



TOWN OF LOXAHATCHEE GROVES
TOWN COUNCIL MEETING AGENDA
TUESDAY, MARCH 18, 2014

Mayor David Browning (Seat 4)

Vice Mayor Jim Rockett (Seat 2)

Councilman Tom Goltzené (Seat 5)

Councilman Ronald D. Jarriel (Seat 1)

Councilman Ryan Liang (Seat 3)



Town of Loxahatchee Groves

Town Council Meeting

Tuesday, March 18, 2014 at 7:00 p.m.

(Or As Soon As Possible following the Special Workshop)

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)
Vice Mayor Ronald D. Jarriel (Seat 1)
Councilman Tom Goltzené (Seat 5)
Councilman Ryan Liang (Seat 3)
Councilman Jim Rockett (Seat 2)

Town Manager Mark Kutney
Town Clerk Janet K. Whipple
Town Attorney Michael D. Cirullo, Jr.

Tentative
Subject to Revision

PUBLIC NOTICE/AGENDA

1. OPENING

- a. Call to Order & Roll Call
- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda
- d. **SWEARING IN OF COUNCIL MEMBER TOM GOLTZENÉ (SEAT 5).**

*******Cake will be served after the swearing in ceremony*******
******Short Recess will be taken******

Note: Appointment of Mayor and Vice-Mayor will be conducted during the April 1, 2014, Town Council Meeting. (Pursuant to the Town Charter. Section 2(2)(a))

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2. **CONSENT AGENDA**

- a. Minutes for Approval: **February 18, 2014**

3. **PUBLIC COMMENTS**

4. **PRESENTATIONS - NONE**

5. **COMMITTEE REPORTS – NONE**

6. **RESOLUTIONS - NONE**

7. **ORDINANCES**

a. **ORDINANCE NO. 2014-03: FIRST READING (Livestock Waste - Haulers)**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HAULING OF LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS AND PERMIT FEES; PROVIDING FOR THE DISPOSAL OF LIVESTOCK WASTE ONLY AT APPROVED DISPOSAL SITES WITHIN THE TOWN; PROVIDING FOR PERMITTED HOURS OF HAULING LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR REQUIRED RECORDS AND AUDITING OF SUCH RECORDS BY THE TOWN; PROVIDING FOR CHANGES TO LIVESTOCK WASTE REGULATIONS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

b. **ORDINANCE NO. 2014-04: FIRST READING (Livestock Waste - Property Owners)**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO DEPOSITING OF LIVESTOCK WASTE

WITHIN THE TOWN; AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE BY AMENDING PART III ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 50 ENTITLED "PUBLIC NUISANCES" BY ADDING A NEW SECTION 50-035 TO BE ENTITLED "USE OF LIVESTOCK WASTE;" PROVIDING FOR DEFINITIONS; PROVIDING THAT DEPOSITING OF LIVESTOCK WASTE IS A PUBLIC NUISANCE EXCEPT AS PROVIDED BY THIS SECTION; PROVIDING FOR REGISTRATION AND PERMITS, REQUIREMENTS AND LIMITATIONS ON THE DELIVERY AND USE OF LIVESTOCK WASTE REPORTING AND NOTICE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

c. ORDINANCES – PUBLIC HEARING

ORDINANCE NO. 2013-11 – SECOND AND FINAL READING / PUBLIC HEARING (Historical Legacy)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED "USES AS OF OCTOBER 1, 2006" TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE IS NOT CURRENTLY THE SUBJECT OF A TOWN CODE ENFORCEMENT ACTION; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING THAT CERTAIN USES ARE NOT ELIGIBLE FOR APPROVAL UNDER THIS SECTION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

8. ADMINISTRATIVE UPDATE – *Town Manager Kutney*

a. Gas Tax Maps Report

9. OLD BUSINESS

- a. Auditor Retention Letter

10. NEW BUSINESS - NONE

11. CLOSING COMMENTS

- a. Public

- b. Town Attorney

- c. Town Council Members

12. ADJOURNMENT

The next regular Town Council Meeting is tentatively scheduled for April 1, 2014.

Comment Cards: Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.



Item 2.a.

Consent Agenda

Minutes

February 18, 2014



Town of Loxahatchee Groves

Town Council Meeting

Tuesday, February 18, 2014 at 7:00 p.m.

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)
Vice Mayor Ronald D. Jarriel (Seat 1)
Councilman Tom Goltzené (Seat 5)
Councilman Ryan Liang (Seat 3)
Councilman Jim Rockett (Seat 2)

Town Manager Mark Kutney
Town Clerk Janet K. Whipple
Town Attorney Michael D. Cirullo, Jr.

MINUTES

1. OPENING

- a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7:00 p.m. Present were Mayor Browning, Vice-Mayor Jarriel, Councilmen Tom Goltzené, Ryan Liang, and Jim Rockett. Also present were Town Manager Mark Kutney, Town Attorney Mike Cirullo, Town Planning Consultant Jim Fleischmann, and Town Clerk Janet K. Whipple.

- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

Motion: Councilman Liang made a motion to approve the Agenda as presented. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.

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2. **CONSENT AGENDA**

- a. Minutes for Approval: January 14, 2014 and February 4, 2014

Motion: Councilman Liang made a motion to approve the Consent Agenda. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.

3. **PUBLIC COMMENTS**

Roxana (Roxie) Colman, 3924 147th Avenue North, working at the Yesteryear Village Schoolhouse at the South Florida Fairgrounds, brought vintage photos from schools in the Loxahatchee Groves area. She spoke of the Schoolhouse and the Military Museum at Yesteryear Village, along with war service awards given to Loxahatchee Groves' area resident. Ms. Colman handed out copies of the photos to Council.

Keith Harris, 2580 C Road, referenced Agenda Item 9.b. of Manure Ordinance No. 2012-03. He mentioned that he is enrolled in the Florida Best Practices Equestrian Policy, and keeps manure in concrete containers. He requested that Council ban any manure from coming into the Town from outside sources.

4. **PRESENTATIONS - NONE**

5. **COMMITTEE REPORTS – NONE**

6. **RESOLUTIONS - NONE**

7. **ORDINANCES**

- a. **ORDINANCE NO. 2013-11 / SECOND READING / PUBLIC HEARING:**
(Historical Legacy):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED

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“USES AS OF OCTOBER 1, 2006” TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR OR HIS OR HER DIRECT RELATIVE RELATED BY BLOOD OR MARRIAGE; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE HAS NO HISTORY OF CODE VIOLATIONS OR THE USE HAS BEEN BROUGHT INTO CODE COMPLIANCE; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; AND TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Cirullo stated that there was a discrepancy in the advertised title of Ordinance No. 2013-11. The titles of the ordinance did not match on the first and second reading legal notice newspaper advertisements. Ordinance No. 2013-11 will be re-advertised and go back to Town Council for a second first reading on March 4, 2014, to be followed by a second, second reading.

Council discussed qualifying issues and the loss of agriculture exemption, and whether the basis was cost recovery or fee based, and to change Commission to Council as a clerical matter.

Town Manager Kutney noted that the Town would try to review in house as much as possible so there would not be so much cost recovery imposed on the applicant.

8. ADMINISTRATIVE UPDATE – *Town Manager Kutney*

a. RETGAC Vacant

Town Manger Kutney reported to Council that Dr. Bill Louda submitted his resignation from the RETGAC (Roadway, Equestrian, Trails, and Greenway Advisory Committee) effective January 22, 2014. This was Mayor Browning’s appointment.

b. Compton Road Equipment Demonstration

Town Manager Kutney provided a video on the state of the art vegetation clearing equipment. There will be a meeting with Florida Power and Light (FPL) possibly on February 25th to watch the machine work on Compton Road.

A Notice to Proceed and permit for the culverts was issued by the Town and filed with the Loxahatchee Groves Water Control District (LGWCD). The culvert is on order. Keshavarz, the Town Engineers, has until March 3, 2014 to respond on the engineering.

Town Attorney Cirullo reported that the Road Resurfacing Agreement is almost ready and he is waiting on the Engineer's Report.

Council discussed the filling of holes on Compton Road.

Mayor Browning stated he did not want to delay filling any potholes but wanted to make sure that what was being used worked with the OGEM Process.

Town Manager Kutney will do a Notice to Proceed.

Town Manager Kutney mentioned that he will be meeting with Mr. Weisberg, Traffic Engineer from Palm Beach County concerning the signal on D Road and Okeechobee Boulevard. Mr. Harris will also attend.

Councilman Rockett asked if Council members could attend the meeting.

Town Manager Kutney and Jim Fleischmann, Town Planning Consultant, met with Mr. Yee's Architect Marcello Penso, on February 13th to review the site plan on the Palms West Plaza.

Town Manager Kutney reported that per a request by Councilman Rockett he was providing an update on the speed hump matter. Mr. Kutney had given a Notice to Proceed to Simmons and White, Town Traffic Engineers, for them to provide a template profile as it relates to the speed humps on Sycamore Drive and at 140th Avenue and 44th Street. He issued this on February 11th and asked that the information be returned by February 26th

Council discussed templates for speed humps, and specifications.

Town Manager Kutney stated speed humps and spacing will be on the March 4, 2014 Town Council Agenda.

Council discussed speed humps versus speed tables, and which road might be the best example to study.

John Ryan, 3508 A Road, reported he sat in on many discussions concerning speed humps, and expressed concerns that the engineers would not sign off on the roads without guardrails along the canals.

Council discussed resurfacing roads and who would take over the ownership.

Town Attorney Cirullo stated that once the B Road agreement is executed, it will be the Town doing the work. Once the road work has been completed, the Loxahatchee Groves Water Control District (LGWCD) can maintain the canal.

Dr. Bill Louda 1300 B Road, stated roads without guard rail are fine.

Town Manager Kutney, in response to an inquiry from Councilman Rockett concerning the home occupational license business going to a Planning and Zoning (P&Z) Meeting; stated, the P&Z Board had no development matters for the meeting in February so it did not meet. Council can direct Staff to convene the P&Z Board for the home occupational matter during March or April.

Motion: Councilman Rockett made a motion to submit the home occupational item for the Planning and Zoning Board Meeting scheduled for March 13th. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 4/1 with Councilman Goltzene casting the dissenting vote.

9. OLD BUSINESS

- a. Reconciliation of ULDC work authorization (*Town Manager Kutney*)

Town Manager Kutney requested the Town Council authorized \$1,500 to complete the Unified Land Development Code Review Committee (ULDC) Annual Summary Report; and \$222.50 for the overages and any additional final expenses for the Historical Legacy.

Motion: Councilman Liang made a motion approved the authorization of requested funds for ULDC and Historical Legacy. Councilman Goltzené seconded the motion.

Council discussed costs, review of the ordinance, gun uses, the fact that the ULDC was overregulated, possibly reducing staff at the meetings, Attorney General Opinions, and how the ULDC Board was directed to proceed.

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John Ryan, 3508 A Road, expressed his opinions on the reference to the term “ag” and its uses. **Upon vote, the motion passed 4/1 with Councilman Rockett casting a dissenting vote.**

b. Discussion of Manure Ordinance No. 2012-03.

Town Manager Kutney reaffirmed that as long as the Management Company has been employed by the Town, they have attempted to get a handle on the problem with regulating the hauling of manure. He further explained the procedures Staff has implemented in order to keep the hauling under control. He stated that during the IGC (Intergovernmental Coordination Committee) Meetings, approximately seven (7) or eight (8) months ago, when Mayor Browning served as Council Representative, and Frank Schiola served as the Loxahatchee Groves Water Control District (LGWCD) Representative, Mr. John Bonde, and Mr. Michael O’Dell from Wellington, who shared some of the nightmares Wellington had dealing with the phosphorus issues. The regulations that are in place are from Ordinance No 2012-03.

Motion: Councilman Rockett made a motion to impose a moratorium immediately, and move through the committees to make a change to Ordinance No. 2012-03. Councilman Goltzené seconded the motion, for discussion.

Councilman Goltzené discussed keeping the manure dumping within Town limits. He suggested shutting out loads coming in from outside, but not hauling out.

Town Attorney Cirullo explained a couple of concepts of a moratorium. A moratorium needs to go through a formal adoption process. The Town can stop the hauling while it goes through procedures. The changes will have to go through the Planning and Zoning Committee and two readings before Town Council.

Councilman Rockett revised his motion to state the Town would have a moratorium to allow only intra-movement within the Town.

Town Manager Kutney stated we would have to beef up our code enforcement.

Councilman Liang reinforced the comments of excessive manure hauling and suggested placing a ban during the winter months when the haulers are hauling and dumping twenty-four (24) hours a day. The Town does need someone at night to stop the haulers.

Discussion followed concerning hiring someone to watch for haulers at night, using the fine money to hire someone, restricting hauling from October through March, and providing a dumping site within the Town until the situation is resolved,

Town Attorney Cirullo asked if this would be an absolute ban, and also if the load size would be reduced. He also questioned that this motion would include no ban for taking manure out of Town. The answer to each question was in the affirmative.

Water quality issues were a concern, as well as, best management practices.

Town Manager Kutney will provide a copy of the Best Management Practices Policy Mr. Harris had referred to.

Councilman Rockett recapped on the motion he made and modified, which was that the Town have a zoning in progress for manure hauling restricting anything coming into the Town, and that the Town will be working on distribution within the Town. Councilman Liang made the second.

Bill Louda, 1300 E Road, provided a report on water quality basically on the Town canals. He suggested that by making the hauling internal the Town could make it like a co-op with no fees.

John Ryan, 3508 A Road, referred to the State Statutes for reference.

Lt. Combs, from the Palm Beach County Sheriff's Office (PBSO), stated any illegal dumping is a felony.

Upon vote the motion passed 5/0.

Mayor Browning called for a break 9:00 – 9:05.

10. NEW BUSINESS

- a. Discussion of Town Management/Council Priorities/Business Plan Initiatives.

Town Manger Kutney brought the Priorities/Business Plan Initiatives back to Council for their review and comments. He requested that if Council would like any item reclassified to please let him know.

Council requested a degree of completion, if any completion dates were known, and the annual road list for gas tax.

Town Manager Kutney will provide the information via separate correspondence.

- b. Bernardo Alzate Nursery Request to end the one (1) year permit restrictions for Property Owner Manure Permit per Ordinance No. 2012-03.

Town Manager Kutney reported that Mr. Rios representing Alzate Nursery was the gentleman who had two (2) permits to haul one thousand (1000) loads of manure. The Town did approve an additional permit for fifty (50) loads. Now that the Town has direction, this matter has been taken care of. The Town will not renew Mr. Rios' permit when it lapses in March.

