated that if the Board selects Mr. Robson as the District’s engineer, an agreement would be negotiated regarding fees. A **motion** was made by Ms. Gill, seconded by Mrs. Balaun to select Mr. Robson as the District’s engineer and further instructed staff to negotiate a contract to be brought back to the Board. Upon being put to a vote, the **motion** carried 5 to 0.

2. Discussion Regarding Letter to Residents with Encroachments

Ms. Dailey gave a background on the encroachment issue and thanked Mrs. Balaun for obtaining all the addresses of the properties with encroachments. She suggested that when the letters are sent out that they are returned to the Chair. The Board reviewed the letter drafted by Mr. Knight. Mr. Knight stated that he would change the letter to read “percolation” rather than “retention” areas. Ms. Gill asked how many properties were involved and Ms. Howerton responded 34 or 35. Ms. Gill asked if only those properties exceeding 5 feet would need to sign the encroachment agreement. Ms. Howerton responded that they would have to sign. Ms. Dailey added that the Board had not discussed the specifics of the letter yet, since the Board, at the previous meeting, wanted to make those decisions once an Engineer was on board to give recommendations. Mr. Knight suggested authorizing Mr. Robson to look at the issue and

SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD MEETING
FEBRUARY 13, 2017

to bring back a recommendation that the District would allow without compromising percolation. A **motion** was made by Mr. Roeth, seconded by Mr. Balaun and passed unanimously to do so.

H. NEW BUSINESS

There were no Administrative Matters to come before the Board.

I. ADMINISTRATIVE MATTERS

1. Financials

Ms. Dailey went over the financials.

Discussion ensued regarding next month's meeting and the Board consensus was to hold the March meeting, as scheduled.

J. BOARD MEMBER COMMENTS

Mrs. Balaun stated that she would get in touch with Tropical Isles to get information on the types of materials allowed for building patios.

K. ADJOURNMENT

There being no further business to come before the Board, a **motion** was made by Ms. Howerton, seconded by Ms. Gill to adjourn the Regular Board Meeting at 6:55 p.m. The **motion** carried unanimously.

Secretary/Assistant Secretary

Chair/Vice-Chair

RESOLUTION NO. 2017-01

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

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

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

WHEREAS, the Board of the District has selected Todd Wodraska, Jason Pierman, Patricia LasCasas, Lennart Lindahl, Kathleen Dailey and _____ to serve as the signatories, as required, on the District checking/operating account; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT, AS FOLLOWS:

Section 1. The above recitals are hereby adopted.

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

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

PASSED, ADOPTED and becomes EFFECTIVE this 13th day of March, 2017.

ATTEST:

**SAIL HARBOUR
COMMUNITY DEVELOPMENT DISTRICT**

By: _____
Secretary/Assistant Secretary

By: _____
Chairperson/Vice Chairperson

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT (“**Agreement**”) is made and entered into to be effective this ____ day of March, 2017, by and between:

Sail Harbour Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in Lee County, Florida (“**District**”); and

Johnson Engineering, Inc., a Florida corporation, with a mailing address of 2122 Johnson Street, Fort Myers, Florida 33901 (“**Engineer**”).

RECITALS

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

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

WHEREAS, pursuant to sections 190.033 and 287.055, *Florida Statutes*, the District solicited proposals from qualified firms to provide professional engineering services on a continuing basis; and

WHEREAS, Engineer submitted a proposal to serve in this capacity; and

WHEREAS, the District’s Board of Supervisors ranked Engineer as the most qualified firm to provide professional engineering services for the District and authorized the negotiation of a contract pursuant to section 287.055, *Florida Statutes*; and

