

Davenport Road South Community Development District

12051 Corporate Boulevard, Orlando, FL 32817; 407-382-3256

Davenportroadsouthcdd.com

The following is the proposed agenda for the Board of Supervisors Meeting for the Davenport Road South Community Development District, scheduled to be held on **Thursday, August 10, 2017 at 9:30 a.m. at the Offices of Cassidy Homes, 346 East Central Ave., Winter Haven, FL 33880.** As always, the personal attendance of three (3) Board Members will be required to constitute quorum

If you would like to attend the Board Meeting by phone, you may do so by dialing:

Phone: 1-877-864-6450 Participant Code: 345750

PROPOSED BOARD OF SUPERVISORS' MEETING AGENDA

Administrative Matters

- Roll Call to Confirm Quorum
- Public Comment Period *[for any members of the public desiring to speak on any proposition before the Board]*
- 1. **Consideration of the Minutes of the July 13, 2017 Board of Supervisors Meeting**

Business Matters

2. **Consideration of Financial Advisory Agreement with Fishkind & Associates, Inc.**
3. **Consideration of District Engineering Agreement**
4. **Review of Monthly Financials *(provided under separate cover)***

Other Business

Staff Reports
District Counsel
District Engineer
District Manager
Supervisor Requests and Audience Comments
Adjournment

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**Davenport Road South
Community Development District**

Minutes

MINUTES OF MEETING

***DAVENPORT ROAD SOUTH COMMUNITY DEVELOPMENT DISTRICT
BOARD OF SUPERVISORS' MEETING***

Thursday, July 13, 2017 at 9:34 a.m.

Offices of Cassidy Homes

346 East Central Ave.,

Winter Haven, Florida 33880

Board Members present at roll call:

Lauren Schwenk	Board Member
Rennie Heath	Board Member
Andrew Rhinehart	Board Member
Phillip Allende	Board Member
Scott Shapiro	Board Member

Also Present:

Sarah Warren	Hopping Green & Sams, P.A.
Jane Gaarlandt	Fishkind & Associates, Inc.
Joe MacLaren	Fishkind & Associates, Inc.
Sharon Garrett	Resident

FIRST ORDER OF BUSINESS

Call to Order and Roll Call

The meeting was called to order at 9:34 a.m. Those in attendance are outlined above.

SECOND ORDER OF BUSINESS

Public Comment Period

There were public comments at this time.

THIRD ORDER OF BUSINESS

**Consideration of the Minutes of
the June 8, 2017 Board of
Supervisors' Meeting**

The Board reviewed the minutes of the June 8, 2017 Board of Supervisors' Meeting.

On MOTION by Mr. Heath, seconded by Mr. Rhinehart, with all in favor, the Board approved the Minutes of the June 8, 2017 Board of Supervisors' Meeting.

FOURTH ORDER OF BUSINESS

Public Hearing on the Adoption of the District's Fiscal Year 2017-2018 Budget

- a) **Public Comments and Testimony**
- b) **Board Comments**
- c) **Consideration of Resolution 2017-33, Adopting Fiscal Year 2017-2018 Budget and Appropriating Funds**

Mr. MacLaren recommended a motion to open the public hearing.

On MOTION by Mr. Heath, seconded by Mr. Shapiro, with all in favor, the Board opened the Public Hearing.

The budget for the upcoming fiscal year is anticipated to be Developer Funded rather than collected via assessments. The \$180,000.00 proposed budget will act as a not-to-exceed amount. The Developer will fund the actual expenses.

On MOTION by Mr. Heath seconded by Mr. Shapiro, with all in favor, the Board approved Resolution 2017-33, Adopting Fiscal Year 2017-2018 Budget and Appropriating Funds.

FIFTH ORDER OF BUSINESS

Consideration of Fiscal Year 2017-2018 Budget Funding Agreement

This Agreement outlines that the Developer agrees to pay the expenses of the District on an as incurred basis.

