

# Catalina at Winkler Preserve Community Development District

# Board of Supervisors' Meeting November 7, 2023

District Office: 9530 Marketplace Road, Suite 206 Fort Myers, Florida 33912 (239) 936-0913

www.catalinacdd.org

Professionals in Community Management

### CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

Rizzetta & Company, Inc., 9530 Marketplace Road, Suite 206, Fort Myers, Florida 33912

Board of Supervisors	Keith Sherman Joseph Molon Butch Johnston Dick Bonito Douglas Thompson	Chairman Vice Chairman Assistant Secretary Assistant Secretary Assistant Secretary
District Manager	Belinda Blandon	Rizzetta & Company, Inc.
District Counsel	Lauren Gentry	Kilinski I VanWyk PLLC
District Engineer	Carl Barraco	Barraco and Associates, Inc.

#### All cellular phones must be placed on mute while in the meeting room.

The Audience Comment portion of the agenda is where individuals may make comments on matters that concern the District. Individuals are limited to a total of three (3) minutes to make comments during this time.

Pursuant to provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting/hearing/workshop is asked to advise the District Office at least forty-eight (48) hours before the meeting/hearing/workshop by contacting the District Manager at (239) 936-0913. If you are hearing or speech impaired, please contact the Florida Relay Service by dialing 7-1-1, or 1-800-955-8771 (TTY) 1-800-955-8770 (Voice), who can aid you in contacting the District Office.

A person who decides to appeal any decision made at the meeting/hearing/workshop with respect to any matter considered at the meeting/hearing/workshop is advised that person will need a record of the proceedings and that accordingly, the person may need to ensure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

#### CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT <u>District Office · Ft. Myers, Florida · (239) 936-0913</u> Mailing Address · 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614

www.catalinacdd.org

October 30, 2023

#### Board of Supervisors Catalina at Winkler Preserve Community Development District

#### AGENDA

Dear Board Members:

The regular meeting of the Board of Supervisors of Catalina at Winkler Preserve Community Development District will be held on **Tuesday, November 7, 2023 at 2:30 p.m.** at the office of Rizzetta & Company, Inc., located at 9530 Marketplace Road, Suite 206, Fort Myers, FL 33912. The following is the agenda for this meeting:

1. CALL TO ORDER/ROLL CALL

#### 2. PUBLIC COMMENT

#### 3. BUSINESS ADMINISTRATION

J.	000		
	Α.	Consideration of the Minutes of the Board of Supervisors'	
		Meeting held on August 08, 2023	Tab 1
	В.	Ratification of the Operations and Maintenance	
		Expenditures for July, August, and September 2023	Tab 2
4.	BUS	INESS ITEMS	
	Α.	Consideration of EarthBalance Proposal for 2023 Quarterly	
		Preserve Maintenance	Tab 3
5.	STA	FF REPORTS	
	Α.	District Counsel	
	В.	District Engineer	
	C.	District Manager	Tab 4
6.	SUP	ERVISOR REQUESTS AND COMMENTS	
-			

#### 7. ADJOURNMENT

We look forward to seeing you at the meeting. In the meantime, if you have any questions, please do not hesitate to call us at (239) 936-0913.

Very truly yours, Belínda Blandon Belinda Blandon District Manager

Cc: Lauren Gentry, Kilinski I VanWyk PLLC

# Tab 1

1	Ν	INUTES OF MEETING				
2 3 4	CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT					
5 6 7 8 9	Community Development District	e Board of Supervisors of Catalina at Winkler Preserve was held on <b>Tuesday, August 08, 2023 at 2:30 p.m.</b> at y, Inc., located at 9530 Marketplace Road, Suite 206,				
10 11 12	Present and constituting a quorun	ו:				
12 13 14 15 16 17 18	Keith Sherman Joe Molon Butch Johnston Richard "Dick" Bonito Douglas Thompson	Board Supervisor, Chairman Board Supervisor, Vice Chairman Board Supervisor, Assistant Secretary Board Supervisor, Assistant Secretary Board Supervisor, Assistant Secretary				
19 20	Also present were:					
21 22 23	Belinda Blandon Lauren Gentry	District Manager, Rizzetta & Company, Inc. District Counsel, Kilinski I VanWyk PLLC (via Teams)				
24 25 26	Molly Maggiano Wes Kayne Representative	District Counsel, Kilinski I VanWyk PLLC District Engineer, Barraco & Associates, Inc. Solitude Lake Management				
27 28	Audience					
29 30	FIRST ORDER OF BUSINESS	Call to Order				
31 32 33	Ms. Blandon called the me	eting to order and conducted roll call.				
34	SECOND ORDER OF BUSINES	S Public Comment				
35 36 37 38 39 40	Ms. Knecht spoke about her backyard. She stated that several trees at the back of her yard sit in the water as a result of loss of approximately four feet of her parcel, which she believes was caused by remediation work undertaken by the CDD several years ago. Ms. Knecht provided an overview of her comments to the Board in a letter during the meeting, which is attached to the minutes.					
41 42 43 44	THIRD ORDER OF BUSINESS	Consideration of the Minutes of the Board of Supervisors' Meeting held on May 09, 2023				
45 46 47		e minutes of the Board of Supervisors' Meeting held on re were any questions, comments, or changes to the				

#### CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT August 08, 2023 Minutes of Meeting Page 2

48 minutes as presented. There were none. 49 On a Motion by Mr. Johnston, seconded by Mr. Sherman, with all in favor, the Board 50 Approved the Minutes of the Board of Supervisors' Meeting held on May 09, 2023, for 51 the Catalina at Winkler Preserve Community Development District. 52 53 54 FOURTH ORDER OF BUSINESS Consideration of the Operations and Maintenance Expenditures for April, 55 56 May, and June 2023 57 58 Ms. Blandon provided an overview of the operations and maintenance expenditures for the month of March 2023 totaling \$9,327.69; the expenditures for the 59 60 period of May 1-31, 2023, totaling \$18,455.84; and the expenditures for the period for June 1-30, 2023, totaling \$7,119.98. She asked if there were any questions. Mr. 61 Thompson asked about the expenditure for the month of June. There was a brief 62 63 discussion about the costs of the Solitude tests. 64 65 On a Motion by Mr. Thompson, seconded by Mr. Johnston, with all in favor, the Board Approved the Operations and Maintenance Expenditures for the Month of April 2023 66 (\$9,327.69), May 2023 (\$18,455.84), and June 2023 (\$7,119.98), for the Catalina at 67 Winkler Preserve Community Development District. 68 69 FIFTH ORDER OF BUSINESS 70 Public Hearing to Consider the Adoption of the Fiscal Year 2023/2024 71 72 Budget(s) 73 74 Ms. Blandon provided an overview of the public hearing process and asked for a motion to open the public hearing to consider the adoption of the fiscal year 2023/2024 75 76 budget. 77 78 On a Motion by Mr. Sherman, seconded by Mr. Johnston, with all in favor, the Board Opened the Public Hearing to Consider the Adoption of the Fiscal Year 2023/2024 79 Budget, the Catalina at Winkler Preserve Community Development District. 80 81 82 Ms. Blandon opened the floor to the public for public comment. Ms. Knecht made 83 the comment that she hopes the budget will accommodate remedial repair of her 84 backyard. 85 On a Motion by Mr. Johnston, seconded by Mr. Bonito, with all in favor, the Board Closed 86 the Public Hearing to Consider the Adoption of the Fiscal Year 2023/2024 Budget, the 87 Catalina at Winkler Preserve Community Development District. 88 89 SIXTH ORDER OF BUSINESS Presentation of the Proposed Budget 90 91 for Fiscal Year 2023/2024 92 Ms. Blandon presented the Proposed Budget. She asked if there were any 93

94	questions. There were none.	
95 96 97 98 99 100	SEVENTH ORDER OF BUSINESS	Consideration of Resolution 2023-04, Annual Appropriations and Adopting the Final Budget for Fiscal Year 2023/2024
100 101 102 103 104 105 106	Ms. Blandon provided an overview of 2023/2024 advising that the total general fund fund budget is \$30,661. She asked if there value the cost of the maintenance of the la Reserved Study to the Board.	were any questions. Mr. Sherman spoke
107 108 109 110	On a Motion by Mr. Sherman, seconded by M Adopted Consideration of Resolution 2023-04, Final Budget for Fiscal Year 2023/2024, for the Development District.	Annual Appropriations and Adopting the
111 112 113 114	EIGHTH ORDER OF BUSINESS	Consideration of Resolution 2023-05, Fiscal Year 2023/2024 Assessments
115 116 117 118	Ms. Blandon provided an overview assessments for fiscal year 2023/2024 and a were no questions.	of Resolution 2023-05, relating to the sked if there were any questions. There
119 120 121	On a Motion by Mr. Thompson, seconded by Adopted Consideration of Resolution 2023-05, the Catalina at Winkler Preserve Community De	Fiscal Year 2023/2024 Assessments, for
122 123 124 125 126	NINTH ORDER OF BUSINESS	Consideration of Resolution 2023-06, Redesignating the Secretary of the District
127 128 129	Ms. Blandon provided an overview of the questions. There were no questions.	e resolution and asked if there were any
130 131 132	On a Motion by Mr. Johnston, seconded by M Adopted Resolution 2023-06, Redesignating District, for the Catalina at Winkler Preserve Co	Scott Brizendine as Secretary of the
133 134 135 136	TENTH ORDER OF BUSINESS	Consideration of Resolution 2023-07, Adopting a Meeting Schedule for Fiscal Year 2023/2024
137 138 139	Ms. Blandon provided an overview of being presented is consistent with the current	the resolution advising that the schedule t year schedule. She asked if there were

#### CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT August 08, 2023 Minutes of Meeting Page 4

140 141 142	• •		out one of the scheduled days being an ecided to leave the schedule in place.
143 144 145	Adopted Cor	sideration of Resolution 2023-0	Mr. Thompson, with all in favor, the Board 7, Adopting a Meeting Schedule for Fiscal Preserve Community Development District.
146 147 148 149 150	L	ORDER OF BUSINESS	Ratification of Acceptance of Audit for Fiscal Year End September 30, 2022 as Prepared by Berger, Toombs, Elam, Gaines & Frank
151 152 153 154 155	30, 2022 as	•	of the audit for Fiscal Year End September Elam, Gaines and Frank. She asked if there
156 157 158 159	Adopted Rat Prepared by	ification of Acceptance of Audit	by Mr. Molon, with all in favor, the Board for Fiscal Year End September 30,2022 as es, & Frank, for the Catalina at Winkler
160 161 162	TWELFTH (	ORDER OF BUSINESS	Discussion of Claims Related to 17012 Clemente Court
163			
163 164 165 166 167 168 169 170 171	for the parce previously u Ms. Gentry r Mr. Kayne p location of the Board that, i not caused	el owner at 17012 Clemente Co ndertaken by the District caused equested that Mr. Kayne address rovided the Board with an overvi ne work previously completed by n his professional opinion, the is by the District and are outside	correspondence received from legal counsel ourt relative to claims that remediation work damage and loss of a portion of her parcel. Is the claims from an engineering perspective. Is the claims from an engineering
164 165 166 167 168 169 170	for the parce previously u Ms. Gentry r Mr. Kayne p location of the Board that, i not caused repair. The District Cour	el owner at 17012 Clemente Co ndertaken by the District caused equested that Mr. Kayne address rovided the Board with an overvi ne work previously completed by n his professional opinion, the is by the District and are outside Board determined there was no a	burt relative to claims that remediation work damage and loss of a portion of her parcel. Is the claims from an engineering perspective. Here work the scope of the remediation work and the District. Mr. Kayne further advised the sues the parcel owner is experiencing were
164 165 166 167 168 169 170 171 172 173 173	for the parce previously u Ms. Gentry r Mr. Kayne p location of the Board that, i not caused repair. The District Cour received from	el owner at 17012 Clemente Condertaken by the District caused equested that Mr. Kayne address rovided the Board with an overvi- ne work previously completed by n his professional opinion, the is by the District and are outside Board determined there was no a neel to coordinate with the District n the parcel owner's counsel. <b>THORDER OF BUSINESS</b> Ms. Blandon introduced the overview of the Salinity tes discussion ensued.	burt relative to claims that remediation work damage and loss of a portion of her parcel. Is the claims from an engineering perspective. Is wo f the scope of the remediation work and the District. Mr. Kayne further advised the issues the parcel owner is experiencing were the scope of the District's responsibilities to action to be taken by the District and directed
164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180	for the parce previously u Ms. Gentry r Mr. Kayne p location of the Board that, i not caused repair. The District Cour received from	el owner at 17012 Clemente Condertaken by the District caused equested that Mr. Kayne address rovided the Board with an overvi- ne work previously completed by n his professional opinion, the is by the District and are outside Board determined there was no a nsel to coordinate with the District n the parcel owner's counsel. <b>HORDER OF BUSINESS</b> Ms. Blandon introduced the overview of the Salinity tes discussion ensued. District Counsel	burt relative to claims that remediation work damage and loss of a portion of her parcel. The claims from an engineering perspective. The claims from an engineering perspective. The District. Mr. Kayne further advised the asues the parcel owner is experiencing were the scope of the District's responsibilities to action to be taken by the District and directed the Engineer to prepare a response to the letter <b>Staff Reports</b> Solitude representative, and she gave an

