

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Public Works      **DATE:** December 2, 2003  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR ENGINEERING SERVICES (GOOD SAMARITAN/HIGHLAND AVENUE WATER STORAGE TANK REHABILITATION) BETWEEN THE VILLAGE OF DOWNERS GROVE AND TANK INDUSTRY CONSULTANTS", as presented.



**SUMMARY OF ITEM:**

Adoption of the attached resolution shall authorize an agreement between the Village of Downers Grove and Tank Industry Consultants for professional engineering services with the design, bidding and construction inspection of the repainting and rehabilitation of the Good Samaritan/Highland Avenue Water Storage Tank

**RECORD OF ACTION TAKEN:**

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RESOLUTION NO. \_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR  
ENGINEERING SERVICES (GOOD SAMARITAN/HIGHLAND AVENUE WATER  
STORAGE TANK REHABILITATION) BETWEEN  
THE VILLAGE OF DOWNERS GROVE AND TANK INDUSTRY CONSULTANTS**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Owner") and Tank Industry Consultants (the "Engineer" or "Consultant"), for professional engineering services with the design, bidding and construction inspection of the repainting and rehabilitation of the Good Samaritan/Highland Ave. Water Storage Tank, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

**Good Samaritan/Highland Ave. Water Storage Tank Rehabilitation  
Professional Services Agreement**

**AGREEMENT  
FOR ENGINEERING SERVICES  
GOOD SAMARITAN/HIGHLAND AVENUE WATER STORAGE TANK  
REHABILITATION**

THIS AGREEMENT, made and entered into in the Village of Downers Grove, State of Illinois, this 20th day of November, 2003 by and between the Village of Downers Grove, an Illinois municipal corporation, whose address is: c/o Public Works Department, 5101 Walnut Ave., Downers Grove, Illinois, 60515-4074 (hereinafter called the "Owner"), and **Tank Industry Consultants**, whose address is 7740 West New York Street, Indianapolis, IN 46214, (hereinafter called the "Engineer" or "Consultant"),

WITNESSETH;

WHEREAS, The Owner requires professional engineering services associated with the design, bidding, and construction inspection of the repainting and rehabilitation of the **Good Samaritan/Highland Ave. Water Storage Tank** in the Village of Downers Grove (hereinafter referred to as the "Project"); and

WHEREAS, the Engineer desires to provide professional Engineering services to the Owner in connection with the Project, in accordance with the terms, conditions, and obligations set forth herein;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. SCOPE OF WORK

A. The Consultant shall be required to prepare Detailed Technical Specifications and Contract Documents for bidding the tank rehabilitation project. The prepared specifications shall address, but not necessarily be limited to the following:

1. Identification of all applicable standards which must be adhered to in completing the work.
2. Specific identification and references of the steel surfaces requiring cleaning and painting.
3. Specific surface preparation requirements.
4. Specific coating systems and application methods.

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5. Proper compliance with environmental and worker-protection regulations as required by the scope of the work.
  6. Procedure for verifying finishes coat integrity, total film thickness and final cure.
- B. The Consultant shall be required to perform contract administration during the tank project. These services shall include but not be limited to the following:
1. Consultation on adequacy and compliance with the specification and materials and equipment used, and procedures followed.
  2. Report to Owner when the need for clarification and interpretation of the Contract Documents and Specifications arises, and transmit said clarification and interpretation to contractor as issued by Owner.
  3. Attend pre-construction and subsequent meetings—supplying typed meeting notes to Owner.
  4. Prepare a bid tabulation form, review contractor bid submittals, and make recommendation of award.
  5. Review all contractors' submittals and shop drawings.
  6. Review construction schedule
  7. Review and approve all materials.
  8. Prepare and assist in the negotiations of change orders and supplemental agreements.
  9. Review and recommend approval of all payment requests.
  10. Consult with Owner in advance of scheduled major tests, shutdowns, and reductions in capacity, as well as for other important phases of the projects.
- C. The Consultant shall be required to conduct on-site observation of the Work in progress to assist the OWNER in determining if the Work is in general proceeding in accordance with the Contract Documents.
- D. The Consultant shall conduct coating evaluation services during the painting of the tank. These evaluations shall assist the Owner in determining if the Work is proceeding in accordance with the Contract Documents. The Consultant shall furnish the Owner a written report of the findings of each observation.
- E. The Consultant shall report to Owner whenever Engineer's field technician believes that any Work is unsatisfactory, defective, does not conform the Contract Documents, has been damaged. or does not meet the requirements of any observation, test or necessary approval. The ENGINEER shall advise the Owner of Work that the technician believes should be corrected, rejected, be uncovered for observation, or subject to special testing, evaluation, or approval.
- F. The Consultant shall take color photographs of the Work and submit copies to the Owner on a regular basis, documenting the observation of the engineer's field technician. The photographs shall be mounted with captions adjacent to the