On MOTION Mr. Heath, seconded by Ms. Schwenk, with all in favor, the Board approved the Fiscal Year 2017-2018 Funding Agreement.

Ms. Warren requested a motion to close the public hearing.

On MOTION Mr. Shapiro, seconded by Ms. Schwenk, with all in favor, the Board closed the Public Hearing.

SIXTH ORDER OF BUSINESS

Consideration of Statements of Qualifications for the Position of District Engineer

At the Board's direction, District staff ran a Request for Qualification notice for the position of District Engineer. The District received one response from Dennis Wood Engineering, LLC. District staff has reviewed this and found Dennis Wood Engineering, LLC. to be qualified and recommends that the Board accept the recommendation.

On MOTION by Mr. Heath, seconded by Ms. Schwenk, with all in favor, the Board accepted Dennis Wood Engineering, LLC as the most qualified proposer and authorized District Counsel to put together an Agreement.

SEVENTH ORDER OF BUSINESS

Review of Monthly Financials

The District has incurred approximately \$43,316.00 in expenses versus a budget of \$90,000.00 through the end of June. The District is under budget at this point in the fiscal year. There was no action required by the Board.

EIGHTH ORDER OF BUSINESS

Staff Reports

District Counsel – The Bond Validation hearing is scheduled for July 26, 2017 at 3:15 p.m.

Interim Engineer – No Report

District Manager – No Report

NINTH ORDER OF BUSINESS

**Supervisor Requests and Audience
Comments**

There were no Supervisor requests.

There were no public comments.

TENTH ORDER OF BUSINESS

Adjournment

There were no other questions or comments. Mr. MacLaren requested a motion to adjourn.

ON MOTION by Mr. Shapiro, seconded by Mr. Schwenk, with all in favor, the Thursday, July 13, 2017 Board of Supervisors' Meeting was adjourned.

Secretary / Assistant Secretary

Chairman / Vice Chairman

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**Davenport Road South
Community Development District**

Financial Advisory Agreement

FINANCIAL ADVISORY AGREEMENT

1.0 Registration as a Municipal Advisor

Fishkind & Associates, Inc. ("FA" or "Advisor") is a registered Municipal Advisor pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the United States Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB") License Number K1055. As such, FA is bound by the SEC's Municipal Advisor Rule that imposes a: (a) registration regime upon municipal advisors, i.e., firms that give advice to municipal entities, such as community development districts, and (b) fiduciary duty upon municipal advisors that give advice to municipal entities.

FA also must comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As part of our registration FA is required to disclose to the SEC information regarding criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation involving FA. Pursuant to MSRB Rule G-42, FA is required to disclose any legal or disciplinary event that is material to the District's evaluation of FA or the integrity of its management or advisory personnel. FA has determined that no such event exists. Copies of FA's filings with the SEC can currently be found by accessing the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system Company Search Page which is currently available at <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

In addition, G-42 requires FA to disclose in writing all material conflicts of interest. FA is not aware of any conflicts of interest related to this engagement.

2.0 Scope of Work

2.1 Municipal Advisor Role

The Municipal Advisor is engaged as a recognized independent expert whose primary responsibility is to give objective fiscal advice on the structure and issuance of any debt under state and federal securities law.

2.2 Specific Advisory Services

We will provide the following services.

