

*Viera East  
Community Development District*

*Cont. Board of Supervisors Meeting &  
Workshop Agenda*

*April 13, 2023*



## **Viera East CDD's Continued Board of Supervisors Meeting & Workshop Meeting**

**Thursday  
April 13, 2023  
7:00 p.m.**

**Faith Lutheran Church: Multi-purpose Room  
5550 Faith Drive  
Viera, Florida**

### **Continued Board of Supervisors Meeting**

1. Roll Call
2. Audience Comments
3. Discussion of General Manager Position
4. Discussion of Potential Grants
5. Supervisor's Requests
6. Adjournment

### **Workshop Meeting**

1. Roll Call
2. General Manager's Report
3. Restaurant Report
4. Lifestyle/ Marketing Report
5. Supervisor's Requests
6. Adjournment

# SECTION III

## EMPLOYMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made in Viera, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Jim Moller, who resides at 442 Lambright Street, Palm Bay, FL 32908 (the "Employee"), and the VIERA EAST COMMUNITY DEVELOPMENT DISTRICT (the "District"), for the benefit of itself.

**WHEREAS**, the Employee desires to enter the employment of the District, and in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Employee and the District agree as follows:

1. **Representations and Warranties:** The Employee hereby represents and warrants to the District that he or she (i) is not subject to any written non-solicitation or non-competition agreement affecting his or her employment with the District; (ii) is not subject to any written confidentiality or nonuse/nondisclosure agreement affecting his or her employment with the District; and (iii) has brought to the District no trade secrets, confidential business information, documents, or other personal property of a prior employer.

2. **Employment:** The District hereby employs the Employee, and the Employee hereby accepts employment upon the terms and conditions set forth in this Agreement. The employee will receive a written performance evaluation at least annually.

Employee's employment with Employer is "at will" and may be terminated by Employee or the District for any reason at any time.

3. **Compensation:** During the term of this Agreement, the District shall compensate the Employee for any and all services of every nature rendered and to be rendered by the Employee in connection with this employment. Employee shall initially receive as compensation for services hereunder a salary of \$110,000.00 per year. Employee's salary shall be paid in accordance with the customary payroll policies of the District. In addition, the District will pay, on behalf of the Employee, the annual membership dues owed to the Professional Golfers Association. The Employee will be provided benefits, holidays time off, and paid time off in the same manner as provided to other District employees. The Employee's performance will be reviewed at least annually and may be increased from time to time in the sole discretion of the District.

4. **Termination of Employment:** The District may, without cause, terminate the Employee's employment upon written notice to the Employee, such notice to be effective seven (7) calendar days after receipt by the Employee.

The District may, for cause, terminate the Employee's employment upon written notice to the Employee, such notice to be effective immediately upon receipt by the Employee. "Cause" includes but is not limited to: (i) material breach of any provision of this Agreement; (ii) theft or misappropriation of business assets of the District or of any

existing or prospective client of the District; (iii) poor or inadequate work performance; (iv) excessive tardiness; or (v) any other conduct detrimental to the business of the District. The Employee may, with or without cause, terminate his or her employment with the District, and agrees to give the District fourteen (14) days written notice prior to the effective date of such resignation.

**5. Concurrent Business:** As long as Employee is an agent or Employee of the District, Employee will not directly or indirectly own, manage, be employed by, be an independent contractor to, engage in, carry on, or be connected in any other manner with any business engaged in the same or similar type of business or entity of any kind during his or her employment with the District without written permission from the District's Board of Supervisors.

**6. Non-Disclosure of Clients:** The District's Client List is strictly confidential. Employee will not, at any time, either during employment or for a one (1) year period after the termination of his or her employment for any reason, directly or indirectly, either for himself or herself or for any other person, firm, corporation, partnership, joint venture, association, or any other business organization or entity the name, address, telephone number or any other item identifying any Client or Prospective Client of the District.

**7. Non-Solicitation of Clients:** At all times while Employee is employed by the District and for a one (1) year period after the termination of his or her employment for any reason, directly or indirectly, either for himself or herself or for any other person, firm, corporation, partnership, joint venture, association, or any other business organization or entity, call upon, solicit, divert, refer, or take away any of the District's Clients or Prospective Clients.

