

OWOSSO CITY COUNCIL

FEBRUARY 21, 2006

7:30 P.M.

PRESIDING OFFICER: MAYOR LINDA L. ROBERTSON

OPENING PRAYER: CITY MANAGER GREGG G. GUETSCHOW

PLEDGE OF ALLEGIANCE: MAYOR LINDA L. ROBERTSON

PRESENT: Mayor Linda L. Robertson, Mayor Pro-Tem Mark D. Owen, Councilpersons Michael E. Bruff, Michael N. Cline, Joane E. Ford, Matthew B. Harvey, and Justin R. Horvath.

ABSENT: None.

APPROVE AGENDA

Motion by Councilperson Ford to approve the Agenda as presented with the following changes to the Consent Agenda: #2 Bid Award to become Item of Business #5 and #3 Warrant No. 322 to become Item of Business #6. Motion supported by Mayor Pro-Tem Owen and concurred by unanimous vote.

APPROVE MINUTES – FEBRUARY 6, 2006

Motion by Councilperson Ford to approve the Minutes of the Regular Meeting of February 6, 2006 as presented, with correction to the title of Item of Business #6 Street Closure. "UNDEVELOPED PORTIO OF HOWARD STREET" should be corrected to read "UNDEVELOPED PORTION OF HOWARD STREET". Motion supported by Councilperson Harvey and concurred by unanimous vote.

PUBLIC HEARING

ORDINANCE AMENDMENT

The public hearing was held to receive citizen comment regarding proposed ordinance amendment to Section 2-410, Article VII, *Municipal Employees' Pensions*, of Chapter 2, *Administration*, of the Code of Ordinances of the City of Owosso.

There were no citizen comments.

Whereas, the Council, after due and legal notice, has met and there being no one to be heard, motion by Mayor Pro-Tem Owen that the following ordinance be adopted:

ORDINANCE NO. 672

AN ORDINANCE TO AMEND SECTION 2-410 OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN, TO MODIFY MEMBERSHIP IN THE RETIREMENT SYSTEM.

The City of Owosso ordains:

Section 1. That, Chapter 2, Administration, Article VII, Municipal Employees' Pensions, Section 410, of the Owosso City Code shall be and the same is hereby amended to read as follows:

Section 2-410: Membership Consists Of.

- (1) The Members of the Retirement System shall include all persons who are now and who hereafter become employed by the City. Such persons shall be eligible to participate in the Retirement System immediately upon becoming Members and shall commence participation as soon as administratively practicable. The Members shall not include:
 - (a) Any person whose services are compensated for on a contractual professional, or on a fee basis, unless considered to be a Member on July 1, 1964; nor
 - (b) Any person, except an elected City official, who is employed in a position normally requiring less than one thousand six hundred sixty-four (1664) hours of work per annum; nor
 - (c) The Medical Director; nor

(d) Any person that becomes employed by the City after January 1, 2006, covered by a collectively bargained agreement with Owosso Local number 1059, Council Number 25 of the American Federation of State, County and Municipal Employees, AFL-CIO; nor

(e) Any person that becomes employed by the City after January 1, 2006, that is not covered by a collective bargaining agreement.

(2) In all cases of doubt, the Board shall decide who is a Member of the Retirement System within the meaning of the provisions of this Retirement System ordinance.

Section 3. This Ordinance shall become effective March 13, 2006.

Section 4. This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Ford.*

*Corrected by action of City Council at July 17, 2006 Regular City Council Meeting. Akk

Roll Call Vote.

AYES: Councilpersons Horvath, Cline, Harvey, Mayor Pro-Tem Owen, Councilpersons Ford, Bruff and Mayor Robertson.

NAYS: None.

CITIZEN COMMENTS

Gary Martenis, 705 Lingle Avenue, announced an informational/organizational meeting regarding Holman Pool.

Kevin Michael Brown, 217 Curwood Castle Drive, commented on Holman Pool and budget cuts.

Eddie Urban, 601 Glenwood Avenue, commented on Holman Pool and snow plowing practices.