with the district and providing NPDES reports. 187 188 189 Mr. Sherman asked about the drainage and Mr. Kayne stated he would double check the drain boxes to confirm they are flowing before September. 190 191 192 Mr. Sherman asked Mr. Kayne to survey the lakes and Mr. Kayne stated he 193 would complete that survey. 194 195 C. **District Manager** Ms. Blandon advised that the next meeting of the Catalina at Winkler 196 197 Preserve CDD is scheduled for Tuesday, November 07, 2023, at 2:30 198 p.m. 199 200 Ms. Blandon also advised that the district is slightly overbudget due to 201 hurricane expenses. She asked if there were any questions. Mr. Sherman inquired about a landscaping company to do small work around the CDD 202 203 community. Ms. Blandon requested that Mr. Kayne send Ms. Blandon a map of the area and quantities for proposals for the repairs. 204 205 FOURTEENTH ORDER OF BUSINESS Supervisor Requests and Comments 206 207 Ms. Blandon opened the floor to Supervisor requests and comments. 208 209 210 Mr. Johnston advised the Board that he is resigning as he has moved. 211 212 On a Motion by Mr. Thompson, seconded by Mr. Molon, with all in favor, the Board 213 Acceptance the Resignation of Mr. Floyd Johnston, for the Catalina at Winkler Preserve Community Development District. 214 215 FIFTEENTH ORDER OF BUSINESS Adjournment 216 217 218 Ms. Blandon stated there are no other agenda items to come before the Board and 219 asked for a motion to adjourn the meeting. 220 221 On a Motion by Mr. Bonito seconded by Mr. Sherman, with all in favor, with all in favor, 222 the Board adjourned the meeting at 3:13 p.m., for the Catalina at Winkler Preserve 223 Community Development District. 224 225 226 227 228 229

230 Secretary/Assistant Secretary

# Tab 2

# CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

#### <u>District Office · Ft. Myers, Florida · (239) 936-0913</u> <u>Mailing Address - 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614</u> <u>www.catalinacdd.org</u>

#### Operation and Maintenance Expenditures July 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from July 1, 2023 through July 31, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: \$4,936.22

Approval of Expenditures:

\_\_\_\_\_ Chairperson

Vice Chairperson

Assistant Secretary

### Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

July 1, 2023 Through July 31, 2023

Vendor Name	Check Number	Invoice Number	Invoice Description	voice Amount
Florida Power & Light Company	100100	09846-68343 06/23	17043 Tremont St #Aerator 06/23	\$ 119.10
Florida Power & Light Company	100100	11246-08348 06/23	17213 Wrigley Cir #Aerator 06/23	\$ 499.03
Kilinski / Van Wyk, PLLC	100103	6911	Legal Service 06/23	\$ 54.00
Rizzetta & Company, Inc.	100101	INV0000081359	District Management Fees 07/23	\$ 4,264.09

**Report Total** 

4,936.22

\$

# CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

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#### Operation and Maintenance Expenditures August 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from August 1, 2023 through August 31, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: \$8,610.00

Approval of Expenditures:

\_\_\_\_\_ Chairperson

\_\_\_\_\_Vice Chairperson

Assistant Secretary

# Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

August 1, 2023 Through August 31, 2023

Vendor Name	Check Number	Invoice Number	Invoice Description	Invo	ice Amount
Disclosure Services, LLC	100105	001	Amortization Schedule S2017 5-1-23 Prepay \$10,000 07/23	\$	100.00
Douglas B Thompson	100108	DT080823	Board of Supervisors Meeting 08/08/23	\$	200.00
Florida Power & Light Company	ACH	09846-68343 07/23 AUTOPAY	17043 Tremont St #Aerator 07/23	\$	111.16
Floyd Johnston	100109	FJ080823	Board of Supervisors Meeting 08/08/23	\$	200.00
Jay Keith Sherman	100110	KS080823	Board of Supervisors Meeting 08/08/23	\$	200.00
Joseph Molon	100111	JM080823	Board of Supervisors Meeting 08/08/23	\$	200.00
Kilinski / Van Wyk, PLLC	100115	7129	Legal Service 07/23	\$	753.00
News-Press Media Group	100112	5793326	Legal Advertising 07/24/23-07/31/23	\$	592.40
Richard Bonito	100113	RB080823	Board of Supervisors Meeting 08/08/23	\$	200.00
Rizzetta & Company, Inc.	100104	INV0000082222 08/23	District Management Fees 08/23	\$	4,264.09
Solitude Lake Management, LLC	100107	PSI002184	Aerator Maintenance 08/01/23 - 10/31/23	\$	264.00
Solitude Lake Management, LLC	100107	PSI003011	Lake & Pond Monthly- Fountain Maint 08/01/23 - 10/31/23	\$	129.00
Solitude Lake Management, LLC	100114	PSI-86420	Lake & Pond Management Services 06/23	\$	465.45

### Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

August 1, 2023 Through August 31, 2023

Vendor Name	Check Number	Invoice Number	Invoice Description	Invoice	<u>Amount</u>
Solitude Lake Management, LLC	100114	PSI-87580	Lake & Pond Management Services 07/23	\$	465.45
Solitude Lake Management, LLC	100114	PSI-97318	Lake & Pond Management Services 08/23	\$	465.45

**Report Total** 

8,610.00

\$

# CATALINA AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT

#### <u>District Office · Ft. Myers, Florida · (239) 936-0913</u> <u>Mailing Address - 3434 Colwell Avenue, Suite 200, Tampa, Florida 33614</u> <u>www.catalinacdd.org</u>

#### Operation and Maintenance Expenditures September 2023 For Board Approval

Attached please find the check register listing the Operation and Maintenance expenditures paid from September 1, 2023 through September 30, 2023. This does not include expenditures previously approved by the Board.

The total items being presented: \$16,999.75

Approval of Expenditures:

\_\_\_\_\_ Chairperson

\_\_\_\_\_Vice Chairperson

Assistant Secretary

### Catalina at Winkler Preserve Community Development District

Paid Operation & Maintenance Expenditures

September 1, 2023 Through September 30, 2023

Vendor Name	Check Number	Invoice Number	Invoice Description		Invoice Amount
ADA Site Compliance, LLC	100122	2929	ADA Website Compliance 09/23	\$	900.00
Barraco and Associates, Inc.	100118	26526	Engineering Services 08/23	\$	3,769.67
Egis Insurance Advisors, LLC	100121	19817	Policy #100123605 10/01/2023- 10/01/2024	\$	5,945.00
Florida Power & Light Company	100117	09846-68343 08/23	17043 Tremont St #Aerator 08/23	\$	117.79
Kilinski / Van Wyk, PLLC	100119	7349	Legal Service 08/23	\$	1,537.75
Rizzetta & Company, Inc.	100116	INV0000083206	District Management Fees 09/23	\$	4,264.09
Solitude Lake Management, LLC	100123	PSI005842	Lake & Pond Management Services 09/23	<u>\$</u>	465.45

#### **Report Total**

16,999.75

\$

# Tab 3



#### PROJECT NAME: Catalina at Winkler Preserve CDD 2023 Maintenance

ATTENTION: Belinda Blandon, Senior District Manager Catalina at Winkler Preserve CDD c/o Rizzetta & Company 9530 Marketplace Road, Suite 206 Fort Myers, FL 33912 bblandon@rizzetta.com

#### **PRICE QUOTED:**

Description	No. of Events	Price Per Event	Total Price
Maintenance	4	\$2,495.00	\$9,980.00

#### SCOPE OF WORK:

#### Maintenance

**EarthBalance**<sup>®</sup> will supply the labor and materials necessary for one year of quarterly ongoing nuisance and exotic plant species maintenance within approximately 21 acres of preserve at Catalina at Winkler Preserve Community Development District located in Fort Myers, Florida. This Task will include a treatment of all listed Category I and II Florida Invasive Species Council's (FISC) 2019 "List of Invasive Plant Species". All target species within the treatment area will be killed-in-place with an appropriate dye-laced herbicide approved for use by the State of Florida. This Task does not include any removal or disposal of vegetative debris by **EarthBalance**<sup>®</sup>. All work will be directed by a qualified project manager licensed to apply herbicides by the State of Florida.

EarthBalance<sup>®</sup> will perform the services described above for a fixed fee of **\$9,980.00**.



#### **PROJECT NAME:** Catalina at Winkler Preserve CDD 2023 Maintenance

#### CONDITIONS:

This quote shall remain valid for a period not to exceed thirty (30) days beyond the submittal date of **September 27, 2023.** If not accepted within this period, **EarthBalance**<sup>®</sup> reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement and the attached terms and conditions shall be effective upon its full execution.