11. CLOSING COMMENTS

- a. Public

Ann Parker, 15565 Collecting Canal Road, felt this had been a good meeting.

- b. Town Attorney

Town Attorney Cirullo apologized for Ordinance No. 2013-11 not being able to be heard this evening due to an advertising matter. The Boca Raton case concerning citizens' initiatives had been resolved.

- c. Town Council Members

Councilman Goltzene thanked everyone for coming to the Town Council Meeting.

Vice-Mayor Jarriel also thanked everyone for coming, and wished Councilman Liang a Happy birthday.

Councilman Liang thanked everyone for coming and celebrating his birthday with him.

Councilman Rockett mentioned a large Minto Development meeting, in the evening, on February 19, 2014 at Seminole Ridge. He mentioned that he would like the golf cart ordinance posted on the website. Thanks to everyone for coming.

Mayor Browning also thanked everyone for coming, and noted that Gary Morello (Gary' Midway) passed away last week. As a note, everyone in three zip codes area can vote their opinion on the Minto project at the meeting.

12. ADJOURNMENT

There being no further business before the Town Council, Mayor Browning adjourned the meeting at 9:17 p.m.

Janet K. Whipple, Town Clerk

David Browning, Mayor

(SEAL)

These minutes were approved at the March 18, 2014, Town Council Meeting.

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Item 4.

PRESENTATIONS

None



Item 5.

COMMITTEE REPORTS

None



Item 6.

RESOLUTIONS

None



Item 7.a.

ORDINANCES

Ordinance No. 2014-03 - 1st Reading

(Livestock Waste Haulers)

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2014-03

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HAULING OF LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS AND PERMIT FEES; PROVIDING FOR THE DISPOSAL OF LIVESTOCK WASTE ONLY AT APPROVED DISPOSAL SITES WITHIN THE TOWN; PROVIDING FOR PERMITTED HOURS OF HAULING LIVESTOCK WASTE WITHIN THE TOWN; PROVIDING FOR REQUIRED RECORDS AND AUDITING OF SUCH RECORDS BY THE TOWN; PROVIDING FOR CHANGES TO LIVESTOCK WASTE REGULATIONS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 6, 2010, the Town Council of the Town of Loxahatchee Groves adopted Ordinance 2010-003, to provide requirements for permits by landowners and transporters of manure and horse bedding (livestock waste) in the Town; and,

WHEREAS, on April 3, 2012, the Town Council adopted Ordinance 2012-03, which amended and restated Ordinance 2010-03, to provide for properties eligible to receive manure and horse bedding materials (livestock waste), amend permit requirements and provide regulations on how such materials are used on eligible properties; and,

WHEREAS, the Town Council has heard concerns from Town Management and the public relating to the current permitting process and continued abuses by haulers and property owners for dumping manure and horse droppings (livestock waste) on properties within the Town; and,

WHEREAS, the Town Council continues to be concerned with water quality within the drainage canals in the Town, and has heard from residents with scientific and academic

backgrounds that raised phosphorous levels are possible from continued abuse of manure and horse bedding (livestock waste) by haulers and property owners within the Town; and,

WHEREAS, improper hauling and disposal of Livestock Waste is a nuisance, attracting flies and emanating odors to nearby properties; and

WHEREAS, the Town Council believes that increased regulation of livestock waste haulers is necessary to prevent illegal dumping and pollution, and avoid the creation of nuisances within the Town; and,

WHEREAS, the provisions of this Ordinance shall replace and supersede the requirements for livestock waste haulers in Ordinance 2012-03.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. **Definitions.** The following definitions shall apply to this Ordinance.

(a) *Approved disposal site:* A parcel of real property in which a Town, county or state registration or permit has been issued for the disposal and/or processing of livestock waste, as amended from time to time, and/or a plot of land that is conducting bona fide agricultural activities in accordance with F.S. § 193.461.

(b) *Bona fide agricultural purposes:* means farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture, consistent with Section 823.14, Florida Statutes (Right to Farm) and Section 570.02, Florida Statutes (Agriculture).

- (c) *Commercial livestock waste hauler*: Person(s), firm(s), corporation(s), or other legal entity(ies) permitted by the Town to provide livestock waste removal or delivery services for a fee, or in exchange for payment, within the Town in accordance with terms and conditions established by this ordinance.
- (d) *Composting*: The process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner for a period of 30 to 90 days.
- (e) *Hauler*: when used herein, collectively Commercial Livestock Waste Hauler and Livestock Waste Self-Haulers
- (f) *Livestock*: All animals of the equine, bovine, or swine class.
- (g) *Livestock facility*: Property under single ownership or control where livestock is raised and or boarded.
- (h) *Livestock waste*: Wastes composed of excreta of animals and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals. For purposes of this ordinance, livestock waste that has been properly composted shall not be considered livestock waste.
- (i) *Livestock waste self-hauler*: Property owner or authorized representative registered with the Town to provide livestock waste removal services from their own property using their own equipment and vehicles, to an Approved Disposal Site in accordance with the terms and conditions established by this ordinance.

(j) *Nuisance*: the unreasonable, unwarranted and/or unlawful activity and/or use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.

(k) *Livestock waste storage area*: An area constructed of impermeable material such as concrete or asphalt; with an impermeable cover; or a mechanical storage container that can be sealed, lifted, and transported.

(l) *Load*: approximately twenty (20) to twenty-five (25) cubic yards of Livestock Waste.

Section 3. All Commercial Livestock Waste Haulers and Livestock Waste Self-Haulers must comply with the requirements of this ordinance.

Section 4. Permitting Requirements. All Commercial Livestock Waste Haulers and Livestock Waste Self-Haulers transporting Livestock Waste within the Town must obtain a permit from the Town prior to engaging in any hauling of Livestock Waste.

(a) In obtaining the permit, the Commercial Livestock Waste Haulers and Livestock Waste Self-Hauler will:

1. Identify every property within the Town from which it will haul Livestock Waste, and every Approved Disposal Site (whether located within the Town or not) to which it will deliver Livestock Waste;
2. Provide copies of all licenses and registrations for vehicles used for hauling Livestock Waste.
3. Acknowledge on a form provided by the Town that (1) loads to be deposited within the Town originate from a Livestock Facility within the Town, or shows by separate affidavit its load originated from outside the State of Florida; (2) upon receipt of a request from a property owner within the Town for Livestock Waste,

it will confirm prior to engaging in hauling that the Livestock Waste will be deposited within a Livestock waste storage area or used solely for bona fide agricultural purposes, and that the property owner has obtained the necessary permit from the Town; and (4) that it has read and reviewed this ordinance and agrees to its requirements and provisions, and will adhere to such in providing its hauling services.

4. Pay the required fees for the permit.

(b) An annual permit shall be valid from October 1 to September 30, and shall expire each September 30 regardless of the date it is issued. Haulers are responsible for the timely renewal of the annual permits.

(c) The annual permit fee for a Commercial Hauler shall be \$500.00. The annual permit fee for Livestock Waste Self-Haulers shall be \$100.00. An annual permit shall permit the Hauler to transport up to twenty (20) loads. The permit fee shall be \$2000.00 if a Hauler transports Livestock Waste prior to obtaining a permit from the Town.

(d) A Commercial Livestock Waste Hauler may transport in excess of twenty (20) loads, for a maximum of thirty (30) additional loads, at an additional fee of \$40.00 per load, paid in advance to the Town. Should the Commercial Livestock Waste Hauler fail to pay such fee in advance, the fee shall be _____ per load.

(e) A Livestock Waste Self-Hauler may transport thirty (30) additional loads, at an additional fee of _____ per load, paid in advance to the Town. Should the Livestock Waste Self-Hauler fail to pay such fee in advance, the fee shall be _____ per load.

(f) The fees set forth in this ordinance may be amended by the Town Council by resolution.

(g) No permit shall be issued to a Hauler who has not remedied previous violations of this Ordinance.

Section 5. Origin of Livestock Waste. All Livestock Waste deposited at Approved disposal sites in the Town must originate from within the Town, or be shown by affidavit to have originated from outside the State of Florida.

Section 6. Approved disposal sites. Haulers may deposit Livestock Waste only at Approved Disposal Sites for the purpose of composting in an approved composting area, or for bona fide agricultural purposes.

Section 7. Authorized Times for Hauling within the Town. Hauling of Livestock Waste within the Town by any Hauler shall be permitted only between the hours of 9:00 a.m. through 4:00 p.m., Monday through Friday, except holidays as listed on the Town website. Hauling of Livestock Waste is prohibited at all other times.

Section 8. Required Records. Hauling records shall be provided by Haulers to the Town Manager each month, no later than the fifth (5th) business day of the month following the month for which the report is filed. Hauling records shall identify the waste source, quantity in cubic yards, and the waste disposal site with quantity deposited in cubic yards within an approved site. Hauling records shall include signed load tickets or affidavits certifying the loads from both the source and disposal site owners. Failure to timely provide monthly hauling records shall result in the revocation of the permit. The Town reserves the right to audit the hauling record and load tickets from the generating properties and disposal sites which have been approved as a disposal site as defined herein. The failure to cooperate with such audit shall result in the revocation of a permit.

Section 9. Changes to Regulations. The Town Council reserves the right to amend this Ordinance at any time, and any such amendments will apply to both future permits, and active permits unless specifically exempted by the Town Council.

Section 10. Revocation of Permits. A Hauler that violates any of the provisions of this ordinance may have its permit revoked by the Town Manager. Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit from the Town for a period of one (1) calendar year from the date of the last violation.

Section 11. Nuisance. A violation of this ordinance is deemed by the Town Council to be a public nuisance.

Section 12. Violation of State Laws. The Town Council specifically finds that a violation of this ordinance presents a public nuisance for purposes of enforcement of Section 403.413, Florida Statutes, and law enforcement officers charged with the enforcement of state and local laws within the Town shall strictly enforce Section 403.413, Florida Statutes. Upon the issuance of a violation notice under Section 403.413, Florida Statutes, or this ordinance, any permits issued by the Town to the Hauler shall be suspended and the Hauler shall cease all Livestock Waste hauling until such time as a hearing is conducted or the fines paid.

Section 13. Enforcement. This ordinance shall be enforced as follows:

(a) Law enforcement officers are authorized to enforce this ordinance. In addition to penalties resulting from a violation of Section 403.413, Florida Statutes, the fines for violations of this ordinance shall be:

First Offense	Second Offense	Third Offense	All Additional Offenses
\$100	\$250	\$400	\$500

(b) The Town may also file charges for any offense in a court with jurisdiction, in which case the penalty shall be a fine of \$500, imprisonment not to exceed sixty (60) days, or both, for each violation of this ordinance. The Town shall recover its costs of prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.

(c) To the extent authorized by law, the Town Administration is authorized to use the Town's Code Enforcement process to enforce violations of this ordinance where a law enforcement officer has not otherwise issued violations of Section 403.413, Florida Statutes, or of this ordinance. In such instances, the fine shall be the maximum permitted by law.

(d) Each day a violation remains, and each haul for which there is no permit, constitutes a separate violation of this ordinance.

Section 14. Effect on Ordinance 2012-03. The provisions herein as to regulations for Haulers (referred to in Ordinance 2012-03 as transporters) of Livestock Waste, referred to in Ordinance 2012-03 as "manure and horse bedding," supersedes and replaces regulations as to Haulers in Ordinance 2012-03. Regulations relating to property owners and the use of Livestock Waste on Property within the Town shall remain in effect except to the extent in conflict with this Ordinance.

Section 15. Repeal of Laws in Conflict. All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

Section 16. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 17. Codification. It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this ordinance may be re-numbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 18. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 18th DAY OF MARCH, 2014.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS _____ DAY OF _____, 2014.

**TOWN OF LOXAHATCHEE
GROVES, FLORIDA**

ATTEST:

Mayor David Browning

Janet K. Whipple, Town Clerk

Vice-Mayor Ron Jarriel

APPROVED AS TO LEGAL FORM:

Council Member Tom Goltzené

Office of the Town Attorney

Council Member Ryan Liang

Council Member Jim Rockett



Item 7.b.

ORDINANCES

Ordinance No. 2014-04 - 1st Reading

(Livestock Waste Property Owners)

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO DEPOSITING OF LIVESTOCK WASTE WITHIN THE TOWN; AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE BY AMENDING PART III ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 50 ENTITLED "PUBLIC NUISANCES" BY ADDING A NEW SECTION 50-035 TO BE ENTITLED "USE OF LIVESTOCK WASTE;" PROVIDING FOR DEFINITIONS; PROVIDING THAT DEPOSITING OF LIVESTOCK WASTE IS A PUBLIC NUISANCE EXCEPT AS PROVIDED BY THIS SECTION; PROVIDING FOR REGISTRATION AND PERMITS, REQUIREMENTS AND LIMITATIONS ON THE DELIVERY AND USE OF LIVESTOCK WASTE REPORTING AND NOTICE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 6, 2010, the Town Council of the Town of Loxahatchee Groves adopted Ordinance 2010-003, to provide requirements for permits by landowners and transporters of manure and horse bedding (livestock waste) in the Town; and,

WHEREAS, on April 3, 2012, the Town Council adopted Ordinance 2012-03, which amended and restated Ordinance 2010-003, to provide for properties eligible to receive manure and horse bedding materials (livestock waste), amend permit requirements and provide regulations on how such materials are used on eligible properties; and,

WHEREAS, the Town Council has heard concerns from Town Management and the public relating to the current permitting process and continued abuses by haulers and property owners for dumping manure and horse droppings (livestock waste) on properties within the Town; and,

WHEREAS, the Town Council continues to be concerned with water quality within the drainage canals in the Town, and has heard from residents with scientific and academic backgrounds

that raised phosphorous levels are possible from continued abuse of livestock waste dumping by transporters and property owners within the Town; and,

WHEREAS, the Town Council believes that increased equestrian activities in neighboring municipalities during certain periods of time each year causes transporters of livestock waste originating on facilities in those areas to seek out places in close proximity to those communities to dump their loads and avoid expenses and perhaps industry regulations associated with taking such loads to facilities designed to accept such; and,

WHEREAS, the Town Council believes that when used properly and in limited quantities, livestock waste can provide agricultural benefits, and thus a total ban on the dumping of livestock waste is not in the best interest of the community; and,

WHEREAS, on the other hand, improper disposal of Livestock Waste is a nuisance, attracting flies and emanating odors to nearby properties; and

WHEREAS, the Town Council seeks to balance permitting the limited and beneficial use of livestock waste with avoiding nuisances created by abuses associated with the dumping of such materials within the Town; and,

WHEREAS, the Town believes that given the limited beneficial use of livestock waste, it is fair and reasonable to require property owners of property on which livestock waste is to be deposited for use for agricultural purposes obtain a permit from the Town so that nuisances can be avoided and the Town can effectively enforce regulations and laws intended to prevent illegal dumping of livestock waste and prevent pollution.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof. Ordinance 2012-03 is amended as set forth herein.