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

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

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

ARTICLE 1. SCOPE OF SERVICES; WORK AUTHORIZATIONS

- A. The Engineer will provide general engineering services, including:
1. Preparation of any necessary reports and attendance at meetings of the District's Board of Supervisors.
 2. Providing professional engineering services including, but not limited to, review and execution of documents under any of the District's Trust Indentures and monitoring of District projects.
 3. Any other items requested by the Board of Supervisors.
- B. Engineer shall, when authorized by the Board, provide general services related to construction of any District projects including, but not limited to:
1. Periodic visits to the site, or full time construction management of District projects, as directed by District.
 2. Processing of contractors' pay estimates.
 3. Preparation of, and/or assistance with, the preparation of work authorizations, requisitions, change orders and acquisitions for review by the District Manager, District Counsel and the Board.
 4. Final inspection and requested certificates for construction including the final certificate of construction.
 5. Consultation and advice during construction, including performing all roles and actions required of any construction contract between District and any contractor(s) in which Engineer is named as owner's representative or "Engineer."
 6. Any other Activity related to construction as authorized by the Board.
- C. With respect to maintenance of the facilities, Engineer shall render such services as authorized by the Board.
- D. Each specific planning and/or study service shall be authorized in writing by the District. The written authorization shall be incorporated in a work authorization which shall include the scope of work, compensation, schedule, and special provisions or conditions specific to the service being authorized ("**Work Authorization**"). Authorization of services under this Agreement shall be at the sole option of the District. Work Authorization #1 attached hereto as **Exhibit B** is hereby approved.

ARTICLE 2. REPRESENTATIONS

The Engineer hereby represents to the District that:

- A. It has the experience and skill to perform the services required to be performed by this Agreement.
- B. It shall design to and comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Agreement, and shall, if requested by District, provide certification of compliance with all registration and licensing requirements.
- C. It shall perform said services in accordance with generally accepted professional standards in an expeditious and economical manner, and to the extent consistent with the best interests of the District.
- D. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.
- E. The designs, plans, drawings, specifications, or other work product of the Engineer shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from District and such other person.

ARTICLE 3. COMPENSATION

It is understood and agreed that the payment of compensation for services under this Agreement shall be stipulated in each Work Authorization. One of the following methods shall be used:

- A. ***Lump Sum Amount*** - The District and the Engineer shall mutually agree to a lump sum amount for the services to be rendered payable monthly in direct proportion to the work accomplished (or as otherwise set forth in the Work Authorization). For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY FOUR, the District shall require the Engineer to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The price for any lump sum Work Authorization, and any additions thereto, will be adjusted to exclude any significant sums by which the District determines the Work Authorization was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments must be made within 1 year following the completion of the work contemplated by the lump sum Work Authorization.

- B. **Hourly Personnel Rates** - For services or projects where the scope of services is not clearly defined, or for recurring services or other projects where the District desires the use of hourly compensation rates, the District and the Engineer shall use the hourly compensation rates outlined in **Exhibit A**.

ARTICLE 4. REIMBURSABLE EXPENSES

Reimbursable expenses consist of actual expenditures made by the Engineer in the interest of the Project for the incidental expenses listed as follows, provided however that to the extent that the provisions set forth in this Article 4 are inconsistent with **Exhibit A**, **Exhibit A** shall control:

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

ARTICLE 5. TERM OF CONTRACT

Unless this Agreement is terminated pursuant to its terms, the term of this Agreement will be from the time of execution of this Agreement by the parties until such time as the planning and/or study services are completed.

ARTICLE 6. OWNERSHIP AND REUSE OF DOCUMENTS

- A. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement (the "**Work Product**") shall be and remain the sole and exclusive property of the District when developed and paid for by the District and shall be considered work for hire.
- B. The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for the Engineer in the District's sole discretion, to retain possession for a longer period of time. Upon early termination of the Engineer's services hereunder, the Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. The Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the Project.

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

ARTICLE 7. INSURANCE

Subject to the provisions of this Article 7, the Engineer shall maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers' Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$1,000,000/\$2,000,000
Property Damage (including Contractual)	\$1,000,000/\$2,000,000
Automobile Liability	Combined Single Limit \$1,000,000
Bodily Injury / Property Damage	
Professional Liability for Errors and Omissions	\$1,000,000

If any such policy of insurance is a “claims made” policy, and not an “occurrence” policy, the Engineer shall, without interruption, maintain the aforementioned insurance for professional liability for errors and omissions for at least one year after the completion or termination of this Agreement.

The District, its officers, supervisors, agents, staff, and representatives shall be named as additional insured parties (except on Workers' Compensation and Professional Liability for Errors and Omissions). The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Article. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within the period provided for in the policy for giving prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.

