

MINUTES OF MEETING
CANOPY
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Canopy Community Development District was held Tuesday, April 2, 2019 at 11:00 a.m. at Dorothy B. Oven Park, 3205 Thomasville Road, Tallahassee, Florida.

Present and constituting a quorum were:

Tom Asbury	Chairman
John "Al" Russell	Assistant Secretary
Colleen Castille	Assistant Secretary

Also present were:

Darrin Mossing	District Manager
Jennifer Kilinski	District Counsel
Lauren Gentry	HGS
Darrin Mossing, Jr.	GMS
Abraham Prado	District Engineer

FIRST ORDER OF BUSINESS

Roll Call

Mr. Mossing called the meeting to order at 11:00 a.m. and called the roll.

SECOND ORDER OF BUSINESS

Public Comment Period

There being none, the next item followed.

THIRD ORDER OF BUSINESS

**Approval of the Minutes of the March 5, 2019
Board of Supervisors Meeting and Acceptance
of the March 5, 2019 Audit Committee
Meeting**

On MOTION by Mr. Asbury seconded by Mr. Russell with all in favor the minutes of the March 5, 2019 Board meeting were approved as presented and the March 5, 2019 Audit Committee meeting minutes were accepted.
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FOURTH ORDER OF BUSINESS**Consideration of RFQ Responses for Architectural Services**

Mr. Mossing stated the District advertised for architectural services and received two responses from EDSA, Inc. and Conn & Associates, Inc. This is strictly qualifications and the Board needs to rank those firms no. 1 and 2. Staff has reviewed the submittals and both firms are legally qualified to provide those services.

The Board discussed each of the selection criteria and came to a consensus ranking as follows: Ability, Conn 25 points and EDSA 20 points, past performance Conn 25 points and EDSA 20 points, geographic location 20 points for Conn and 10 points for EDSA, minority business both 5 points, willingness to meet time and budget requirements both received 15 points, recent, current and projected workloads both 5 points, volume of work previously awarded to consultant by District both received 0 for a total of 95 points for Conn & Associates and 75 points for EDSA.

On MOTION by Ms. Castille seconded by Mr. Russell with all in favor Conn & Associates was ranked no. 1 and EDSA, Inc. ranked no. 2 and staff was authorized to enter into negotiations with the number one ranked firm to obtain an agreement for services.

FIFTH ORDER OF BUSINESS**Consideration of Resolution 2019-08 Award of Units 4/5 Infrastructure Contract**

This item was tabled.

SIXTH ORDER OF BUSINESS**Ratification of Interlocal Agreement**

Ms. Gentry stated this is the agreement between the City of Tallahassee, Blueprint and Canopy for construction of certain sections of Welaunee Boulevard that have not yet been constructed. Under this agreement the city reimburses the District for construction of those portions of the road and then Blueprint later reimburses the city. This has already been executed so this is just ratification. It does have certain requirements that have to be met for timing and the bidding requirements that have to be met when you construct the project and I wanted to point those out and remind everybody that it is important to follow those.

On MOTION by Ms. Castille seconded by Mr. Asbury with all in favor the interlocal agreement was ratified.

SEVENTH ORDER OF BUSINESS

**Consideration of Assignment of Canopy Unit
1 Phase 6 Contract**

Ms. Gentry stated these are draft documents to assign the Unit 1 Phase 6 construction contract to the District so that going forward payments would be made directly from the District. It contains a certification of the engineer, developer's affidavit, the contractor's acknowledgement and acceptance of the assignment and a contract addendum that adds all the CDD specific provisions that we would need going forward. There are a few gaps where pieces of information need to be filled in and we are working on getting all of those.

Mr. Asbury stated basically we are saying the contract that Ox Bottom Mortgage had is now going to the CDD.

Ms. Gentry stated right, the CDD will take the place of Ox Bottom Mortgage.

Mr. Russell asked what is the timeline?

Ms. Gentry stated we are working on that to take place as soon as possible.

Ms. Kilinski stated you may recall that we assigned Unit 3, it was entered into as part of that original Phase 1 project, which is before the District was even established or had any funds. There is still a fairly significant portion to complete and now there are bond proceeds for this project. We thought at first it was going to be an acquisition instead of an assignment, but it has been moving slow enough that we can assign it. It will also be subject to bond requirements or a demand note, similar to what we did for Unit 3.

Ms. Castille asked is there a distinction between the processes of assignment and acquisition?

Ms. Kilinski stated there is a different paperwork package. It is completed improvements already in the ground, it is a Bill of Sale, a Warranty Deed, Engineer's Certificate to ensure that what has been constructed has met the plans.

Ms. Castille stated you are actually buying an asset versus assigning the contract. Ms. Gentry stated with an acquisition it has already been constructed under that contract between the contractor and someone else and you are just buying the improvements that have been constructed and here you are assigning the contract so that you have the contract and you already own what is constructed from that point on.