Section 2. The Town’s Unified Land Development Code (ULDC) is amended to amend Part III, entitled “Supplemental Regulations,” Article 50, entitled “Public Nuisance,” to create a new Section 50-035, to be entitled “Use of Livestock Waste,” to read as follows:

PART III – SUPPLEMENTAL REGULATIONS

ARTICLE 50 – PUBLIC NUISANCES

Section 50-035. – Use of Livestock Waste.

(A) The following definitions shall apply to this Section:

1. Approved disposal site: A real property in which a Town, county or state registration or permit has been issued for the disposal and/or processing of livestock waste, as amended from time to time, and/or a plot of land that is conducting bona fide agricultural activities in accordance with F.S. § 193.461.
2. Bona fide agricultural purposes: means farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture, consistent with Section 823.14, Florida Statutes (Right to Farm) and Section 570.02, Florida Statutes (Agriculture).
3. Commercial livestock waste hauler: Person(s), firm(s), corporation(s), or other legal entity(ies) permitted by the Town to provide livestock waste removal services for a fee within the Town in accordance with terms and conditions established by this ordinance.
4. Composting: The process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner for a period of 30 to 90 days.
5. Hauler: when used herein, collectively Commercial Livestock Waste Hauler and Livestock Waste Self-Haulers
6. Livestock: All animals of the equine, bovine, or swine class.
7. Livestock facility: Property under single ownership or control where livestock is raised and or boarded.
8. Livestock waste: Wastes composed of excreta of animals and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals. For purposes of this article, livestock waste that has been properly composted shall not be considered livestock waste.
9. Livestock waste self-hauler: Property owner or authorized representative registered with the Town to provide livestock waste removal services from their own property using its own

- equipment and vehicles, to an Approved Disposal Site in accordance with the terms and conditions established by this ordinance.
10. Livestock waste storage area: An area constructed of impermeable material such as concrete or asphalt; with an impermeable cover; or a mechanical storage container that can be sealed, lifted, and transported.
 11. Load: approximately twenty (20) to twenty-five (25) cubic yards of Livestock Waste.
 12. Nuisance: The unreasonable, unwarranted and/or unlawful activity and/or use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.
- (B) The deposit and/or dumping of Livestock Waste, unless done in strict compliance with this Section, is declared to be a public nuisance and is prohibited.
- (C) The deposit of Livestock Waste is permitted only on Approved disposal sites within the Town.
- (D) Only Livestock Waste that originates from within the Town or is shown by the filing of an affidavit by the property owner that it originated from outside the State of Florida may be deposited on property within the Town.
- (E) A property owner must obtain a permit from the Town prior to accepting any Livestock Waste on the property. The permit will serve as the registration with the Town pursuant to this Ordinance. A property owner may have only one permit at a time. An annual permit shall be valid from October 1 to September 30, and shall expire each September 30 regardless of the date it is issued. Property owners are responsible for the timely renewal of the annual permits.
- (F) The requirements for the permit required by subsection (E) are as follows:
1. With the exception of a Town Manager-approved permit for residential property hereinafter provided, the property on which the Livestock waste is to be deposited must be designated as agricultural by the Palm Beach County Tax Collector for property tax purposes; provided that when a property owner applies for the first time

to the Town for a permit, the property owner may obtain its initial permit notwithstanding not having the agricultural use tax designation when the property owner certifies to the Town Manager that the property owner is making a good faith effort to obtain the agricultural use tax designation. This exception shall apply only for the initial permit. No subsequent permits may be issued until the property obtains the agricultural use tax designation. Property owners of property designated as residential by the Palm Beach County Tax Collector may obtain a permit from the Town Manager when the property owner of the residential property demonstrates to the Town Manager that the Livestock Waste is solely for bona fide agricultural use on-site. The Town Manager shall advise the Town Council of all permits approved for residential properties.

2. The permit will be in the name of the record owner of the property. The property owner must be the applicant for the permit.
3. The property owner shall certify that the Livestock Waste originates from within the Town or is shown by the filing of an affidavit by the property owner that it originated from outside the State of Florida.
4. The Livestock Waste is being used by the property owner for bona fide agricultural purposes in appropriately limited quantities pursuant to Best Management Practices (BMP). The property owner shall provide the Town with a copy of the applicable BMP. The property owner must advise the Town of the total quantity of Livestock Waste to be delivered to the property and its intended use.
5. A permit issued to a property owner pursuant this Ordinance is limited to one Hauler. The property owner must identify the Hauler at the time of applying for the permit.

The Hauler must have a permit from the City and be in compliance with the ordinance at all times during the effectiveness of the owner's permit. The property owner must advise the Town in writing of a change in Hauler(s) prior to receiving any Livestock Waste from the Hauler.

6. The acceptance of a permit by the property owner shall provide consent for a Town representative to inspect the property solely for purposes of ensuring compliance with the terms of the permit.
 7. There shall be no charge for a Property Owner Permit.
 8. The Town may request copies of permits and licenses for the designated Hauler, as well as drawings or layouts of the property to verify that the Livestock Waste shall be deposited and used in compliance with this Section 50-035.
- (G) All Livestock Waste deposited in the Town must originate from within the Town, or be shown by affidavit to have originated from outside the State of Florida.
- (H) Delivery of Livestock Waste shall be permitted only between the hours of 9:00 a.m. through 4:00 p.m., Monday through Friday, except holidays as listed on the Town website. Hauling of Livestock Waste is prohibited at all other times. Delivery must also be avoided during storm events, or when the ground is saturated.
- (I) A Property Owner may accept a maximum of twenty (20) loads pursuant to the Permit, with a maximum of four (4) loads in a calendar month. The Property Owner shall ensure that its Hauler not dump Livestock Waste within fifty (50) feet of the property line or within seventy five (75) feet of any well or other body of water on the property.
- (J) The Property Owner shall spread the Livestock Waste in accordance with BMP within seventy-two (72) hours of receipt of the materials. Property Owners are required to use

appropriate equipment to properly spread Livestock Waste. Livestock Waste shall not be spread within fifty (50) feet of the property line or within seventy five (75) feet of any well or other body of water on the property. Front end loaders shall not be used. Crops should be planted as soon as possible after spreading.

- (K) The use of Animal Waste as fill on property is strictly prohibited.
- (L) The Property Owner shall post a sign at the entrance on the property at the location where deliveries are received with a contact telephone number for neighbors to be able to contact the property owner about concerns with the delivery of Livestock Waste on the property.
- (M) Delivery Records shall be provided by Property Owners to the Town Manager each month, no later than the fifth (5th) business day of the month following the month for which the report is filed. The Delivery records shall identify the waste source, quantity in cubic yards, the bona fide agricultural use of the Livestock waste, and the quantity deposited in cubic yards. Failure to provide monthly delivery records shall result in the revocation of the permit. The Town reserves the right to audit the delivery record and request records from the Hauler that delivered the Livestock Waste to the property. The failure to cooperate with such audit shall result in the revocation of a permit.
- (N) Field application records on nutrient application rates shall be maintained by the Property Owner and delivered to the Town Manager on a monthly basis at the same time as the Delivery Records are delivered.
- (O) The Town Council reserves the right to amend this Ordinance at any time, and any such amendments will apply to both future permits, and active permits unless specifically exempted by the Town Council.

- (P) A Property Owner that violates any of the provisions of this ordinance may have its permit revoked by the Town Manager. Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit from the Town for a period of one (1) calendar year from the date of the last violation.
- (Q) A violation of this ordinance is deemed by the Town Council to be a public nuisance.
- (R) The Town Council specifically finds that a violation of this ordinance presents a public nuisance for purposes of enforcement of Section 403.413, Florida Statutes, and law enforcement officers charged with the enforcement of state and local laws within the Town shall strictly enforce Section 403.413, Florida Statutes. Upon the issuance of a violation notice under Section 403.413, Florida Statutes, or this ordinance, any permits issued by the Town to the Property Owner shall be suspended and the Property Owner shall cease accepting Livestock Waste until such time as a hearing is conducted or the fines paid.
- (S) In addition to enforcement pursuant to Section 403.413, Florida Statutes, this ordinance shall be enforced as follows:
 - (1) Law enforcement officers are authorized to enforce this ordinance. In addition to penalties resulting from a violation of Section 403.413, Florida Statutes, the fines for violations of this ordinance shall be:

<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>All Additional Offenses</u>
<u>\$100</u>	<u>\$250</u>	<u>\$400</u>	<u>\$500</u>

- (2) The Town may also file charges for any offense in a court with jurisdiction, in which case the penalty shall be a fine of \$500, imprisonment not to exceed sixty (60) days, or both, for each violation of this ordinance. The Town shall recover its costs of

prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.

- (3) To the extent authorized by law, the Town Administration is authorized to use the Town's Code Enforcement process to enforce violations of this ordinance where a law enforcement officer has not otherwise issued violations of Section 403.413, Florida Statutes, or of this ordinance. In such instances, the fine shall be the maximum permitted by law.
- (4) Each day a violation remains, and each haul for which there is no permit, constitutes a separate violation of this ordinance.
- (T) Nothing in this ordinance is to be construed to permit a Solid Waste Management Facility in conflict with state and county regulations.

Section 3. Effect on Ordinance 2012-03. The provisions herein as to regulations for Property Owners for delivery and use of Livestock Waste, referred to in Ordinance 2012-03 as "manure and horse bedding," supersedes and replaces regulations as to delivery and use of Haulers in Ordinance 2012-03.

Section 4. Repeal of Laws in Conflict. All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

Section 5. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 6. Codification. It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this

ordinance may be re-numbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 7. **Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 18th DAY OF MARCH, 2014.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS _____ DAY OF _____, 2014.

**TOWN OF LOXAHATCHEE GROVES,
FLORIDA**

ATTEST:

Mayor David Browning

Janet K. Whipple, Town Clerk

Vice-Mayor Ron Jarriel

APPROVED AS TO LEGAL FORM:

Council Member Tom Goltzené

Office of the Town Attorney

Council Member Ryan Liang

Council Member Jim Rockett

MDC



Item 7.a. & b.

ORDINANCES

Ordinance No's. 2014-03 and 2014-04

(Backup Information)



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PALM BEACH COUNTY CODE

Chapter 11 ENVIRONMENTAL REGULATION AND CONTROL*

ARTICLE IV. WASTE CONTROL*

Sec. 11-59. Prohibitions for dumping and placing waste.

Sec. 11-59. Prohibitions for *dumping* and placing waste.

It is unlawful and shall constitute willful causing of pollution for any person to dump, or cause or allow to be dumped; or place, or cause to allow to be placed; or bury, or cause or allow to be buried any waste upon any land, or any water located in the county.

(Ord. No. 91-46, § 4, 11-19-91)

Sec. 11-60. Exceptions.



(a) All waste management activities which are approved by department of environmental regulation, solid waste authority, or the public health unit are exempt from regulation under this article.



(b) **Agricultural waste disposal shall be exempt from regulation under this article, provided the agricultural wastes are generated and disposed of on-site and the property is agriculturally zoned.**



(c) Soil and mulch brought on to a property and used for the purpose of improving soil/plant relations through improving retention of nutrients and water for plants in-ground or above-ground on that site shall be exempt from regulation under this article.



(d) A person may dispose of clean fill on land located in the county if the person obtains the property owner's consent and the property owner has provided the public health unit with required notification as set forth herein.

(Ord. No. 91-46, § 5, 11-19-91)

Sec. 11-61. Initial notification of clean fill activity.



(a) Forty-five (45) working days prior to the commencement of clean fill activities, the property owner shall provide the public health unit with written initial notification.



(b) Initial notification shall include the property owner(s) name, mailing address, phone number, clean fill material to be utilized, amount of clean fill, the anticipated start-up and completion dates of the clean fill activity, a survey prepared by a registered land surveyor, and a sketch indicating location of fill on property.



(c) Initial notification shall not be required for the following activities:

County Gives Initial OK To Animal Waste Dumping Rules

By Ron Bukley at July 5, 2013 | 12:05 am | Print



In a zoning meeting last week, the Palm Beach County Commission gave preliminary approval to changes in its animal waste and manure regulations aimed in part to improve control over uncontrolled dumping of animal waste in unincorporated areas such as The Acreage.

The change, going through as part of the year's first round of Unified Land Development Code amendments, are intended to prevent property owners in the county from allowing their lots to be completely covered with several feet of animal waste hauled in from other areas, which creates health concerns.

At the June 24 meeting, Acreage residents Anne and Gert Kuhl opposed changes to the animal waste rules, instead asking the county to strictly enforce the existing regulations. Gert Kuhl said he thought people were abusing the existing animal waste regulations, specifically by taking waste from horse shows in Wellington and dumping it illegally in other areas.

"Dumping a whole bunch of manure in one place is not agriculture," he said. "I think there is nothing broken here in the laws."

Anne Kuhl said she would prefer that the county and other regulatory agencies enforce existing regulations. She pointed out that **proposed setbacks of 25 feet** would adversely affect owners of the predominantly 1.25-acre lots in The Acreage.

Speaking in favor of the amendments, Nick Aumen of Las Flores Ranchos near White Fences said he was not concerned about the reasonable use of compost and manure for soil enrichment and gardening, but rather the broad-scale application of animal waste, explaining that one of the owners of a 5-acre lot near his home completely covered his land with animal waste recently, up to 4 feet deep in some areas.

He thanked County Administrator Bob Weisman and County Commissioner Jess Santamaria for coming out and looking at the lot he was particularly concerned about.

"We live about three lots away, and the amount of flies and smell was just unbelievable, and after the recent rains, the roads were absolutely brown with runoff from this manure," Aumen said.

He also pointed out that another lot owner had covered his lot with animal waste in the same manner a few years previously.

"I do want to respectfully disagree with the previous speakers," he said. "I'm just trying to fix the egregious nature of this, not the regular use on small lots. I'm a horse owner, and we have two horses on our property, and I'm all for being able to spread that manure over. In our case, we have 5 acres."