ARTICLE 8. SUBCONTRACTORS

The Engineer may subcontract portions of the services, subject to the terms of this Agreement and subject to the prior written consent of the District, which may be withheld for any or no reason. Without in any way limiting any terms and conditions set forth in this Agreement, all subcontractors of Engineer shall be deemed to have made all of the representations and warranties of Engineer set forth herein and shall be subject to any and all obligations of Engineer hereunder. Prior to any subcontractor providing any services, Engineer shall obtain from each subcontractor its written consent to and acknowledgment of the terms of this Agreement. Engineer shall be responsible for any breach by any subcontractor of any representations, warranties or obligations set forth in this Agreement.

ARTICLE 9. INDEPENDENT CONTRACTOR

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

ARTICLE 10. CONTINGENT FEE

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

ARTICLE 11. AUDIT

Records of the Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times. The Engineer agrees that the District or any of its duly authorized representatives, at District's sole cost, shall have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until: (a) the completion of an audit and resolution of all questions arising

therefrom, or (b) three years after the expenditure of all funds under this Agreement, or (c) the public record retention period established by the District's records retention policy, whichever comes later.

ARTICLE 12. INDEMNIFICATION

The Engineer agrees to indemnify and hold the District and the District's officers and staff wholly harmless from all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, which may come against the District and the District's officers and staff to the extent caused by negligent, reckless, or intentionally wrongful acts or omissions by the Engineer or persons employed or utilized by Engineer in the course of any work done in connection with any of the matters set out in this Agreement. Except as otherwise agreed to by separate Work Authorization, liability under this indemnity provision, for any services conducted by Engineer in connection with any activities covered by Section 725.06, Florida Statutes, shall in no event exceed the sum of \$2,000,000, which amount the Engineer agrees bears a reasonable commercial relationship to the Agreement and was part of the project specifications or bid documents, if any. The Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of District's limitations on liability pursuant to section 768.28, Florida Statutes, or any other statute or law.

ARTICLE 13. PUBLIC RECORDS

The Engineer agrees and understands that Chapter 119, Florida Statutes, may be applicable to documents prepared in connection with work provided to the District and agrees to cooperate with public record requests made thereunder. Consistent with that, and Section 119.0701, Florida Statutes, the Engineer agrees to: (a) keep and maintain public records that ordinarily and necessarily would be required by the District in order to perform the services; (b) provide the public with access to public records on the same terms and conditions that the District would provide the records and at a cost that does not exceed the cost provided by law and the District's rules; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining public records; and (e) transfer, at no cost, to the District all public records in possession of the Engineer upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with the information technology systems of the District.

ARTICLE 14. EMPLOYMENT VERIFICATION

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

ARTICLE 15. CONFLICTS OF INTEREST

The Engineer shall bear the responsibility for acting in the District's best interests, shall avoid any conflicts of interest and shall abide by all applicable ethical canons and professional standards relating to conflicts of interest.

ARTICLE 16. NO THIRD PARTY BENEFITS

Nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by operation of law.

ARTICLE 17. CONTROLLING LAW

The Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Any dispute arising from or relating to this Agreement shall subsist solely in the state and/or federal courts located within Sarasota County, Florida.

ARTICLE 18. ASSIGNMENT

Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Any purported assignment without such written consent is void.

ARTICLE 19. TERMINATION

The District may terminate this Agreement for cause immediately upon notice to Engineer. The District or the Engineer may terminate this Agreement without cause upon ten (10) days prior written notice. At such time as the Engineer receives notification of the intent of the District to terminate the contract, the Engineer shall not perform any further services unless directed to do so in writing by the District. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential damages of any kind (including but not limited to lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

ARTICLE 20. RECOVERY OF COSTS AND FEES

In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees at all judicial levels.

ARTICLE 21. AMENDMENT

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 of the parties hereto and formally approved by the Board.