- a. Formulation of the District's assessment methodology or similar security for the debt including consultation with the District's underwriter, bond counsel, district counsel, and consulting engineer.
- b. Assistance to the District and its underwriter in developing the financing plan for the District's funding of its infrastructure.
- c. Recommendations as to the appropriate financial structures for the proposed financings, as requested.
- d. Advice on terms and features of bonds, the timing of marketing of bond issues and the analysis of market conditions as they relate to bond sales.
- e. Assistance with the District's underwriter in the review and preparation of cash flow forecasts for proposed issues addressing debt service requirements and sources of funding.
- f. Assistance, as requested, in the preparation of financing schedules, bond documents, inter local agreements and official statements.
- g. Assistance in negotiations with the underwriter regarding the underwriter's gross spread (bond discount).
- h. Assistance, with the District's underwriter, regarding any interim financing, if necessary or desirable.
- i. Advice to the District, if requested, on the selection of a trustee, paying agent and other financial intermediaries.
- j. Assistance in the proceedings for the validation of the District's bonds, the preparation of materials in support of validation, and determination of the validation amount as requested.
- k. Assistance to the District with regard to the sale of its bonds by the underwriter, including an analysis of the proposed interest rate and other factors affecting the sale.
- l. Assistance with the District's bond closing, including the printing, signing and delivery of the District's bonds and the transfers of moneys to the District by the underwriter.
- m. Calculation of the preliminary and final assessment rolls or their equivalent.
- n. Assistance to the District in investing the proceeds of any debt offering as requested.

- q. Attendance at all necessary meetings as determined by the District Manager.

3.0 Compensation

3.1 General Considerations and Avoidance of Conflicts of Interest

There are several potential conflicts of interest that may apply to our engagement with you concerning compensation. For example, fixed fees or "lump sum" compensation represents a potential conflict of interest, because if the transaction requires more work than originally contemplated, the financial advisor may suffer a loss. Thus, the advisor may recommend less time-consuming alternatives, or fail to do a full analysis of alternatives. Fees based upon the par amount of debt presents a conflict of interest, because the advisor may have an incentive to advise the client to increase the size of the securities issue for the purpose of increasing the advisor's compensation. Contingent fees create a potential conflict of interest because the advisor may have an incentive to recommend unnecessary financings or financings that are disadvantageous to the client. When facts or circumstances arise that could cause the financing to be delayed or fail to close, an advisor may have an incentive to discourage a full consideration of such facts and circumstances.

3.2 Fee Proposal and Budget

FA's plan to mitigate conflicts of interest regarding compensation is to charge for our services on a time and expense basis at our standard rate of \$450 per hour. Reasonable out-of-pocket expenses incurred by the Advisor in the performance of his duties shall be billed and paid on a pro rata monthly basis in accordance with Section 112.061, Florida Statutes.

We propose a not-to-exceed budget of \$1,000 for this engagement based on our estimate for the cost of the work involved in rendering financial advisory services on a routine basis. We will bill hourly against this budget.

Should the work expand beyond the budget, we will notify you promptly with documentation supporting a proposed budget increase. Such expansions would include: (a) developing assessment methodologies, (b) crafting financing strategies, and (c) managing the issuance of any debt obligations. In such circumstances, we expect that the Advisor's fee and expenses will be paid from the proceeds of the District's debt issuance. Therefore, the payment of our fees and expenses for any expansion of our routine financial advisory services will be deferred until the later of the time when: (a) the District closes on a debt issuance or (b) the District defers or abandons its issuance of debt. However, our fees are not contingent upon the District's issuance of debt.

4.0 General Provisions

4.1 Advisor Not to Participate as Underwriter

The Advisor is precluded from being an underwriter of any debt obligations issued by the District and shall not participate, in any manner, in the initial syndication for the issuance of any of the District's debt obligations. However, the Advisor may act as a placement agent for debt obligations.

4.2 Termination of Relationship

The District has the right to terminate this Agreement for "good cause" which shall include misfeasance, malfeasance, nonfeasance or dereliction of duties by the Advisor. Termination for "good cause" shall be effected by provision of a minimum of ten (10) days written notice to Advisor. Either party hereto shall have the right to terminate the relationship between the District and the Advisor, at any time and for any reason whatsoever, upon the District providing a minimum of thirty (30) days advance written notice to the Advisor and the Advisor providing a minimum of sixty (60) days advance written notice of intention to terminate. All notices shall be mailed to the person and address specified for use in the giving of notice, in paragraph 4.10, hereof. Should the relationship be terminated, all work product produced by the Advisor, to the date of termination, shall be the sole property of the District. The Advisor's fee shall be prorated according to the amount of work completed as determined by the District. Finally, the Advisor shall be entitled to all expenses not reimbursed as of the notice of termination.