Aumen said the lot owner who had piled up the animal waste most recently had told him it was to prevent flooding. "It wasn't for agricultural purposes, and for me, it doesn't matter what the reason is — too much is too much," he said.

Aumen said he thought the **limit of 20 cubic yards per acre in 12 months**, allowed under the proposed changes, was plenty for even the most ambitious agriculturalist, and that the setbacks for water bodies and well fields were also important.

"I'm a water quality specialist," he said. "I've been working in the field of water quality for almost 40 years, and this is a very transmissive substrate. This runoff from these areas leach very quickly down into the groundwater."

Palm Beach County Zoning Director Jon P. MacGillis explained that the amendments were aimed at striking a balance between people applying fertilizer for gardening and dumping farm animal waste on their property.

"We do have provision for exemptions if you're spreading commercial fertilizer or compost manure, so people can still put that on their garden at any amount," MacGillis said. "Ten cubic yards is allowed in a 12-month period. You can increase that up to 20, but this requires somebody to get a soil analysis off the existing soil conditions and working with the Agricultural Extension Office to determine... if that's warranted based on the composition of the soil. I think what we've tried to do is provide balance."

MacGillis explained that the amendments do not prohibit somebody from using manure on their property, but specify using it in a fashion that they are actually enhancing what they are trying to grow and not just dumping for some other reason.

Deputy County Administrator Verdenia Baker said her staff had met with concerned residents and listened closely to what they had to say, and then modified the proposal.

"We definitely did not want to put the small tomato-growing farmer out, but we definitely wanted to protect the neighbors and not continue with the issue that was going on," Baker said. "We narrowly tailored this particular issue so we could address the issue that was brought forward."

Baker said she believed that what was being recommended specifically addresses the application of proper amounts of fertilizer with the appropriate exemptions, in coordination with agencies that have oversight over manure.

Santamaria agreed that proper balance is needed to take care of everyone's needs and concerns. He asked whether there will be time for further fine-tuning of the amendments, and MacGillis said the first reading would be July 28, with adoption scheduled in August.

Santamaria said he wanted to continue meeting with the parties involved to see if there are other appropriate changes to be made to take care of everyone's needs and concerns.

Palm Beach County Vice Mayor Priscilla Taylor asked about soil analyses, and MacGillis said the intent was to determine how much more fertilizer, if any, was needed to enhance the soil on a particular piece of property.

“The Agricultural Extension Office has indicated there are some properties that don’t warrant bringing any type of fertilizer in because of the condition of the soil already,” MacGillis said.

Planning, Zoning & Building Director Rebecca Caldwell said that after public input, staff set the amount to a maximum of 20 cubic yards per acre allowable before a soil analysis and nutrient plan was required. She said county staff avoided the dumping regulations that have been put in place in Wellington and Loxahatchee Groves, where illegal dumping was an issue, because the county’s concerns were more specific.

“The phosphorus and nitrogen specifically are the items that can cause severe problems,” Caldwell said. “Wellington has a severe phosphorus overabundance right now. If you bring that onto your site, you can kill everything that’s there if it comes in inappropriately. That’s why the nutrient plan makes all the sense in the world.”

Commissioner Shelley Vana said she favored the amendments.

“This discussion has been ongoing forever,” Vana said. “As I represented Wellington in the legislature many moons ago, that had been an ongoing discussion. I think it’s really good that we have the Ag Extension involved and the Department of Environmental Protection, because this phosphorus, be it biological phosphorus from animals, it still is going into our water supply, and it will be a problem we have to deal with eventually.” Taylor made a motion to grant preliminary approval to the amendments, which carried unanimously.

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❏

EXHIBIT J

BEST MANAGEMENT PRACTICES FOR LIVESTOCK WASTE
SUMMARY OF AMENDMENTS

1
2 Part 1. ULDC Art. 1.I, Definitions and Acronyms (pages 40, 48, 53 71 and 100 of 119), is hereby
3 amended as follows:

4 CHAPTER I DEFINITIONS & ACRONYMS

5 Section 2 Definitions

6

7 B. Terms defined herein or referenced in this Article shall have the following meanings:

8

9 17. **Best Management Practices (BMPs)** – technologically and economically feasible means of
10 preventing or reducing amounts of pollution generated by point and non-point sources to a
11 level compatible with the water quality and quantity objectives of the PBC. BMPs include
12 schedules of activities, prohibitions of practices, maintenance procedures, and other
13 management practices to prevent or reduce the pollution of waters. [Ord. 2013-...]

14

15 C. Terms defined herein or referenced in this Article shall have the following meanings:

16

17 62. **Composting Facility** - a facility designed and used for transforming food, yard waste and
18 other organic material into soil or fertilizer through biological decomposition. This use does
19 not include backyard-composting serving individual families.

20 63. **Composting** – the process by which biological decomposition of organic solid waste is
21 carried out under controlled conditions, and which stabilizes the organic fraction into a
22 material which can easily and safely be stored, handled, and used in an environmentally
23 acceptable manner. [Ord. 2013-...]

24 [Relocated accordingly.]

25

26 D. Terms defined herein or referenced in this Article shall have the following meanings:

27 21. **Designated Disposal Facility** – for the purposes of Art. 5.J, Best Management Practices for
28 Livestock Waste, a solid waste management facility operated, permitted or designated by the
29 Solid Waste Authority to receive solid waste generated within Palm Beach County, or such
30 alternate facility as may be designated by the Solid Waste Authority in writing. [Ord. 2013-
31 ...]

32 [Relocated accordingly.]

33 52. **Domesticated Livestock** - for the purposes of Article 5, shall include, but not be limited to,
34 all animals of the equine (excluding horses), bovine (cattle), porcine (swine), caprine (goats),
35 ovine (sheep), and camelid (llamas, alpacas) families as well as poultry (chickens and
36 ducks). For the purposes of Art. 5.J, Best Management Practices for Livestock Waste,
37 livestock shall include all domesticated livestock and horses. [Ord. 2012-027] [Ord. 2013-...]

38

39 L. Terms defined herein or referenced in this Article shall have the following meanings:

40

41 48. **Livestock Waste** – for the purposes of Art. 5.J, Best Management Practices for Livestock
42 Waste, waste composed of excreta of animals and residual materials that have been used for
43 bedding, sanitary, or feeding purposes for such animals. [Ord. 2013-...]

44 [Relocated accordingly.]

45 Section 3 Abbreviations and Acronyms

46

47 **CES** Cooperative Extension Service

48

49 Part 2. ULDC Art. 5, Supplementary Standards (page 92 of 92), is hereby amended to create
new Chapter J, Best Management Practices for Livestock Waste, as follows:

50 **CHAPTER J BEST MANAGEMENT PRACTICES FOR LIVESTOCK WASTE RECEIVED FROM**
51 **OFFSITE SOURCES**

52 Section 1 Purpose and Intent

53 The purpose and intent of these regulations is to prevent potential adverse environmental impacts,
54 pathogens and other nuisances associated with the inappropriate use or disposal of livestock waste
55 received from off-site sources. Adverse impacts include but are not limited to: ground and surface water
56 pollution due to excessive nutrient discharge, specifically nitrogen or phosphorus; odors or other nuisance
57 from improperly stored, composted or spread livestock waste.

Notes:

Underlined indicates new text.

~~Stricken~~ indicates text to be deleted. If relocated destination is noted in bolded brackets [**Relocated to:**].

Italicized indicates text to be relocated. Source is noted in bolded brackets [**Relocated from:**].

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EXHIBIT J

BEST MANAGEMENT PRACTICES FOR LIVESTOCK WASTE
SUMMARY OF AMENDMENTS

- 1 **Section 2** **Applicability**
- 2 The standards shall apply to the storage or receiving of livestock waste that is received from offsite
- 3 sources.
- 4 **A. Exemptions**
- 5 1. Where pre-empted by State law, including but not limited to, the Right to Farm Act. Where
- 6 applicable, documentation of implemented Best Management Practices or other method of
- 7 pre-emption shall be required;
- 8 2. A SWA Designated Disposal Facility;
- 9 3. The commercial application of fertilizer on non-agricultural property when in compliance with
- 10 the Palm Beach County Fertilizer Ordinance (Ord. 2012-039);
- 11 4. Composted manure applied by a homeowner or tenant to residential lawns or gardens; and,
- 12 5. Ten cubic yards per acre up to a maximum of 20 cubic yards in any 12 month period, with all
- 13 requirements being met, as listed under Section 3 below.
- 14 **Section 3** **Storage or Spreading of Livestock Waste**
- 15 The storage or spreading of livestock waste that is received from off-site sources is prohibited, unless in
- 16 compliance with the following:
- 17 **A. Storage**
- 18 Storage areas shall be covered or contained to prevent run-off or seepage of liquids or materials
- 19 from the storage area. Storage of livestock waste shall comply with the following:
- 20 1. Shall not be located within five feet of any structure, unless placed within a structure intended
- 21 for the storage or composting of such waste;
- 22 2. Shall not be located within 25 feet of any property line, with exception to internal lot lines of
- 23 parcels owned by the same entity; and,
- 24 3. Shall not be within 100 feet of a potable water supply well, a storm drainage system, wetland,
- 25 pond, canal or other water body.
- 26 **B. Spreading**
- 27 Livestock waste received from off-site sources shall be spread within 72 hours of delivery, except
- 28 for less than 10 cubic yards that is actively being composted, or as otherwise approved in a
- 29 Nutrient Management Plan. Storage shall comply with any applicable livestock waste Storage
- 30 and Separation requirements. Spreading of livestock waste shall comply with the following:
- 31 1. **Nutrient Management Plan**
- 32 Prior to receiving livestock waste, an application shall be submitted to the Cooperative
- 33 Extension Service (CES) for review. Upon completion of the review, the CES shall develop a
- 34 Nutrient Management Plan which indicates whether application of any livestock waste is
- 35 appropriate for the soil condition, and if so, in what amount.
- 36 a. **Application Form and Requirements**
- 37 The application form and requirements shall be in a manner established by the CES.
- 38 b. **Validity of Nutrient Management Plan**
- 39 The Nutrient Management Plan shall remain current for three years after its issuance by
- 40 the CES. A current Nutrient Management Plan must be in place prior to receiving of
- 41 livestock waste at any time. It shall be a violation of the ULDC, if livestock waste is
- 42 stored or spread in a manner inconsistent with the current Nutrient Management Plan.
- 43 2. **Separation**
- 44 The spreading of livestock waste shall not occur:
- 45 a. Within 25 feet of any property line, with exception to internal lot lines of parcels owned by
- 46 the same entity; and,
- 47 b. Within 100 feet of a potable water supply well, a storm drainage system, wetland, pond,
- 48 canal or other water body. [Ord. 2013-...]
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Notes:

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The 2000 Florida Statutes

[Title XLVI](#)
CRIMES

[Chapter 823](#)
Public Nuisances

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CHAPTER 823 PUBLIC NUISANCES

- 823.01 Nuisances; penalty.
- 823.02 Building bonfires.
- 823.04 Animals suffering from disease or pests.
- 823.041 Disposal of bodies of dead animals; penalty.
- 823.05 Places declared a nuisance; may be abated and enjoined.
- 823.06 Doors of public buildings to open outward.
- 823.07 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units; abandonment, discard.
- 823.08 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units abandoned or discarded; attractive nuisance.
- 823.09 Violation of s. 823.07; penalty.
- 823.10 Place where controlled substances are illegally kept, sold, or used declared a public nuisance.
- 823.11 Abandoned and derelict vessels; removal; penalty.
- 823.12 Smoking in elevators unlawful; penalty.
- 823.13 Places where obscene materials are illegally kept, sold, or used declared a public nuisance; drive-in theaters, films visible from public streets or public places.
- 823.14 Florida Right to Farm Act.
- 823.145 Disposal by open burning of mulch plastic used in agricultural operations.
- 823.15 Dogs and cats released from animal shelters or animal control agencies; sterilization requirement.
- 823.16 Sport shooting ranges; definitions; exemption from liability; exemption from specified rules; exemption from nuisance actions; continued operation.

823.01 Nuisances; penalty.-All nuisances which tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals, are misdemeanors of the second degree, punishable as provided in s. 775.083.

History.--s. 47, Feb. 10, 1832; RS 2704; GS 3680; RGS 5624; CGL 7817; s. 932, ch. 71-136; s. 32, ch. 73-334; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298; s. 18, ch. 83-214.

823.02 Building bonfires.-Whoever is concerned in causing or making a bonfire within 10 rods of any house or building shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 12, ch. 1637, 1868; RS 2705; GS 3681; RGS 5625; CGL 7818; s. 933, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.



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Title XXIX
PUBLIC HEALTH

Chapter 386
Particular Conditions Affecting Public Health

[View Entire Chapter](#)

386.041 Nuisances injurious to health-

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

- (a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases, and noisome odors which are harmful to human or animal life.
- (b) Improperly built or maintained septic tanks, water closets, or privies.
- (c) The keeping of diseased animals dangerous to human health.
- (d) Unclean or filthy places where animals are slaughtered.
- (e) The creation, maintenance, or causing of any condition capable of breeding flies, mosquitoes, or other arthropods capable of transmitting diseases, directly or indirectly to humans.
- (f) Any other condition determined to be a sanitary nuisance as defined in [§86.01](#).

(2) The Department of Health, its agents and deputies, or local health authorities are authorized to investigate any condition or alleged nuisance in any city, town, or place within the state, and if such condition is determined to constitute a sanitary nuisance, they may take such action to abate the said nuisance condition in accordance with the provisions of this chapter.

History.--s. 2, ch. 63-64; ss. 19, 35, ch. 69-106; s. 150, ch. 77-147; s. 77, ch. 97-101.

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Title XXIX
PUBLIC HEALTH

Chapter 386
Particular Conditions Affecting Public Health

[View Entire Chapter](#)

386.01 Sanitary nuisance.-A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

History.-s. 1, ch. 4346, 1895; GS 1153; RGS 2157; CGL 3386.

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T. A. Steinman Enterprises, Inc.
PENALTY JUSTIFICATION

1. Regulation: Chapter 62-701 F.A.C.
Solid Waste Management Facilities

Violation: T. A. Steinman Enterprises, Inc. is disposing of solid waste at an unpermitted facility.

T. A. Steinman Enterprises, Inc. is operating a solid waste management facility without a permit.

Characterization of Violation:

Per the Environmental Litigation Reform Act, Section 403.121(3)e, Florida Statutes, disposing of solid waste at an unpermitted facility carries a penalty of \$3,000.00.