ARTICLE 22. ARM’S LENGTH TRANSACTION

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

ARTICLE 23. NOTICE

All notices, requests, consents and other communications hereunder (“**Notices**”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied to the parties, as follows:

- A. If to Engineer:** Johnson Engineering, Inc.
2122 Johnson Street
Fort Myers, Florida 33901
Attn: David K. Robson

- B. If to District:** Sail Harbour Community
Development District
2501A Burns Road
Palm Beach Gardens, FL 33410
Attn: District Manager

With a copy to: Billing, Cochran, Lyles, Mauro & Ramsey, P.A.
515 E. Las Olas Blvd., Suite 600
Fort Lauderdale, FL 33301-2478
Attn: District Counsel

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

ARTICLE 24. PUBLIC RECORDS

A. Engineer shall, pursuant to and in accordance with Section 119.0701, Florida Statutes, comply with the public records laws of the State of Florida, and specifically shall:

1. Keep and maintain public records required by the District to perform the services or work set forth in this Agreement; and
2. Upon the request of 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; and
3. 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 Engineer does not transfer the records to the District; and
4. Upon completion of the Agreement, transfer, at no cost to the District, all public records in possession of the Engineer or keep and maintain public records required by the District to perform the service or work provided for in this Agreement. If the Engineer transfers all public records to the District upon completion of the Agreement, the Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Engineer keeps and maintains public records upon completion of the Agreement, the Engineer 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.

B. Engineer acknowledges that any requests to inspect or copy public records relating to this Agreement must be made directly to the District pursuant to Section 119.0701(3), Florida Statutes. If notified by the District of a public records request for records not in the possession of the District but in possession of the Engineer, the Engineer shall provide such records to the District or allow the records to be inspected or copied within a reasonable time. Engineer acknowledges that should Engineer fail to provide the public records to the District within a reasonable time, Engineer may be subject to penalties pursuant to Section 119.10, Florida Statutes.

C. IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING

TO THIS AGREEMENT/CONTRACT, THE ENGINEER MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS FOR THE DISTRICT AT:

**Special District Services, Inc.,
2501A Burns Road,
Palm Beach Gardens, FL 33410
Telephone 941.875.4195
Email: kdailey@sdsinc.org.**

ARTICLE 25. ACCEPTANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Attest:

**SAIL HARBOUR COMMUNITY
DEVELOPMENT DISTRICT**

Assistant Secretary/Secretary

Chairperson / Vice Chairperson,
Board of Supervisors

JOHNSON ENGINEERING, INC.