4.4 Disclaimer of Advisor

The District acknowledges that the Advisor is not an attorney and may not render legal advice or opinions. Although the Advisor may participate in accumulating information necessary for documents required by the District to finalize any particular financing, such information shall be verified by the District as to its correctness; provided, however, that the District shall not be required to verify the correctness of any information originated by the Advisor or the correctness of any information originated by the Advisor which the Advisor has used to formulate its opinions and advice given to the District.

4.4 Attorney Fees and Governing Law

In the event either party is required to take any action to enforce this Agreement, the prevailing party shall be entitled to attorney's fees and costs, including fees and costs incurred in determining entitlement to and reasonableness of such fees and costs. This Agreement shall be interpreted in accordance with and shall be governed by the laws of the State of Florida.

4.5 Indemnification

The Advisor agrees to indemnify, defend, and hold the District harmless from and against any and all claims, actions, suits, demands, assessments or judgments asserted and any and all losses, liabilities, damages, costs, court costs, and expenses, including attorney's fees, that the District may hereafter incur, become responsible for, or be caused to pay out arising out of or relating to the negligent, reckless and/or intentionally wrongful acts or omissions of the Advisor. The indemnification provided for herein shall not be deemed exclusive of any other rights to which the District may be entitled and shall continue after the Advisor has ceased to be engaged under this Agreement.

Nothing herein shall be construed to limit the District's sovereign immunity limitations of liability provided in section 768.28, Florida Statutes or other applicable law.

4.6 Insurance

The Advisor shall provide and maintain the following levels of insurance coverage at all times subsequent to the execution of this Agreement:

- a) Worker's Compensation insurance to cover full liability under worker's compensation laws in effect from time to time in Florida.
- b) General Liability insurance with limit of one million dollars (\$1,000,000.00) per each occurrence.
- c) Professional Liability insurance with limit of one million dollars (\$1,000,000.00) per each occurrence.
- d) Employment Practices Liability insurance with limit of two million dollars (\$2,000,000.00) per each occurrence.
- e) Commercial Crime insurance with limit of two million dollars (\$2,000,000.00) per each occurrence.
- f) Comprehensive Automobile Liability insurance for all vehicles used by the Consultant's staff, whether owned or hired, with a combined single limit of one million dollars (\$1,000,000.00).

The District (and its staff, consultants, and supervisors as applicable) will be listed as additional insureds on the General Liability and Automobile insurance policies described above. The District (and its staff, consultants, and supervisors as applicable) will be listed as a joint loss payee on the Commercial Crime insurance. None of the policies above may be canceled during the term of this Agreement (or otherwise cause the District to not be named as an additional insured or joint loss payee where applicable) without sixty (60) days written notice to the District. Advisor will furnish the District with a Certificate of Insurance evidencing compliance with this section prior to Agreement commencement and upon request.

4.7 Time of the Essence

The District and the Advisor agree that time is of the essence and that the services of the Advisor shall be performed expeditiously.

4.8 Term of This Agreement

This Agreement shall renew automatically until terminated by either the District or the Advisor.

4.9 Entire Agreement

This Agreement constitutes the entirety of the terms and conditions of the agreement between the parties for District Management services. Any amendment or change to this Agreement shall be in writing and executed by all parties to the Agreement.

4.10 Notices

All notices, requests, or authorizations which may from time to time be required or expedient shall be in writing and shall be delivered or mailed as follows:

District:	Davenport Road South CDD 12051 Corporate Blvd. Orlando, FL 32817
With a copy to:	Hopping Green & Sams, P.A. Roy Van Wyk 119 South Monroe Street, Suite 300 Tallahassee, FL 32301
Advisor:	Fishkind & Associates, Inc. Dr. Hank Fishkind 12051 Corporate Blvd. Orlando, Florida 32817 hankf@fishkind.com

4.11 Authority to Execute

Each of the parties hereto covenant to the other that it has the lawful authority to enter into this relationship, that the governing or managing body of each party has approved this relationship and has similarly authorized the execution of this Agreement.