CONSENT AGENDA

Motion by Councilperson Ford to approve the Consent Agenda as follows:

Bid Award. Accepted low bid from Perrin Construction for the 2006 Street Program in the amount of \$315,380.50.

Motion supported by Mayor Pro-Tem Owen.

Roll Call Vote.

AYES: Mayor Pro-Tem Owen, Councilpersons Harvey, Cline, Ford, Bruff, Horvath, and Mayor Robertson.

NAYS: None.

ITEMS OF BUSINESS

TSBY LOOP BIKEWAY AGREEMENT

There was general Council discussion on the source of money for this project, grant funding, restoration of the Oakwood Bridge, the Steam Railroading Institute's position on the project, and time frames for the project.

Motion by Councilperson Horvath to authorize the following Professional Services Agreement with Capital Consultants to provide engineering plans for the TSBY Loop Bikeway in the amount of \$45,600.00:

Proposal for TSBY Trail — Downtown Owosso City of Owosso

Project Description

The City of Owosso has secured MDOT grant funding for construction of the TSBY Trail along the Shiawassee River. The project includes approximately 920 feet of on-grade and elevated boardwalk construction and reconstruction of the historic Oakwood Street pedestrian (vehicle traffic restricted) bridge.

The trail abuts the railroad property and thus requires a minimal 11-foot clearance from the outside rail to the pathway. Another portion of the trail system is being designed by others in

conjunction with Michigan Department of Environmental Quality (MDEQ) funds being used to reclaim contaminated soils.

Certain parts of the Shiawassee River bank have sloughed due to storm water runoff. The Shiawassee County NRCS will be designing the bank reestablishment with the help of in-house or contracted design professionals. This proposed work is to be coordinated with the placement and foundation design for the elevated boardwalk.

Wetlands along portions of the river bank have been identified by others. These limits are to be evaluated by the MDEQ in spring 2006 and incorporated into the planning, design and permitting of this trail section.

Between Michigan Department of Transportation (MDOT) grants and matching City funds, a total of \$400,000 is available for construction of the on-grade and elevated boardwalk trail sections. Additionally, \$229,000 is available for the Oakwood Street bridge reconstruction.

Scope of Services

Capital Consultants/DesignWorks AJE (CC/DWAE) will provide the following services:

Design Services

1. Attend a kick-off meeting with the City of Owosso to review the updated preliminary design, scope of services, project schedule, and grant requirements. A Project Management Plan will be prepared and distributed to outline project responsibilities and coordination and communication procedures. The meeting shall include invited representatives from the following:
 - a. Railroad company
 - b. MDOT
 - c. MDEQ
 - d. Shiawassee County NRCS
 - e. Dixon Engineering and Vern Mesler
2. Supplement existing topographical survey of the project site with additional ground features, current slough areas, cross-sections of trail route, etc. as needed. Incorporate wetlands delineation work conducted previously by others, upon approval by MDEQ.
3. Refine the updated preliminary layout plan for both the on-grade and elevated boardwalk sections of the project incorporating additional information such as updated survey, agency input, etc.
4. Attend a meeting with the City of Owosso to review the completed layout plan.
5. Coordinate with Soil and Materials Engineers for soil borings along the proposed length for elevated boardwalk construction. Depth of borings shall be to 20 feet below grade or refusal, whichever is less.
6. Coordinate with Dixon Engineering (as our subconsultant), Vern Mesler and the State Historic Preservation Office (SHPO) as appropriate for work process of the Oakwood Street Bridge repair. This work includes evaluating and identifying construction means for disassembly, repair staging, surface treatment and replacement of the bridge structure and grouting beneath the north bridge abutment. Incorporate technical specifications and provisions for these work elements in the design package.
7. Coordinate with the Shiawassee County NRCS, as appropriate, for the proposed restabilization of sloughed river bank areas and design storm water controls to accommodate the new trail.
8. With consensus on approval of the layout plan, prepare preliminary site and grading plans for the on-grade portion of the project including cross-sections and structural details for the elevated boardwalk section(s). Also prepare preliminary outline specifications and project cost opinion.
9. Perform a visual assessment of the condition of structural bridge members once it has been disassembled. Provide technical support for the development of technical specifications for repairing and reassembling the bridge on the existing abutments. Invasive or destructive structural testing, concrete testing of abutments and abutment redesign are not included.
10. Develop plans and specifications to 90% completion, update the cost opinion and forward to the City of Owosso for review and comment. Cost opinions will include anticipated professional fees for bidding and construction phase services. Draft applications for

MDEQ/U.S. Army Corps of Engineers Wetlands Permit and MDEQ Inland Lakes and Streams Permit will also be submitted for review at this time.