Witness

By: Lonnie V. Howard
Its: President

EXHIBIT A: Schedule of Rates
EXHIBIT B: Work Authorization #1

EXHIBIT A: Schedule of Rates

PROFESSIONAL SERVICES HOURLY RATE SCHEDULE

Effective January 10, 2017

Engineer IX	\$ 190.00	Grant Proposal Manager	\$ 95.00
Engineer VIII	\$ 170.00	Grant Administrator	\$ 90.00
Engineer VII	\$ 160.00	Grant Writer	\$ 75.00
Engineer VI	\$ 150.00		
Engineer V	\$ 135.00	Principal Ecologist	\$ 170.00
Engineer IV	\$ 125.00	Ecologist IV	\$ 150.00
		Ecologist III	\$ 130.00
		Ecologist II	\$ 115.00
Engineer Intern III	\$ 115.00	Ecologist I	\$ 100.00
Engineer Intern II	\$ 105.00		
Engineer Intern I	\$ 95.00		
		Surveyor and Mapper VI	\$ 190.00
Development Project Coordinator	\$ 115.00	Surveyor and Mapper V	\$ 170.00
		Surveyor and Mapper IV	\$ 150.00
Project Director	\$ 145.00	Surveyor and Mapper III	\$ 125.00
		Surveyor and Mapper II	\$ 115.00
Designer IV	\$ 135.00	Surveyor and Mapper I	\$ 100.00
Designer III	\$ 115.00		
Designer II	\$ 90.00	StarVAC w/Water Truck Four-Man Party	\$ 330.00
Designer I	\$ 80.00	StarVAC w/Water Truck Three-Man Party	\$ 280.00
Permit Technician	\$ 100.00	StarVAC w/Four-Man Party	\$ 290.00
Technician IV	\$ 100.00	StarVAC w/Three-Man Party	\$ 265.00
Technician III	\$ 75.00	StarVAC w/Two-Man Party	\$ 245.00
Technician II	\$ 65.00	Two-Man Field Party	\$ 135.00
Technician I	\$ 55.00	Three-Man Field Party	\$ 160.00
		Four-Man Field Party	\$ 170.00
Hydrogeologist V	\$ 150.00	Hydrographic Field Party	\$ 225.00
Hydrogeologist IV	\$ 135.00	GPS Mapping Grade: One-Man Party	\$ 90.00
Hydrogeologist III	\$ 125.00	GPS Mapping Grade: Two-Man Party	\$ 130.00
Hydrogeologist II	\$ 100.00	GPS Mapping Grade: Three-Man Party	\$ 170.00
Hydrogeologist I	\$ 90.00	GPS Surveying Grade: One or Two-Man Party	\$ 170.00
		GPS Surveying Grade: Three-Man Party	\$ 180.00
Environmental Scientist VI	\$ 135.00		
Environmental Scientist V	\$ 120.00	Principal GIS Consultant	\$ 170.00
Environmental Scientist IV	\$ 100.00	GIS Consultant IV	\$ 170.00
Environmental Scientist III	\$ 85.00	GIS Consultant III	\$ 135.00
Environmental Scientist II	\$ 65.00	GIS Consultant II	\$ 110.00
Environmental Scientist I	\$ 55.00	GIS Consultant I	\$ 90.00
		GIS Technician III	\$ 80.00
Principal Planner II	\$ 170.00	GIS Technician II	\$ 70.00
Principal Planner I	\$ 150.00	GIS Technician I	\$ 60.00
Senior Planner	\$ 135.00		
Planner IV	\$ 125.00	CONSTRUCTION OBSERVATION SERVICES	
Planner III	\$ 110.00	Senior Project Engineer	\$ 170.00
Planner II	\$ 95.00	Construction Observation Services Manager	\$ 150.00
Planner I	\$ 85.00	Project Administrator	\$ 125.00
		Contract Support Specialist	\$ 110.00
Planning Technician III	\$ 80.00	Senior Construction Observer II	\$ 100.00
Planning Technician II	\$ 70.00	Senior Construction Observer I	\$ 90.00
Planning Technician I	\$ 60.00	Construction Observer III	\$ 75.00
		Construction Observer II	\$ 65.00
Principal Landscape Architect	\$ 170.00	Construction Observer I	\$ 55.00
Managing Landscape Architect	\$ 140.00	Resident Compliance Officer (RSO)	\$ 65.00
Senior Landscape Architect	\$ 130.00		
Landscape Architect	\$ 120.00	Expert Witness	\$ 250.00
Senior Landscape Designer	\$ 105.00		
Project Landscape Designer	\$ 85.00	REIMBURSABLE EXPENSES	
Landscape Designer II	\$ 78.00	Materials	Cost + 10%
Landscape Designer I	\$ 72.00	Sub-Consultant Services	Cost + 10%

EXHIBIT B: Work Authorization #1

March ____, 2017

Sail Harbour Community Development District
Fort Myers, Florida

Subject: **Work Authorization #1**
 Sail Harbour Community Development District

Dear Chairperson, Board of Supervisors:

Johnson Engineering, Inc., is pleased to submit this work authorization to provide engineering services for the Sail Harbour Community Development District. We will provide these services pursuant to our current agreement dated March ____, 2017 (“**Engineering Agreement**”) as follows:

- **Scope of Services** – Sail Harbour Community Development District will engage the services of Johnson Engineering, Inc., as Engineer to attend and participate in meetings of the District’s Board of Supervisors, and to provide other general engineering services, as requested by the District.
- **Fees** – Sail Harbour Community Development District will compensate Johnson Engineering, Inc., pursuant to the hourly rate schedule contained in the Engineering Agreement in accordance with the terms of the Engineering Agreement.

All other terms of the Engineering Agreement apply to this Work Authorization #1. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Thank you for the opportunity to be of service.

Sincerely,

APPROVED AND ACCEPTED

By: _____
Authorized Representative of
Sail Harbour CDD
Date: _____

By: _____
Johnson Engineering, Inc.