4.12 Public Records Disclosure

Advisor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Advisor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Consultant acknowledges that the designated public records custodian for the District is Fishkind & Associates, Inc. ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Advisor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the Advisor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the Agreement, transfer to the District, at no cost, all public records in Advisor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Advisor, the Advisor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE FA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, FISHKIND & ASSOCIATES, INC., AT 772-345-5101, 10807 SW TRADITION SQUARE, PORT ST. LUCIE, FLORIDA 34987.

In witness whereof, the parties hereto have executed this Agreement, in duplicate, this _____ day of _____, 2017.

Board of Supervisors
Davenport Road South Community Development District

Sign _____

Print Name _____

Fishkind & Associates, Inc.

Hank Fishkind, Ph.D., President

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**Davenport Road South
Community Development District**

District Engineering Agreement

**AGREEMENT BETWEEN DAVENPORT ROAD SOUTH COMMUNITY
DEVELOPMENT DISTRICT AND DENNIS WOOD ENGINEERING, LLC
FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT (“Agreement”) made and entered into effective the ___ day of August, 2017, by and between:

DAVENPORT ROAD SOUTH COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established and existing pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Davenport, Florida, with a mailing address at 12051 Corporate Boulevard, Orlando, Florida 32817 (the “District”), and

DENNIS WOOD ENGINEERING, LLC, a Florida limited liability company, with a mailing address of 1925 Bartow Road, Lakeland, Florida 33801 (“Engineer”).

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, *Florida Statutes* (“Uniform Act”), by ordinance of the City of Davenport, Florida; and

WHEREAS, the District is authorized to plan, finance, construct, install, acquire and/or maintain improvements, facilities and services in conjunction with the development of the lands within the District; and

WHEREAS, pursuant to Sections 190.033 and 287.055, *Florida Statutes*, the District solicited statements of qualification from qualified firms to provide professional engineering services on a continuing basis; and

WHEREAS, Engineer submitted a statement of qualification to serve in this capacity; and

WHEREAS, the District's Board of Supervisors ranked Engineer as the most qualified firm to provide professional engineering services for the District on a continuing basis and authorized the negotiation of a contract pursuant to Section 287.055, *Florida Statutes*; and

WHEREAS, the District intends to employ Engineer to perform engineering, construction administration, environmental management and permitting, financial and economic studies, as defined by a separate work authorization or work authorizations; and

WHEREAS, the Engineer shall serve as District's professional representative in each service or project to which this Agreement applies and will give consultation and advice to the District during performance of these services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the acts and deeds to be performed by the parties and the payments by the District to the Engineer of the sums of money herein specified, it is mutually covenanted and agreed as follows:

Article 1. Scope of Services

- A. The Engineer will provide general engineering services, including:
 - 1. Preparation of any necessary reports and attendance at meetings of the District's Board of Supervisors.
 - 2. Providing professional engineering services including but not limited to review and execution of documents under the District's Trust Indentures and monitoring of District projects. Performance of any other duties related to the provision of infrastructure and services as requested by the Board, District Manager, or District Counsel.
 - 3. Any other items requested by the Board of Supervisors.

- B. Engineer shall, when authorized by the Board, provide general services related to construction of any District projects including, but not limited to:
 - 1. Periodic visits to the site, or full time construction management of District projects, as directed by District.
 - 2. Processing of contractor's pay estimates.
 - 3. Preparation of, and/or assistance with the preparation of, work authorizations, requisitions, change orders and acquisitions for review by the District Manager, District Counsel and the Board.
 - 4. Final inspection and requested certificates for construction including the final certificate of construction.
 - 5. Consultation and advice during construction, including performing all roles and actions required of any construction contract between District and any contractor(s) in which Engineer is named as owner's representative or "Engineer."
 - 6. Any other activity related to construction as authorized by the Board.