On MOTION by Ms. Castille seconded by Mr. Russell with all in favor assignment of the Canopy Unit 1 Phase 6 contract to the District was approved in substantial form.

EIGHTH ORDER OF BUSINESS

Staff Reports

A. Attorney

There being none, the next item followed.

B. Engineer

i. Ratification of Capital Funding Request No. 10 Dove Pond Regional Stormwater Construction Project

Mr. Prado stated this is ratification of capital funding request no. 10 for pay app #13 with Dove Pond. We confirmed with the CEI firm that this is satisfactory, and we recommend ratification.

On MOTION by Ms. Castille seconded by Mr. Asbury with all in favor capital funding request no. 10 in the amount of \$85,457.75 was ratified.

ii. Ratification of Capital Funding Request No. 11 Dove Pond Regional Stormwater Construction Project

Mr. Prado stated this item is a request for payment of a change order that the Board has not approved. The change order itself is item 4 for consideration and this item is tied to that.

iii. Consideration of RSH Change Order no. 2

Mr. Asbury stated we have already authorized negotiation of this change order.

iv. Consideration of Sandco Change Order no. 3

Ms. Kilinski stated you may recall at the last meeting we talked about RS&H's billing, which is related to the change order from Sandco's request at least as it relates to the amount of days. This handout has Sandco, the amount and it has calendar days and it has RS&H, amount and calendar days. After speaking with GPI and Tom and seeing RS&H's certification I don't think we have any dispute as it relates to the amount of the change order for Sandco. That has all been verified, but what we are in dispute about is the number of calendar days. RS&H's category

particularly in the RS&H days the difference between rain days and recovery days requested by RS&H and by Sandco are significantly different. We have a couple other pieces here such as DEP mitigation areas, but our contract requires that Sandco in order to claim any rain days or recovery days is required to submit documentation for such claims within 10 days of the event. The idea is then GPI as project manager and RS&H as CEI can verify in the field whether there was actually a rain day or not and not have to try to go back 18 months. We have not received that documentation for that request. Furthermore, the number of calendar days requested and what RS&H is reporting are recovery days or non-pursuit days are significantly higher than what Sandco is contesting. We are now six to eight months over what our last contract extension was for the Sandco contract. What we are really asking for is authority for District staff to send a letter to Sandco that would authorize payment of the amounts, dispute the number of days and retain our right to enforce liquidated damages. That contract has a liquidated damages provision that says if you don't meet substantial and final completion dates the District reserves the right to enforce \$500 per day for the first two weeks, \$1,000 per day thereafter until you complete the project. I want to retain the rights to do that, it doesn't mean that we are going to necessarily enforce it, but we are still in strong negotiations with RS&H who is asking for a \$352,000 change order that they argue they were having to work because Sandco hasn't been prosecuting the work. I want to be able to put us in a position to go to both of those parties and not have the District be out the funds when clearly there has been inability to finalize the work on both their parts. The CEI is required to push the schedule, make sure the contractor is showing up for work, that is part of their contract and that has not been happening.

That is the Sandco change order. I don't have a problem from everything I have heard getting them paid and we can authorize the change order as relates to the cost, but I would not like to authorize a change order as it relates to the days and I have already drafted a letter that has a lot of this in it and was waiting to send it until we had this discussion at the Board level. I don't want to threaten any contractors without the Board saying yes, we want to retain our rights. We can come back to you with liquidated damages enforcement, but we also are trying to incentivize them to get a project finished because we had information from RS&H yesterday that said they are still 45 – 60 days away from completion.

Ms. Castille asked RS&H is sort of like a supervisor?

Ms. Kilinski stated yes, on the RS&H piece their contract expired June 3, 2018. We have not had a change order for them since then. At the last meeting we talked about sending a letter that articulated our position and you gave us settlement authority up to \$100,000 to finalize the disagreement about how much they are owed. We have had a couple meetings, we are supposed to have one again with their Senior Vice President this afternoon, who I believe has the authority on their behalf to talk about the difference in our offer of \$75,000 and their continuing to give us change orders for \$352,000. A lot of that dispute is the staffing levels associated with their contracts when they should have been out there, when they shouldn't have been out there, the documentation that has been provided since then demonstrates claims for days when there were hurricanes, Christmas Day, Fourth of July, those kinds of things. I think when we start reducing the days if you take out the rain days they are claiming and the DEP mitigation areas they are claiming, you are left with 18 days. There was never a project scope for DEP mitigation, they are not required to certify DEP mitigation, there was no reason for them to watch the DEP mitigation we have other folks who are doing that for us. We never authorized them to do that. 18 days even if you figured full staffing levels would be significantly less than \$75,000 so we still think that is a reasonable discussion to have. That is why those two things are related. We don't want to authorize an extension of days under Sandco and put us in a position of not arguing an extension under RS&H. We still have not been able to resolve that issue.

Ms. Castille asked do you want to delay this?