**8. Non-Solicitation of Employees:** At all times while Employee is employed by District and for a one (1) year period after the termination of his or her employment with the District for any reason, Employee shall not, directly or indirectly, for himself or for any other person, firm, corporation, partnership, joint venture, association, or any other business organization or entity, hire or solicit any person employed by the District, whether that individual is a full-time employee, part-time employee or independent contractor, to terminate his or her employment with the District.

**9. Non-Disclosure of Confidential Information:** Employee acknowledges and expressly stipulates that during the term of his or her employment, he or she will be dealing with "Confidential Information," as defined in more detail below, which is the District's property, used in the course of its business. Employee agrees that he or she will not, either during his or her employment with the District or at any time thereafter, directly or indirectly, divulge or disclose to any third party, any of the District's Confidential Information. Further, Employee shall not use any such information other than in the course of his or her employment at the District. In the course of using this Confidential Information, Employee shall limit the disclosure of this Confidential Information to those employees of the District who are required to have such Confidential Information. All documents that Employee prepares, or Confidential Information that might be given to Employee in the course of his or her employment with the District, are the exclusive

property of the District and shall remain in the District's possession on the District's premises, except as is necessary in the conduct of Employee's job duties to the District.

As utilized in this Agreement; every reference to "Confidential Information" shall include any information other than trade secrets that is (i) of any value or significance to the District and (ii) not generally known to the competitors of the District nor intended by the District for general dissemination, including, but not limited to, any and all proprietary and technical information of the District in the nature of business operations, operating systems and processes, methods of training or operation, equipment, software compositions, inventions, innovations, patents, accounting and financial data, current or potential suppliers/vendors, intellectual property, data, formulae, designs, sketches, plans, drawings, specifications, samples, reports, customer lists, price lists, proposals, business plans, future plans, scientific processes and operations, design systems pricing and discounting practices, market data, project files, prospect reports, and information about the District itself and its executives, officers, directors and employees.

**10. Non-Disclosure of Trade Secrets:** The Employee shall not, whether while employed by the District or otherwise, disclose or use for the benefit of himself or herself or any other person, firm, corporation, partnership, joint venture, association, or any other business organization or entity, any of the trade secrets of the District. Employee agrees that he or she will not, either during his or her employment with the District or thereafter for a period of ten (10) years, directly or indirectly, divulge or disclose to any third party, any of the District's trade secrets. Further, Employee shall not use any such information other than in the course of his or her employment at the District.

For purposes of this Agreement, "trade secrets" shall include, but not be limited to, any proprietary and technical information of the District in the nature of sales, pricing methods, operating systems, associated procedures and systems, information, programs, services, systems, inventions and the like developed or employed by the District.

**11. Position of Trust/ Irreparable Harm:** Employee further expressly acknowledges that due to the unique services that he or she will perform on behalf of the District and including the close working contact that he or she will have with the District's clients, Employee is placed in a position of trust and confidence and will not take advantage of that trust or confidence to the detriment of the District. Employee further stipulates and agrees that any breach by Employee of any portion of this Agreement will cause irreparable harm to the District due to the unique and highly specialized nature of the District's business and its services.

**12. Acknowledgement by Employee:** Employee acknowledges and confirms that due to the unique nature of the District's highly specialized business, the restrictive covenants contained in this Agreement are reasonable restraints as to time, area and activities involved and are reasonably necessary to protect the legitimate business interests of the District.

**13. Property of the District:** All property of the District, including but not limited to, customer correspondence, internal memoranda, products and designs, sales brochures, training manuals, project files, price lists, customer and vendor lists, prospectus reports, customer and vendor information, sale literature, notebooks, textbooks, records, files, forms, reports, accounts, documents, computer data and intangible things and all other like information or products, including all copies, duplications, replications, and derivatives of such information or products, now in the possession of the Employee or acquired by the Employee while in the employ of the District; whether prepared by the District or any other entity, shall be the exclusive property of the District and shall be returned to the District immediately upon termination of employment or the District's request at any time whatsoever.

