

VILLAGE OF PORT DICKINSON
Village Board Meeting Agenda
August 12, 2014
6:00 pm
Port Dickinson Village Hall

PUBLIC HEARING:

APPROVAL OF MINUTES: July 8, 2014

PUBLIC PARTICIPATION:

TREASURER'S REPORT:

- Jim Farnham, AFLAC

AUDIT & PAYMENT OF CLAIMS Abstract #3:

1. No. 1-35 as listed on the Abstract of Unaudited vouchers for the General Fund for \$18,898.52
2. No. 37-39 as listed on the Abstract of Unaudited vouchers for the Water Fund for \$653.85
3. No 1, 15, 22 and 36 as listed on the Abstract of Unaudited vouchers for the Sewer Fund for \$2,376.74

COMMUNICATIONS:

1. Certificate of Workers Comp Ins from Johnsons Pools & Spas

COMMITTEE REPORTS:

Administration/Code Enforcement/Community Association – James DeGennaro, Trustee
Planning Board
Parks/Public Works – Robert Aagre, Trustee
Public Safety – Michael Cashman, Trustee
Water/Sewer – Charles Harding, Trustee
Zoning Board of Appeals

RESOLUTIONS FOR APPROVAL:

1. Agreement with Lake Engineering for MS4 project
2. Resolution approving PROCEDURES FOR POST-ISSUANCE COMPLIANCE WITH FEDERAL TAX LAW
3. CMOM

NEW BUSINESS/DISCUSSION:

1. 772 State St code violation
2. Draft response to Audit Report
3. Hydrant flushing

ADJOURNMENT

AGREEMENT

THIS AGREEMENT made and entered into this 12th day of August, 2014 by and between VILLAGE OF PORT DICKINSON (hereinafter "Village"), a municipal corporation organized and existing under and by virtue of the laws of the State of New York (mailing address: Village of Port Dickinson, Attention: Village Clerk, 786 Chenango Street, Binghamton, NY 13901), party of the first part, and LAKE ENGINEERING (hereinafter "Consultant") (mailing address: 282 Ostrum Road, Kirkwood, NY 13795), party of the second part.

WHEREAS, The Board of Trustees of the Village has solicited a proposal for the purpose of providing engineering services from August 12, 2014 to May 31, 2015 by continuing to update the MS4 program for the Village(the "Engineering Services") and

WHEREAS, Consultant has offered to provide such services at a lump sum price of Five Thousand Dollars (\$5,000.00) , all as enumerated on Exhibit A attached hereto and made a part hereof, and

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter expressed, it is hereby agreed by and between the parties hereto as follows:

1. The Village hereby enters into an agreement with Consultant to perform the Engineering Services at a lump sum price of Five Thousand Dollars (\$5,000.00
2. On or before 1st of each month, the Consult may must submit to the Village a voucher using the standard form of the Village. On or before the 15th of that month, the Village will cause said voucher to be audited, and if approved, make payment to the Consultant by the 20th day of that month
3. Consultant shall not commence any work under this agreement until Consultant has, at his cost and expense, obtained all of the following general liability insurance and professional liability insurance required under this paragraph and such insurance has been approved by the

Village.

- A. Consultant shall take out and maintain during the life of this agreement such commercial general liability insurance from an A.M. Best rated "secured" NYS licensed insurer containing a 30-day notice of cancellation as shall protect Consultant from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from activities and operations under this agreement.

Consultant shall furnish the Village with satisfactory proof that the required insurance is in full force and effect. The commercial general liability insurance policy shall specifically name and include Village as additional named insured with ISO endorsement CG2026 or its equivalent. The amounts of such insurance shall be as follows:

Commercial general liability insurance on an occurrence coverage form with a combined single limit in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and property damage on account of any one occurrence.

- B. Compensation Insurance - The Consultant shall take out and maintain during the life of this contract Workers' Compensation Insurance and Disability Benefits Insurance for all its employees to be assigned to the work hereunder.

C. The Consultant agrees to indemnify the Village for any applicable deductibles.

D In addition thereto the Consultant shall obtain and maintain in full force and effect while providing services under this agreement of professional liability insurance in the amount of \$1,000,000

4. In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to

execute this Agreement, to any other person or corporation without the previous consent in writing of the Village.

5. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

6. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistently with such status. The Consultant, its partners and employees will not hold out as nor claim to be an officer or employee of the Village by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Village, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

7. No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

8. It is understood that the entire Agreement between the parties is contained in this contract, and that no other representations, understanding or statement, whether verbal or written, shall be binding unless approved by the parties in writing.

9. The Mayor has executed this Agreement pursuant to a Resolution adopted by the Board of Trustees of the Village, at a meeting thereon held on August 12, 2014. Kevin M Burke, Mayor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Village.

10. This instrument shall be executed in quadruplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Village Clerk of the Village of Port Dickinson, New York.

IN WITNESS WHEREOF, the Village of Port Dickinson has caused its corporate seal to be affixed hereto and these presents to be signed by Kevin M. Burke, its Mayor, duly authorized to do so, and to be attested to by Susan Fox, Village Clerk, and LAKE ENGINEERING has caused these presents to be signed by Ronald Lake., its duly authorized representative.

VILLAGE OF PORT DICKINSON

By: _____

Kevin M. Burke, Mayor

Attest:

Susan Fox, Village Clerk

LAKE ENGINEERING

By: _____

RONALD LAKE

EXHIBIT A

LAKE ENGINEERING
282 OSTRUM ROAD
KIRKWOOD, NEW YORK 13795

June 3, 2014

Village of Port Dickinson
786 Chenango Street
Binghamton, New York 13901

Re: Proposal for MS4 Engineering Services
June 1, 2014 to May 31, 2015

Honorable Town Board,

I propose to provide MS4 Engineering Services for the period June 1, 2014 to May 31, 2015 for the sum of \$5,000.00

We have the Town of Dickinson's MS4 web site up and running. I believe we are now ready to launch yours. I know you approved it a couple of years ago but I wanted to learn on the Town. I would like to see if I can put you on the Town's web site before we do your own, trying to save money.

We need to **continue the Storm Water Management Plan** for the Village of Port Dickinson which will involve the Public Works Department (this is in addition to the Annual Report), We will continue the self evaluation of our Storm Water Management Practices and Training, as DEC or EPA will be conducting audits of MS4 Municipalities and an unsatisfactory grade will most likely result in fines.

Project related (developer) MS4 review work that is chargeable under "Professional Services" will be invoiced through Lake Engineering at the standard hourly rates and not the reduced municipal rate. (I don't anticipate any development of one or more acres).

Respectfully,

Ronald B. Lake

Ronald B. Lake, P. E., FASCE, CEO

LAKE ENGINEERING
282 OSTRUM ROAD
KIRKWOOD, NEW YORK 13795
607-797-0438
607-729-9052 (fax)

June 9, 2014

Village of Port Dickinson
786 Chenango Street
Binghamton, New York 13901

Re: Proposal for MS4 Engineering Services
June 1, 2014 to December 31, 2014

Honorable Town Board,

I propose to provide MS4 Engineering Services for the period June 9, to December 31, 2014 estimated not to exceed 70 hours at standard hourly billing rates.

The work is anticipated to consist of:

- Preparation of bidding documents for televising, smoke testing, and cleaning of streets designated by the Village.
- Review of bids and answering questions during the bid process.
- Recommendation to award, collect bonds and insurance submittals, prepare agreement all in coordination with Village Attorney.
- Work with contractor and be available for questions.
- Review NASCO Certified documents received from contractor.
- Prepare a list for I/I work required based on documents received.
- Prepare cost estimated for I/I work and televising, smoke testing, and cleaning work for 2015.
- Prepare Annual Update Report for submittal to DEC and the Joint Board.
- Other work as appropriate and authorized by the Village.

Please call if you have any questions.

Respectfully,

Ronald B. Lake

Ronald B. Lake, P. E., FASCE, CEO

Accepted Village of Port Dickinson

Kevin M. Burk, Mayor

PROCEDURES FOR POST-ISSUANCE
COMPLIANCE WITH FEDERAL TAX LAW

State and local governmental entities, including cities, towns, villages and school districts, that borrow money on a tax-exempt basis are now required to report to the Internal Revenue Service whether they have established written procedures to comply with applicable requirements of federal tax law for all issues of federally tax-exempt bonds, bond anticipation notes, tax anticipation notes, revenue anticipation notes, financing leases, energy performance contract financings, and any other instruments evidencing the borrowing of money (collectively the "Obligations"). The procedures set forth herein will assist Town of Maine (the "Issuer") in meeting the post-issuance requirements of federal tax law necessary to preserve the tax-exempt status of interest on Obligations issued by the Issuer.