11. Attend a meeting with the City of Owosso to review comments on the package.
12. Incorporate comments, as mutually agreed. Submit final plans and cost opinion to MDOT for review and approval. Conduct in-house QNQC review.
13. Incorporate MDOT comments, as mutually agreed between CC/DWAE and the City. Prepare final environmental permit applications for signature and submittal by the City. All application fees will be paid by the City.

Construction Phase Services

1. Construction Phase services can be negotiated by contract amendment upon completion of the Design Phase.

Assumptions

1. Existing topography survey information is to be used for base plans, supplemented where necessary. The City understands that this may not completely reflect current site conditions and thus will not hold CC/DWAE responsible for construction costs associated with the inaccuracy of the base plans.
2. The proposed pathway design criteria are to conform to MDOT/AASHTO criteria for non-motorized transportation. Trail width is anticipated at this time to be 10 feet with 2 foot shoulders for the on-grade portions.
3. The extent of wetlands mitigation that may be required as part of the MDEQ/USACOE permit application cannot be determined at this time. These services can be negotiated by contract amendment, if necessary.
4. The City will pay for all permit application fees.
5. A separate fee estimate is provided for additional river cross-section survey and HEC-RAS modeling, should this be required by the MDEQ as part of the permitting process.
6. Construction administration services are not included, but can be negotiated by contract amendment.
7. Design changes requested by the City beyond its approval of the layout plan noted in item #8 above may be subject to negotiation for additional fees.
8. No additional environmental assessment or reconnaissance beyond what has been identified above has been requested by the City, and therefore, is not included in this proposal.

Fee Breakdown

Design	\$31,800	lump-sum fee
Dixon Engineering services	2,900	estimated fee
Geotechnical Investigation	5,000	estimated fee
Survey and HEC-RAS modeling	5,900	estimated fee
Wetland Mitigation Design	0	(not included, subject to contract amendment)

Total Estimated Fee \$45,600

The parties to this agreement, Capital Consultants/DesignWorks AJE, Lansing, Gaylord, and Grand Rapids, Michigan, hereinafter called the ENGINEER and the City of Owosso, Michigan, hereinafter called the OWNER, hereby agree to the following conditions:

- A. Limit of Scope: The services provided by the ENGINEER shall be limited to those described in the Scope of Services.
- B. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the ENGINEER are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the ENGINEER may call for renegotiation of appropriate portions of this Agreement. The ENGINEER shall notify the OWNER of the changed conditions necessitating renegotiation, and the ENGINEER and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the

changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

- C. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such services in writing. Additional services will be billed monthly as work progresses and invoices are due upon receipt.
- D. Design Without Construction Administration: It is understood and agreed that the ENGINEER's Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by the OWNER. The OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the OWNER waives any claims against the ENGINEER that may be in any way connected thereto.

In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the ENGINEER.

- E. Standard of Care: In providing design services under this Agreement, the ENGINEER will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the ENGINEER and by mutual agreement between the parties, the ENGINEER will without additional compensation, correct those services not meeting such a standard.
- F. ADA Compliance: The Americans with Disabilities Act (ADA) provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. The OWNER acknowledges that the requirement of the ADA will be subject to various and possibly contradictory interpretations. The ENGINEER, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The ENGINEER, however, cannot and does not warrant or guarantee that the OWNER's project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.
- G. Code Compliance: The ENGINEER shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of submission to building authorities. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the ENGINEER to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement.
- H. Permits and Approvals: The ENGINEER shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the ENGINEER's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the ENGINEER and included in the Scope of Services of this Agreement.

Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the ENGINEER has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the ENGINEER's opinions of probable construction costs are made on the basis of the ENGINEER's professional judgment and experience. The ENGINEER makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the ENGINEER's opinion of probable construction cost.

- J. Schedule for Rendering Services: The ENGINEER shall prepare and submit for OWNER approval a schedule for the performance of the ENGINEER's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This

schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.

- K. Ownership of Reports, Drawings and Other Materials: The OWNER agrees that all reports, drawings, letters, work sheets, plans, preliminary material tables, supportive data, documents and other materials produced by the ENGINEER in the course of and for the purpose of meeting this contract are the property of the ENGINEER, and shall remain in the possession of the ENGINEER. The OWNER shall have access to the above named material during normal business hours of the ENGINEER during and after completion of this contract. The OWNER may obtain copies of any of the above named material. Copies of electronic media may be obtained by the OWNER. (See Alteration and Reuse of CAD Information provision of this Agreement.)
- L. Alteration and Reuse of CAD Information: Because computer aided design/drafting (CAD) information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, the ENGINEER reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the ENGINEER in CAD form. Copies shall be for information and used by the OWNER for the specific purpose for which the ENGINEER was engaged. Said material shall not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the ENGINEER's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the ENGINEER harmless, from all claims, injuries, damages, losses, expenses, and attorneys fees arising out of the unauthorized modification of these materials.
- M. Payment Terms: Invoices will be submitted by the ENGINEER monthly, are due upon receipt and shall be considered past due if not paid within thirty (30) calendar days of the due date.
- N. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the ENGINEER in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the ENGINEER's favor and shall be calculated on the unpaid balance from the due date of the invoice.
- O. Abandonment of Work: If any work is abandoned or suspended, the ENGINEER shall be paid for services performed prior to receipt of written notice from the OWNER of abandonment or suspension.
- P. Errors and Omissions Insurance: The ENGINEER maintains an errors and omissions insurance policy as part of normal business practice. The OWNER agrees to limit the ENGINEER's liability to the OWNER and to all Construction Contractors and Subcontractors on the project due to the ENGINEER's negligent acts, errors, or omissions, such that the total aggregate liability of the ENGINEER to all those named shall not exceed \$629,000.
- Q. Betterment: If, due to the ENGINEER's negligence, a required item or component of the project is omitted from the ENGINEER's construction documents, the ENGINEER shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the ENGINEER be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.
- R. Indemnification: The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the ENGINEER is legally liable.

The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts

in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.

Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

- S. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- T. Jobsite Safety: Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the ENGINEER and the ENGINEER's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.
- U. Hazardous Materials: As used in this Agreement, the term *hazardous materials* shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

Both parties acknowledge that the ENGINEER's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the ENGINEER or any other party encounters any hazardous or toxic materials, or should it become known to the ENGINEER that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the ENGINEER's services, the ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

The OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, partners, employees and consultants (collectively, ENGINEER) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the ENGINEER.

- V. Agreement Not to Claim for Cost of Certain Change Orders: The OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications and other design documentation furnished by the ENGINEER or in the other professional services performed or furnished by the ENGINEER under this Agreement whether caused by professional negligence or by imperfections that are within professional standards ("Covered Change Orders"). Accordingly, the OWNER agrees not to sue and otherwise to make no claim directly or indirectly against the ENGINEER on the basis of professional negligence, breach of contract or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of the ENGINEER for the costs of Covered Change Orders in excess of such percentage will be

determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that the OWNER would have incurred if the Covered Change Order work had been included originally in the Contract Documents without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Drawings, Specifications and other design documents furnished by the ENGINEER or in the ENGINEER's other professional services related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, the ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order.

W. Dispute Resolution: The OWNER agrees that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties:

American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing for arbitration as set forth below and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration.

If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law.

The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute, or other matter. If the demand for arbitration is not effectuated within one (1) year, the claim, dispute, or other matter shall be forever barred and not mandatory.

The decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings action against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

Motion supported by Councilperson Ford.

Roll Call Vote.

AYES: Councilpersons Horvath, Ford, Cline, Harvey, Mayor Pro-Tem Owen, Councilperson Bruff, and Mayor Robertson.

NAYS: None.

