TAVARES
America's Seaplane City

AGENDA
TAVARES CITY COUNCIL

March 16, 2011
4:00 P.M.
TAVARES CITY HALL COUNCIL CHAMBERS

I. CALL TO ORDER

II. INVOCATION & PLEDGE OF ALLEGIANCE

Bernice Odums, St. Johns Free Methodist Church

III. APPROVAL OF AGENDA

(The City Council Agenda is subject to change at the time of the Tavares City Council Meeting)

IV. APPROVAL OF MINUTES

Tab 1) City Council Regular Meeting March 2, 2011 — **Mayor Wolfe**

V. PROCLAMATIONS/PRESENTATIONS

Tab 2)Budget Priorities of State Chief Financial Officer - — **Mayor Wolfe**
Presentation by Randall Brown – Outreach Coordinator for Jeff Atwater

Tab 3) Water Conservation Month – April 2011 — **Mayor Wolfe**

Tab 4) Surveyor's Week – March 20-26, 2011 — **Mayor Wolfe**

VI. SWEARING IN BY CITY ATTORNEY AND DISCLOSURE OF EXPARTE CONTACTS

VII. READING OF ALL ORDINANCES/RESOLUTIONS — Nancy Barnett

VIII. CONSENT AGENDA

None

IX. ORDINANCES

FIRST READING

Tab 5) Ordinance #2011-01 – Amendment to Land Development Regulations – Building Regulations – Adoption of International Property Maintenance Code – First Reading	**Jacques Skutt**
Tab 6) Ordinance #2011-04 – Amendment to Land Development Regulations to Include Dock and Housing of Seaplanes as Accessory Use – First Reading	**Jacques Skutt**

SECOND READING

X. RESOLUTIONS

None

XI. GENERAL GOVERNMENT

Tab 7) Discussion on Impact Fee Credits for Construction Exceeding Florida Building Code Requirements	**Jacques Skutt**
Tab 8) Approval of Agreement with USDA for Engineers Joint Contract Document Committee for Stormwater Grant	**Brad Hayes**
Tab 9) Ratification of Legal Services Agreement with City Attorney and Bond Counsel for USDA Stormwater Grant	**Lori Houghton**
Tab 10) Request to Construct Dumpster Enclosure at Wooton Park	**Chris Thompson**
Tab 11) Fireworks at Dragonboat Festival	**Tammy Rogers**

XII. OLD BUSINESS

XIII NEW BUSINESS

XIV. AUDIENCE TO BE HEARD

XV. REPORTS

Tab 12) City Administrator	**John Drury**

Tab 13) Council Reports City Councilmembers

F.S. 286.0105 If a person decides to appeal any decision or recommendation made by Council with respect to any matter considered at this meeting, he will need record of the proceedings, and that for such purposes he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least two (2) working days in advance of the meeting date and time at (352) 253-4546.

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TAVARES

America's Seaplane City™

CITY OF TAVARES
MINUTES OF REGULAR COUNCIL MEETING
MARCH 2, 2011
CITY COUNCIL CHAMBERS

COUNCILMEMBERS PRESENT **ABSENT**

Robert Wolfe, Mayor
Bob Grenier, Vice Mayor
Sandy Gamble, Councilmember
Lori Pfister, Councilmember
Kirby Smith, Councilmember

STAFF PRESENT

John Drury, City Administrator
Lori Houghton, Finance Director
Bob Williams, City Attorney
Nancy Barnett, City Clerk
Bill Neron, Economic Development Director
Lori Tucker, Human Resources Director
Chief Lubins, Police Department
Jacques Skutt, Director of Community Development
Chief Richard Keith, Fire Department
Chris Thompson, Interim Public Works Director
Tamera Rogers, Director of Community Services
Brad Hayes, Director of Utilities

I. CALL TO ORDER

Mayor Wolfe called the meeting to order at 4:00 p.m.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor Tim Green gave the invocation and those present recited the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Mr. Drury stated that staff would like to remove Tab 3), Shanti Niketan Senior Condominiums, at the request of the owner. This item will be removed and will not be taken up again for at least 30 days. It will be re-advertised at such time as the owner makes the request.

MOTION

Bob Grenier moved to approve the agenda with the removal of Tab 3, seconded by Kirby Smith.

Mayor Wolfe stated Council will not be discussing Tab 3 if the motion is approved.

The motion carried unanimously 5-0.

IV. APPROVAL OF MINUTES – February 16, 2011

MOTION

Sandy Gamble moved for the approval of the minutes of February 16, 2011 as submitted, seconded by Bob Grenier. The motion carried unanimously 5-0.

V. PROCLAMATIONS/PRESENTATIONS

Tab 2) National Nutrition Month

Mayor Wolfe noted Sue Miller was in the audience. He read a proclamation designating March as National Nutrition Month.

Sue Miller stated she is a registered dietician who lives in Tavares. She expressed appreciation for the Mayor reading the proclamation and noted she would provide a copy to various dietetic associations. She gave a sign to the mayor that proclaimed March as National Nutrition Month.

VI) SWEARING IN BY CITY ATTORNEY AND DISCLOSURE OF EXPARTE CONTACTS

Attorney Williams stated there were no quasi-judicial matters on the agenda.

VII) READING OF ALL ORDINANCES/RESOLUTIONS INTO THE RECORD

None

VIII) CONSENT AGENDA

None

IX. ORDINANCES/RESOLUTIONS – PUBLIC HEARING

Tab 4) Resolution #2011-05 – Amending Project Scope for Street Paving Loan

Ms. Houghton stated she had added additional language that she hoped would address questions. Resolution 2008-19 was adopted authorizing the issuance of debt through Capital Improvement Note Series 2008 in the amount of $1,500,000. The projects for this note were intended for paving of unpaved roadways within the city. Due to economic conditions actual bids for the unpaved roads were less than anticipated. In October 2009. Resolution 2009-15 was then adopted to amend the resolution which expanded the project scope to include alleyway improvements and resurfacing of specific streets. January 19, 2011 Council approved a contract with BESH Engineers to incorporate the downtown master plan streetscape recommendations into the Alfred Street Two Way Pair project at a cost of $152,800 and to use

some of the remaining funds in the capital improvement revenue note series 2008 account, There is approximately $317,000 in that fund and this will use approximately $153,000.

The purpose of the resolution is to ensure that the resolution for the project that supports the debt, includes the Alfred Street project.

Councilmember Smith thanked Ms. Houghton for addressing his questions and for providing more information. He asked if the remaining $148,000 could be used for alleyways and sidewalks. Ms. Houghton said it could be used for other transportation related projects and the resolution could probably be further expanded to include those areas.

Mayor Wolfe asked if the audience had comment.

MOTION

Bob Grenier moved to approve Resolution #2011-05, seconded by Kirby Smith. The motion carried unanimously 5-0.

X. GENERAL GOVERNMENT

Tab 5) Fiscal Year 2012 Budget Priorities

Mr. Drury stated he had provided a lengthy presentation on the upcoming budget at the last meeting with a full power point presentation. He noted he had provided that information again in the agenda packet but he did not feel he needed to make a second presentation. He noted that he had met with each councilmember since that meeting. He said staff is looking for broad budget direction and goals from Council for the next fiscal year. He noted there is an $800,000 shortfall in the General Fund because the city relies on property valuation to run city services which is anticipated to go down one more year according to the property appraiser. In addition there are some expenses that are increasing. He said prior to staff developing a budget over the next year; the staff would like to ensure that the budget that is developed is in alignment with Council's goals.

Discussion

Mayor Wolfe

- Noted that taking money from reserves might need to be considered if the amount did not damage the city's bond rating
- Would consider a possible one day or half day furlough
- Line items should be reviewed for further cuts
- Would prefer that no staff positions be eliminated if not necessary.
- Reconsider the fire assessment and possibly lower the millage rate.