Per the Environmental Litigation Reform Act, Section 403.121(4)c, Florida Statutes, operating a solid waste management facility without a permit carries a penalty of \$3,000.00.



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
400 N. Congress Ave. Suite 200
West Palm Beach, Florida 33401

David B. Struhs
Secretary

CERTIFIED MAIL 7002 0860 0006 8778 0296
RETURN RECEIPT REQUESTED

June 3, 2003

Mr. W. Roy Smith
P. O. Box 1616
Hwy. 27 West
Clewiston, FL 33440

Palm Beach County
SW – Horse Manure
Compliance Files

RE: Horse Stable Waste Disposal
2510 E Road
Loxahatchee, FL 33470
PCN 00-41-43-17-01-517-0020

Dear Mr. Smith:

Your Agriculture Use Plan (AUP) was received in this office on March 11, 2003. It was reviewed by personnel from the Department of Environmental Protection (Department) and the Department of Agriculture and Consumer Services (DOACS).

The Plan was found to be inadequate. Attached you will find an E-Mail from Mr. John Folks of DOACS pointing out some of the deficiencies in your AUP.

The Department sent you a Notice of Non-Compliance dated February 21, 2003. Included with that letter was a copy of a policy memorandum dated November 8, 2001 that described those documents recommended for inclusion in an AUP. Your AUP did not include all items as required.

You are hereby notified that your AUP is insufficient to allow you to claim an agricultural exemption from Chapter 62-701 Florida Administrative Code (F.A.C.). Therefore, you cannot accept any more horse stable waste on your property.

It is a violation of Rule 62-4.030 F. A. C., and Sections 403.161(1)(b) and 403.087, Florida Statutes, for any facility that can reasonably be expected to be a source of pollution to operate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.

"More Protection, Less Process"

Printed on recycled paper.

E Road
W. Roy Smith

Page 2 of 2

Be advised that the Florida Department of Environmental Protection's Office of General Council (OGC) issued an opinion on January 31, 2003 relative to the disposal of horse manure on one's own property which is not generated on that property. This opinion states in part "...importing manure and disposing of it on site can never be a normal farming operation...".

You must remove this material from your property. It must be disposed of at a facility with a valid permit issued by the Department. Copies of certified receipts shall be submitted to this office to verify compliance for disposal.

You are asked to respond to this letter within 15 days of receipt. Failure to do so could result in enforcement action being taken against you.

If you have any questions or need assistance you can contact me at (561) 681-6725.

Sincerely,



William F. Forrest
Solid Waste Section

Cc: Ken Berg, PBCSWA(w/o encl.)- via electronically kberg@swa.org
Clete Saunier, LGWCD(w/o encl.)- via electronically cs_lgwcd@bellsouth.net
John O'Malley, PBCHD(w/o encl.)- via electronically John_O'Malley@doh.state.fl.us
Jim McInis, Village of Wellington(w/o encl.)- via electronically jamesm@wellvillage.com
Brad Dunker, PBCBZ(w/o encl.)- via electronically bdunker@co.palm-beach.fl.us
Lisa London, OGC/TLH(w/o encl.) –via electronically lisa.london@dep.state.fl.us
John Folks, DOACS/TLH(w/o encl.) – via electronically folksj@doacs.state.fl.us



Department of Environmental Protection

Jeb Bush
Governor

Southeast District
400 North Congress Avenue, Suite 200
West Palm Beach, Florida 33401

Colleen M. Castille
Secretary

JUL - 7 2004

Certified Mail 002 0860 006 8781 9323
Return Receipt Requested

Notice of Noncompliance

Palm Beach Polo Club
Mr. Glenn Straub
11199 Polo Club Road
Wellington, Florida 22414
Email address: N/A

50 - Palm Beach County
Palm Beach Polo Club

Re: Palm Beach Polo Club, 11199 Polo Club Road, Village of Wellington, Florida Facility.
Determination of Applicability as Concentrated Animal Feeding Operation (CAFO).

Dear Mr. Straub:

On April 30, 2004, representatives of the Department of Environmental Protection (the Department) inspected the Palm Beach Polo Club permanent and temporary stables. The purpose of the inspection was to determine whether the facility should be classified as a CAFO under the Federal National Pollutant Discharge Elimination System (NDPES) permitting program.

After inspecting the referenced facility, the Department has determined that the facility does qualify as a CAFO. **Therefore, an NDPES permit is required for the facility to operate, and a schedule to modify manure management practices must be developed to bring the facility into compliance with Department rules.**

To obtain an NDPES permit, you are required to submit a permit application to the Department's Southeast District office within 30 days of receipt of this notice. The application form [DEP Form 62-620.910(3)], and information related to it, may be downloaded from the Department's web-site, www.dep.state.fl.us. (Select Programs, select Wastewater and click on Wastewater Forms).

When the permit is issued by the Department, it will be accompanied by a Consent Agreement, including a compliance schedule, which is mutually agreeable to you and the Department. The Department recommends that you contract an agricultural engineering firm to review the referenced facility's management practices.

The Department requests that you submit the application to the Department's South East District office at the address indicated above, to the attention of Tim Powell, no later than 30 days from receipt of this notice. If there are any questions regarding this notice or the permit application, please contact Mr. Powell at (561) 681-6684.

Sincerely,

Folk
Linda A. Horne, P.G.
Water Facilities Administrator

LAH:TRB:tvv

ec: John Folkes, DACS/Tallahassee folksj@doacs.state.fl.us
Vince Seibold, DEP/Tallahassee vince.seibold@dep.state.fl.us
Kim Shugar, DEP/WPB kim.shugar@dep.state.fl.us
Joe Lurix, DEP/WPB joe.lurix@dep.state.fl.us
James McInis, Village of Wellington, jamesm@welvillage.com

Land Application

The Florida Department of Agriculture and Consumer Services (FDACS) in cooperation with the Florida Department of Environmental Protection (FDEP) and the South Florida Water Management District (SFWMD) are responsible for determining areas in which land application of the horse bedding/manure would result in the minimization of environmental impact. The property owners listed below have expressed to DACS an interest and willingness to have these materials applied to their properties. Unfortunately, the use of fly control chemical sprays containing boron in horse stables effectively eliminates citrus groves as a potential land application area.

Deleted: have determined

Deleted: fall within these areas and

DACS, DEP, and the SFWMD have also determined that the following procedures and conditions must be met on all land application sites:

- 1) The landowner must have an NRCS Conservation Plan for the property containing a nutrient management plan in accordance with USDA, NRCS Conservation Practice Standard – Code 590 “Nutrient management.”
- 2) The water table must be eighteen (18) inches or more below ground surface when the material is applied.
- 3) The following set back distances must be maintained during application;
 - a. Drinking water wells – 300 feet
 - b. Drainage ditches – 100 feet
 - c. Natural water courses – 200 feet
- 4) Discharge monitoring (Phosphorus concentration) must be conducted at the property's discharge site during application and on a monthly basis for six months thereafter. Through monitoring, if it is determined that unacceptable levels of phosphorus are coming from the properties, then corrective action will be taken under the Clean Water Act.

Any and all associated costs, including those of the requirements above, for the application of the materials to the property are the concern of the material disposal contractor/supplier unless otherwise agreed to between both parties (landowner and material disposal contractor/supplier). The following interested landowners below must follow and meet the procedures listed above.

Interested Landowners

Jim Russakus
7150 20th street
Vero Beach, FL
772-569-7555

Brad McFarland
5051 NE 16th Court
Okeechobee, FL
863-763-1705

Joey O'Bannon
7600 SW Fox Brown Road
Indiantown, FL
772-597-4757

Jim Haygood
Hwy 76
Stuart, FL
772-287-3046

Agriculture Resource Management - Mike Ziegler, of Sustainable Agriculture Organic Crop Production, phone number 772-220-7302, may be able to use a considerable amount of the material for organic citrus grove application. This determination will depend on the amount of Boron contained in the material. The exploration of this alternative by a material disposal contractor/supplier may prove fruitful.

Good Neighbor Guidelines for On-farm and Offsite Application of Livestock Waste



GOOD NEIGHBOR GUIDELINES FOR ON-FARM AND OFFSITE ANIMAL WASTE MANAGEMENT

PURPOSE

- Protect Florida's environment.
- Increase public understanding of the animal and agriculture industry.
- Improve community relations by implementing best management practices to address unwanted conditions associated with on-farm and offsite application of animal waste.

FLORIDA WATERS

GROUND WATER PROTECTION

Ground water is one of Florida's most vital resources supplying most ecosystems and providing drinking water for 90% of the state's population. Since the state's geology makes ground water vulnerable to contamination, its protection is crucial. The agricultural industry can take steps towards effectively protecting Florida's ground water:

Stockpiling

Apply animal waste at agronomic rates to prevent the leaching of nutrients past the root zone. Dairies typically use liquid manure management systems where the solids have considerably fewer nutrients than effluent from wastewater storage lagoons. Be aware that agronomic rates may be exceeded by multiple applications and/or staging large piles of solids or sludge for an extended period of time in the fields.

Poultry operations and horse farms typically use dry manure management systems where the solids contain higher amounts of nutrients. Care should be taken to prevent over application of nutrients (See the Contacts and References section on page 7 for contact information related to managing agronomic rates.)

Composting

Poultry operations and horse farms often use composting to convert bedding and manure into a rich and odor-free soil amendment for use on the farm or for sale. Composting is a method whereby the organic component of the solid waste is biologically decomposed under controlled conditions to a state in which it can be handled, stored, and applied to the land without adversely affecting the environment. A key phrase in the above definition is "under controlled conditions." This distinguishes composting from the biological decomposition processes that occur naturally, and it also differentiates composting from some objectionable

practices such as open dumps, piles of rotting manure, and other accumulations of waste materials. The Department of Environmental Protection issues permits for solid waste composting operations, but not for routine farm activities. Check with DEP about options you are considering and whether a permit would be needed.

Waste Analysis

Use available laboratories for waste analysis to ensure agronomic rates are not exceeded. The **Livestock Waste Testing Lab** in Live Oak provides free analysis of livestock waste and can be contacted at **(386) 362-1725**. The **Florida Rural Water Association** at **1-800-872-8207** provides free assistance for collecting and transporting waste samples to the Live Oak laboratory. (See the back of this booklet for additional contact information for waste analysis and transportation.)

Manure Spreader Calibration

Spread waste evenly on fields or pastures to prevent high nutrient concentration areas. Use a calibrated manure spreader to spread waste; front-end loaders are not appropriate for waste application.

Planting Crops

To contain and use nutrients effectively, plant crops as soon as possible following the application of animal waste. If there is concern about ammonia toxicity effects on seed germination, contact a crop consultant.

Cover Crops

To recover and retain residual nutrients, use cover crops between cropping periods where possible.

Sinkholes

Maintain a sufficient non-application buffer zone and/or berm to prevent applied waste and rainwater in contact with waste from entering sinkholes. The recommended buffer zone width on level ground with good vegetative cover is 50'. If poor vegetative cover is present or anticipated, or if the soil surface slopes towards the sinkhole, then buffer zones up to 100' should be considered. (Contact the NRCS representative listed in the back for additional information regarding sinkhole buffers.)

Buffer Zone Vegetation

For optimal nutrient uptake in the buffer zone, use the recommended grass species for the soil series present and geographic location. On moderately drained soils establish a regionally appropriate improved Bermuda grass, and on slightly poor to poorly drained soils establish bahia grass. (Contact the NRCS or IFAS representatives listed in the back for additional information regarding appropriate buffer widths and grass species.)

Well Protection

Maintain a sufficient non-application buffer zone and/or berm to prevent applied waste and rainwater in contact with waste from entering wells or other potable water sources. Maintain a 200' non-application buffer zone around a private potable water source and a 300' buffer zone when the private potable water source is located down slope of the waste application site. A 500' buffer zone is required for potable community wells and water sources.

SURFACE WATER PROTECTION

With over 50,000 miles of rivers and streams, 7800 lakes, and 4000 square miles of estuaries, Florida has an abundance of surface waters that are used for a variety of purposes. Protection of surface waters is crucial towards safeguarding aquatic life and human health. Agriculture can take steps towards effectively protecting Florida's surface waters:

Agronomic Rates

Prevent any unnecessary discharge of nutrients to surface waters of the state by spreading animal waste and other fertilizers on crops or pastures at agronomic rates.

Timing of Waste Application

To prevent surface runoff of the waste to surface waters, do not apply animal waste before or during storm events or when the ground is saturated.

Non-Application Zones

Do not apply animal waste in or in close proximity of surface waters of the state, wetlands, stormwater ditches or any conveyance system that is connected with bodies of water.

Surface Water Buffer Zones

Maintain a sufficient non-application buffer zone and/or berm to prevent applied waste and rainwater in contact with waste from entering water bodies, streams, ponds, or wetlands. The recommended buffer zone width on level ground with good vegetative cover is 50'. If poor vegetative cover is present or anticipated, or if the soil surface slopes towards the water body, then buffer zones up to 100' should be considered. (Contact the NRCS representative listed in the back for additional information regarding buffer zones.)

REDUCING UNWANTED CONDITIONS

Improper application of animal waste can lead to unpleasant living circumstances for surrounding communities. Minimizing odors and managing waste appropriately illustrates a willingness to be a good neighbor.

ODORS

Staging Solids in Fields

Manage offsite waste application areas to minimize odors and prevent the occurrence of nuisance conditions for surrounding neighbors. Avoid staging manure or spoiled feed in fields for longer than necessary. Staging times for manure or waste feed prior to land application should be kept to a minimum.

Meteorological Considerations

When possible, avoid spreading waste materials when conditions are present that would increase odors being carried offsite. Those conditions include stagnant periods, when there is minimal mixing (no odor dilution), and when residences are located downwind.

Incorporating Solids

To reduce odors, evenly spread and, where applicable, incorporate the solids into the ground. Use a calibrated manure spreader; front-end loaders are not appropriate for waste distribution. When possible, avoid spreading waste near residences on weekends.

FLIES

Food Sources

Manage offsite waste application areas so flies are not presented with a highly concentrated food source. Fly food sources include spoiled silage, sand bedding, and manure solids; avoid staging piles in the fields for longer than necessary prior to land application.

Technical Assistance

If flies substantially increase in numbers following animal or silage waste application, immediately till waste into the soil or utilize a drag harrow. Contact University of Florida Entomologist Dr. Jerry Butler at (352) 392-1901, extension 152 for additional information. (Additional contact information listed in the back.)