These procedures address Obligations issued for physical facilities and equipment for the Issuer (the "Capital Obligations") and Obligations issued to finance cash-flow operating requirements of the Issuer (the "Cash-Flow Obligations").

I. GENERAL PROCEDURES

A. Responsible Official. The Supervisor (herein referred to as the "Responsible Official") will identify such officers and employee(s), who will be responsible for each of the procedures listed below, and will notify such officers and employee(s) of the responsibilities, and provide those persons with a copy of these procedures. Upon employee transitions, the Responsible Official will advise the new personnel of their responsibilities under these procedures and will ensure they understand the importance of these procedures. If employee positions are restructured or eliminated, the Responsible Official and/or the Town Board will reassign responsibilities as necessary.

B. Issuance of Obligations.

1. Bond Counsel. The Issuer will retain a firm of nationally-recognized bond counsel ("Bond Counsel") to deliver a legal opinion in connection with the issuance of all Obligations. The Responsible Official will consult with Bond Counsel and other legal counsel and advisors, as needed, following the issuance of Obligations to ensure that applicable post-issuance requirements are met, so that interest on each issue of Obligations will be excluded from gross income for federal income tax purposes.

2. Documentation of Tax Requirements. The federal tax requirements relating to each issue of Obligations will be set forth in a Tax Certificate (the "Tax Certificate") executed in connection with each issue of Obligations, which will be included in the closing transcript for each issue of Obligations. The Tax Certificate will contain certifications, representations, expectations and factual statements relating to the restriction on use of the facilities financed with Obligations by persons or entities other than the Issuer, changes in use of the facilities financed or refinanced with the proceeds of Obligations, restrictions applicable to the investment of the proceeds of any Obligations and other moneys relating to the Obligations, and arbitrage rebate requirements. The Responsible Official will review the Tax Certificate prior to the date of issue of each issue of Obligations.

3. Information Reporting. In connection with each issue of Obligations, the Issuer is required to file, or shall cause to be filed by Bond Counsel, an IRS Form 8038-G (or, if applicable, IRS Form 8038-GC). Any such IRS Form filed with the IRS, together with a proof of filing, will be included as part of the closing transcript for each issue of Obligations, or kept in the records maintained by Bond Counsel related to the appropriate issue of Obligations. The Responsible Official shall ascertain that such form has been filed in connection with each issue of Obligations.

C. Record Retention.

1. General. Copies of all relevant documents and records sufficient to support that the tax requirements relating to all Obligations have been satisfied, including the following documents and records, should be maintained by the Issuer:

- (a) Closing transcript;
- (b) All records of investments, arbitrage reports, returns filed with the IRS and underlying documents;
- (c) Construction contracts, purchase orders, invoices and expenditure and payment records;
- (d) Documents relating to costs reimbursed with the proceeds of Capital Obligations;
- (e) All contracts and arrangements involving Private Use of the property financed with Capital Obligations;
- (f) All reports relating to the allocation of the proceeds of Obligations and Private Use of property financed with Capital Obligations;
- (g) Itemization of property financed with the proceeds of Capital Obligations; and
- (h) In connection with Cash-Flow Obligations, information regarding the Issuer's revenue, expenditures and available balances sufficient to support the Issuer's prospective and actual maximum cumulative cash-flow deficit calculations.

2. Duration of Record Retention. All of the foregoing documents and records should be retained for the term of the Obligations, plus three (3) years or if the Obligations are refunded with proceeds of a subsequent Obligation, the date three (3) years after the last of such refunding Obligations are retired.