QUOTED BY: James Barron Project Manager EarthBalance<sup>®</sup> 2570 Commerce Parkway North Port, FL 34289 jbarron@earthbalance.com

**IN WITNESS WHEREOF,** this Agreement is executed on the dates hereinafter stated.

EARTHBALANCE®	CLI	IENT	
Ву:	Ву: <u>-</u>		
Printed:	Prin	nted:	
Title: Vice President	Title	e:	
Date:, 2023	Dat	te:	, 2023
PLEASE INDICATE IF THE CLIENT IS WHICH THE SERVICES/			
OWNER		NOT THE O	WNER
IF THE CLIENT IS NOT THE PROPE AND CONTACT INFORMATI		•	
Name:			
Address:			
Phone Number:			
17407.13 2 Catalina at Winkler Preserve CDD 2023 Preserve M	of 4 pages 1aintenance	Initials	Date Belinda Blandon
2570 Commerce Parkway North Port, FL 34289	941.426.7878(p)	941.426.8778 (f)	earthbalance.com



1. <u>Services</u>. EarthBalance<sup>®</sup> hereby agrees to provide all supervision, labor, materials, equipment, and other facilities to complete the Work as described in the attached Price Quote ("Scope of Work" or "Work"). EarthBalance<sup>®</sup> agrees to use its best efforts in completing the Work. The Work shall be accomplished in a workmanlike and professional manner using the degree of skill and care ordinarily exercised by a reputable member of EarthBalance's<sup>®</sup> profession practicing in the same or similar locality. No other warranty, express or implied, is made or intended, unless provided in the Scope of Work.

This agreement is limited to tasks identified in the attached Price Quote and does not include additional or repeat Work resulting from changes to the project or the information upon which this agreement is based. Modification to the final work products performed at the request of the Client that is not the result of the Contractor's errors or omissions shall be billed to the Client as additional services.

2. <u>Time.</u> This quote shall remain valid for a period not to exceed thirty (30) days beyond the date of submittal. If not accepted within this period, **EarthBalance**<sup>®</sup> reserves the right to modify any portion thereof or withdraw the quotation in its entirety. This agreement shall be effective upon its full execution.

3. <u>Duty to Cooperate.</u> Client agrees to cooperate with **EarthBalance**<sup>®</sup> in all respects in connection with **EarthBalance's**<sup>®</sup> efforts to discharge the Scope of Work. Client shall make Client's property available to **EarthBalance**<sup>®</sup>, shall timely comply with **EarthBalance's**<sup>®</sup> requests for information, and shall execute all documents reasonably required by **EarthBalance**<sup>®</sup> in discharging the Scope of Work. Client agrees to inform **EarthBalance**<sup>®</sup> of any known job site hazards including, but not limited to, hazardous substances, buried debris, ordnance or explosives, sinkholes, wildlife hazards, etc.

4. <u>Payment</u>. Client agrees to pay a fee for the Work performed based upon the information contained in attached Price Quote. As soon as may be practicable at the beginning of each month, **EarthBalance**<sup>®</sup> shall invoice Client for all work performed in the prior month and any other sums due **EarthBalance**<sup>®</sup>. Client shall pay the invoice amount within thirty (30) days after the invoice date. **EarthBalance**<sup>®</sup> may cease performing work under the attached Price Quote if any payment due hereunder is not paid within thirty (30) days of the invoice date. **EarthBalance**<sup>®</sup> accepts cash, check, credit card, ACH or Wire Transfer as payment. A convenience fee of 5% will be added to all credit card payments.

Client agrees that **EarthBalance**<sup>®</sup> may place a lien upon the Property for Work performed under the attached Price Quote and that **EarthBalance**<sup>®</sup> may record and enforce the lien for Work performed in accordance with the provisions of Florida's Construction Lien Law. In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. In addition, if **EarthBalance**<sup>®</sup> places this executed Price Quote in the hands of an attorney for the collection of any sums due hereunder, Client agrees to reimburse **EarthBalance**<sup>®</sup> for its reasonable attorney's fees and costs relating thereto.