Vice Mayor Grenier

- Furlough would be preferable to making job cuts (half day if it will help)

Councilmember Smith

- Does not wish to impact the basic services of fire, police, water, and sewer
- The Police Department is already the leanest in the county
- Fire Department is working with minimal personnel
- Continue to look at a Tri City Fire District however that will not assist with the upcoming budget
- Consider furlough program (employees receive time off which helps with compensation)
- If cuts are necessary look at below the basic services

Councilmember Pfister

- Fire District would not necessarily save monies
- Would consider reduction in forces since Council does not want to raise the millage rate or take from reserves; prefer to get to essential needed employees
- Consider having part-time employees fill in for different positions

Councilmember Gamble

- Has heard only one councilmember consider reducing reserves; has concerns about going further into reserves
- Consideration of a change with the youth program
- Consider if employees are duplicating services
- Would prefer a half a day furlough if a furlough is necessary (thinks employees would prefer that over job cuts)
- Consider costs of some extracurricular activities—some projects and events (some of the events may be incurring overtime)
- Not in favor of a millage increase
- Not in favor of a fire assessment
- Property on Lake Dora – if it will take money out of general fund to purchase, may need to wait on that project

Mayor Wolfe clarified that he would not want to take monies from reserves a 5% level.

Councilmember Gamble said taking from reserves would only be a last choice. Councilmember Smith said he is not in favor of any millage increase whatsoever and that he would like to see a decrease. He said if the city was to enter into the Tri City Fire District, it could be done by having each city pay for its share or there could be a fire district tax (assessment). He asked if that 1.8M was taken out of the budget how it would impact the millage rate. Mr. Drury said Ms. Houghton responded that 1.8M is equivalent to a millage rate of 2.95 however if this amount was taken out of the budget there would probably be a need from the general fund to compensate for untaxed properties.

Mr. Drury discussed the County's model for their fire district. Vice Mayor Grenier noted that property rates were still yet to come officially from the property appraiser's office.

Councilmember Pfister said she wished to review the line items in the general budget. She said she believed last year some things were moved into line items without discussion and therefore she wished to go over line items closely this year. Councilmember Smith agreed.

Mayor Wolfe asked the audience for comment.

Norman Hope – Fox Run

Mr. Hope said he has been asking questions of Ms. Houghton. He said he would like to see how many positions have been added versus how many have been cut. He said he had spoken to the property appraiser and the private appraiser about the 10% projection which has been verified by the property appraiser but not the private sector.

Mr. Hope said he understood the city's dilemma and that he appreciated that Council did not wish to cut any funds from public safety. He agreed with the half day furlough but had concern over taking that from the employees. He thanked Council for looking at all areas rather than focusing on just one area. He expressed concern about taking from reserves.

Mr. Cunningham

Mr. Cunningham questioned the need for twice a week garbage pickup and thought in that area there could be a savings.

Mayor Wolfe said a study was done and he did not believe there was much savings. Councilmember Smith agreed and discussed the analysis that had been done. Councilmember Pfister with the rise in fuel it might be worthwhile looking at it again.

Mr. Drury said staff will send Council and Mr. Cunningham a copy of the study that was done.

Mr. Cunningham said he appreciated the Fire and Police services and that hopefully Council will not cut their budgets.

Councilmember Pfister asked if there could be consideration of going to once a week pickup during the summer because of the decrease in residents during the summer.

Charlotte Hope – Fox Run

Mrs. Hope said reserves are usually the last resort in budgeting. She said in this day and time residents have to be creative at home and Council will need to be creative with the budget for the city. She advised looking at line items. She discussed her opinion regarding Council action taken last year with regard to a reduction on fines for a code enforcement violation. She said she believed there is an abundance of fines and liens which would mean instant revenue back into the city.

Councilmember Gamble noted the governor is trying to enact the 5% contribution from the employees and therefore the last thing he wanted to do was take anything further away from the employees. He noted that might affect the city's contribution as well.

Tab 6) Agreement with the Chamber of Commerce for the Sale of Alcohol at the Colt Ford Concert

Ms. Rogers discussed the proposed agreement which has been developed by working with the Chamber. They will provide beer sales on site at the concert. They will also be selling the city's bottled water which the city will sell to them at cost. The profit from the alcohol sales will be divided between the land owner, the city and the chamber. On site will be one food vendor.

Councilmember Pfister said she was concerned about the business owners although she supported the Chamber. She asked if staff have talked with all the business owners to determine if they are all agreeable with the Chamber being the sole provider of water and beer.

Ms. Rogers said staff has met with Andrew O'Keefe, president of the Downtown Business Development Committee and the landowner. He said they have both been agreeable to the contract. She said once people are within the concert area they will not be able to leave the area and return. Councilmember asked about the other businesses that sell alcohol. Ms. Rogers said Mr. O'Keefe was representative of the committee and typically staff will meet with the president who in turn will relay the information to the other businesses.

Councilmember Gamble asked about the price of beer which was referred to in the contract. Ms. Rogers said she believed it was $4.00 but it would need to be included in the contract.

MOTION

Lori Pfister moved to approve the chamber selling beer at the event [Colt Ford concert], seconded by Kirby Smith. The motion carried unanimously 5-0.

XI. OLD BUSINESS

None

XII. NEW BUSINESS

None.

XIII. AUDIENCE TO BE HEARD

Mayor Wolfe invited public comment.

Doris Ragan

Ms. Ragan said she is president of the Palm Garden Club. She said the retention pond holds a fountain called the Chris Daniels Memorial Park. She said the club would like to request that the retention pond be renamed the "Welcome Lake" which would give a welcome to all who enter the city from the west. Mr. Drury said this could be put on the next agenda to allow Council some time to consider this.

XV. REPORTS

Tab 13) City Administrator

Mr. Drury stated he had provided a list of meetings and events. He noted on March 15th the County will host the community-wide fire discussion at the Magnolia Room at Lake Sumter at 4 p.m.

Attorney Williams

None

Finance Director

None

Community Services Director

Discussed opening day for Babe Ruth this Saturday at Fred Stover field.

Fire Chief

None

Chief Lubins

None

Economic Development Director

Mr. Neron discussed upcoming events.

Communications Director

None

City Clerk

No report

Utility Director

Stated staff has received notification of a $20,000 grant from the Florida Department of Health for equipment at Water Treatment Plant #1 which Ms. Houghton is reviewing.

Presented the container of pills that have been dropped off at the Police Department by the public, thus keeping them out of the aquifer. Police Lubins stated the pills will be disposed of by the Police Department.

Tab 14) City Council

Councilmember Smith
Councilmember Smith said he would like to see the list of proclamations that have been done previously.

He asked for a count of the tickets that have been sold for the Colt Ford Concert. Ms. Rogers said "195" and that she has been advised by the talent buyer that that is a good pre-sale because it is general admission and there is no incentive to buy early.

Councilmember Smith asked if the city has all the rowers it needs for Dragonboat and encouraged others to participate.

Noted that the mayor has been complimented on the job he has done on the flagpole and the monument but that Jim Dolan is a resident of Tavares who works with Mr. Wolfe and they have both donated their time (over 20 hours) to do this for the city.

Vice Mayor Grenier noted the Historical Society newsletter will be featuring the Mayor and Mr. Dolan.

Councilmember Gamble
Asked for confirmation that the Golden Triangle meeting will be March 23rd. Thanked the audience for their attendance.

Councilmember Pfister
No report.

Vice Mayor Grenier
Noted that on March 3, 1845 Florida became a state and that the birthday of Major St.Clair Abrams was seven days later. Noted that March 4 is the City of Chicago's birthday (1832).

Commented on the flagpole that the Mayor has been constructing which is utilizing the bricks from the 1888 Osceola Hotel donated by Charlene and Jack King.

Mayor Wolfe
Said he met with the Taiwanese consultant who has donated funds for a fireworks show at the Dragonboat Festival on April 8th.

Adjournment

There was no further business and the meeting was adjourned by the Mayor at 6:58 p.m.

Respectfully submitted,

Nancy A. Barnett

Nancy A. Barnett, C.M.C.
City Clerk

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 2

SUBJECT TITLE: Presentation of Budget Priorities of State Chief Financial Officer by Randall Brown, Outreach Coordinator for Jeff Atwater

OBJECTIVE:

Randall Brown, Outreach Coordinator for Jeff Atwater, will make a presentation of the Budget Priorities of the State Chief Financial Officer.