Sail Harbour
Community Development District

**Financial Report For
February 2017**

Sail Harbour Community Development District
Balance Sheet
As of February 28, 2017

	<u>Operating Fund</u>	<u>Capital Projects Fund</u>	<u>Debt Service Fund</u>	<u>General Fixed Assets Fund</u>	<u>Long Term Debt Fund</u>	<u>TOTAL</u>
ASSETS						
Current Assets						
Checking/Savings						
101.100 - Checking	260,047.34	0.00	0.00	0.00	0.00	260,047.34
Total Checking/Savings	<u>260,047.34</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>260,047.34</u>
Total Current Assets	260,047.34	0.00	0.00	0.00	0.00	260,047.34
Fixed Assets						
Earthwork	0.00	0.00	0.00	547,952.00	0.00	547,952.00
Surface Water Management	0.00	0.00	0.00	889,049.00	0.00	889,049.00
Land Acquisition	0.00	0.00	0.00	3,267,406.00	0.00	3,267,406.00
Accum Deprec - Surface Water Mgt	0.00	0.00	0.00	-222,260.00	0.00	-222,260.00
Total Fixed Assets	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>4,482,147.00</u>	<u>0.00</u>	<u>4,482,147.00</u>
Other Assets						
Accounts Receivable	0.00	0.00	0.00	0.00	0.00	0.00
Investments - Interest Account	0.00	0.00	0.43	0.00	0.00	0.43
Investments - Reserve Account	0.00	0.00	191,435.26	0.00	0.00	191,435.26
Investments - Revenue Account	0.00	0.00	442,739.99	0.00	0.00	442,739.99
Investments - Prepayment Account	0.00	0.00	580.04	0.00	0.00	580.04
Investments - Construction Fund	0.00	0.00	0.00	0.00	0.00	0.00
A/R Non Ad Valorem Receipts	0.00	0.00	10,544.80	0.00	0.00	10,544.80
Amount Available In DSF	0.00	0.00	0.00	0.00	645,300.52	645,300.52
Amount To Be Provided	0.00	0.00	0.00	0.00	5,894,699.48	5,894,699.48
Total Other Assets	<u>0.00</u>	<u>0.00</u>	<u>645,300.52</u>	<u>0.00</u>	<u>6,540,000.00</u>	<u>7,185,300.52</u>
TOTAL ASSETS	<u>260,047.34</u>	<u>0.00</u>	<u>645,300.52</u>	<u>4,482,147.00</u>	<u>6,540,000.00</u>	<u>11,927,494.86</u>
LIABILITIES & EQUITY						
Liabilities						
Current Liabilities						
Accounts Payable						
Accounts Payable	2,364.29	0.00	0.00	0.00	0.00	2,364.29
Total Accounts Payable	<u>2,364.29</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>2,364.29</u>
Total Current Liabilities	2,364.29	0.00	0.00	0.00	0.00	2,364.29
Long Term Liabilities						
Special Assessment Debt	0.00	0.00	0.00	0.00	6,540,000.00	6,540,000.00
Total Long Term Liabilities	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>6,540,000.00</u>	<u>6,540,000.00</u>
Total Liabilities	2,364.29	0.00	0.00	0.00	6,540,000.00	6,542,364.29
Equity						
Retained Earnings	225,483.86	0.00	329,614.61	-222,260.00	0.00	332,838.47
Net Income	32,199.19	0.00	315,685.91	0.00	0.00	347,885.10
Current Year Depreciation	0.00	0.00	0.00	0.00	0.00	0.00
Investment In General Fixed Assets	0.00	0.00	0.00	4,704,407.00	0.00	4,704,407.00
Total Equity	<u>257,683.05</u>	<u>0.00</u>	<u>645,300.52</u>	<u>4,482,147.00</u>	<u>0.00</u>	<u>5,385,130.57</u>
TOTAL LIABILITIES & EQUITY	<u>260,047.34</u>	<u>0.00</u>	<u>645,300.52</u>	<u>4,482,147.00</u>	<u>6,540,000.00</u>	<u>11,927,494.86</u>