5. <u>Termination and Default</u>. This agreement may be terminated by either party giving the other party thirty (30) days written notice of intent to terminate. Upon a notice of termination without cause, Client shall pay **EarthBalance**<sup>®</sup> for all labor and materials procured to the date of termination, including a reasonable profit not to exceed 10% of completed work that complies with the Contract Documents. This shall include all cost incurred in preparing to fulfill the contractual obligations and any restocking fees along with all other damages associated with termination. In addition, upon default by Client, monetary or otherwise, this agreement may be terminated by **EarthBalance**<sup>®</sup> with seven (7) days written notice of intent to terminate if the default remains uncured after such notice period and **EarthBalance**<sup>®</sup> shall be entitled to recover all damages both actual and consequential, incurred as a result of said default. **EarthBalance's**<sup>®</sup> liability to Client or any related party for any claim related to or arising out of (i) this agreement or (ii) **EarthBalance's**<sup>®</sup> Work shall be limited to two times the amount of fees paid by Client hereunder.

6. <u>Force Majeure Event</u>. **EarthBalance**<sup>®</sup> shall not be liable to Client for damages resulting from delay in or termination of **EarthBalance's**<sup>®</sup> Work because of fire or casualty, riots, strikes, picketing, boycotts, lockouts, labor disturbances, shortages of materials, epidemics, pandemics, war, terrorism or combined action of the workmen or others, governmental delays, or any acts of God including, but not limited to, severe snowstorms, earthquakes, hurricanes, floods, or any other cause or condition beyond its control making it inadvisable in **EarthBalance's**<sup>®</sup> determination to proceed with the Work (collectively, a "Force Majeure Event"). **EarthBalance**<sup>®</sup> shall have no obligation to resume Work discontinued under this Section. If **EarthBalance**<sup>®</sup> elects not to resume the Work, Client's sole and exclusive remedy shall be payment on a pro-rata basis for the percentage of Work that has actually been completed as of the date of its receipt of **EarthBalance's**<sup>®</sup> notice of the Force Majeure Event.

7. <u>Warranties.</u> Unless otherwise provided: THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. All warranties/guarantees provided by EarthBalance<sup>®</sup>, if any, shall be deemed null and void if Client fails to strictly adhere to the payment terms contained in the Agreement. All warranties and guarantees, if any, provided under the Agreement are solely for the original Client and are non-transferable, unless otherwise agreed to by Client and EarthBalance<sup>®</sup> in writing. Any express warranty provided, if any, by EarthBalance<sup>®</sup> is the sole and exclusive remedy for alleged defects, in lieu of all other remedies, implied or statutory. Warranties to be issued upon completion and full payment of this Agreement.

17407.13	3 of 4 pages	Initials	Date
Catalina at Winkler Preserve CDD 2023 Preserve	Maintenance		Belinda Blandon
2570 Commerce Parkway North Port, FL 34289	941.426.7878(p)	941.426.8778 (f)	earthbalance.com



8. <u>Price Escalation.</u> If there is an increase in the price of labor, materials, or fuel surcharge charged to **EarthBalance**<sup>®</sup> in excess of **five (5%) percent**, subsequent to making this Agreement, then the price set forth in this Agreement shall be increased without the need for a written change order or amendment to the Agreement to reflect the price increase and additional direct cost to **EarthBalance**<sup>®</sup>. **EarthBalance**<sup>®</sup> shall submit written documentation of the increased charges to Client. As an additional remedy, if the actual cost of any line item increases more than ten (10%) percent subsequent to entering into this Agreement, **EarthBalance**<sup>®</sup>, at its sole discretion, may terminate the Agreement for convenience.

9. <u>Delay.</u> This contract contemplates installation on <u>N/A</u>. As living plants, Client acknowledges that ongoing watering, feeding, maintenance and storage costs will continue beyond the specified installation date at a per diem rate of <u>N/A</u>. Accordingly, despite any Contract Document provision to the contrary, **EarthBalance**<sup>®</sup> will be compensated for any delays beyond the Installation Date via change order at the per diem rate.

10. <u>Site Conditions.</u> Should **EarthBalance**<sup>®</sup> discover concealed or unknown conditions in the existing soil suitability that vary from those conditions ordinarily encountered and generally recognized as inherent in the work of the character identified in this Agreement, then the Agreement amount shall be equitably adjusted upon notice thereof from **EarthBalance**<sup>®</sup> to Client.

11. <u>Choice of Law, Venue and Attorney's Fees.</u> This Agreement shall be governed by the laws of the State of Florida. Venue of any proceeding arising out of this Agreement shall be **Sarasota County, Florida**. The non-prevailing party in any legal or equitable action arising out of or relating to this Agreement including arbitration, administrative, appellate and/or bankruptcy proceedings shall reimburse the prevailing party on demand for all attorney's fees, costs, and expenses incurred by the prevailing party in connection with the action.