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photographs describing the Work and its compliance or non-compliance with the specifications.

- G. The Consultant shall accompany visiting inspectors representing the public or other agencies having jurisdiction over the Project, record the results of these site visits and report to the Owner.
- H. The Consultant shall conduct final observation in the company of the Contractor and prepare a final list of items to be completed or corrected.
- I. The Consultant shall observe that all items on the final list have been completed or corrected and make recommendation to Owner concerning acceptance
- J. The Consultant shall be required to perform a one-year correction evaluation.

**II. LIMITATIONS OF AUTHORITY**

If ENGINEER is requested to perform observation of the contractor's workmanship, then the limitations of authority of the ENGINEER shall include:

- A. The ENGINEER shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless directed by the OWNER.
- B. The ENGINEER shall not exceed the limitations of the OWNER's authority as set forth in this Agreement and the Contract Documents.
- C. The ENGINEER shall not undertake any of the responsibilities of the contractor, sub-contractors or contractor's superintendent.
- D. The ENGINEER shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
- E. The ENGINEER shall not advise, issue directions regarding or assume control over safety precautions and programs concerning the Work.
- F. The ENGINEER shall not advise on, issue directions regarding or assume control over contractor's compliance with environmental regulations.

**III. OWNER'S RESPONSIBILITIES**

OWNER shall perform the following in a timely manner so not to delay the services of ENGINEER:

- A. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

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- B. Provide all criteria and full information regarding OWNER'S requirements for each project or task, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and budgetary limitations. Furnish copies of all design and construction standards that OWNER currently has, if any.
- C. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- D. Review all of ENGINEER's submittals and provide comments and input to allow ENGINEER's work to meet OWNER's objectives.
- E. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work of any Contractor affecting the Project.
- F. Perform the duties required under the Terms section (if any) of the Proposal.
- G. The information and services to be provided by OWNER under the Section will be without cost to ENGINEER.

IV. AVAILABLE INFORMATION

- 1. ENGINEER'S descriptive proposal dated 08 October 2003.
- 2. Information on file with the Owner will include:
  - a. Method of level control
  - b. Budgetary Constraints
  - c. Tank Style and interior dry configuration

V. PROFESSIONAL FEE

The Owner agrees to hire the Engineer for the services set forth in Section I for the **Good Samaritan/Highland Ave. Water Storage Tank**. The Owner further agrees to compensate the Engineer for fees *not to exceed an aggregate sum of **Sixty-seven thousand one hundred twenty-five** and **00/100** dollars [\$ **67,125.00**]*. Such fees shall include the fees of any parties retained by the Engineer to perform work on this project. The Engineer agrees that the compensation for the services listed above will be the total compensation for this work, and no additional compensation will be due him. Payments of said fee will be due within thirty (30) days after Owner's receipt of said request for payment, and upon satisfactory completion of the work for which payment is requested. Any additional fees greater than those agreed upon

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above, shall not be paid by the Owner to the Engineer unless the Owner gives its prior approval in writing to the work that generates said additional fees.