Pesticides

If pesticide applications are necessary, follow all product application and safe handling guidelines provided by the manufacturer.

OTHER

RECORD KEEPING

Importing & Exporting Animal Waste

Whether you are the provider or receiver of animal waste material, maintain a record of the day, amount, and source of waste removed from or brought to the site.

Field Application Records

Maintain records on nutrient application rates on a field-by-field basis. Use recent waste analysis or an estimated nutrient content of the applied waste to calculate application rates. (Contacts listed under the agronomic rate section of the contacts and references section can provide information related to nutrient application record keeping.)

COMMUNITY RELATIONS

Public Perception

The public may assume that standing piles of material from dairy farms, horse farms, chicken farms or any animal feeding operation consist wholly of manure. If piles of muck or bedding material, with low nutrient content, are to be staged for any length of time, notify neighbors that the piles are not manure and do not present a threat to ground water or the environment. Routinely spread piles with low nutrient content to avoid public misperception.

Public Education

If presented with the opportunity, inform surrounding neighbors that the application of animal waste is a beneficial reuse of a waste product, improves soil conditions and reduces the need for commercial fertilizer.

Contact Number

Provide surrounding neighbors with a business contact number to relay concerns.

Distribution of Guidelines

Regardless of who is responsible for management of the waste, improper handling will reflect badly on the source of the waste. If you distribute animal waste to other farmers or property owners, provide them with a copy of these guidelines.

Agency Contacts

If you receive complaints or concerns from the public regarding your application activities, contact the appropriate state agencies and local elected officials, and inform them of the situation.

Public Outreach Suggestions

Make available small quantities of manure for the neighbors to use in their gardens, flowerbeds, or newly established lawn. Sponsor local programs, organizations or youth leagues.

CONTACTS AND REFERENCES FOR ANIMAL WASTE MANAGEMENT

ARGONOMIC RATES

- ➔ Natural Resources Conservation Services (NRCS)
Steve Boetger, State Agronomist
(352) 338-9548
Website: <http://www.fl.nrcs.usda.gov>
- ➔ University of Florida Agricultural & Biological Engineering Dept.
Dr. Roger A. Norstedt
(352) 392-1864 ext. 103 Email: roger@agen.ufl.edu
Website: <http://www.agen.ufl.edu>
- ➔ Florida Rural Water Association
Jack Hodges, Agricultural Wastewater Technician
1-800-872-8207 or (850) 668-2746 Email: frwa@ix.netcom.com
Website: <http://frwa.net>
- ➔ Florida Department of Environmental Protection (DEP)
Tallahassee Division of Water Resource Management (850) 487-1855 or
contact the Industrial Wastewater Section of the nearest DEP district office.
Website: <http://dep.state.fl.us>

BUFFER ZONES

- ➔ Natural Resources Conservation Services (NRCS)
Greg Hendricks, State Resource Conservationist
(352) 338-9543
Website: <http://www.fl.nrcs.usda.gov>

COMPOSTING

- ➔ University of Florida Agricultural & Biological Engineering Dept.
Dr. Roger A. Norstedt
(352) 392-1864 ext. 103 Email: roger@agen.ufl.edu
Website: <http://www.agen.ufl.edu>
- ➔ Florida Backyard Composting Tutorial and Information
Website: <http://compost.ifas.ufl.edu/>
- ➔ Composting Horse Manure
SS-ANS-001E. A. Ott, E. L. Johnson, R. A. Nordstedt
http://edis.ifas.ufl.edu/BODY_AN040
- ➔ On-Farm Composting of Poultry Litter P&SS Info # 319,
Walker, F
<http://www.agriculture.utk.edu/ansci/poultry/PSS319.htm>
- ➔ A Practical Guide for Composting Poultry Litter
MAFES Bulletin 981 published June, 1992. Brake, J. D.
<http://www.msstate.edu/dept/poultry/complit.htm>

- ➡ Florida Department of Environmental Protection (DEP)
Tallahassee Solid Waste section (850) 488-0300 or contact the Solid Waste Section of the nearest DEP district office. Website:
http://www.dep.state.fl.us/waste/categories/solid_waste/pages/composting.htm

FLY CONTROL

- ➡ University of Florida Entomology and Nematology Dept.
Dr. Jerry Butler
(352) 392-1901 ext. 152 Email: jfb@gnv.ifas.ufl.edu
Website: <http://entnemdept.ifas.ufl.edu>

LABORATORIES (FREE ASSISTANCE)

- ➡ Livestock Waste Testing Lab (analysis free of charge - except for grant-funded research)
Justin Jones, Research Coordinator
7580 CR 136
Live Oak, Florida 32060
(386) 362-1725 Email: JTJones@mail.ifas.ufl.edu
Website: <http://nfrec-sv.ifas.ufl.edu>
- ➡ Florida Rural Water Association (FRWA) (transporting samples - free of charge)
Jack Hodges, Agricultural Wastewater Technician
1-800-872-8207 or (850) 668-2746 Email: frwa@ix.netcom.com
Website: <http://frwa.net>

OTHER CONTACTS

- ➡ Florida Department of Agriculture & Consumer Services (FDACS)
Website: <http://doacs.state.fl.us>
- ➡ Local Water Management District
Website: http://www.dep.state.fl.us/secretary/watman/wmd_map.htm
- ➡ Florida Cooperative Extension
Website: <http://edis.ifas.ufl.edu/>

- * This document was produced with the cooperation of the Florida Dairy Industry, dairy consultants, various state agencies listed above, and other livestock industry stakeholders.
- * Please distribute these Good Neighbor Guidelines to applicable businesses, farms, dairies, and homeowners.
- * These guidelines may be subject to revision based on new information or improved management practices.

Cover Photos courtesy of USDA-NRCS, Ellen McCarron, and the William H. Lane family.

This publication was funded in part by the Florida Department of Environmental Protection with a Section 319 Nonpoint Source Management Program Grant from the U.S. Environmental Protection Agency.



Item 7.c.

ORDINANCES/PUBLIC HEARING

Ordinance No. 2013-11 - 2nd Reading

(Historical Legacy)

TOWN OF LOXAHATACHEE GROVES

ORDINANCE NO. 2013-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED “USES AS OF OCTOBER 1, 2006” TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE IS NOT CURRENTLY THE SUBJECT OF A TOWN CODE ENFORCEMENT ACTION; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING THAT CERTAIN USES ARE NOT ELIGIBLE FOR APPROVAL UNDER THIS SECTION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council has directed staff and the Unified Land Development Code (ULDC) Review Committee to prepare corrective amendments to Section 75-035 that will result in a process to permit “historical legacy” uses in the Agricultural Residential (AR) zoning district.

WHEREAS, In response to the Council directive the Town’s staff has prepared proposed amendments to the Town’s Unified Land Development Code (ULDC) and,

WHEREAS, the Town’s ULDC Review Committee considered the proposed ULDC amendments at its October 17, 2013, meeting and recommended that the Town Council approve the amendments to the ULDC proposed by staff subject to revisions which have been incorporated in Exhibit A hereto; and,

WHEREAS, the Town’s Planning and Zoning Board considered the proposed ULDC amendments at its December 12, 2013, meeting and pursuant to Chapter 163, Part II, Florida Statutes, recommended that the Town Council approve the amendments to the ULDC as worded in “Exhibit A” hereto; and,

WHEREAS, the Town Council of Town of Loxahatchee Groves finds that the adoption of this ordinance, to revise Section 75-035, entitled “Uses as of October 1, 2006”, is consistent with the Town’s Comprehensive Plan, and in the best health and welfare interests of the Town, its property owners and residents.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA:

Section 1: That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2: That the Town Council of the Town of Loxahatchee Groves, hereby amends the Town’s Unified Land Development Code (ULDC) by amending Section 75-035, entitled “Uses as of October 1, 2006”, as fully set forth in “**EXHIBIT A**”, and incorporated herein by reference.

Section 3: Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 5: Codification. The Town Clerk shall cause this ordinance to be codified as a part of the ULDC.

Section 6: Effective Date. This ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 4th DAY OF MARCH, 2014.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS ____ DAY OF _____, 2014.

**TOWN OF LOXAHATCHEE GROVES,
FLORIDA**

ATTEST:

Mayor David Browning

Janet K. Whipple, MMC
Town Clerk

Vice-Mayor Ron Jarriel

APPROVED AS TO LEGAL FORM:

Council Member Tom Goltzené

Office of the Town Attorney

Council Member Ryan Liang

Council Member Jim Rockett

EXHIBIT A

Historical Legacy Amendments

(Ref: Following Page)

Amendments to the following ULDC Section:

1. Section 75-035. *Uses as of October 1, 2006*

NOTE: Underlined text is an addition to Section 75-035 and ~~struck through text~~ is a deletion to Section 75-035.

Section 75-035. - Historical Legacy Uses as of October 1, 2006.

Certain uses that were in existence as of October 1, 2006 are not contained in the table of permitted uses for the Agricultural Residential (AR) zoning district. Such uses, referred to as "Historical Legacy Uses", but may be allowed to continue to exist, subject to following:

- (A) The applicant shall have the burden of proof to demonstrate that the use was in existence on the property as of October 1, 2006; and
- (B) The applicant shall apply for a Category B Special Exception pursuant to Section 170-010(B) of this Code; and
- (C) ~~The application for the Special Exception shall be filed within eight months of the effective date of these regulations.~~ A historical legacy use shall comply with either of the following criteria: (1) Be located on a property owned by a resident with a homestead exemption within the Town; or (2) be located on a separate property within the Town, either contiguous or non-contiguous to the homesteaded property. In either case, the business owner's homestead exemption shall have been in effect and the historical legacy business shall have been in continuous operation within the Town since October 1, 2006.
- (D) The use does not present a threat to public health or safety..
- (E) The property upon which the use is located is not currently the subject of a Town code enforcement action, with the exception of a property containing a use that qualifies for a Historical Legacy Category B Special Exception.
- (F) The owner-operator has submitted an affidavit: (1) certifying compliance with Sections (A) –(E) above (2) limiting the continued operation of the use to both the Parcel Control Number (PCN) and operator; (3) agreeing not to diversify the existing business; (4) agreeing that no signs visible from the road which advertise or promote the use will be erected on the property; (5) agreeing to maintain, and provide a copy to the Town, an active annual local business tax receipt; (6) acknowledging that, in the event of the transfer of the property to a new owner the right to operate the use shall cease; (7) acknowledging that, in the event of the owner's loss of his or her homestead exemption on the property, the right to operate the use shall cease; and (8) agreeing to conditions imposed by Town Staff including, but not limited to, access, parking, hours of

operation, noise generation, location of the business activities upon the property, number of on-site employees, clients or customers allowed, deliveries, waste disposal, proof of insurance, etc.

(G) The owner-operator has undergone a review and inspection by the Town to determine compliance with Sections (A) – (F) above.

(H) The following uses are not eligible for approval under this section:

(1) Adult entertainment establishment, as defined in Section 10-015: *Definitions*.

(2) Recreational vehicle or mobile home park, where parking spaces are rented or sold and provided with one or more of the following services: potable water, electrical and/or sewage disposal.

(3) Junk dealer, as defined in Section 17-75(a) of the Palm Beach County Code of Ordinances.

(4) Additional uses determined by Town staff to be non-compliant with Articles 45: *Property Maintenance* and Article 50: *Public Nuisances*.

(I) All Historical Legacy Special Exception B approvals by the Town Manager shall be placed on Consent Agenda for Town Council acceptance.



Item 8.a.

ADMINISTRATIVE UPDATE

Gas Tax Map Report

(No Backup)



Item 9.a.

OLD BUSINESS

Auditor Retention Letter

Underwood Management Services Group, LLC

840 N.E. Stokes Terrace
Jensen Beach, Florida 34957
Telephone: 772.233.1511

William F. Underwood, II
Managing Partner
Email: umsg@att.net

Memorandum

To: Finance Advisory and Auditing Committee
From: William F. Underwood, II, Managing Partner *WFM*
Date: February 18, 2014
Subject: External Auditor Retention

The Town's external auditor Nowlen, Holt, and Miner, PA contract is due to expire upon completion of the fiscal year 2013 audit. The original contract was for a term of 3 years with two 1-year renewals. The staff believes the Town has been well served by employing the firm. The firm provides historical stability in the Town's financial operations, which UMSG found to be extremely beneficial to the Town. Further, to the best of our knowledge, auditing services are not required to be bid pursuant to state statutes.

Additionally, it is my professional opinion that auditing firms and the government staff become more effective and efficient in their cooperation for audit work after the third or fourth year of experience with a particular entity.

Due to the background and understanding the firm has of the operations of the Town, we would recommend to the FAAC and Town Council that the current auditing contract be amended to provide for an additional three (3) years of service.

This matter is brought to your attention at this time in order to provide sufficient time for the Town to bid auditing services. It would also allow sufficient time to provide for an audit selection committee, review, analyze, and receive presentations from prospective vendors in order to provide a recommendation to the Council well before October, in the event the FAAC or Town Council choose not to amend the existing contract.

**RENEWAL AGREEMENT
FOR AUDITING SERVICES**

THIS AGREEMENT is made and entered into this _____ day of March, 2014, by and between the TOWN OF LOXAHATCHEE GROVES, a Florida municipal corporation (the "TOWN"), and NOWLEN, HOLT & MINER, P.A., a Florida Corporation ("AUDITOR").

WHEREAS, the TOWN issued Request for Proposals (RFP) No. 2009-006, seeking Financial Auditing Services for the TOWN; and,

WHEREAS, AUDITOR was selected to provide Financial Auditing Services for the Town, and TOWN and AUDITOR entered into an Agreement dated December 1, 2009; and,

WHEREAS, the TOWN'S Management Firm and Finance Advisory and Audit Committee (FAAC), recommend that the Agreement with AUDITOR be renewed for an additional three (3) year term; and,

WHEREAS, the TOWN Council finds it in the best interest of the Town to renew the Agreement with AUDITOR as recommended by the TOWN'S Management Firm and the FAAC.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

- A. The above WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Agreement.
- B. Section 7.2 of the Agreement is amended to provide for an additional three (3) year renewal term, and two (2) additional one (1) year renewal terms upon the mutual agreement of the parties.
- C. The Agreement is renewed for an additional three (3) year term. The term of this Renewal Agreement shall be effective as of October 1, 2014, and shall continue through the reporting period ending September 30, 2017 unless earlier terminated as provided in Section 8 of the Agreement.
- D. Section 3.1 is amended to reflect the Compensation for Auditing Services, as follows:

For all Auditing Services provided by AUDITOR as described in Sections 2.1 through 2.4 of the initial Agreement, AUDITOR shall be compensated as set forth in its Town of Loxahatchee Groves Audit Services Schedule of Fees, attached hereto as Exhibit "A", as follows:

- a. \$16,700 for the fiscal year ending 9/30/15;
- b. \$16,700 for the fiscal year ending 9/30/16;

- c. \$16,700 for the fiscal year ending 9/30/17;
- d. \$16,700 for the fiscal year ending 9/30/18; and,
- e. \$16,700 for the fiscal year ending 9/30/19.