- C. With respect to maintenance of the facilities, Engineer shall render such services as authorized by the Board.

Article 2. Method of Authorization. Each service or project shall be authorized in writing by the District. The written authorization shall be incorporated in a work authorization which shall include the scope of work, compensation, project schedule, and special provisions or conditions specific to the service or project being authorized ("Work Authorization"). Authorization of services or projects under the contract shall be at the sole option of the District.

Article 3. Compensation. It is understood and agreed that the payment of compensation for services under this Agreement shall be stipulated in each Work Authorization. One of the following methods will be utilized:

A. Lump Sum Amount - The District and Engineer shall mutually agree to a lump sum amount for the services to be rendered payable monthly in direct proportion to the work accomplished. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in Section 287.017, *Florida Statutes*, for CATEGORY FOUR, the District shall require the Engineer to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The price for any lump sum Work Authorization, and any additions thereto, will be adjusted to exclude any significant sums by which the District determines the Work Authorization was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments must be made within one (1) year following the completion of the work contemplated by the lump sum Work Authorization.

B. Hourly Personnel Rates - For services or projects where scope of services is not clearly defined, or recurring services or other projects where the District desires to use the hourly compensation rates outlined in **Schedule A** attached hereto. The District and Engineer may agree to a “not to exceed” amount when utilizing hourly personnel rates for a specific work authorization.

Article 4. Reimbursable Expenses. Reimbursable expenses consist of actual expenditures made by Engineer, its employees, or its consultants in the interest of the project for the incidental expenses as listed as follows:

A. Expenses of transportation and living when traveling in connection with a project, for long distance phone calls and telegrams, and fees paid for securing approval of authorities having jurisdiction over the project. All expenditures shall be made in accordance with Chapter 112, *Florida Statutes*, and with the District’s travel policy.

B. Expense of reproduction, postage and handling of drawings and specifications.

Article 5. Term of Contract. It is understood and agreed that this Agreement is for engineering services. It is further understood and agreed that the term of this Agreement will be from the time of execution of this Agreement until terminated pursuant to Article 21.

Article 6. Special Consultants. When authorized in writing by the District, additional special consulting services may be utilized by Engineer and paid for on a cost basis.

Article 7. Books and Records. Engineer shall maintain comprehensive books and records relating to any services performed under this Agreement, which shall be retained by Engineer for a period of at least four (4) years from and after completion of any services hereunder, or such further time as required under Florida’s public records law. The District, or its

authorized representative, shall have the right to audit such books and records at all reasonable times upon prior notice to Engineer.

Article 8. Ownership of Documents.

A. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement (the "Work Product") shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

B. The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for Engineer in the District's sole discretion, to retain possession for a longer period of time. Upon early termination of Engineer's services hereunder, Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the Project. If said Work Product is used by the District for any purpose other than that purpose which is intended by this Agreement, the District shall indemnify Engineer from any and all claims and liabilities which may result from such re-use, in the event Engineer does not consent to such use.

C. The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Engineer hereby assigns to the District any and all rights Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

Article 9. Accounting Records. Records of Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times.

Article 10. Independent Contractor. Engineer and District agree that Engineer is and shall remain at all times an independent contractor and shall not in any way claim or be considered an employee of District. Engineer shall not have authority to hire persons as employees of District.

Article 11. Reuse of Documents. All documents including drawings and specifications furnished by Engineer pursuant to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by District or others on extensions of the work for which they were provided or on any other project. Any reuse without specific written consent by Engineer will be at the District's sole risk and without liability or legal exposure to Engineer. All documents including drawings, plans and specifications furnished by Engineer to District are subject to reuse in accordance with Section 287.055(10), *Florida Statutes*.