12. <u>Arbitration.</u> If a dispute shall arise between **EarthBalance**<sup>®</sup> and Client with respect to any matters or questions arising out of or relating to this Agreement or the breach thereof, such dispute, other than collection matters, shall be decided by arbitration administered by and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

13. <u>Jury Trial Waiver.</u> In the event there is litigation over the enforcement of a collection matter or construction lien, the parties KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF OR PERTAINING TO THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON OR PARTY RELATED TO THIS AGREEMENT; THIS IRREVOCABLE WAIVER OF THE RIGHT TO A JURY TRIAL BEING A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

14. Damage Limitation. In no event, whether based on contract, warranty (express or implied), tort, federal or state statute or otherwise arising from or relating to the work and services performed under the Agreement, shall EarthBalance® be liable for special, consequential, punitive, or indirect damages, including loss of use or loss of profits. EarthBalance® and Client agree to allocate certain risks so that, to the fullest extent permitted by law, EarthBalance's ® total aggregate liability to Customer is limited to the dollar amount of the Agreement for any and all injuries, damages, claims, expenses or claim expenses including attorneys' fees arising out of or relating to this Agreement regardless of whether it is based in warranty, tort, contract, strict liability, negligence, errors, omissions, or from any other cause or causes.

15. <u>Claims.</u> It is Client's duty to notify **EarthBalance**<sup>®</sup> in writing within **three (3) days** of the occurrence of any claim, defect or deficiency arising out of work, services or materials provided by **EarthBalance**<sup>®</sup> under this Agreement ("Occurrence"). Failure of Client to provide written notice of the Occurrence shall result in Client waiving all claims that may be brought against **EarthBalance**<sup>®</sup> arising out of or relating to the Occurrence, including claims arising in law, equity, contract, warranty (express or implied), tort or federal or state statutory claims.

16. <u>Shortages.</u> In the event that any specified material or equipment becomes unavailable either temporarily or permanently after the Agreement is executed, provided that such availability is a result of factors beyond **EarthBalance's**<sup>®</sup> control, then in the event of temporary unavailability, the Agreement time shall be extended to reflect the duration of time that **EarthBalance**<sup>®</sup> is delayed by the unavailability, and in the case of permanent unavailability, **EarthBalance**<sup>®</sup> shall be excused from providing said material or equipment and allowed to provide an available substitute. To the extent an available substitute is provided by **EarthBalance**<sup>®</sup> under this provision, any increase in the cost between the originally specified material or equipment and its substitute shall be paid by the Customer to the **EarthBalance**<sup>®</sup>. Due to material shortages, Client may experience delays related to the inability to timely obtain materials for this project. In the event of such a delay, **EarthBalance**<sup>®</sup> shall notify Client, and Client agrees to provide **EarthBalance**<sup>®</sup> with an extension of time for any delay attributable to the temporary inability to obtain materials.

**17.** <u>Miscellaneous</u>. The invalidity of any provision of the agreement shall not impair the validity of any other provision. If any provision of this agreement is determined to be unenforceable by a court of competent jurisdiction, such provision shall be deemed severable and the remaining provisions of the agreement shall be enforced. Headings are for convenience only and do not affect interpretation. This Agreement records the entire agreement of the parties and supersedes any previous or contemporaneous agreement, understanding, or representation, oral or written, by the parties and may only be amended, modified or terminated by the written mutual consent of all the parties hereto and duly executed by the authorized representatives of the parties hereto. All documents/exhibits referred to in this Agreement are an integral part of the Agreement and are incorporated by reference.

17407.13	4 of 4 pages	Initials	Date
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2570 Commerce Parkway North Port, FL 34289	941.426.7878(p)	941.426.8778 (f)	earthbalance.com

# Tab 4



#### UPCOMING DATES TO REMEMBER

- Next Meeting: February 6, 2024
- FY 2021-2022 Audit Completion Deadline: June 30, 2023 \* Completed
- Next Election (Seats 1, 2, & 5): November 8, 2024



FINANCIAL SUMMARY	<u>9/30/2023</u>	
General Fund Cash & Investment Balance	\$311,272	
Reserve Fund Investment Balance	Investment Balance \$304,757	
Debt Service Fund Investment Balance	\$130,499	
Total Cash and Investment Balances	\$746,528	
General Fund Expense Variance:	\$1,592 Under Budget	

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Professionals in Community Management



FEMA Update: The project is under review by FEMA.

**Fountain and Aerator Repairs:** The repairs have been completed and we are pending receipt of a proposal to replace some of the floating lines that will need to be replaced.