SUMMARY:

N/A

OPTIONS:

N/A

STAFF RECOMMENDATION:

N/A

LEGAL SUFFICIENCY:

N/A

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TAVARES

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AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 3

SUBJECT TITLE: Proclamation for Water Conservation Month 2011

OBJECTIVE:

Council will consider a Proclamation declaring April 2011 as Water Conservation Month and calling upon the citizens and business community to help protect water resources and practice water saving measures.

SUMMARY:

See attached proclamation.

OPTIONS:

1. Declare April as Water Conservation Month.
2. Do not declare April as Water Conservation Month.

STAFF RECOMMENDATION:

Declare April as Water Conservation Month.

FISCAL IMPACT:

N/A

LEGAL SUFFICIENCY:

N/A

TAVARES

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PROCLAMATION

WHEREAS, water is a basic and essential need of every living creature; and

WHEREAS, the State of Florida, Water Management Districts, and City of Tavares Utilities are working together to increase awareness about the importance of water conservation; and

WHEREAS, the City Of Tavares and the State of Florida have designated APRIL, typically a dry month when water demands are most acute, Florida's "WATER CONSERVATION MONTH" to educate citizens about how they can help save Florida's precious water resources; and

WHEREAS, the City Of Tavares has always encouraged and supported water conservation; and

WHEREAS, every business, industry, school, and citizen can make a difference when it comes to conserving water; and

WHEREAS, every business, industry, school, and citizen can help by saving water and thus promote a healthy economy and community; and

NOW, THEREFORE, be it resolved that the Tavares City Council of Lake County, Florida, in regular session, duly assembled, hereby proclaims the month of APRIL as **"WATER CONSERVATION MONTH"**

The Tavares City Council of Lake County, Florida, is calling upon each citizen and business to help protect our precious resource by practicing water saving measures and becoming more aware of the need to save water.

Dated this 16th day of March, 2011

Mayor	Robert Wolfe _____
Vice Mayor	Robert Grenier _____
Councilmember	Sandy Gamble _____
Councilmember	Lori Pfister _____
Councilmember	Kirby Smith_____

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 4

SUBJECT TITLE: Proclamation for Florida Surveyors & Mappers Week

OBJECTIVE:

The Mayor will read a proclamation declaring March 20-26, 2011 as Florida Surveyors and Mappers Week.

SUMMARY:

N/A

OPTIONS:

N/A

STAFF RECOMMENDATION:

N/A

LEGAL SUFFICIENCY:

N/A

TAVARES

America's Seaplane City™

PROCLAMATION

WHEREAS, surveyors and mappers are counted among the founding leaders of our country and were instrumental in the formation of the layout of property boundaries in the United States which have provided our citizens the enjoyment of property ownership; and

WHEREAS, George Washington, Thomas Jefferson and other former Presidents of the United States, served their fellow colonists as surveyors; and

WHEREAS, the citizens of Florida recognize the valuable contributions of the surveying and mapping profession to history, development, and quality of life in Florida and the United States of America and make important decisions based on the knowledge and expertise of licensed surveyors and mappers; and

WHEREAS, the surveying and mapping profession requires special education, training, the knowledge of mathematics, the related physical and applied sciences, and requirements of law for evidence; and

WHEREAS, surveyors and mappers are uniquely qualified and licensed to determine and describe land and water boundaries for the management of natural resources and protection of private and public property rights; and

WHEREAS, the continual advancements in instrumentation have required the surveyor and mapper not only to be able to understand and implement the methods of the past, but also to learn and employ modern technology in finding solutions to meet the challenges of the future.

NOW, THEREFORE, BE IT RESOLVED that in conjunction with National Surveyors Week, the City of Tavares does hereby proclaim the week of March 20-26, 2011, as

FLORIDA SURVEYORS & MAPPERS WEEK

and, recognize the many contributions and the ongoing dedication of surveyors and mappers to the citizens of Tavares.

PASSED AND DULY ADOPTED on this 16th day of March, 2011

_____

Mayor Robert Wolfe
City of Tavares

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 5 **FIRST READING**

SUBJECT TITLE: **Ordinance 2011-01**
Amendment to City's Land Development Regulations
Adoption of the International Property Maintenance Code

OBJECTIVE:

To consider text amendments to the City's Land Development Regulations that would adopt the 2009 International Property Maintenance Code as the property maintenance standard for the City of Tavares.

SUMMARY:

On May 5, 2002, the City of Tavares adopted the 1997 edition of the Standard Housing Code, published by the Southern Building Code Congress International, Inc., as the governing law for minimum housing standards in Tavares. Since that date, the Southern Building Code Congress International, or SBCCI, has been incorporated into the International Code Council or ICC, for the purpose of developing a single set of coordinated national model building codes. Florida has adopted the ICC codes as the state's building code.

The Standard Housing Code, adopted in our Land Development Regulations, is no longer in print or readily available and in fact, the city does not have a copy of this code to refer to for enforcement. Although not mandatory, many local governments that enforce property standards have adopted ICC's Property Maintenance Code thus insuring coordination with state building codes.

The proposed ordinance repeals the adoption of the old Standard Housing Code and adopts in replacement the 2009 International Property Maintenance Code with the following exceptions:

1. The administration and enforcement procedures for property standards will continue in the same manner as specified in our Code of Ordinances.
2. The City's Building Official or Fire Marshall shall enforce emergency measures needed to safeguard life against situations such as building collapse and the presence of explosive fumes or gases.
3. The section governing weeds of the ICC code is not adopted since it conflicts with our City's present regulations governing accumulation and excessive growth. It is staff's opinion that these present standards are adequate.

OPTIONS:

No Council action required at First Reading.

STAFF RECOMMENDATION:

At Second Reading, staff will recommend that Council moves to approve Ordinance 2011-01

FISCAL IMPACT:

N/A

LEGAL SUFFICIENCY:

This ordinance has been reviewed by the City Attorney and approved for legal sufficiency.

ORDINANCE 2011-01

AN ORDINANCE OF THE CITY OF TAVARES, FLORIDA; AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING CHAPTER 22, BUILDINGS AND BUILDING REGULATIONS, BY REPEALING IN ITS ENTIRETY, SECTION 22-4, STANDARD HOUSING CODE AND REPLACING IT WITH SECTION 22-4, PROPERTY MAINTENANCE CODE; THUS ADOPTING THE 2009 INTERNATIONAL PROPERTY MAINTENANCE CODE TO REGULATE AND GOVERN THE CONDITIONS AND MAINTENANCE OF ALL PROPERTIES, BUILDINGS AND STRUCTURES IN THE CITY OF TAVARES; PROVIDING FOR SEVERABILTY AND CONFLICTS; SUBJECT TO THE RULES, REGULATIONS AND OBLIGATIONS ORDAINED BY THE CITY OF TAVARES COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 5, 2002, the City of Tavares adopted the 1997 edition of the Standard Housing Code, published by the Southern Building Code Congress International, Inc., as the governing law for minimum housing standards in Tavares, and

WHEREAS, the Southern Building Code Congress International, or SBCCI, has been incorporated into the International Code Council or ICC, for the purpose of developing a single set of coordinated national model building codes, and

WHEREAS, the 1997 edition of the Standard Housing Code, which is no longer in print or readily available, has been replaced and updated by ICC's International Property Maintenance Code, and

WHEREAS, the ICC Codes have become the model building codes adopted throughout the country including Florida, and

WHEREAS, the City of Tavares has determined that adopting the International Property Maintenance Code as the property maintenance standard for the city is appropriate and in accordance with protecting the health, safety and welfare of the community; therefore;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAVARES, FLORIDA:

Section 1. Text Amendments

That the City of Tavares Land Development Regulations Section 22-4, Standard Housing Code, is hereby repealed in its entirety and replaced with Section 22-4, Property Maintenance Code as set forth in Exhibit "A", attached hereto as part of this ordinance.

Section 2. Severability and Conflicts

The provisions of this ordinance are severable and it is the intention of the City Council of Tavares, Florida, to confer the whole or any part of the powers herein provided. If any court of competent jurisdiction shall hold any of the provisions of this ordinance unconstitutional, the decision of such court shall not impair any remaining provisions of this ordinance.

