



DEVELOPMENT PLANNING & FINANCING GROUP, INC.

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***HARBOR BAY  
COMMUNITY DEVELOPMENT DISTRICT***

***Meeting Package***

***Continued Meeting***

***Thursday  
January 30, 2020  
6:00 p.m.***

***Location:  
MiraBay Clubhouse  
107 Manns Harbor Drive  
Apollo Beach, FL 33572***

***Note: The Advanced Meeting Package is a working document and thus all materials are considered DRAFTS prior to presentation and Board acceptance, approval or adoption.***

# Harbor Bay Community Development District

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## Development Planning and Financing Group

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Tampa, Florida 33647  
813-374-9105

Board of Supervisors  
**Harbor Bay Community Development District**

Dear Board Members:

The Continued Meeting of the Board of Supervisors of the Harbor Bay Community Development District is scheduled for **Thursday, January 30, 2020 at 6:00 p.m.** at the **MiraBay Clubhouse, 107 Manns Harbor Drive, Apollo Beach, FL 33572.**

*The advanced copy of the agenda for the meeting is attached along with associated documentation for your review and consideration. Any additional support material will be distributed at the meeting.*

The balance of the agenda is routine in nature. Staff will present their reports at the meeting. If you have any questions, please contact me. I look forward to seeing you there.

Sincerely,

*Patricia Comings-Thibault*

Patricia Comings-Thibault  
District Manager

Cc: Attorney  
Engineer  
District Records

District: **HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT**

Date of Meeting: Thursday, January 30, 2020

Time: 6:00 PM

Location: MiraBay Clubhouse  
107 Manns Harbor Drive  
Apollo Beach, FL 33572

Dial-in Number: 712-775-7031  
Guest Access Code: 109-516-380

*Continued Meeting Agenda*

**I. Call to Order/Roll Call**

**II. Pledge of Allegiance**

**III. Audience Comments on Agenda Items**

**IV. Business Items**

A. Seawall Update – Florida Structural Group

➤ Seawall Update and Options

Exhibit 1

**V. Staff Reports**

A. District Counsel

B. District Engineer

C. District Manager

D. MiraBay Field Operations Manager

**VI. Supervisor Requests**

**VII. Audience Comments**

**VIII. Adjournment**

# EXHIBIT 1

# Hopping Green & Sams

Attorneys and Counselors

## MEMORANDUM

**To:** Board of Supervisors  
Harbor Bay Community Development District

**From:** Sarah Sandy  
Mike Collazo

**Re:** Status of Design-Builder Contract with FSG

**Date:** January 14, 2020

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The purpose of this memorandum is to provide the Harbor Bay Community Development District ("District") Board of Supervisors ("Board") an update on the status of ongoing discussions with Florida Structural Group, Inc. ("FSG") regarding its Contract for the Seawall Project (both as hereinafter defined).

### Background on Status

On November 30, 2018, the District published Notices of Request for Proposals for reconstruction of the seawall ("Seawall Project") divided into Section I, Section II and Section III. After failing to receive responsive proposals, the District entered into direct negotiation with FSG for the entirety of the Seawall Project. During such negotiations, FSG's surety agent provided a letter to our firm dated July 3, 2019, stating FSG "is bondable at this time," and it did "not foresee an issue with providing a Payment and Performance Bond for the Sea Wall Project to [the District] contingent upon all financial requirements being met by the [District] prior to application process and underwriting criteria for the P&P bond issuance."

The District and FSG executed a contract on July 11, 2019, for the entire Seawall Project ("Contract") at a lump-sum price of \$17,449,213, contingent on the District securing financing for the same. On August 30, 2019, the District issued its Capital Improvement Revenue Bonds, Series 2019A-1, which together with approximately \$1.1 million of District funds on hand, provided sufficient funds for the entirety of the Contract.

In early September 2019, FSG's bonding agent, Mr. Jeff Schorle, informed us an application for the payment and performance bonds had been submitted, and approval was expected in the "next couple of weeks." On September 19, Brian Peachey of FSG revised the estimated timeline to 4 to 6 weeks (i.e., October 16, 2019).

In mid-October 2019, we again reached out to Mr. Schorle and Mr. Peachey for an update on whether the payment and performance bonds remained on track for issuance on October 16. Mr. Peachey indicated that the bonds were still "in underwriting" and that his accountant needed to provide the underwriter additional information so that it could complete its review, but that the accountant was delayed due to end-of-the-year tax work. On October 24, Mr. Schorle confirmed that the required information was finally compiled and submitted to the underwriter. On October 28 and 30, when asked for an update on status, Mr. Schorle indicated that FSG was still waiting to hear back from the underwriter.

We continued trying to reach FSG representatives the first and second week of November 2019. When finally reached by phone on November 14, Mr. Schorle apologized for being difficult to reach due to a severe illness. He noted that the bonds were still in underwriting but that he had a meeting with the underwriter scheduled on November 15 to discuss status. We coordinated a conference call for the afternoon of November 15 to discuss the outcome of his anticipated meeting with the underwriter.