OLIVER STREET BRIDGE DESIGN AND CONSTRUCTION INSPECTION AGREEMENT

There was general discussion regarding the services the contract covers and the City's obligation to the project.

Motion by Councilperson Ford to authorize Professional Services Agreement with Fishbeck, Thompson, Carr and Huber to provide design and construction inspection for the reconstruction of the Oliver Street bridge in an amount not to exceed \$289,400.00.

Motion supported by Councilperson Harvey.

Roll Call Vote.

AYES: Councilpersons Harvey, Ford, Cline, Horvath, Bruff, Mayor Pro-Tem Owen, and Mayor Robertson.

NAYS: None.

*Agreement will be kept on file in the Clerk's Office.

GRANT AGREEMENT —QVF INFRASTRUCTURE UPGRADE/HAVA DIGITIZED SIGNATURE PROJECT

Motion by Mayor Pro-Tem Owen to adopt the following resolution:

Whereas, the City of Owosso wishes to enter into an agreement with the Michigan Department of State to obtain federal financial assistance for the purchase of infrastructure upgrades as it relates to the Qualified Voter File Infrastructure Upgrade/HAVA Digitized Signature Project.

Now, Therefore, Be It Resolved that the Owosso City Clerk is hereby authorized to execute the appropriate documents related to the Grant Agreement for the Qualified Voter File Infrastructure Upgrade/HAVA Digitized Signature Project on behalf of the City of Owosso, Michigan.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
AND
CITY OF OWOSSO
GRANT AGREEMENT

QUALIFIED VOTER FILE INFRASTRUCTURE UPGRADE
HAVA DIGITIZED SIGNATURE PROJECT

FUNDED BY HELP AMERICA VOTE ACT (HAVA), TITLE II, SECTION 251

This Grant Agreement is between the Michigan Department of State (“Department”) and City of Owosso (“Grantee”). This document shall constitute the Grantee’s agreement for the receipt of federal financial assistance provided to the State under the provisions of Title II, Section 251, of the Help America Vote Act (HAVA), CFDA 90.401. The Department refers to this program as the HAVA Digitized Signature -Qualified Voter File (QVF) Refresh Project.

The purpose of this grant is to upgrade the Qualified Voter File infrastructure to meet the digitized signature objective of Michigan’s HAVA State Plan. In order to meet this objective, the Department must replace remote workstations for certain QVF local sites throughout the state and upgrade these sites to a more current version of the Oracle database management system.

1. Grant Period:

Original grant agreements must be signed and returned by February 22, 2006. No photocopies, faxed copies, or altered Grant Agreements will be accepted. Agreements should be returned to:

Carri Simon
Michigan Department of State
Financial Services Division
430 West Allegan, 4th Floor
Lansing, MI 48918

2. Program:

This program provides a QVF system upgrade in 2006. A system upgrade consists of one QVF server using the Windows XP operating system, and Oracle database software. For a list of technical specifications, please refer to the attachment A.

The equipment covered by this Grant Agreement will replace only current QVF system (s); any non-QVF software that has been locally installed on the current equipment will not be replaced. Although other uses are acceptable, the primary use of the equipment covered by this Grant Agreement must be QVF related. If this equipment is no longer used for QVF activities, the Department must be notified.

3. This program is a one-time purchase of computer equipment used by certain jurisdictions to access the QVF. This program includes only the equipment described in attachment A. The purchase and maintenance of additional workstations, laser printers and other peripheral equipment not included in this grant agreement remain the sole responsibility of each QVF site. Maintenance of the equipment included in this program is the sole responsibility of each QVF site once any applicable warranties expire.

4. Performance:

The Department will review and, once approved, provide the Applicant with a copy of a fully executed Grant Agreement signed by a signatory from the City of Owosso and the Department of State. The Department and or a designated representative will process all system orders. The department will also coordinate the installation of these systems. Upon installation the grantee must confirm the completion of the installation on a form provided by the Department.

5. Ownership:

Any equipment and software purchased pursuant to this Grant Agreement is the property of the jurisdiction.