Section 3. Effective Date

This Ordinance shall take effect immediately upon its final adoption by the Tavares City Council.

PASSED AND ADOPTED this _____ day of _____, 2011 by the City Council of the City of Tavares, Florida.

_____
Robert Wolfe, Mayor
Tavares City Council

First Reading: _____

Second Reading: _____

ATTEST:

_____
Nancy A. Barnett, City Clerk

Approved as to form:

_____
Robert Q. Williams, City Attorney

EXHIBIT "A"

Section 22-4 Property Maintenance Code

A) Adopted

Subject to the amendments set forth in subsection (B), the 2009 edition of the International Property Maintenance Code, as published by the International Code Council as amended from time to time, is hereby adopted as the property maintenance standard that governs the condition and maintenance of all properties, buildings and structures within the City of Tavares.

B) Exceptions

Chapter 1- Administration
The administrative procedures for the enforcement of this code, including, but not limited to, the issuing of notices of violations, conducting hearings, levying of fines and liens and the appeal of orders shall be as specified in the Code of Ordinances of the City of Tavares, Article 111, Division 2, Enforcement of Municipal Codes.

Section 109- Emergency Measures
For the purposes of this Section, the Building Official or the Fire Marshall for the City of Tavares shall be deemed to be the Code Official. The City's Code Enforcement Officer shall be deemed to be the Code Official for the enforcement of all other sections of this code.

Section 302.4 Weeds
Delete entire Section. (Accumulation and Excessive Growth is governed by Section 12-8 of the City's Land Development Regulations.)

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AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 6 **FIRST READING**

SUBJECT TITLE: **Ordinance 2011-04**
Amendment to City's Land Development Regulations
Seaplane Docks, Landing and Housing

OBJECTIVE:

To consider text amendments to the City's Land Development Regulations to specifically permit the docking, landing and housing of seaplanes as an accessory use in our waterfront residential districts.

SUMMARY:

On October 21, 2009, the City of Tavares officially became **"America's Seaplane City".** The city has embraced this brand with the construction and operation of the **Tavares Seaplane Base and Marina.** The City actively encourages commercial development related to the Seaplane Industry as well as the private usage of seaplanes for recreational purposes and as an alternate and unique mode of transportation.

A citizen from Tavares has recently asked if our Land Development Regulations would allow private docking, landing and housing for seaplanes as an accessory use in waterfront residential zonings. Although our code does recognize these uses for boats, it does not specifically mention that the same accessory structures and uses are allowed for seaplanes. Both the inquiring citizen and staff believe that **"America's Seaplane City"** should have provisions in our code that would allow both seaplane and boat related accessory uses.

The proposed amendment to Chapter 8, Section 11(D) (1) (g) of the Land Development Regulations is a simple change that would allow private docks, boathouses and landing places for seaplanes, water vessels and boats provided that such structures maintain the same side yard as that required by the principal structure, and further that such structures comply with State and/or Federal regulations when applicable.

OPTIONS:

No Council action required at First Reading.

STAFF RECOMMENDATION:

At Second Reading, staff will recommend that Council moves to approve Ordinance 2011-04

FISCAL IMPACT:

N/A

LEGAL SUFFICIENCY:

This ordinance has been reviewed by the City Attorney and approved for legal sufficiency.

ORDINANCE 2011-04

AN ORDINANCE OF THE CITY OF TAVARES, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS; BY AMENDING CHAPTER 8, SECTION-11(D)(1), PERMITTED ACCESSORY USES AND STRUCTURES IN RESIDENTIAL DISTRICTS, BY AMENDING CLAUSE (g) TO SPECIFICALLY ALLOW PRIVATE DOCKS, HOUSING AND LANDING OF SEAPLANES PROVIDED THAT SUCH STRUCTURES COMPLY WITH STATE AND/OR FEDERAL REGULATIONS WHEN APPLICABLE, SUBJECT TO THE RULES, REGULATIONS AND OBLIGATIONS ORDAINED BY THE CITY OF TAVARES COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 21, 2009, the City of Tavares officially became **America's Seaplane City**; and

WHEREAS, the City of Tavares has embraced this brand with the construction and operation of the **Tavares Seaplane Base and Marina** in Wooten Park; and

WHEREAS, the City of Tavares actively encourages commercial development related to the Seaplane Industry as well as the private usage of seaplanes for recreational purposes and as an alternate and unique mode of transportation; and

WHEREAS, the Land Development Regulations presently allows private docks, housing and landings for boats in residential districts but does not specifically allow for the same accessory structures for seaplanes, and

WHEREAS, the City of Tavares has determined these changes are appropriate and in the best interest of the community; therefore;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAVARES, FLORIDA:

Section 1. Text Amendments

That the City of Tavares Land Development Regulations be hereby amended as follows:

Chapter 8, Section 11(D)(1)(g)

(g) Private docks, boathouses and landing places for seaplanes, water vessels and boats are permitted provided that such structures maintain the same side yard as that required for the principal structure, and further provided that such structures comply with State and/or Federal regulations when applicable.

Section 2. Severability and Conflicts

The provisions of this ordinance are severable and it is the intention of the City Council of Tavares, Florida, to confer the whole or any part of the powers herein provided. If any court of competent jurisdiction shall hold any of the provisions of this ordinance unconstitutional, the decision of such court shall not impair any remaining provisions of this ordinance.

Section 3. Effective Date

This Ordinance shall take effect immediately upon its final adoption by the Tavares City Council.

PASSED AND ADOPTED this _____ day of _____, 2011 by the City Council of the City of Tavares, Florida.

_____
Robert Wolfe, Mayor
Tavares City Council

First Reading: _____

Second Reading: _____

ATTEST:

_____
Nancy A. Barnett, City Clerk

Approved as to form:

_____
Robert Q. Williams, City Attorney

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TAVARES

America's Seaplane City™

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 7

SUBJECT TITLE: Discussion on Providing Impact Fee Credits for Construction that Exceeds Building Code Requirements

OBJECTIVE:
To discuss with Council a proposal for a program that would provide impact fee credits for certain methods of development and construction that exceed code requirements if it could be demonstrated that this would result in a measurable reduction in the levels of service that would have to be provided by the city.

SUMMARY:
In December of 2010, City Council approved, as a city-wide economic incentive, an ordinance that extended the waiver of all city impact fees until December 31, 2011. During that meeting, there was discussion that waivers could not be indefinitely sustained. There was a suggestion that, at a future time, impact fee credits could be given in recognition of extraordinary green construction over and above the energy saving regulations that are already part of our Florida Building Code.

Staff met with Council Member Lori Pfister, our liaison for the Green Initiatives Horizon Project. Examples of how green and innovative construction methods and design could result in lowering the impacts on required City Services were discussed. If these could be quantified and equated to a corresponding impact fee credit, there would theoretically be no cost or loss of revenue to the city. Possible examples are:

Water Impact Fee- $1,670
Things that could reduce impact
-rain water collection
-draught tolerant landscaping
-water saving irrigation methods
-grey water recycling
-use of water conserving appliance/fixtures that are more efficient than that required by code

Sewer Impact-$3,130
Things that could reduce impact
- same as above

Fire Impact-$402.79
Things that could reduce impact
-use of fire sprinkler systems where not already required by the Building Code
-non-combustible construction where not already required by the Building Code

Parks Impact-$439.99
Things that could reduce impact
-dedicated open space above code requirements in-lieu of park impact fee

Police Impact -$215.37
Things that could reduce impact
-gated/secured communities
-security systems

This list is very preliminary and simply reflects findings of an internet search of programs that have been adopted in part by a few cities throughout the country. To fully implement this concept, a complete study of eligible practices and expected savings would have to be undertaken.

OPTIONS:

1. That City Council discusses the concept of providing impact fee credits in recognition of the savings related to extraordinary green and innovative construction and design that is above code requirements and that Council instructs staff to develop a program to implement this concept for the future.
2. That City Council discusses the concept and takes no action on this matter.

STAFF RECOMMENDATION:

This is a policy issue for which staff is seeking Council direction.

FISCAL IMPACT:

N/A

LEGAL SUFFICIENCY:

Approved for legal sufficiency.