E. Section 13 of the Agreement is amended to update the parties' contact information, as follows:

For the TOWN: Town of Loxahatchee Groves
 Attention: Mark Kutney, Town Manager
 14579 Southern Boulevard, Suite #2
 Loxahatchee Groves, Florida 33470
 Telephone: (561) 793-2418
 Facsimile: (561) 793-2420

Copy to: Michael D. Cirullo, Jr., Office of the Town Attorney
 3099 East Commercial Boulevard, Suite 200
 Fort Lauderdale, Florida 33308
 Telephone: 954-771-4500
 Facsimile: 954-771-4923

For AUDITOR: Nowlen, Holt & Miner, P.A.
 515 N. Flagler Drive, Suite 1700
 West Palm Beach, Florida 33402-0347
 Phone: (561) 659-3060
 Facsimile: (561) 835-0628

F. The March 5, 2014, Engagement Letter is attached hereto as Exhibit "B" and incorporated herein.

G. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS. TOWN shall have the right to audit the books, records and accounts of AUDITOR that are related to this Agreement. AUDITOR shall keep such book, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. AUDITOR shall preserve and maintain all financial records, supporting documents, statistical records, and any other documents pertinent to his Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless AUDITOR is notified in writing by the TOWN of the need to extend the retention period. Such retention of such records and documents shall be at AUDITOR's expense. AUDITOR shall comply with inspection and reproduction obligations of Florida law relating to public records in its possession. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the TOWN to be applicable to AUDITOR's records,

AUDITOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by AUDITOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.

In addition, AUDITOR shall respond to the reasonable inquiries of any successor in interest to TOWN and allow any such successors in interest to TOWN to receive working papers relating to matters of continuing significance. In addition, AUDITOR shall provide a complete copy of all working papers as required by law or as needed to TOWN, prior to final payment, in accordance with this Agreement and the Schedule for AUDITOR's services.

H. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL. AUDITOR is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement, and in furtherance thereof may demand and obtain records and testimony from AUDITOR and, any, if applicable, subcontractors and lower tier subcontractors. AUDITOR understands and agrees that in addition to all other remedies and consequences provided by law, failure of AUDITOR or, if applicable, subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested will be deemed to be a breach of this Agreement. AUDITOR shall be responsible for all costs incurred by it or the TOWN as a result of any investigation by the Inspector General which results in an adverse determination caused by AUDITOR, and if applicable, subcontractors and lower tier subcontractors.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

TOWN

ATTEST:

BY: DAVID BROWNING, MAYOR

JANET K. WHIPPLE
TOWN CLERK

APPROVED AS TO FORM:

MICHAEL D. CIRULLO, JR.
TOWN ATTORNEY

AUDITOR
NOWLEN, HOLT & MINER, P.A.

WITNESSES:

BY: _____

ATTEST:

SECRETARY

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014, by _____, as _____ of Nowlen, Holt & Miner, P.A., a Florida Corporation, who is personally known to me, and who has affirmed that he/she has been duly authorized to execute the above document on behalf of the corporation.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Name of Acknowledger, typed, printed, or Stamped

Exhibit "A"

Town of Loxahatchee Groves Audit Services Schedule of Fees

**TOWN OF LOXAHATCHEE GROVES
AUDIT SERVICES
SCHEDULE OF FEES**

**SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
FOR THE AUDIT OF THE SEPTEMBER 30, 2014 - 2018 FINANCIAL STATEMENTS
SUPPORTING SCHEDULE FOR AUDIT SERVICES**

	PROPOSED HOURLY RATES
	<u> </u>
Partner	185
Manager	155
Supervisor	140
Senior	125
Staff	110
Other (Para-Professionals)	65
Less: Multi-year Contract Discount	
Other Expenses*	
	<u>Audit Fee</u>
Total All-Inclusive Price for Audit Services	
Year 2014	16,700 (1)(2)
Year 2015	16,700 (1)(2)
Year 2016	16,700 (1)(2)
Year 2017 (Option year)	16,700 (1)(2)
Year 2018 (Option year)	16,700 (1)(2)

(1) Fee includes total CAFR costs including preparing, editing and printing 30 copies.

(2) Does not include Single Audit. If a Single Audit is required, the fee would not exceed \$5,500 per major program.

Note: Price Proposal assumes that no significant audit adjustments will be necessary and no significant deficiencies in internal control or significant non-compliance will be noted.

Note: Invoices for audit services will be rendered each month as work progresses and are payable on presentation. In accordance with our firm's policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full.

Exhibit “B”

March 5, 2014, Engagement Letter



NOWLEN, HOLT & MINER, P.A.

CERTIFIED PUBLIC ACCOUNTANTS

WEST PALM BEACH OFFICE
NORTHBRIDGE CENTRE
515 N. FLAGLER DRIVE, SUITE 1700
POST OFFICE BOX 347
WEST PALM BEACH, FLORIDA 33402-0347
TELEPHONE (561) 659-3060
FAX (561) 835-0628
WWW.NHMCOPA.COM

EVERETT B. NOWLEN (1930-1984), CPA
EDWARD T. HOLT, CPA
WILLIAM B. MINER, CPA
ROBERT W. HENDRIX, JR., CPA
JANET R. BARICEVICH, CPA
TERRY L. MORTON, JR., CPA
N. RONALD BENNETT, CVA, ABV, CFF, CPA
ALEXIA G. VARGA, CFE, CPA
EDWARD T. HOLT, JR., PFS, CPA
BRIAN J. BRESCIA, CFP®, CPA

KATHLEEN A. MINER, CPA
J. MICHAEL STEVENS, CPA
JARRETT A. PERRY, CPA
KARA D. PETERSON, CFE, CPA
MARK J. BYMASTER, CFE, CPA
RYAN M. SHORE, CPA
TIMOTHY H. SCHMEDES, CPA
WEI PAN, CPA

March 5, 2014

Town of Loxahatchee Groves, Florida
C/O Mark A. Kutney, Town Manager
14579 Southern Blvd, Suite 2
Loxahatchee Groves, FL 33470

BELLE GLADE OFFICE
333 S.E. 2nd STREET
POST OFFICE BOX 338
BELLE GLADE, FLORIDA 33430-0338
TELEPHONE (561) 996-5612
FAX (561) 996-6248

To the Honorable Mayor, Members of the Town Council and Town Manager:

We are pleased to confirm our understanding of the services we are to provide the Town of Loxahatchee Groves, Florida for the years ended September 30, 2014, 2015 and 2016, with options to renew for September 30, 2017 and 2018. We will audit the financial statements of the governmental activities, the business-type activities, and each major fund, including the related notes to the financial statements, which collectively comprise the basic financial statements of the Town of Loxahatchee Groves, Florida as of and for the years ended September 30, 2014, 2015 and 2016, with options to renew for September 30, 2017 and 2018. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Town of Loxahatchee Groves, Florida's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Town of Loxahatchee Groves, Florida's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Budgetary Comparison Schedule – General Fund
- 3) Budgetary Comparison Schedule – Transportation Fund

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our audit's report will not provide an opinion or any assurance on that other information:

1) Introductory and Statistical Sections

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records of the Town of Loxahatchee Groves, Florida and other procedures we consider necessary to enable us to express such opinions. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and compliance will include a paragraph that states that the purpose of the report is solely to describe the scope of testing of internal control over financial reporting and compliance, and the result of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance, and that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control over financial reporting and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the Town of Loxahatchee Groves, Florida is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will assist with preparation of your financial statements and related notes. You will be required to acknowledge in the written representation letter our assistance with preparation of the financial statements and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. You agree to assume all management responsibilities for any non-audit services we provide; oversee the services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for ensuring that management is reliable and financial information is reliable and properly recorded. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) that you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing

management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors or any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures - Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from

illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Town of Loxahatchee Groves, Florida's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Engagement Administration, Fees, and Other

We will provide one electronic and 30 copies of our reports to the Town of Loxahatchee Groves, Florida; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Nowlen, Holt & Miner, P.A. and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a regulatory agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Nowlen, Holt & Miner, P.A. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by a federal awarding agency, state awarding agency or pass through entity. If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

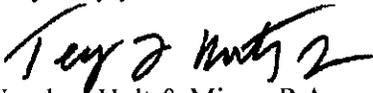
We expect to begin our audit in January 2015 and issue our reports no later than March 20, 2015. Terry L. Morton is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fee for these services will be in accordance with the attached fee schedule. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been

completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

You have requested that we provide you with a copy of our most recent external peer review report and any subsequent reports received during the contract period. Accordingly, our peer review report dated October 23, 2012, accompanies this letter.

We appreciate the opportunity to be of service to the Town of Loxahatchee Groves, Florida and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,



Nowlen, Holt & Miner, P.A.

RESPONSE:

This letter correctly sets forth the understanding of the Town of Loxahatchee Groves, Florida:

Management Signature: _____

Title: _____

Date: _____

Governance Signature: _____

Title: _____

Date: _____

**TOWN OF LOXAHATCHEE GROVES
AUDIT SERVICES
SCHEDULE OF FEES**

**SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
FOR THE AUDIT OF THE SEPTEMBER 30, 2014 - 2018 FINANCIAL STATEMENTS
SUPPORTING SCHEDULE FOR AUDIT SERVICES**

	PROPOSED HOURLY RATES
Partner	185
Manager	155
Supervisor	140
Senior	125
Staff	110
Other (Para-Professionals)	65
Less: Multi-year Contract Discount	
Other Expenses*	
	<u>Audit Fee</u>
Total All-Inclusive Price for Audit Services	
Year 2014	16,700 (1)(2)
Year 2015	16,700 (1)(2)
Year 2016	16,700 (1)(2)
Year 2017 (Option year)	16,700 (1)(2)
Year 2018 (Option year)	16,700 (1)(2)

(1) Fee includes total CAFR costs including preparing, editing and printing 30 copies.

(2) Does not include Single Audit. If a Single Audit is required, the fee would not exceed \$5,500 per major program.

Note: Price Proposal assumes that no significant audit adjustments will be necessary and no significant deficiencies in internal control or significant non-compliance will be noted.

Note: Invoices for audit services will be rendered each month as work progresses and are payable on presentation. In accordance with our firm's policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full.



System Review Report

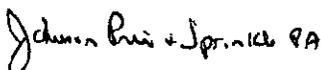
October 23, 2012

To the Shareholders of Nowlen, Holt & Miner, P.A.
and the Peer Review Committee of the Florida Institute of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Nowlen, Holt & Miner, P.A. (the firm) in effect for the year ended May 31, 2012. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Nowlen, Holt & Miner, P.A. in effect for the year ended May 31, 2012, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Nowlen, Holt & Miner, P.A. has received a peer review rating of *pass*.


Johnson Price Sprinkle PA

Johnson Price Sprinkle PA

79 Woodfin Place, Suite 300 • Asheville, NC 28801 • 828.254.2374 • Fax 252.9994 • www.jpspa.com

An Independent Member of the BDO Seidman Alliance.



Item 9.a. Addition

OLD BUSINESS

Original Auditor Contract

AGREEMENT
FOR AUDITING SERVICES

THIS AGREEMENT is made and entered into this 1st day of DECEMBER, 2009, by and between the TOWN OF LOXAHATCHEE GROVES, a Florida municipal corporation (the "TOWN"), and NOWLEN, HOLT & MINER, P.A., a Florida Corporation ("AUDITOR").

WHEREAS, the TOWN issued Request for Proposals (RFP) No. 2009-006, seeking Financial Auditing Services for the TOWN; and,

WHEREAS, the TOWN'S Finance Advisory and Audit Committee ("FAAC"), reviewed the responses to RFP 2009-006, and unanimously recommended that the Town Council select NOWLEN, HOLT & MINER, P.A., for Financial Auditing Services for the TOWN; and,

WHEREAS, at its November 17, 2009, meeting, the TOWN Council selected NOWLEN, HOLT & MINER, P.A., to provide Financial Auditing Services for the TOWN

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1.0 PURPOSE/AUTHORIZATION

- 1.1 The purpose of this Agreement is to provide for the TOWN'S retention of AUDITOR to perform all Auditing Services for the TOWN as described in Section 2 below.
- 1.2 RFP 2009-006, AUDITOR'S Response, and the November 24, 2009, Engagement Letter are incorporated herein and made a part hereof. Any conflicts among the documents shall be resolved as set forth in Section 9.1.

2.0 SCOPE OF SERVICES

2.1 Scope of Work to be Performed

AUDITOR shall provide the Auditing Services to the TOWN set forth in Article II of RFP 2006-006, attached hereto and incorporated herein as Exhibit "A".

2.2 Auditing Standards to be Followed

AUDITOR shall meet the Auditing Standards set forth in Article II (C) of RFP 2009-006, attached hereto and incorporated herein as Exhibit "A".

2.3 Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the

AUDITOR shall issue the Reports listed in Article II (D) of RFP 2009-006, attached hereto as Exhibit "A".

2.4 Article II(E) of RFP 2009-006 attached hereto and incorporated herein, entitled "Special Considerations," provides additional services and standards for performance, with which AUDITOR agrees to comply.

2.5 **Additional Services**

AUDITOR shall provide additional services to the TOWN as determined by the TOWN Council, at the same hourly rates as set forth within the Schedule of Proposal Prices, within AUDITOR'S Response to RFP 2009-006, attached hereto as Exhibit "B" and incorporated herein.

3. **COMPENSATION**

3.1 For all Auditing Services provided by AUDITOR as described in Sections 2.1 through 2.4 of this Agreement, AUDITOR shall be compensated as set forth within the Schedule of Proposal Prices within AUDITOR'S Response to RFP 2009-006, attached hereto as Exhibit "B", as follows:

- a. \$14,500 for the fiscal year ending 9/30/09;
- b. \$15,000 for the fiscal year ending 9/30/10;
- c. \$15,525 for the fiscal year ending 9/30/11;
- d. \$16,100 for the fiscal year ending 9/30/12; and
- e. \$16,700 for the fiscal year ending 9/30/13.