**VI. COMPLETION SCHEDULE**

The Engineer agrees to complete the services described in Paragraph I by the date listed herein. No additional working days will be granted by the Owner for any reason, as sufficient time is provided to offset any working days lost due to adverse weather preventing work, or site conditions due to recent weather preventing work.

**The Engineer shall begin work on the project within sufficient time after receipt of the Notice to Proceed from the Owner, to ensure completion of Section IA, preparation of Detailed Technical Specifications, by Friday 06 February 2004. For the remainder of the work outlined in this Agreement, the Engineer shall submit a schedule detailing its completion.**

**VII. DEFAULT**

Default: In the event either party to this Agreement defaults in carrying out any obligation established herein, the defaulting party shall be notified by the other of the default in writing.

If the Owner exercises its option to terminate this agreement upon default by the Engineer, the Engineer shall cause to be delivered to the Owner all drawings, field notes, photographs, or electronic data files, with the understanding that all such material becomes the property of the Owner. The Engineer shall be paid for the work completed not to exceed the total maximum cost as set forth in Section II of this Agreement, less the cost incurred by the Owner for the completion of the work.

**VIII. DISCRIMINATORY PRACTICES**

During the performance of work under this agreement, the Engineer for himself, his assigns and successors in interest, agrees to conform to the following requirements for non-discrimination:

- A. The Engineer shall, as a party to a public contract:
1. Refrain from unlawful discrimination in employment and undertake affirmative action to ensure equality of employment opportunity and eliminate the effects of past discrimination.
  2. Comply with the procedures and requirements of the Department of Human Rights' regulations concerning equal employment opportunities and affirmative action.
  3. Provide such information and assistance, with respect to its employees and applicants for employment as the Department of Human Rights may reasonably request.

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- B. It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service. Engineer shall comply with standards set forth in Title VII of Civil Rights Act of 1964, 42 U.S.C. 2000 et seq., and the Human Rights Act of the State of Illinois, 775 ILCS 5/1.101 et. seq.

**XI. TERMINATION OF THIS AGREEMENT**

The Owner may terminate this Agreement at any time after the date hereof, provided that the Owner has given written notice to the Engineer five days in advance of the effective date of such termination. Unless so terminated, this Agreement shall remain in full force and effect until the work is completed. In the event of such termination, the Engineer shall be paid for his actual payroll expenses times one hundred and twenty percent (120%). The ENGINEER shall also be paid his actual cost of consultants, reimbursable expenses and material costs up to and including the date of the Engineer's receipt of the Notice of Termination. Upon occasion of termination, the total amount paid to the Engineer shall not exceed the total cost for work (see Section V.).

**XII. PROJECT FILES AND DOCUMENTS**

All drawings, documents, photographic negatives and electronic data files prepared by the Engineer shall become the property of the Engineer. However, as a condition precedent to any final payment to the Engineer for Services rendered hereunder, the Engineer shall furnish to the Owner copies of all plans, reports, photographs, and documents generated by the Engineer relating to the Project. Said plans, reports, photographs, and documents shall include, but not be limited to the materials specifically requested in Section I. All materials shall be available for use by the Owner in the completion of the Project, or for such other use as the Owner may deem desirable.

The OWNER may reproduce and retain any additional copies of said documentation for information and reference concerning the Project. The OWNER and others may make use of said copies and reproductions for use relating to the Project. However, such documents are not intended to be suitable for re-use by the OWNER or others on extensions of the Project, or on any other project. Any re-use without the express written consent of the ENGINEER will be at re-user's sole risk, and without liability or legal exposure to the ENGINEER. The OWNER shall indemnify and hold harmless the ENGINEER from all claims, damages, losses, expenses, and costs, including attorneys' fees arising out of or resulting from the reuse or subsequent inapplicability of said documents without the ENGINEER's consent. The granting of such consent will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

**XIII. ASSIGNMENT OF RIGHTS**

The rights and duties of the parties under this Agreement shall not be assigned or delegated in whole or in part. The Engineer agrees to full and personal performance of the surveying

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services to be performed as provided herein, and said personal performance of such services by the Engineer shall be deemed material to this Agreement.