Ms. Kilinski stated I think we can authorize payment of the \$307,000 change order, authorize staff to send a letter to Sandco retaining our rights to liquidated damages and we will have to delay the RS&H change order or keep it the same, we still would have settlement authority up to \$100,000, I don't think that changes anything on that but I wanted to give you an update as to where we were.

Ms. Castille moved to approve change order no. 3 with Sandco in the amount of \$307,276.40 as it relates to the cost only and to retain the right to dispute the rain days and staff was authorized to send a letter to Sandco retaining the District's rights to liquidated damages and Mr. Asbury seconded the motion.

Mr. Russell asked how connected are we to RS&H?

Ms. Kilinski stated we sent them a stand down letter a couple weeks ago when they sent us another change order saying we are still going to provide top of the line full staffing levels and we said we have been very clear that we do not need full staffing. Abe and I discussed what was left to be done and a lot of it is sod and you don't need to watch grass go into the ground. There may be some spillway repairs that have yet to be done when they actually have the grout and materials to do that, that may be something they show up for, but we are talking about a handful of days in the scheme of what is left to do. We asked them to wait until you get a punch list from Sandco and Sandco indicates to you that they are performing the spillways punch list and go out for that and nothing else.

Mr. Russell asked then we are through, right?

Ms. Kilinski stated yes.

Mr. Asbury stated they have to certify. Moore Bass is doing the MP on the pond and the ERP and they have to certify that the pond was built to the standards. I'm not sure why RS&H is there, but they have been out there looking at it so, we probably want them to say they have seen the dam and it is built according to the plans.

Mr. Prado stated Blueprint probably requires a certification by the CEI that the work has been completed in accordance with the plans. I think Moore Bass' certification will be based on review of the as-builts.

Ms. Castille stated we specifically hired RS&H in part because they have that experience working with dams.

Ms. Kilinski stated in part. We were required for funding with Blueprint to hire an independent CEI firm unrelated to the design firm unrelated to the District Engineer to provide CEI services for construction of the dam. It did not require anything related to DEP mitigation or anything else it was related strictly to Dove Pond.

Mr. Asbury stated we were actually in favor of that.

Mr. Russell stated we just need to stick with them until we get the certification and be done with them.

Ms. Kilinski stated yes. We indicated to them that if they had come to us in June and said we are going to fully staff and charge you \$400,000 to get the punch list items we would have said if that is what you require to continue with the contract, we are going in a different direction.

On voice vote with all in favor the motion passed.

v. Consideration of Sandco Units 3 Contract Change Order no. 1

Mr. Prado stated change order no. 1 to the Sandco Unit 3 contract removes the costs associated with the lot grading and we recommend approval subject to verification they have all the necessary paperwork for the assignment of the contract to the CDD.

On MOTION by Mr. Asbury seconded by Ms. Castille with all in favor change order no. 1 for unit 3 with Sandco removing the costs associated with lot grading was approved subject to verification of all the necessary paperwork for the assignment of the contract to the CDD.

vi. Consideration of Matters Related to Unit 3 Construction Contract

Mr. Mossing stated this was a placeholder in case there were anything else we needed to discuss.

vii. Ratification of Capital Funding Request No. 11 Dove Pond Regional Stormwater Construction Project

Mr. Mossing stated now that the change order has been approved, we need to approve Funding Request no. 11.

On MOTION by Ms. Castille seconded by Mr. Asbury with all in favor capital Funding Request no. 11 in the amount of \$291,912.58 was ratified.

Ms. Kilinski stated just so we are clear, request no. 11 took in the amount but not the days. On the change order when we had the days changed, we need to make sure we don't approve those days.

Mr. Mossing stated okay.

Mr. Prado stated there was no proposed change order in the package so we will prepare a change order that matches the funding amount requested.

C. Manager

i. Approval of Check Register Summary

On MOTION by Mr. Russell seconded by Mr. Asbury with all in favor the check run summary was approved.

ii. Balance Sheet and Income Statement

A copy of the balance sheet and income statement were included in the agenda package.

iii. Consideration of Capital Funding Request no. 6

On MOTION by Ms. Castille seconded by Mr. Russell with all in favor Capital Funding Request no. 6 in the amount of \$15,875.91 was approved.

iv. Update on Auditor Selection Process

Mr. Mossing stated at the last meeting the Board selected Carr Riggs as your audit firm subject to negotiating a lower fee for their services, which we did. We were able to lower their fee by almost \$1,800. Their five-year fee under their proposal was \$25,750 and they lowered it to \$24,000 for the five-year period. They are the second lowest bidder now with the negotiation.

In your May meeting we will start the budget process and I will be meeting with the Chair to discuss any maintenance contracts that may be turned over to the District.

NINTH ORDER OF BUSINESS

Other Business


There being none, the next item followed.

TENTH ORDER OF BUSINESS

Supervisors Requests

There being none, the next item followed.

On MOTION by Ms. Castille seconded by Mr. Russell with all in favor the meeting was continued to April 30, 2019 at 11:00 a.m. in the same location.


Secretary/Assistant Secretary


Chairman/Vice Chairman