**14. Breach:** The parties hereby stipulate that each of the matters in this Agreement is important, material and gravely affects the effective and successful conduct of the District's business, as well as its reputation and goodwill. It is further recognized and hereby acknowledged that any breach of any term contained in this Agreement is a material breach of this Agreement and will cause irreparable injury and damage to the District, the monetary amount of which may be virtually impossible to ascertain. As a result, the District shall be entitled to an injunction from any court of competent jurisdiction enjoining and restraining any violation of any or all covenants contained in the Agreement. In addition, Employee shall also pay the District all damages, including, but not limited to, compensatory, incidental, consequential and lost profit damages, which arise from any such breach, together with interest, costs and attorney's fees incurred, including appellate attorney's fees and costs, for any and all efforts of the District in the enforcement and/or collection under this Agreement. Employee agrees that damages alone would be an inadequate remedy for the District and that the injunctive relief will be necessary to give effect to this Agreement and preserve the District's business interests.

**15. Capacity:** Employee represents and warrants that he or she is entering into this Agreement freely and voluntarily, intending to be bound thereby. Employee affirms that he or she will be able to comply with this Agreement, even after the termination of his or her employment. Employee recognizes and affirms that the subject employment is a highly beneficial and unique opportunity and is a fair exchange for his or her promises in this Agreement.

**16. No Waiver of Breach:** The District may waive a provision of this Agreement only in writing signed by an officer of the District or an otherwise designated member of management. The waiver by the District of a breach by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee or any other employee. Similarly, the refusal or failure of the District to enforce restrictive covenants contained in any similar agreements against any other employee, agent or independent contractor of the District, shall not constitute a defense to the enforcement by the District of any of the restrictive covenants contained in this Agreement, nor shall it give rise to any claim or cause of action by the Employee against the District.

**17. Extension of Non- Compete Period:** Should legal proceedings have to be brought by the District against the Employee to enforce any restrictive covenant contained in this Agreement, the period of restriction shall be deemed to begin running on the date of entry of an order granting the District preliminary injunctive relief and shall continue uninterrupted for the remainder of the period of the restriction.

**18. Independence of This Agreement:** The restrictive covenants contained in this Agreement shall be construed as agreements independent of any other provisions of this Agreement or Employee's employment with the District, and the existence of any claim or cause of action of the Employee against the District, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by the District of an restrictive covenant contained herein.

**19. Merger/ Oral Modification:** No change, deletion, addition or modification of this Agreement shall be valid or binding upon either party unless in writing and signed by both parties. This Agreement replaces and supersedes all prior agreements and understandings as to this subject matter. Employee is not relying upon any prior negotiations, discussions, or representations in executing this Agreement.

**20. Severability:** In the event that any provision or portion of this Agreement or its application shall be held invalid, arbitrary or unenforceable for any reason, it shall be deemed severable and divisible as to line of business, time and geographic area. If a court of competent jurisdiction should determine the specified line of business, the specified period or the specified geographic area to be unreasonable, arbitrary or unenforceable for any reason, a narrower line of business, a lesser period or a smaller geographic area that is determined to be reasonable, non-arbitrary and not against public policy for any reason may be enforced by the District against the Employee.

**21. Choice of Law/ Venue:** Employee agrees and consents to personal jurisdiction and venue, for any action brought by the District arising out of a breach or threatened breach of this Agreement, exclusively in the Circuit Court in and for Brevard County, Florida. The Employee hereby agrees that any action brought by him or her, alone or in combination with others, against the District arising out of this Agreement, shall be brought exclusively in the Circuit Court in and for Brevard County, Florida. The Employee further agrees that any controversy which may arise under this Agreement would involve complicated and difficult factual and legal issues and that, therefore, any action brought by the District shall be determined by a Judge sitting without a jury and Employee waives any and all rights to a trial by jury.

This Agreement shall be governed and construed in accordance with the statutory and decisional law of the State of Florida.

**22. Assignment:** Neither party shall have the right to assign or delegate their rights or obligations hereunder or any portion thereof, to any other person.



23. **Heading and Captions:** The titles and captions of paragraphs and subparagraphs contained in this Agreement are provided for convenience of reference only, and they shall not be considered a part of this Agreement for purposes of interpreting or applying this Agreement. Such titles or captions are not intended to define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms, provisions, representations, warranties or conditions in any manner or any way whatsoever.

IN WITNESS WHEREOF:, the undersigned have executed this six (6) page Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**VIERA EAST COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Employee  
Print Name: Jim Moller

\_\_\_\_\_  
Witness

Address: 442 Lambright Street  
Palm Bay, FL 32908