6. Records Maintenance and Retention:

The Grantee will maintain a copy of all records pertaining to this program for a period of not less than six years from the date of the Department's final expenditure report to the federal government, or until any litigation or audit findings have been resolved.

7. Mandatory Conditions:

Laws

This is a State of Michigan Grant Agreement and is governed by the laws of the State of Michigan. Any dispute arising as a result of this agreement shall be resolved in the State of Michigan.

Validity

This Grant Agreement is valid upon approval by the State Administrative Board and approval and execution by the Department.

Funding

This Grant agreement is subject to and contingent upon the availability and appropriation of federal funds and any necessary State appropriation.

Costs

The State will not assume any responsibility or liability for costs incurred in relation to this Grant Agreement.

Cancellation

The Department may cancel this Grant Agreement upon failure to comply with the terms of the grant.

Entire Agreement

This Grant Agreement shall represent the entire agreement between the State and Grantee regarding HAVA funding for QVF infrastructure upgrades, and supercedes any prior oral or written agreements, and all other representations between the parties relating to this subject.

Adherence to Terms

The failure of a party to insist upon strict adherence to any term (s) of this Grant Agreement shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term of the Grant Agreement.

Motion supported by Councilperson Cline.

Roll Call Vote.

AYES: Councilpersons Ford, Bruff, Harvey, Cline, Horvath, Mayor Pro-Tem Owen, and Mayor Robertson.

NAYS: None.

WATER AND SEWER CONNECTION CHARGES

There was extensive discussion regarding connection charges from other communities, establishing "equal footing" for old and new users, reuse of existing connections, why fees are structured in the proposed manner, allowing for the best allocation of cost to customers, the need to be able to distinguish between different types of costs, negotiating individually with entities, the desire for master agreements, the number of requests for water, the water main in Caledonia Charter Township, special assessments vs. connection fees, the desire to remain open to all ideas during negotiations, and using the schedule of charges as a fall-back point.

Motion by Councilperson Ford to accept water and sewer connection charges as presented.

There was no support.

Discussion continued in regard to the following: the frequency in which other communities use such schedules, dealing with political issues, the need to move forward, and the option of amending the schedule of charges.

Motion by Councilperson Ford to adopt the following resolution:

"Pursuant to Sections 34-67. (Water service connections, connection charges) and Section 34-144 (Connection charges [Sewer]) of the Owosso City Code, the City Council does hereby resolve that the following connection charges shall be in effect for new applications for City water and sanitary sewer service effective March 13, 2006. All previous resolutions or parts thereof, insofar as the same may be in conflict herewith, are hereby repealed."

Water and Sewer Connection Charges for new or increased size services are a combination of the applicable charges from 1) to 5) below. The Director of Utilities shall verify the applicable charges prior to approving an application for service. The applicant shall provide adequate information relative to water and sewer service requirements for the determination of service size. Any exceptions to the charges require City Council approval.

1) Water Service Line Charge

- a) Option 1 - Contractor for owner provides all excavation, backfill and surface restoration. City performs tap and installs water service from main to curb stop and provides meter for interior installation. (SFR = single family residence)

¾" SFR service	\$500 (¾" tap, ¾" copper to curb stop, 5/8" meter)
1" SFR service	\$600 (1" tap, 1" copper to curb stop, 5/8" or ¾" meter)
1" Duplex service	\$850 (1" tap, master plus 2 curb stops, 2 - 5/8"meters)
Other services	Time and material charges; prepay estimated material cost

- b) Option 2 – City provides excavation, backfill and surface restoration, including street patch, from tap to curb stop, and/or when service line is installed by boring or directional drilling. This option is generally only available for in city customers.

¾" SFR service	\$1,500 (¾" tap, ¾" copper to curb stop, 5/8" meter)
1" SFR service	\$1,600 (1" tap, 1" copper to curb stop, 5/8" or ¾" meter)
1" Duplex service	\$1,850 (1" tap, master plus 2 curb stops, 2 - 5/8"meters)
Other services	Time and material charges; prepay estimated material cost

- c) Option 3 – Connection to existing water service stub to curb stop for vacant lot, if stub was provided at City cost (such stubs are typically done prior to street construction).