D. Capital Obligations.

1. Timely Expenditure of Proceeds of Capital Obligations. At the time of issuance of Capital Obligations issued to fund original expenditures, the Issuer must reasonably expect to spend at least 85% of all proceeds within three (3) years of the date of issuance of the

Obligations. In addition, for Capital Obligations, the Issuer must have incurred or expect to incur within six months after issuance original expenditures of not less than 5% of the amount of such proceeds, and must expect to complete the project financed with Capital Obligations (the "Project") and expend the proceeds of such Capital Obligations to pay Project costs with due diligence. Satisfaction of these requirements allows the proceeds of Capital Obligations issued for the Project to be invested at an unrestricted yield for three (3) years. Failure to satisfy these requirements could subject the Issuer to rebate of investment income, and other penalties. The Responsible Official will monitor the appropriate capital project accounts to ensure that the proceeds of Capital Obligations are spent within the time period(s) required under federal tax law.

Capital Obligations issued to refinance outstanding Capital Obligations are subject to separate expenditure requirements, which shall be outlined in the Tax Certificate relating to such Obligations. In connection with the issuance of any Capital Obligations issued to refinance outstanding Capital Obligations, the Responsible Official will confirm that any rebate obligation due with respect to the original issue and any subsequent refinancing thereof has been met.

2. Use of Proceeds of Capital Obligations. In general, proceeds (including investment income on original sale proceeds) of Capital Obligations, other than proceeds used to pay costs of issuance, should be spent on capital expenditures. For this purpose, capital expenditures generally mean costs to acquire, construct, or improve property (land, buildings and equipment). Capital Expenditures include design and planning costs related to the Project, and include architectural, engineering, surveying, soil testing, environmental, and other similar costs incurred in the process of acquiring, constructing, improving or adapting the property. Capital Expenditures do not include operating expenses of the Project.

3. Use of Facilities Financed with Capital Obligations. For the life of all Capital Obligations, the Project must be owned and operated by the Issuer. At all times while Capital Obligations issued for a Project are outstanding, no more than 10% of the proceeds of such Capital Obligations may be used, directly or indirectly, in a trade or business carried on by a person other than a state or local governmental unit ("Private Use"). Generally, Private Use

consists of any contract or other arrangement, including leases, management contracts (for example, contracts relating to the operation of a school cafeteria or to food service providers), operating agreements and guarantee contracts which provides for use of the facilities financed with Capital Obligations by a person who is not a state or local government on a basis different than the general public. The Project may be used by any person or entity, including any person or entity carrying on any trade or business, if such use constitutes "General Public Use". General Public Use is any arrangement providing for use that is available to the general public at either no charge or on the basis of rates that are generally applicable and uniformly applied.

4. Management or Operating Agreements for Facilities Financed with Capital Obligations. Any management, operating or service contracts whereby a non-exempt entity is using facilities financed or refinanced with the proceeds of Capital Obligations must relate to portions of the Project that fit within the above-mentioned 10% allowable Private Use, or the contracts must meet the IRS safe harbor for management contracts (Rev. Proc. 97-13). Any renewals of or changes to such contracts should be reviewed by Bond Counsel. The Responsible Official shall contact Bond Counsel if there may be a lease, sale, disposition or other change in use of facilities financed or refinanced with the proceeds of Capital Obligations.

E. Cash-Flow Obligations.

1. Proper Sizing of Cash-Flow Obligations.

(a) If the Issuer is not subject the small issuer exemption from rebate, at the time of issuance of Cash-Flow Obligations, the Issuer must anticipate that it will incur an actual maximum cumulative cash-flow deficit on a date on or before the close of the six-month period commencing on the issue date of the Cash-Flow Obligations equal to at least 90% of the issue price of the Cash-Flow Obligations.

(b) If the Issuer is subject to the small issuer exemption from rebate, at the time of issuance of Cash-Flow Obligations, the Issuer must anticipate that it will incur an actual maximum cumulative cash-flow deficit on a date on or before the close of the twelve-month period commencing on the issue date of the Cash-Flow Obligations equal to at least 100% of the

issue price of the Cash-Flow Obligations (which may include taking into account the Issuer's "reasonably required working capital reserve").

(c) The Responsible Official will determine the appropriate amount of Cash-Flow Obligations to issue.

(d) With respect to Issuers not subject to the small issuer exemption from rebate, the Responsible Official shall determine whether or not the Issuer has met its requisite maximum cumulative cash-flow deficit within six months following the date of issuance of the Cash-Flow Obligations, and shall, to the extent necessary, obtain assistance from the Arbitrage Rebate Consultant, referred to below.