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 8

SUBJECT TITLE: Approval for Consulting Services for the USDA Loan with Malcolm Pirnie

OBJECTIVE: To approve the Engineers Joint Contract Document Committee (EJCDC) contract form between USDA, City of Tavares and Malcolm Pirnie in the amount of $800,817. This document is part of the application process for a potential $9,470,799 Grant/Loan for the Stormwater Infrastructure System Upgrades in the CRA section of Tavares.

SUMMARY: Previously the City Council went out for proposals to hire a firm to do the entire city utility upgrades, provide grant acquisition and management services and government affairs services for the next five years. The Council selected Malcolm Pirnie.

On behalf of the City, Malcolm Pirnie is pursuing funding through the United States Department of Agriculture (USDA) Rural Utilities Grant/Loan program for the Downtown Community Re-development Area (CRA) Stormwater Improvements. A requirement for the grant funding application submittal is completion of the Engineers Joint Contract Documents Committee (EJCDC) Agreement between Owner and Engineer for Professional Services. The agreement includes tasks for the preliminary design, final design, as well as bidding, negotiating, and administering the construction of the stormwater improvements.

This is the very same process the City went through to appropriate the funding that the City received for the water and wastewater system improvements in the Downtown CRA from the USDA. Essentially, City Council is approving a contract with Malcolm Pirnie to do the engineering work for the project, but the contract is contingent upon 3 conditions: (A) the acceptable review by USDA; (B) the City receiving the funding from USDA for the project. (C) City Council accepts the grant/loan offer from USDA for this project. Based on those 3 items Malcolm Pirnie will not do any work, nor will the City accrue any costs for work, under this contract until the City issues Malcolm Pirnie a subsequent notice to proceed.

The cost of the project is approximately $9.5 million, of which nearly half could be funded by grant, with the balance in the form of a low interest loan to be repaid over a forty-year period, minimizing the cost impact to the City. Included in this estimate are contracts for the various services necessary to enable this funding, and ultimately to complete the project. These include financial, engineering,

legal, administrative, and construction agreements. Staff negotiated favorable fees for this contract, which represents 2 components: (1) Design, Bidding & Construction Phases which is $649,637 and is 7% of the contract which is less than the industry standard of 10-15%. (2) Construction Administration is $151,180 and is 2% of the overall cost and below the industry standard of 7-9% for this work. These fees also meet the parameters of the USDA fee structure guidelines. These agreements – legal and engineering services – are required to be in place at the time the application is submitted to USDA.

Staff is hopeful that, with Council's approval, the City will obtain an acceptable grant/loan determination from USDA to help us make this important project a reality.

OPTIONS:

1. To approve the Contract Document (EJCDC) between the USDA, Tavares and Malcolm Pirnie
2. To not approve the Contract Document (EJCDC) between the USDA, Tavares and Malcolm Pirnie

STAFF RECOMMENDATION:

1. That Council move to approve the Contract Document (EJCDC) between the USDA, Tavares and Malcolm Pirnie to complete the application process.

FISCAL IMPACT: Until a determination is made by the USDA for this application there is no Fiscal Impact

LEGAL SUFFICIENCY: This is a required standard document for the USDA.

Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement

Instructions

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2. Make sure that you have the correct version for your word processing software.

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4. Also note the instruction in the License Agreement about the EJCDC copyright.

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You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

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Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and

workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

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1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or

2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

EJCDC

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

AGC of America
The Associated General Contractors of America
Quality People. Quality Projects.

ASCE American Society of Civil Engineers

National Society of Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

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EJCDC E-500 Standard Form of Agreement Between Owner and Engineer for Professional Services.
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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
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EJCDC

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of March 16 , 2011 ("Effective Date") between

City of Tavares ("Owner") and

Malcolm Pirnie, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Downtown CRA Stormwater Improvements ("Project").

Engineer's services under this Agreement are generally identified as follows:
Design improvements to the stormwater collection system in order to reliably serve the demands of the Downtown Community Redevelopment Area including conveyance modifications to accommodate the 10-year design storm and treatment modifications to provide treatment where little to none exists. The propsed improvements incude approximately 13,000 linear feet of reinforced stormwater piping, 116 structures and two ponds within the CRA.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

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B. Owner shall pay Engineer as set forth in Exhibit C.

C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

A. *Application to Interest and Principal*: Payment will be credited first to any interest owed to Engineer and then to principal.

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B. *Failure to Pay*: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

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ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures*:

1. Engineer and Owner shall comply with applicable Laws and regulations.

2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

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Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

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B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability

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policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and thatrenewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension*:

1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

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b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination*:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

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6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

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C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer*: To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

B. *Indemnification by Owner*: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.

C. *Environmental Indemnification*: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or

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destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence*: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. *Mutual Waiver*: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

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1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.

6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.

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11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

14. *Engineer* – The individual or entity named as such in this Agreement.

15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

18. *PCBs* – Polychlorinated biphenyls.

19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

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24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such

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construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Notice of Acceptability of Work.

F. Exhibit F, Construction Cost Limit, Not Included.

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability, Not Included.

J. Exhibit J, Special Provisions.

K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement:*

A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

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1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:	Engineer:
City of Tavares	Malcolm Pirnie, Inc.
By: _____	By: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____
	Engineer License or Firm's Certificate No. _____
	State of: _____
Address for giving notices:	Address for giving notices:
201 E. Main Street	2301 Maitland Center Parkway, Suite 244
Tavares, FL 32778	Maitland, FL 32751
_____	_____
Designated Representative (Paragraph 8.03.A):	Designated Representative (Paragraph 8.03.A):
_____	_____
Title: _____	Title: _____
Phone Number: _____	Phone Number: _____
Facsimile Number: _____	Facsimile Number: _____
E-Mail Address: _____	E-Mail Address: _____

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This is **EXHIBIT A**, consisting of 12 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

Malcolm Pirnie (Engineer) will perform the professional engineering services for the improvements to the City of Tavares (Owner) stormwater collection system within the Downtown Community Redevelopment Area. The Engineer will serve as the Owner's professional engineering representative in those phases of the project to which the Scope of Work applies, and will provide consultation and advise the Owner during the performance of these services. The applicable disciplines include civil, as well as survey and geotechnical services.

The scope of work includes, but is not limited to the following design components: install approximately 13,000 linear feet of stormwater piping, approximately 116 structures and two ponds within the CRA. One pond is to be used for conveyance capacity and one pond is to be used as a wet detention pond for stormwater treatment.

In order to provide the additional capacity needed to accommodate the 10-year design storm and provide treatment, Malcolm Pirnie recommends the following stormwater collection system modifications.

A1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.

2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.

3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

4. Identify and evaluate two conveyance and four treatment alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.

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5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.

6. Perform or provide the following additional Study and Report Phase tasks or deliverables: No additional tasks or deliverables included.

7. Furnish 2 review copies of the Report and any other deliverables to Owner within 60 calendar days of the Effective Date and review it with Owner. Within 15 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.

8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish 2copies of the revised Report and any other deliverables to the Owner within 30 calendar days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A1.02 *Preliminary Design Phase*

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

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- Perform or provide the following additional Preliminary Design Phase tasks or deliverables: Field Coordination and Kickoff Activities – including project kick off meeting attendance and meeting minutes.
- Coordination of Geotechnical Investigations - The Engineer will provide and coordinate the services of a qualified geotechnical subconsultant.
- Coordination of Topographic Survey Services - The Engineer will provide and coordinate the services of a qualified land survey subconsultant.
- Coordination of Utility Location Subcontractor - The Engineer will provide and coordinate the services of a qualified utility location subconsultant.
- 60 Percent Design Review – Drawing shall be review with the Owner in the office of the Engineer to provide explanation of project components and project status.

5. Furnish 2 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 240 calendar days of authorization to proceed with this phase, and review them with Owner. Within 14 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

6. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner two full sized and 5 half sized sets of drawings and 5 copies of specifications of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 *Final Design Phase*

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.

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4. Perform or provide the following additional Final Design Phase tasks or deliverables: No additional tasks or deliverables included.

5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 14 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.