¾" SFR service	\$750 (existing ¾" tap, ¾" copper to curb stop, new 5/8" meter)
1" SFR service	\$850 (existing 1" tap, 1" copper to stop, new 5/8" or ¾" meter)

- d) Additional charges if applicable:

Meter pit (for ¾" to 1" services)	\$400 (applicable when interior meter set is not feasible)
Winter construction surcharge	\$300 (applicable to option 2 generally between December 15 to March 15 to cover additional costs related to frost excavation and extended street patch maintenance prior to final patch)

2) Sewer Service Line Charge

- a) Option 1 - Contractor for owner provides all excavation, backfill and surface restoration

4" or 6" service	\$100 (covers sewer wye or saddle tap by city)
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- b) Option 2 – Connection to existing sewer service stub to vacant lot, if stub was provided at City cost (such stubs are typically done prior to street construction).

4" or 6" service	\$1,000
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3) Water & Sewer System Charges

System Charges as provided in the table below account for water or sewer system reserve capacity provided for new customers but financed at system expense.

Out of Town Water System Charges apply to retail customers outside the Owosso City Limits unless otherwise provided in an agreement between the City and the respective municipality. City Sewer System Charges do not apply to out-of-town water services. The respective Township regulates sewer service connections in their jurisdiction and their sewer charges thus apply.

Sewer System Charges do not apply to separate water only metered services such as irrigation, fire sprinkler service, or approved industrial applications where the water used does not go to wastewater system.

A residential duplex served by a single service line and meter shall have a minimum meter size of ¾". Determination of appropriate meter size for other larger services is subject to review and approval by the Director of Utilities prior to acceptance of the application for service. That review shall be based on the user's demand potential and generally accepted practices for sizing water meters based on expected average and peak flow rates. Generally, the meter size shall be reduced no more than one standard size from the size of the water line (e.g. a 1.5" meter is acceptable with a 2" service line).

When an existing water service is enlarged or replaced with a larger water service due to an expansion of the customer's water demand, the Water and Sewer System charges shall be the charge based on that for the new meter size minus that for the existing water meter size. There is no credit or rebate on reduction of meter size.

WATER AND SEWER SYSTEM CHARGE TABLE

Potable Water Service Meter Size	Water System Charge		Sewer System Charge	
	In Town	Out of Town	In Town	
5/8"	\$ 400	\$ 600	\$ 400	
3/4"	\$ 600	\$ 900	\$ 600	
1"	\$ 1,000	\$ 1,500	\$ 1,000	
1.5"	\$ 2,000	\$ 3,000	\$ 2,000	
2"	\$ 3,200	\$ 4,800	\$ 3,200	
3"	\$ 6,000	\$ 9,000	\$ 6,000	
4"	\$ 10,000	\$ 15,000	\$ 10,000	
6"	\$ 20,000	\$ 30,000	\$ 20,000	

**Fire Line Service
Line Size**

4"	\$ 1,000	\$ 1,500
6"	\$ 2,000	\$ 3,000
6" with pump	\$ 4,000	\$ 6,000
8"	\$ 4,000	\$ 6,000
8" with pump	\$ 6,000	\$ 9,000
10"	\$ 6,000	\$ 9,000
10" with pump	\$ 8,000	\$ 12,000
12"	\$ 8,000	\$ 12,000
12" with pump	\$ 10,000	\$ 15,000

4) Water Main Assessment Charge (Out of Town)

A Water Main Assessment Charge may apply to retail customers outside the Owosso City Limits unless otherwise provided in an agreement between the City and the respective municipality.

For properties outside the City, that were not assessed or did not pay in a comparable way, for the installation of the water main abutting their property, a Water Main Assessment Charge shall be paid prior to connection. The assessment is as follows:

	Cost per front foot of property	Minimum	Maximum
Water (residential)	\$15	\$ 900	\$3,000
Water (commercial or industrial)	\$20	\$2,000	

For corner lots the assessment applies only to the frontage abutting the water main to be used for the service connection.

Water Main Assessment Charge revenue shall be dedicated and restricted to a replacement fund to be used for water main replacements in the respective Township.