**XIV. WRITTEN NOTIFICATION**

Any notice, direction, approval or request to be given hereunder shall be in writing. Said notice, direction, approval or request shall be delivered either in person, by annotated tele-facsimile or by United States mail, postage properly prepaid. It shall be delivered by the party giving the same, or by its agent, to the other party at the address indicated above. Said notice, direction, approval or request shall be deemed be delivered at the time of such personal delivery, tele-facsimile or deposit in the United States mail.

**XV. INSURANCE REQUIREMENTS**

Upon execution and delivery of this Agreement, the Engineer agrees to indemnify and hold the Owner, its agents, officers, and employees harmless against any claim or claims, meritorious or otherwise, for any loss, personal injury, death or damages that may arise or is alleged to have arisen in connection with, or as the result of, or is alleged to have resulted from, a negligent or willful or wanton act, error, or omission on the part of the Engineer in connection with any professional services rendered under this Agreement.

*The Engineer represents that the Engineer will obtain insurance coverage naming the Owner as an additional insured equal in value to, or exceeding \$1,000,000.00. Proof of Professional Liability Insurance coverage for not less than \$1,000,000.00 shall also be required*

The Engineer shall take all action necessary to keep such insurance in full force and effect from time to time during the term of this Agreement. The Engineer shall deliver or cause the above-described proof of insurance to be delivered to the Owner at least 3 days prior to beginning work under this agreement. The Engineer shall produce satisfactory and current certificates of insurance showing the required coverage and effective dates thereof, including all renewals. The certificates shall contain a limitation stating that coverage may not be modified, revoked or cancelled, prior to the eleventh day after written notice has been served on the Owner.

The Engineer understands that the condition of providing proof of such insurance shall be met prior to the Owner's entry into a contract for this work with the Engineer.

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**XVI. RELATIONSHIP BETWEEN THE PROPOSER AND THE VILLAGE**

The relationship between the Village and the Proposer is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

**XVII. STANDARD OF CARE**

Services performed by Proposer under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Engineering profession currently practicing in the same locality under similar conditions. No other representations, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinions, and documents or otherwise.

If the Engineer fails to meet the foregoing standard, Engineer will perform at its own cost, and without reimbursement from the Village, the professional engineering services necessary to correct errors and omissions caused by Engineer's failure to comply with the above standard and reported to Engineer within one (1) year from the completion of Engineer's services for the Project.

Project site visits by Engineer during construction or equipment installation or the furnishing of Project representatives shall not make Engineer responsible for: (i) constructions means, methods, techniques, sequences or procedures; (ii) for construction safety precautions or programs; (iii) or for any construction contactor(s') failure to perform its work in accordance with contract documents.

**XVIII. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois Venue is proper only in the County of DuPage.

**XIX. SUCCESSORS AND ASSIGNS**

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other. The Proposer will provide a list of key staff, titles, responsibilities, and contact information to include all expected sub Proposers.

**XX. WAIVER OF CONTRACT BREACH**

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

**XXI. AMENDMENT**

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

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**XXII. CHANGE ORDERS**

The contract price is a "not-to-exceed" cost. At any time additional work is necessary or requested, and the not-to-exceed price is increased thereby, any change, addition or price increase must be agreed to in writing by all parties.

**XXIII. SEVERABILITY OF INVALID PROVISIONS**

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

THIS AGREEMENT represents the entire and integrated Agreement between the Owner and the Engineer, and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the undersigned parties hereby execute this Agreement as of the day and year first written above.

The Engineer: \_\_\_\_\_

By: \_\_\_\_\_, (Title:) \_\_\_\_\_

Attest: \_\_\_\_\_ (Title:) \_\_\_\_\_

Owner: THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS

By: \_\_\_\_\_, (Title:) \_\_\_\_\_

Attest: \_\_\_\_\_, (Title:) \_\_\_\_\_

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