6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit two full sized and 5 half sized sets of drawings and 5 copies of specifications final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 30 calendar days after receipt of Owner's comments and instructions.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.

2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.

3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

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4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.

5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: No additional tasks or deliverables included.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.

4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

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6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

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9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.

11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

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a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.

17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

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18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: No additional tasks or deliverables included..

19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

A. Upon written authorization from Ownerduring the Post-Construction Phase Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.

2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.

3. Perform or provide the following additional Post-Construction Phase tasks or deliverables: No additional tasks or deliverables included.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

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PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use.

7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

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11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.

16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

18. Preparation of operation and maintenance manuals.

19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

21. Assistance in connection with the adjusting of Project equipment and systems.

22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.

24. Overtime work requiring higher than regular rates.

25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

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A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with work change directives and change orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.

8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

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This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.

6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

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E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:

   1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

   2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

   3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.

J. Place and pay for advertisement for Bids in appropriate publications.

K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties,

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responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.

P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

S. Perform or provide the following additional services: *[Here list any such additional services]*.

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SUGGESTED FORMAT
(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated March 16, 2011.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:

1. A Lump Sum amount of $ 649,637 based on the following estimated distribution of compensation:

a. Study and Report Phase	$ 58,774
b. Preliminary Design Phase	$ 323,728
c. Final Design Phase	$ 64,630
d. Bidding and Negotiating Phase	$ 25,850
e. Construction Phase	$ 159,420
f. Post-Construction Phase	$ 17,235

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

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B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 10 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 *Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services*: For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of $ 151,180. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.

2. *Resident Project Representative Schedule*: The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a 10 month construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

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COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplmented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General*: For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.

2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of 2012) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.

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2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

8"x11" Copies/Impressions	$0.15 /page
11"x17" Copies/Impressions	$0.30 /page
24"x36" Copies/Impressions	$1.00 /page
Shipping (per package)	$15.00 /each
Mileage (auto)	$0.445 /mile
Mileage (Field Truck)	$0.445 /mile

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This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Project Officer	$ 244 /hour
Senior Associate	$ 200 /hour
Associate	$ 179 /hour
Senior Engineer	$ 149 /hour
Project Design Engineer	$ 124 /hour
Design Engineer	$ 101 /hour
Senior Technician	$ 120 /hour
Technician	$ 82 /hour
Support Staff	$ 62 /hour

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

D1.01 *Resident Project Representative*

C. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.

D. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.

E. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison:*

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a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.

b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. *Shop Drawings and Samples:*

a. Record date of receipt of Samples and approved Shop Drawings.

b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. *Review of Work and Rejection of Defective Work:*

a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

9. *Inspections, Tests, and System Start-ups:*

a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

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b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

d. Maintain records for use in preparing Project documentation.

e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.

c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

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d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion*:

    a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

    b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.

    c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

F. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

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6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept shop drawing or sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

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CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the professional judgment of Engineer.

3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.

4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.

5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

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This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Each Accident: $ 1,000,000
2) Disease, Policy Limit: $ 1,000,000
3) Disease, Each Employee: $ 1,000,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage): $ 1,000,000
2) General Aggregate: $ 2,000,000

d. Excess or Umbrella Liability --

1) Each Occurrence: $ 20,000,000
2) General Aggregate: $ 20,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident $ 1,000,000

f. Professional Liability –

1) Each Claim Made $ 1,000,000

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B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

   a. None

   a. _____
   Engineer

   b. _____
   Engineer's Consultant

   c. _____
   Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

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This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

[*NOTE TO USER: Select one of the two alternatives provided*]

H6.08 *Dispute Resolution*

A. *All claims, disputes and other matters in question sbetween OWNER and ENGINERER arising out of, or relating to this Agreement, or the breach thereof shall be decided by binding unappealable arbitration, as conducted by Americal Arbitration Association, under the Construction Industry Arbitration Rules, if the claim for compensation, costs or expenses or damages is equal to or less than Fifty Thousand Dollars ($50,000)*

Nothing herein contained shall be so construed as to preclude the ENGINEER form commencing a legal action in relation to claims in excess of Fifty Thousand Dollars ($50,000), but the ENGINEER'S sole legal remedy in relation to claims of Fifty Thousand Dollars ($50,000) or less shall be binding, unappealable arbitration as prescribed.

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This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

Special Provisions

None

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This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 16, 2011.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

   a. Effective Date of Owner-Engineer Agreement: _____

   b. Owner: _____

   c. Engineer: _____

   d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

   a. Engineer shall perform or furnish the following Additional Services:

   b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

   c. The responsibilities of Owner are modified as follows:

   d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

   e. The schedule for rendering services is modified as follows:

   f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

   [List other Attachments, if any]

5. Agreement Summary (Reference only)

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a. Original Agreement amount: $_____
b. Net change for prior amendments: $_____
c. This amendment amount: $_____
d. Adjusted Agreement amount: $_____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:	ENGINEER:
_____	_____
By: _____	By: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____

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AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 9

SUBJECT TITLE: Legal Services Agreement for USDA-RD STORMWATER Grant Application

OBJECTIVE:

To approve and ratify USDA-RD Legal Services Agreement with City Attorney

SUMMARY:

The City and Consultants, Malcolm Pirnie, have prepared an extensive grant application to the United States Department of Agriculture Rural Development Agency (USDA-RD) for the stormwater collection and treatment systems in the Downtown CRA district.

The grant is offered through the USDA-RD program as part of the American Recovery and Reinvestment Act of 2009.

As part of the Federal requirement for this grant, the applicant is required to have a Legal Services Agreement on file utilizing the RUS Bulletin 1780-7 format; please see attached agreement for ratification. This agreement is effective only specific to legal work related to the grant should it be awarded. In the event the grant is not awarded by the agency, the legal contract would be cancelled.

This agreement is intended to demonstrate to the granting agency that our legal counsel is prepared to execute and review documents related to the grant.

OPTIONS:

1. Approve and ratify USDA-RD RUS Bulletin 1780-7 Legal Services Agreement as prepared.

2. Do not approve or ratify USDA-RD RUS Bulletin 1780-7 Legal Services Agreement.

STAFF RECOMMENDATION:

Motion to approve and ratify USDA-RD RUS Bulletin 1780-7 Legal Services Agreement as prepared

FISCAL IMPACT: The grant award provides allocated funding for legal services related to the USDA-RD Stormwater Grant.

LEGAL SUFFICIENCY: This agreement has met legal sufficiency.

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service

LEGAL SERVICES AGREEMENT

This agreement made this _____ day of February, 2011 between City of Tavares.

(sponsors) (organizing committee) (Name of organization)

hereinafter referred to as "Owners," and Robert Q. Williams and Michael D. Williams, Esq. of Akerman Senterfitt, attorney at law, of Williams, Smith & Summers, hereinafter referred to as "Attorney": Robert Q. Williams will serve as Issuer's Council; Michael D. Williams will serve as bond council.

WHEREAS, Owners are intending to (have formed) ("public water supply district," public stormwater system "public service district," "not for profit corporation," or other official designation), a municipal corporation ("body politic," "municipal corporation," "nonprofit corporation," or other organization)

in Lake County Florida

under the provisions of (Cite statute(s) under which applicant will be organized) Section 373.713, Florida Statutes; and

WHEREAS, the Attorney agrees to perform all legal services necessary to organize and incorporate said public stormwater system under the provisions of

said statutes and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of
a public stormwater system;

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - LEGAL SERVICES

That the Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

1. Preparation and filing of petition for incorporation and supervision and assistance in the taking of such other actions as may be necessary or incidental to cause the Owners to become duly organized and incorporated and to be authorized to undertake the proposed system.

2. Furnish advice and assistance to the governing body of the duly incorporated association in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of meetings; (c) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction, and initial operation of the system; (d) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed in the conduct of such bond elections as may be necessary; (e) the preparation and completion of such bonds or other obligations as may be necessary to finance the system; (f) the completion and execution of documents for obtaining a loan made or insured or a grant made by the United States of America, acting through the Rural Utilities Service, U. S. Department of Agriculture; (g) entering into construction contracts; (h) preparation and adoption of By-Laws, Rules and Regulations, and rate schedules; (i) such other corporate action as may be necessary in connection with the financing, construction, and initial operation of the system.