5) Meter Charge

This charge applies in cases where the cost of the meter is not included under 1) above. The charge includes standard meter accessories and a one-hour service call related to meter installation and inspection.

5/8" meter	\$150	1" meter	\$250
3/4" meter	\$175	1.5" meter	\$400

Larger meters will be charged at actual cost.

Motion supported by Councilperson Bruff.

Roll Call Vote.

AYES: Councilpersons Harvey, Bruff, Ford, and Mayor Robertson.

NAYS: Councilperson Horvath, Mayor Pro-Tem Owen, and Councilperson Cline.

BID AWARD – AERIAL PHOTOGRAPHY

There was discussion regarding the need for such photography, use by departments, providing historical and geographic information, taking the pictures at regular intervals, selling photographic information to surrounding communities, changes in the layout of the City, the need to schedule airplane time, postponing until next year, and not having a large print framed for display.

Motion by Councilperson Harvey to waive irregularities for bid advertising standards and authorize aerial photography contract, without framed mosaic, with Aerocon in the amount of \$9,440.00.

Roll Call Vote.

AYES: Councilpersons Horvath, Cline, Harvey, Mayor Pro-Tem Owen, Councilpersons Ford, Bruff, and Mayor Robertson.

NAYS: None.

WARRANT NO. 322

There was discussion regarding itemized listing of City Attorney charges, inviting Council members to see City Attorney operations, rates the City is charged, and the necessity of having the City Attorney present at meetings.

Motion by Mayor Pro-Tem Owen to accept Warrant No. 322 as follows:

Vendor	Description	Fund	Amount
Michigan Municipal League Workers' Compensation Fund	Workers' Compensation Insurance	General	\$17,407.00
Brown & Stewart, PC	Professional Services covering the period from January 11, 2006 to February 14, 2006	General	\$13,887.77

Motion supported by Councilperson Horvath.

Roll Call Vote.

AYES: Mayor Pro-Tem Owen, Councilpersons Harvey, Cline, Ford, Bruff, Horvath, and Mayor Robertson.

NAYS: None.

COMMUNICATIONS

- Victoria V. Kremski. Letter regarding Holman Pool.
- Gregg G. Guetschow, City Manager. Analysis of general fund expenditures.
- John F. Archer, Building Official. January 2006 Building Department Report.
- John F. Archer, Building Official. January 2006 Code Violations Report.
- Shiawassee District Library. Minutes of Meeting of December 7, 2005.

CITIZEN COMMENTS

Gary Martenis, 705 Lingle Avenue, commented on the bid award for aerial photography bid and snow plowing.

Betty Coon, 1204 Palmer Street, commented on the handling of the water connection schedule.

William Owen, 1309 Herman Street, commented on prospects for the AO Smith building.

City Manager Guetschow commented on the current status of the AO Smith building.

Councilperson Horvath commented on the future of the AO Smith building.

Kevin M. Brown, 217 Curwood Castle Drive Apt 1, commented on a tree in the AO Smith parking lot.

Eddie Urban, 601 Glenwood Avenue, commented on snow plowing practices and the tree in the AO Smith parking lot.

City Manager Guetschow commented on snow plowing.

Burton Fox, 216 East Oliver Street, commented on the old Owosso Hotel site and its condition in the near future.

Gerald Zemer, 713 North Park Street, commented on citizen access to aerial photography.

Councilperson Bruff commented on his use of aerial photographs.

Councilperson Harvey commented on his use of aerial photographs.

Planning Director Hathaway commented on possible methods for citizen access to aerial photographs.

Councilperson Bruff commented on the attitudes of Council members and problems outside their scope of power.

Pro-Tem Owen commented on concern for future water negotiations.

Councilperson Harvey inquired about the status of hiring a Deputy Director of Fire.

Public Safety Director Compeau commented on the status of the Deputy Director of Fire search.

Councilperson Cline commented on candidate residency.

ADJOURNMENT

Motion by Mayor Pro-Tem Owen, supported by Councilperson Harvey for adjournment at 9:09 p.m. and concurred in by unanimous vote.

Linda L. Robertson, Mayor

Amy K. Kohagen, Deputy City Clerk