**SAIL HARBOUR COMMUNITY DEVELOPMENT DISTRICT
MONTHLY FINANCIAL REPORT
FEBRUARY 2017**

	Annual Budget 10/1/16 - 9/30/17	Year To Date Actual 10/1/16 - 2/28/17
REVENUES		
O & M Assessments	69,069	61,512
Debt Assessments	510,119	454,655
Other Revenues	0	0
Interest Income	300	122
Total Revenues	\$ 579,488	\$ 516,289
EXPENDITURES		
Supervisor Fees	6,000	2,800
Payroll Expense	500	214
Engineering/Inspections	5,000	1,200
Pipe Maintenance/Replacement	10,000	0
Management	24,000	10,000
Legal	5,500	4,200
Assessment Roll	5,000	0
Audit Fees	3,700	0
Arbitrage Rebate Fee	500	0
Travel	500	0
Insurance	5,900	5,778
Legal Advertisements	1,300	966
Miscellaneous	2,100	691
Postage	350	133
Office Supplies	700	121
Dues & Subscriptions	175	175
Trustee Fee	3,800	0
Continuing Disclosure Fee	1,000	0
Website Management	1,500	625
Total Expenditures	\$ 77,525	\$ 26,903
Revenues Less Expenditures	\$ 501,963	\$ 489,386
Bond Payments	(479,512)	(435,939)
BALANCE	\$ 22,451	\$ 53,447
COUNTY APPRAISER & TAX COLLECTOR FEE	(11,583)	(1,135)
DISCOUNTS FOR EARLY PAYMENTS	(23,168)	(20,113)
EXCESS/ (SHORTFALL)	\$ (12,300)	\$ 32,199
Carryover Funds From Prior Year	12,300	0
NET EXCESS/ (SHORTFALL)	\$ -	\$ 32,199

Bank Balance As Of 2/28/17	\$ 260,047.34
Accounts Payable As Of 2/28/17	\$ 2,364.29
Accounts Receivable As Of 2/28/17	\$ -
Available Funds As Of 2/28/17	\$ 257,683.05

Sail Harbour Community Development District
Budget vs. Actual
October 2016 through February 2017

	<u>Oct '16 - Feb 17</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Income				
363.100 · O & M Assessments	61,511.69	69,070.00	-7,558.31	89.06%
363.810 · Debt Assessments	454,655.10	510,119.00	-55,463.90	89.13%
363.820 · Debt Assessment-Paid To Trustee	-435,939.25	-479,512.00	43,572.75	90.91%
363.830 · Assessment Fees	-1,135.20	-11,584.00	10,448.80	9.8%
363.831 · Assessment Discounts	-20,112.73	-23,168.00	3,055.27	86.81%
369.401 · Interest Income	121.76	300.00	-178.24	40.59%
369.402 · Carryover From Prior Year	0.00	12,300.00	-12,300.00	0.0%
Total Income	<u>59,101.37</u>	<u>77,525.00</u>	<u>-18,423.63</u>	<u>76.24%</u>
Expense				
511.122 · Payroll Expense	214.20	500.00	-285.80	42.84%
511.131 · Supervisors Fee	2,800.00	6,000.00	-3,200.00	46.67%
511.310 · Engineering	1,200.00	5,000.00	-3,800.00	24.0%
511.311 · Management Fees	10,000.00	24,000.00	-14,000.00	41.67%
511.315 · Legal Fees	4,200.00	5,500.00	-1,300.00	76.36%
511.318 · Assessment/Tax Roll	0.00	5,000.00	-5,000.00	0.0%
511.320 · Audit Fees	0.00	3,700.00	-3,700.00	0.0%
511.330 · Arbitrage Rebate Fee	0.00	500.00	-500.00	0.0%
511.441 · Travel	0.00	500.00	-500.00	0.0%
511.450 · Insurance	5,778.00	5,900.00	-122.00	97.93%
511.480 · Legal Advertisements	965.70	1,300.00	-334.30	74.29%
511.512 · Miscellaneous	690.62	2,100.00	-1,409.38	32.89%
511.513 · Postage and Delivery	132.46	350.00	-217.54	37.85%
511.514 · Office Supplies	121.20	700.00	-578.80	17.31%
511.540 · Dues, License & Subscriptions	175.00	175.00	0.00	100.0%
511.550 · Pipe Maintenance/Replacement	0.00	10,000.00	-10,000.00	0.0%
511.733 · Trustee Fees	0.00	3,800.00	-3,800.00	0.0%
511.734 · Continuing Disclosure Fee	0.00	1,000.00	-1,000.00	0.0%
511.750 · Website Management	625.00	1,500.00	-875.00	41.67%
Total Expense	<u>26,902.18</u>	<u>77,525.00</u>	<u>-50,622.82</u>	<u>34.7%</u>
Net Income	<u><u>32,199.19</u></u>	<u><u>0.00</u></u>	<u><u>32,199.19</u></u>	<u><u>100.0%</u></u>