3. Review of construction contracts, bid-letting procedure, and surety and contractual bonds in connection therewith.

4. Preparation, negotiation, or review of contract with a city or other source of water supply when necessary.

5. Preparation, where necessary, and review of deeds, easements and other rights-of-way documents, and other instruments for sites for source of water supply, pumping stations, treatment plants, and other facilities necessary to the system and to provide continuous rights-of-way therefor; rendering title opinions with reference thereto; and providing for the recordation thereof.

6. Obtain necessary permits and certificates from county and municipal bodies, from State regulatory agencies, and from other public or private sources with respect to the approval of the system, the construction and operation thereof, pipeline crossings, and the like.

7. Cooperate with the engineer employed by Owners in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, health permits, crossing permits, and other instruments.

8. When applicable, secure assistance of and cooperate with recognized bond counsel in the preparation of the documents necessary for the financing aspects of the system. The attorney shall pay all bond counsel in perfecting the financing aspects, e.g., assessment procedures and completion of documents. Where bond counsel is retained, the Attorney will not be responsible for the preparation and approval of those documents pertaining to the issuance of the Owner's obligations.

SECTION B - COMPENSATION

1. Owners will pay to the Attorney for professional services rendered in accordance herewith, fees as follows:

Fees will be in an amount not to exceed 50,000.00. . See attached fee schedule for local council and bond council.

Said fees to be payable in the following manner and at the following times:

Attorneys fees will be paid at time of bond closing.

SECTION C - OTHER PROVISIONS

1. That upon organization and incorporation the association shall by appropriate resolution adopt and ratify this Agreement, that the association shall be substituted for the individual Owners as a party to this Agreement, and that the Owners as individuals shall thereupon be relieved of all personal liability existing or arising from this Agreement.

2. That upon organization and incorporation should the association fail or refuse to adopt and ratify this Agreement by appropriate resolution within 45 days from the date of the commencement of its legal existence, this Agreement shall terminate and Owners shall be liable to the Attorney for payment of $ 0.00, which sum represents payment in full for the organization and incorporation of the association and for all other legal services rendered to Owners under the terms of this Agreement to the date of said termination.

Attorney:

Robert Q. Williams, Esq.

Michael D. Williams, Esq.

Owners:

John H. Drury, City Adminstrator

City of Tavares, Florida

oOo

Attachment to Legal Services Agreement
Local Counsel

Owner: City of Tavares, Florida Phone: 352-742-6209

Attorney: Williams, Smith & Summers, P.A. Phone: 352-343-6655

Project Name: Public Stormwater System

Itemization of Services Provided and Fee Charged:

		# of Hours	$ Per Hour	Total
1.	Review of all documentation associated with Loan	24	$ 150	$ 3,600
2.	Review of all documentation associated with Grant	24	$ 150	$ 3,600
3.	Research titles and easements, prepare all documents necessary for conveyance	40	$ 150	$ 6,000
4.	Attend all meetings and phone conferences with the City staff and Bond Counsel associated with project	35	$ 150	$ 5,250
5.	Review and respond to all internal correspondence with City staff pertaining to project	20	$ 150	$ 3,000
6	Prepare and deliver opinion of local counsel; final review of all loan documentation; attend loan closing	22	$ 150	$ 3,300
7.			$	$
8.			$	$
9.			$	$
10	Expenses			250
				$
11				
				$

TOTAL $ 25,000

Owner Signature (date)

Attorney Signature (date)

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

Attachment to Legal Services Agreement
Bond Counsel

Owner: City of Tavares, Florida Phone: 352-742-6209

Attorney: Akerman Senterfitt Phone: 407-419-8439

Project Name: Public Stormwater System

Itemization of Services Provided and Fee Charged:

		# of Hours	$ Per Hour	Total
1.	Review of various documents association with Loan and Grant	10	$ 350	$ 3,500
2.	Attend meetings and phone conferences	10	$ 350	$ 3,500
3.	Review of Grant documents	8	$ 350	$ 2,800
4.	Research and initial preparation of loan documentation	20	$ 350	$ 7,000
5.	Finalization of loan documentation; attendance at loan closing, delivery of Bond Counsel opinion and closing documents	22	$ 350	$ 7,700
6			$	$
7.			$	$
8.			$	$
9.			$	$
10	Expenses			500
				$
11				
				$

TOTAL $25,000

Owner Signature (date)

for Michael S. Williams

Attorney Signature (date)

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA ITEM NO. 10

SUBJECT TITLE: Replacement of Wooton Park Dumpster Enclosure

OBJECTIVE:

To enter into a contract with D.E.O. Construction Inc. in the amount of $11,869, to replace the existing dumpster enclosure, located on Ruby St. & St. Clair Abrams Ave.

SUMMARY:

Several years ago, in the advent of commercial growth along Ruby Street, the City was faced with constructing a dumpster enclosure to service these new businesses. A temporary dumpster enclosure was constructed to meet these immediate needs. The present enclosure is problematic and an eyesore. Listed are the reasons for upgrading and relocating this structure.

1. The present enclosure depends on rolling a smaller dumpster out in the street to dump due to the existing overhead lines. This method is awkward and unsafe. Relocation of the overhead lines would be very expensive and is not an option.
2. Wooton Park and many of the businesses along Ruby St. are now serviced by blue carts. These carts are problematic for collection and look unsightly. It is our intention to install suitable trash receptacles throughout Wooton Park and use a new larger dumpster for collecting the park and business generated refuse.
3. The present dumpster will not be sufficient for the combined garbage of new businesses and Wooton Park. With the capability of an accessible larger dumpster, we will be better able to accommodate present and future expansion of our businesses in this area along with an expanded park operation.
4. The City met with Waste Management to assess the proposed location. The manager, along with his driver, helped determine this new site to be both accessible and safe.
5. We will be better able to accommodate the present event schedule.
6. The dumpster enclosure will be 6' high, exterior stucco, painted and landscaped. This structure will be far more visually pleasing.

On February 4, 2011 a request for quotes was published on the City of Tavares website, DemandStar and the Lake County Co-Op site. The closing date was March 3, 2011. Six responses were received and the low quote was DEO Construction. Per state statutes the monetary amount for the scope of services did not require the project to go through a formal bid process. A listing of the quotes received is shown at the end of this summary.

OPTIONS:

1) To enter into a contract with D.E.O. Construction Inc. in the amount of $11,869, to replace the existing dumpster enclosure, located on Ruby St. & St. Clair Abrams Ave.
2) To not enter into a contract with D.E.O. Construction Inc. in the amount of $11,869, to replace the existing dumpster enclosure, located on Ruby St. & St. Clair Abrams Ave.

STAFF RECOMMENDATION:

To enter into a contract with D.E.O. Construction Inc. in the amount of $11,869, to replace the existing dumpster enclosure, located on Ruby St. & St. Clair Abrams Ave.

FISCAL IMPACT:

Appropriation $11,869 from Sanitation Reserves.

The Government Financial Officers' Association recommends that at a minimum, general-purpose local governments, regardless of size, maintain unreserved fund balances of an amount of three months of regular operating expenditures. Three months operating expenditures for City of Tavares Sanitation Fund is estimated at $587,704.

Estimated unreserved retained earnings for the Sanitation Fund as of March 9, 2011 is $626,171.