Article 12. Estimate of Cost. Since Engineer has no control over the cost of labor, materials or equipment or over a contractor's(s') methods of determining prices, or over competitive bidding or market conditions, his opinions of probable cost provided as a service hereunder are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposals, bids, or the construction costs will not vary from opinions of probable cost prepared by him. If the District wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitation established by the District will be considered additional services and justify additional fees.

Article 13. Insurance. Engineer shall, at its own expense, maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers' Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$1,000,000/\$2,000,000
Property Damage (including Contractual)	\$1,000,000/\$2,000,000
Automobile Liability	Combined Single Limit \$500,000
Bodily Injury / Property Damage	
Professional Liability for Errors and Omissions	\$1,000,000

The District, its officers, supervisors, agents, staff, and representatives shall be named as additional insured parties (except on Professional Liability for Errors and Omissions). The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Article. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice of cancellation to the

District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.

Article 14. Contingent Fee. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Article 15. Audit. The Engineer agrees that the District or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of all work under the Agreement.

Article 16. Indemnification. Engineer shall indemnify and hold harmless the District, and its officers, employees and staff, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, which may come against the District and the District's officers and staff to the extent caused by negligent, reckless, or intentionally wrongful acts or omissions by the Engineer or persons employed or utilized by Engineer in the course of any work done in connection with any of the matters set out in this Agreement. Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of the District's sovereign immunity pursuant to Section 768.28, *Florida Statutes*, or any other statute or law.

Article 17. Compliance with Public Records Laws. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **Jim Perry** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy

any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 382-3256, JANEG@FISHKIND.COM, AND 12051 CORPORATE BOULEVARD, ORLANDO, FLORIDA 32817.

Article 18. Employment Verification. The Engineer agrees that it shall bear the responsibility for verifying the employment status, under the Immigration Reform and Control Act of 1986, of all persons it employs in the performance of this Agreement.

Article 19. Controlling Law; Jurisdiction and Venue. Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Jurisdiction and venue for any proceeding with respect to this Agreement shall be in Polk County, Florida.

Article 20. Assignment. Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Engineer from employing such independent professional associates and consultants as Engineer deems appropriate, pursuant to the terms of this Agreement.

Article 21. Termination. The District may terminate this Agreement for cause immediately upon notice to Engineer. The District or the Engineer may terminate this Agreement without cause upon thirty (30) days written notice. At such time as the Engineer receives notification of the intent of the District to terminate the contract, the Engineer shall not perform any further services unless directed to do so in writing by the District. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential or other damages of any kind (including but not limited to lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

Article 22. Notices. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, transmitted by electronic mail (e-mail) and mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the District: Davenport Road South
Community Development District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 S. Monroe Street, Suite 300 (32301)
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Roy Van Wyk

If to Engineer: Dennis Wood Engineering, LLC
1925 Bartow Road
Lakeland, Florida 33801
Attn: Dennis Wood

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for District and counsel for Engineer may deliver Notice on behalf of District and Engineer, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

Article 23. Recovery of Costs and Fees. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees.

Article 24. Compliance with Professional Standards. In performing its obligations under this Agreement, the Engineer and each of its agents, servants, employees or anyone directly or indirectly employed by Engineer, shall maintain the highest standard of care, skill, diligence and professional competency for such work and/or services. Any designs, drawings, reports or specifications prepared or furnished by the Engineer that contain errors, conflicts or omissions will be promptly corrected by Engineer at no cost to the District.

Article 25. Acceptance. Acceptance of this Agreement is indicated by the signature of the authorized representative of the District and the Engineer in the spaces provided below.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed the day and year first above written.

**DAVENPORT ROAD SOUTH
COMMUNITY DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

DENNIS WOOD ENGINEERING, LLC, a Florida
limited liability company

Witness

Dennis Wood, President

Witness

Schedule A – Rate Schedule

Schedule "A"

**Davenport Road South
Community Development District**

Monthly Financials

(provided under separate cover)