F. Investment Restrictions; Arbitrage Yield Calculation; Rebate.

1. Investment Restrictions. Investment restrictions relating to the proceeds of Obligations and other moneys relating to the Obligations are set forth in the Tax Certificate. The Responsible Official will monitor the investment of the proceeds of Obligations to ensure compliance with yield restriction rules.

2. Arbitrage Yield Calculation. Investment earnings on the proceeds of Obligations should be tracked and monitored to comply with applicable yield restrictions and/or rebate requirements. The Issuer is responsible for calculating (or causing the calculation of) rebate liability for each issue of Obligations, and for making any required rebate payments. Any funds of the Issuer set aside or otherwise pledged or earmarked to pay debt service on the Obligations should be analyzed to assure compliance with the tax law rules on arbitrage, invested sinking funds and pledged funds (including gifts or donations linked to facilities financed with Capital Obligations). The Responsible Official will consult with Bond Counsel to confirm that all relevant arbitrage yield requirements are met.

3. Rebate. On or before the date of any required rebate payment (see below), the Issuer will retain a nationally recognized arbitrage rebate consultant (the "Arbitrage Rebate Consultant") to perform rebate calculations that may be required to be made from time to time with respect to any issue of Obligations. The Responsible Official shall provide the Arbitrage Rebate Consultant with requested documents and information on a prompt basis, reviewing

applicable rebate reports and other calculations and generally interacting with the Arbitrage Rebate Consultant to ensure the timely preparation of rebate reports and payment of any rebate.

The reports and calculations provided by the Arbitrage Rebate Consultant will assure compliance with rebate requirements, which require the Issuer to make rebate payments, if any, no later than the fifth (5th) anniversary date and each fifth (5th) anniversary date thereafter through the final maturity or redemption date of a Capital Obligation. A final rebate payment, if due, must be made within sixty (60) days of the final maturity or redemption date of all Obligations.

Rebate spending exceptions for Capital Obligations are available for periods of 6 months, 18 months and 2 years. The Responsible Official will confer and consult with the Arbitrage Rebate Consultant to determine whether any rebate spending exception may be met.

In the case of Cash-Flow Obligations, within 60 days of the maturity date of such Cash-Flow Obligations, if there is concern as to whether the Issuer has met its requisite maximum cumulative cash-flow deficit, a rebate analyst should be promptly engaged to determine whether either the six-month spending exception or the statutory safe harbor exception to the rebate rules was met (in which case no rebate would be owed) or whether the investment income derived from the proceeds of the Cash-Flow Obligations is subject, in whole or in part, to rebate.

Copies of all arbitrage rebate reports, related return filings with the IRS (*i.e.*, IRS Form 8038-T), copies of cancelled checks with respect to any rebate payments, and information statements must be retained as described above. The Responsible Official will follow the procedures set forth in the Tax Certificate that relate to compliance with the rebate requirements with respect to any Obligations.

II. ADDITIONAL PROCEDURES.

A. Periodic Monitoring. The Responsible Official will conduct periodic reviews of compliance with the foregoing procedures to determine whether any violations have occurred so that such violations can be remedied through the "remedial action" regulations (Treas. Reg. Section 1.141-12) or the Voluntary Closing Agreement Program (VCAP) described in IRS

Notice 2008-31 (or successor guidance). If any changes to the terms or provisions of any Obligations are contemplated, the Responsible Official will consult with Bond Counsel, because such modifications could jeopardize the tax-exempt status of interest on the Obligations after they are modified.

B. Use of Facilities. The Responsible Official will maintain records identifying any Private Use of the facilities or portion of facilities that are financed or refinanced with proceeds of Capital Obligations. Such records may be kept in any combination of paper or electronic form. In the event the use of the proceeds of Capital Obligations of the facilities financed or refinanced with the proceeds of Capital Obligations differs from the representations or factual statements in the Tax Certificate, the Responsible Official will promptly contact and consult with Bond Counsel to ensure that there is no adverse effect on the tax-exempt status of the Capital Obligations and, where appropriate, will remedy any violations through the "remedial action" regulations (Treas. Reg. Section 1.141-12), the Voluntary Closing Agreement Program (VCAP) described in IRS Notice 2008-31 (or successor guidance), or as otherwise prescribed by Bond Counsel.