On November 15, FSG attorney Jack Morgan emailed us indicating that FSG had finally “obtained bonding for the project” and that all that remained to be done was a “minor revision to the contract” to add another party (R.A. Johnson, Inc.), which if the District agreed to do “the bond can immediately be put in place and FSG can begin work as early as next week.” On conference calls later that afternoon and on November 18 with Mr. Morgan, we explained that the any change to the Contract would require Board approval at the upcoming Board meeting scheduled for November 21, and that we needed to be provided certain items in advance of that meeting to present to the Board (i.e. a letter from the underwriter confirming that payment and performance bonds would issue within three days after the Board approved any amendment to add R.A. Johnson as a guarantor, a draft amendment to Contract document, a draft joint venture agreement to review, and certain payment and performance bond cost and payee information) (the “Critical Path Items”).

On November 20, the day before the scheduled Board meeting, Mr. Schorle contacted us and requested more time (through December 15) for Liberty Mutual, R.A. Johnson’s underwriter, to undergo financial due diligence in connection with the project and R.A. Johnson. Based upon that conference call, various documents (including the Critical Path Items) would be provided in the interim for legal review, such that the Board could approve the amendment to the Contract at its next Board meeting scheduled for December 19.

On December 3, we asked FSG to provide us an anticipated schedule for providing us the Critical Path Items and days and times of availability for conference calls to discuss status, which we coordinated for December 9. On December 6, Mr. Schorle contacted us to note that a Liberty Mutual representative may be on the scheduled conference call on December 9 and may ask the District to consider breaking up the Contract into phases in order to facilitate bonding. On the morning of December 9, Mr. Schorle asked to delay the scheduled conference call to enable the representative to review documents provided on Friday by FSG’s accountant.

On December 11, we participated in a conference call with FSG’s attorney Frank Aloia. Mr. Aloia indicated that Ms. Schorle would no longer be involved in securing bonds for the project and that R.A. Johnson was no longer being considered for a potential joint venture with FSG. Instead, FSG was now negotiating a potential joint venture arrangement with Complete Property Services, LLC (“CPS”).

On December 16, we again participated in a conference call with Mr. Aloia, during which he confirmed that CPS and FSG were still negotiating and that CPS’ underwriter, Van Wyk Risk Solutions (“VWRS”), was now reviewing project-related documents. The following day, we again requested by email Critical Path Items that we could present to the Board on December 19. In response, on December 18, Mr. Peachey emailed us that International Fidelity Insurance Company (“IFIC”) (not VWRS) would be the surety, and promised to deliver a final, executed joint venture agreement with CPS to us the week of January 6. He also sent us an updated construction and project management (“CPM”) schedule indicating that a final joint venture agreement would be provided on January 7, 2020, and payment and performance bonds would be issued on January 17, 2020. When asked whether IFIC would require a financial due

diligence period, Mr. Peachey responded that “[s]ince the bonding is being supplied direct by [CPS] no further review will be necessary as their current level of bonding far exceeds the project needs.” We asked Mr. Peachey for written confirmation of this fact directly from IFIC but did not receive it. Mr. Peachey was also asked if he could appear in person at the December 19 board meeting to answer any questions, but he indicated he could not attend due to a conflict in Naples.

On January 2, 2020, we attempted to schedule a status call with Mr. Aloia and Mr. Peachey; however, due to the holidays, a call was not scheduled until January 9. On the January 9<sup>th</sup> call, Mr. Peachey stated CPS was no longer an option as a joint venture partner. Instead, a joint venture was being negotiated with Earth Tech Enterprises, Inc. (“Earth Tech”) and that he would be meeting with Earth Tech representatives on January 10 at noon. Mr. Aloia also forwarded a letter from an IFIC bonding agent for Earth Tech indicating that they consider single bond requests for as much as \$20 million and that they hold Earth Tech is an “excellent contractor” that they hold “in very high regard.” We made it clear to FSG on that call that we needed at least a final, executed joint venture agreement and some written documentation from IFIC to present to the Board at the upcoming January 16<sup>th</sup>.

On January 11, Mr. Peachey provided an update regarding his meeting with Earth Tech, indicating it went well and that they “already had an agreement.” To date, despite our repeated requests, no final joint venture agreement has been provided to us. We have also repeatedly requested a conference call with IFIC representatives in order to address any questions they may have regarding the District; however, such a call has not been scheduled. Mr. Peachey indicated by email on January 13 that there was no need for such a call because IFIC “seemed satisfied” with the information already provided.

As of the date of this memorandum, no further update has been provided; however, as the above indicates, this is a fluid situation. Mr. Peachey has agreed to attend the Board’s January 16<sup>th</sup> meeting to answer questions from the Board.

We hope this memorandum has proven to be helpful and informative. Please do not hesitate to contact us if you have any questions or would like to discuss some aspect of this memorandum further. Thank you.