2011-0010 Quotes for Dumpster Pad and Enclosure		
Contractor	**Price**	
DEO Construction	$	11,869.00
Pillar	$	12,493.00
Wagner 3	$	12,717.00
Sally Brackett	$	15,335.00
Perry Contracting	$	19,500.00
Sinemark	$	23,000.00

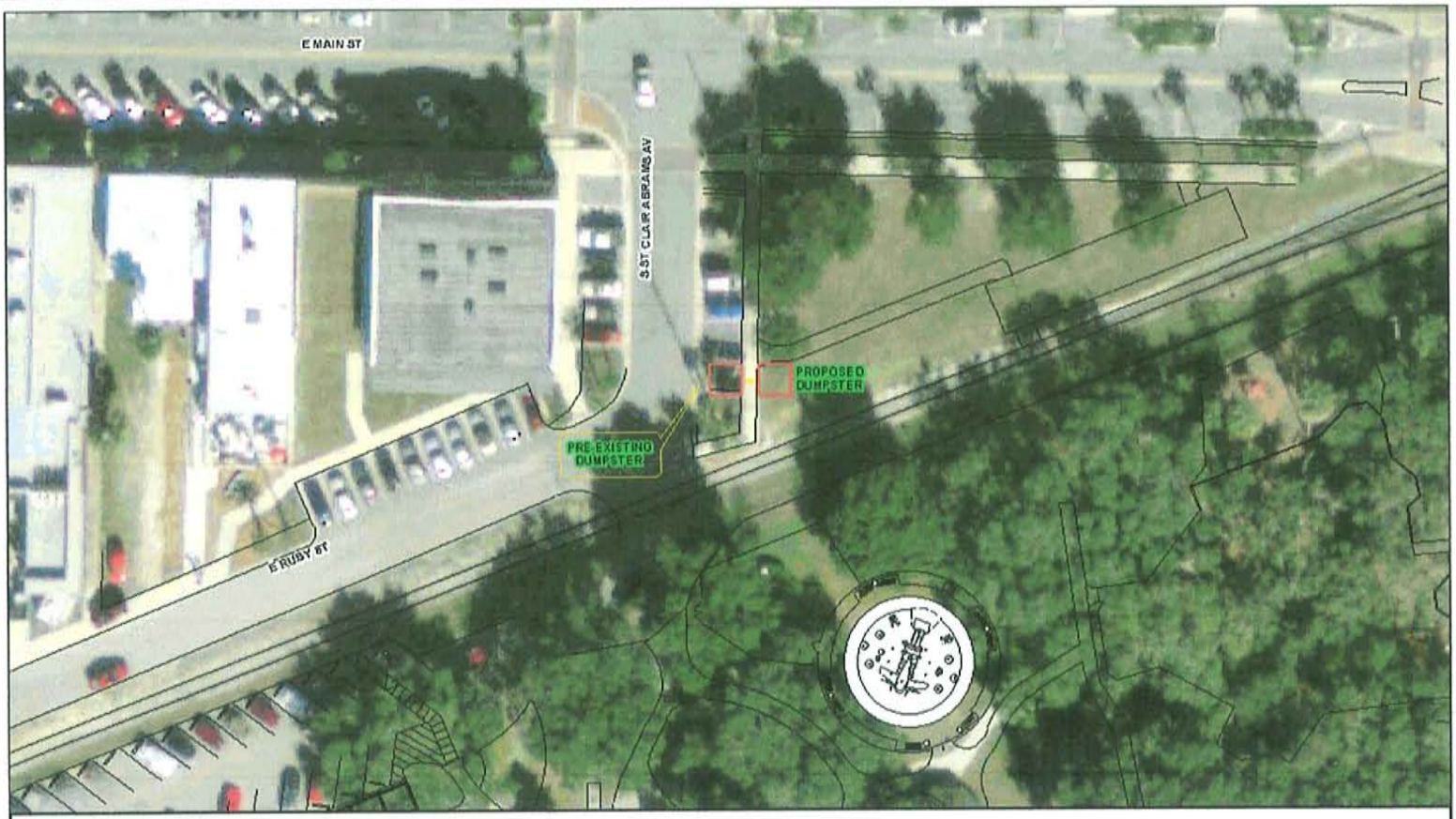
D.E.O. Construction Inc.
29319 E Old Mill rd.
Tavares, Fl 32778
Cell # (352)636-9993
Fax# (352) 343-8558
License# CRC1327838

Quote 2011-0010 Dumpster pad and enclosure

Demo- removal of fence and sidewalks
Dig footer,grade,steel,and inspect
Pour and cut 23 yards
Lay 300 block drop steel
Pour lintel
Stucco 240 sq ft one side
2- 6'x6' doors and hang
Wood for doors and hardware
Paint
Pour 5 yards of sidewalk
Supply and plant 16- 6' trees

TOTAL: $11,869.00

Estimated timeline for work completion: 28 days
All material and labor,waste removal- per addendum #2



DUMPSTER MAP

40 20 0 40 Feet

SODA
MAC & CHEESE
HOT DOGS
2011/03/07

2011/03/07

2011/03/07

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TAVARES

America's Seaplane City™

AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 11

SUBJECT TITLE: Fireworks for Dragon Boat Festival

OBJECTIVE: To discuss options for developing a fireworks display for this year's Dragon Boat Festival and to learn about funding support for this initiative.

SUMMARY: Mayor Wolfe has been communicating with officials from the Taiwanese government to secure funding up to $10,000.00 for a fireworks display for the opening ceremony on Friday evening, April 8th to kick off the dragon boat festival scheduled for Saturday, April 9, 2011.

This year's ceremony will be unusually special to the city as it further enhances and solidifies our new sister city relationship with Xindian and additionally, this year is the 100-year celebration of Taiwan's existence as a country.

Mayor Wolfe has received confirmation from Director General Ray Mau of the Economic and Cultural office in Miami that the Tapei government will commit $2,000.00 toward the display, and Commissioner Wu of Miami has committed $3,000.00 toward the display. Mayor Wolfe is continuing to pursue additional funding to bring the pyrotechnics exhibit to a $10,000.00 level.

It is anticipated that Congressman Dan Webster will be attending the ceremony along with several dignitaries from the Taiwanese government.

The pyrotechnics firm that staff is negotiating with is renowned in its field and on a local level, recently completed the fireworks for the George Fest in Eustis.

OPTIONS:

1) Enter into an agreement with Pyrotecnico for a $5,000.00 level fireworks display funded by donations verbally confirmed by Mayor Wolfe
2) Enter into an agreement with Pyrotecnico for a $10,000.00 level fireworks display funded by donations verbally confirmed by Mayor Wolfe with a commitment of $5,000.00 from Reserves
3) Do not include fireworks in this year's opening ceremony

STAFF RECOMMENDATION:

Staff recommends that council members discuss options.

FISCAL IMPACT:

The Government Financial Officers' Association recommends that at a minimum, general-purpose local governments, regardless of size, maintain unreserved fund balances for the General Fund of an amount between 5 and 20 percent of the fund's operating budget. It is further recommended that small cities maintain reserve levels at the mid or higher range.

Estimated unreserved fund balance as of March 9, 2010 is $1,802,920 or 15.75%.

LEGAL SUFFICIENCY:

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TAVARES

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AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 12

SUBJECT TITLE: City Administrator Report

OBJECTIVE:

To inform Council on city related matters.

SUMMARY: Will be presented at meeting

UPCOMING MEETINGS: (check with Susie Novack for any last minute changes)

- City Council Regular Meeting – April 6, 2011
- Golden Triangle Summit Meeting – Eustis, Mt. Dora, and Tavares – March 23, 2011 at 4 pm at City of Tavares
- Lake Sumter MPO – Board Meeting – March 23, 2011 – 2 p.m. – Tavares Civic Center
- Library Board – April 8, 2011– 8:30 a.m. Library Conference Room, 314 N. New Hampshire
- Planning & Zoning Board March 23, 2011 – 3 p.m.

EVENTS:

Classic Race Boat Association Regatta – March 18-20, 2011

Sunnyland Antique & Classic Boat Society Show – March 24-27, 2011

Planes, Trains and BBQ & Hayfire/Colt Ford Concert – Wooton Park – April 2, 2011

Dragonboat Festival – April 8 and 9, 2011

Seaplane Fly In – April 16, 2011

March of Dimes Walk – April 23, 2011

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TAVARES

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AGENDA SUMMARY
TAVARES CITY COUNCIL
MARCH 16, 2011

AGENDA TAB NO. 13

SUBJECT TITLE: City Councilmembers Report

OBJECTIVE:

To inform Council on city related matters.

SUMMARY:

Council will be offered an opportunity to provide a report at the meeting. Attached is any additional supporting information.

OPTIONS:

N/A

STAFF RECOMMENDATION:

N/A

FISCAL IMPACT:

N/A

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