3.2 AUDITOR will invoice the TOWN monthly for work performed under this agreement for each applicable Fiscal Year on the basis of the percentage of the work completed based on the fees in Section 3.1. It is expressly understood that any incidental or out-of-pocket costs incurred by AUDITOR are covered by the total compensation and are not to be billed separately.

3.3 Invoices received from the AUDITOR pursuant to this agreement will be reviewed and approved by the Town Manager, indicating that services have been rendered in conformity with this Agreement.

3.4 The AUDITOR shall provide any such backup documentation, including staff time records, requested by the TOWN to support the amounts invoiced to the TOWN for the audit services contemplated herein. The TOWN shall pay the AUDITOR for all approved invoices, no later than 30 calendar days from the date of approval by the TOWN Manager of the invoice.

- 3.5 For all Additional Services as described in Sections 2.5 of this Agreement, the TOWN shall pay AUDITOR a fee mutually agreed to in writing by the TOWN Manager, as directed by the TOWN Council, and AUDITOR.

4. **RECORDS/RIGHT TO INSPECT AND AUDIT**

- 4.1. All working papers and reports must be retained during the term of this Agreement and for a period of five (5) years following termination or expiration of this Agreement in accordance with the requirements and procedures set forth by the General Records Schedule for Local Government Agencies as promulgated by the Division of Archives, History and Records Management (a division of the Florida Department of State) at the auditor's expense, unless the firm is notified in writing by the TOWN of the need to extend the retention period. The AUDITOR shall be required to make working papers available, upon request, to the following parties or their designees:
- 4.1.1. Town of Loxahatchee Groves;
 - 4.1.2. U.S. Government Accountability Office (GAO);
 - 4.1.3. Auditors of entities of which the TOWN is a sub-recipient of grant funds;
 - 4.1.4. Parties designated by the federal or state governments of by the TOWN as part of an audit quality review process.
- 4.2 In addition, AUDITOR shall respond to reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.
- 4.3 All records, books, documents, papers and financial information (the "Records") that result from AUDITOR providing services to the TOWN and provided to the AUDITORS by the TOWN under this Agreement shall be the property of the TOWN.
- 4.4 Upon termination or expiration of this Agreement, or at any time during the term of this Agreement, and upon the written request of the TOWN Manager, any and all Records shall be delivered to the TOWN by AUDITOR within fifteen (15) calendar days of the date of such request. Any compensation due to AUDITOR shall be withheld until such records are received by the TOWN.
- 4.5 The Town Manager or his designee shall, during the term of this Agreement and for a period of five (5) years from the date of termination or expiration of this Agreement, have access to and the right to examine and audit any Records of AUDITOR involving transactions related to this Agreement under supervision of the AUDITOR'S personnel.
- 4.7 The TOWN may cancel this Agreement for unreasonable refusal by AUDITOR to allow access by the Town Manager to any Records pertaining to work performed

under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

5. **INDEMNIFICATION**

- 5.1. AUDITOR shall defend, indemnify, and hold harmless the TOWN, its officers, elected and appointed officials, attorneys, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with AUDITOR, its officers', agents' or employees' failure to satisfy its obligations under Auditing Standards Generally Accepted in the United States through negligence or error or omission of AUDITOR or its officers', agents' or employees', including, but not limited to, liabilities arising from contracts between AUDITOR and third parties made pursuant to this Agreement. AUDITOR shall pay all claims and losses of any nature whatever rising therefrom, and may, if elected by the TOWN, defend all suits arising therefrom, in the name of the TOWN when applicable, and shall pay all costs and judgments which may issue thereon, except to the extent caused by the negligence of TOWN officers or employees.
- 5.2. AUDITOR shall defend, indemnify, and hold harmless the TOWN, its officers, attorneys, agents and employees, from all losses, injuries, damages, wages or overtime compensation due AUDITOR'S agents or employees in rendering services pursuant to this Agreement, including payment of TOWN's reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any employment related litigation or claims under federal or state law.
- 5.3. The provisions of this section shall survive termination of this Agreement.

6. **INSURANCE**

- 6.1. AUDITOR shall procure and maintain, and require each joint vendor and/or sub-vendor and/or subcontractor to procure and maintain, during the life of this project, the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to the TOWN and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial A.M. Best & Company rating of no less than Excellent: VII. At or prior to the commencement of AUDITOR performance, AUDITOR shall deliver the original certificate of insurance required herein to TOWN naming the TOWN as an additional insured. AUDITOR shall pay premiums for all insurance required by this Agreement. AUDITOR shall cause all policies of insurance required by this Agreement to be renewed from time to time so that at all times the insurance protection required by this Agreement shall continuously exist. The policy shall not be cancelled or materially changed

without giving of at least thirty (30) days' prior written notice thereof to TOWN, and in such event, a policy pursuant to the above terms must be substituted.

1. Worker's Compensation

Provide Worker's Compensation Insurance on behalf of all employees who are to provide a service for this project, as required under Florida Laws Chapter 440 and Employers Liability of limits no less than:

- \$500,000 each accident
- \$500,000 disease – policy limit
- \$100,000 – each employee

2. Commercial General Liability

This includes but is not limited to bodily injury, property damage and personal injury with limits of not less than:

- \$1,000,000 combined single limit per occurrence
- \$1,000,000 per location aggregate covering all work performed for this project.

3. Automobile Liability

This is to include bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than \$1,000,000 combined single limit covering all work performed for this project.

4. Umbrella Liability

This is to include the Employer's Liability, General Liability and Automobile Liability in underlying policy schedule, with limits of not less than \$1,000,000.

5. Professional Liability

This is to include limits of not less than \$3,000,000 for professional services rendered in accordance with this project. The AUDITOR shall maintain such insurance for at least two (2) years from the termination of this project.

7. **TERM**

7.1 This Agreement shall become effective upon execution by both parties and shall continue through the reporting period ending September 30, 2011 unless earlier terminated as provided in Section 8 (the "Term").

7.2. This Agreement includes two one (1) year renewal options, which may be exercised for the Fiscal Years ending September 30, 2012 and September 30, 2013 upon the mutual agreement of the parties.

8. **TERMINATION**

- 8.1 The TOWN may elect to terminate all or a portion of the services provided by AUDITOR in this Agreement by giving AUDITOR written notice at least 30 calendar days prior to the effective date of termination. Upon receipt of written notice of termination, AUDITOR shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the TOWN Manager. Upon written notice of termination, the TOWN Manager may elect not to use the services of AUDITOR.
- 8.2 AUDITOR may terminate the Agreement at any time by giving the TOWN written notice at least 180 calendar days prior to the effective date of termination.
- 8.3 In the event of termination or expiration of this Agreement, AUDITOR and the TOWN shall cooperate in good faith in order to effectuate a smooth and harmonious transition from AUDITOR to the TOWN, or to any other person or entity the TOWN may designate, and to maintain during such period of transition the same services provided to the TOWN pursuant to the terms of this Agreement.
- 8.4 AUDITOR will take all reasonable and necessary actions to transfer all books, records and data of the TOWN in its possession in an orderly fashion to either the TOWN or its designee in a hard copy and a standard electronic computer format.
- 8.5 In the event that this Agreement is terminated for convenience, the AUDITOR shall be paid for any Auditing Services performed up to the date of termination. Upon receipt of a notice of termination, the AUDITOR shall perform only those services specified by the TOWN Manager and shall not incur additional expenses without the TOWN Manager's prior written approval.
- 8.6 Upon termination or expiration, any compensation payable by TOWN to AUDITOR shall be withheld until all Records and documents are provided to TOWN pursuant to Section 4.4 of this Agreement.
- 8.7 Upon termination or expiration, the TOWN shall not be liable to AUDITOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.

9. **ENTIRE AGREEMENT/MODIFICATION/AMENDMENT**

- 9.1. This writing, including Exhibit "A", RFP 2009-006, Exhibit "B", AUDITOR'S Response to RFP 2009-006, and Exhibit "C," November 24, 2009, Engagement Letter, contains the entire Agreement of the parties and supersedes any prior oral or written representations. In the event of a conflict between this Agreement and any of the Exhibits, the conflict shall be resolved by reference to the Agreement, then RFP 2009-006 then AUDITOR'S response, then the Engagement Letter. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

9.2. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

10. **SEVERABILITY**

10.1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

11. **GOVERNING LAW**

11.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation shall be in Palm Beach County, Florida.

12. **WAIVER**

12.1. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

13. **NOTICES/AUTHORIZED REPRESENTATIVES**

13.1. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by private postal service, addressed to the parties at the following addresses:

For the TOWN: Town of Loxahatchee Groves
 Attention: Frank Spence, Town Manager
 14579 Southern Boulevard, Suite #2
 Loxahatchee Groves, Florida 33470
 Telephone: (561) 793-2418
 Facsimile: (561) 793-2420

Copy to: Michael D. Cirullo, Jr., Office of the Town Attorney
 3099 East Commercial Blvd. Suite 200
 Fort Lauderdale, Florida 33308
 Telephone: 954-771-4500
 Facsimile: 954-771-4923

For AUDITOR: Nowlen, Holt & Miner, P.A.
 215 Fifth Street, Suite 200

West Palm Beach, FL 33402
Phone: (561) 659-3060
Facsimile: (561) 835-0628

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

14. **INDEPENDENT AUDITOR**

14.1. AUDITOR is and shall remain an independent contractor and is not an employee or agent of the TOWN. Services provided by AUDITOR shall be by employees of AUDITOR working under the supervision and direction of AUDITOR and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the TOWN. AUDITOR agrees that it is a separate and independent enterprise from the TOWN.

14.2. AUDITOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with AUDITOR. This Agreement shall not be construed as creating any joint employment relationship between AUDITOR and the TOWN, and the TOWN will not be liable for any obligation incurred by AUDITOR, including but not limited to unpaid minimum wages and/or overtime payments.

15. **STAFFING/REMOVAL**

15.1 If at any time during the term of this Agreement the TOWN Manager becomes dissatisfied with the performance of any of AUDITOR'S staff assigned to provide services under this Agreement, the TOWN Manager may request that the particular employee be removed from servicing this account. Representatives of AUDITOR and the TOWN Manager shall meet to discuss appropriate remedial action to alleviate the performance deficiencies experienced by the TOWN. If the proposed resolution is unsatisfactory to the Town Manager, AUDITOR shall reassign said personnel out of the TOWN within 3 calendar days of notification by the Town Manager.

15.2 AUDITOR agrees to act in good faith and to use its best efforts to resolve any problems experienced by the TOWN.

15.3 AUDITOR shall be responsible for maintaining current background checks on all employees and agents assigned to work in the TOWN. Background checks for each individual must be performed prior to providing any services to the TOWN.

Written verification of any background checks must be provided to the TOWN if requested by the Town Manager.

16. **WAIVER OF JURY TRIAL**

16.1. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to a trial by jury.

17. **ASSIGNMENT/SUBCONTRACTS**

17.1. This Agreement shall not be assignable by AUDITOR without the prior approval of the Town Council, at the TOWN'S sole discretion.

17.2. AUDITOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the Town Manager, which shall be on his or her sole and absolute discretion.

18. **PROHIBITION AGAINST CONTINGENT FEES/CONFLICTS**

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

18.2. Neither AUDITOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with AUDITOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

18.3. AUDITOR agrees that none of its officers or employees shall, during the Term or any renewal term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process.

19. **WARRANTIES OF AUDITOR**

19.1. AUDITOR warrants and represents that at all times during the Term or any renewal term of this Agreement that it shall maintain in good standing with the State of Florida, that all required licenses and certificates of AUDITOR and its employees and agents required to perform services hereunder under federal, state and local laws necessary to perform the Scope of Services specified in this Agreement shall remain current and active.

- 19.2 AUDITOR warrants and represents that its employees have received sexual harassment training and that AUDITOR maintains appropriate sexual harassment and anti-discrimination policies.
- 19.3 The AUDITOR warrants and represents that it does not unlawfully discriminate (as proscribed by federal, state, county, or other local law) on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age above the age of 21, sexual orientation, gender identity or expression, marital status, pregnancy, familial status, veterans status, political affiliation, or physical or mental disability. AUDITOR shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.
- 19.4 AUDITOR represents that all persons delivering the Auditing Services as required by this Agreement have the requisite knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and agrees to provide and perform such Auditing Services to TOWN'S satisfaction for the agreed compensation.
- 19.5 AUDITOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.
- 19.6 AUDITOR shall comply with all applicable federal, state, county and TOWN laws, rules and regulations in the performance of Auditing Services.
- 19.7 The audit firm's professional personnel have received adequate continuing professional education within the proceeding two (2) years in accordance with the requirements of the Florida State Board of Accountancy and *Government Auditing Standards*.

20. **ATTORNEYS' FEES**

- 20.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

TOWN

ATTEST:

BY: David Browning
DAVID BROWNING, MAYOR

Gen Harper
OFFICE OF THE TOWN CLERK

APPROVED AS TO FORM: COUNCIL Approved
12-1-2009

[Signature]
MICHAEL D. CIRULLO, JR.
TOWN ATTORNEY OFFICE

AUDITOR
NOWLEN, HOLT & MINER, P.A.

WITNESSES:

Jamie Ahrens
Judy Drake
ATTEST:

BY: Edward T. Holt

Robert Herby, Jr.
SECRETARY

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing Agreement was acknowledged before me this 8TH day of JANUARY, 2010, by EDWARD T. HOLT, as PRESIDENT of Nowlen, Holt & Miner, P.A., a Florida Corporation, who is personally known to me and who has affirmed that he/she has been duly authorized to execute the above document on behalf of the corporation.

NOTARY'S SEAL:

Geraldine Sibel
NOTARY PUBLIC, STATE OF FLORIDA



GERALDINE SIBEL
Name of Acknowledger, typed, printed, or Stamped

Exhibit "A"

Request for Proposals 2009-006



REQUEST FOR PROPOSALS

DATE: OCTOBER 19, 2009

RFP NO. 2009-006

ALL INTERESTED PARTIES:

The Town of Loxahatchee Groves, Florida, hereinafter referred to as TOWN, will receive sealed Proposals at the office of the Town Office at 14579 Southern Boulevard, Suite 2, Loxahatchee Groves, Florida 33470 for the services described below:

FINANCIAL AUDITING SERVICES

Sealed Proposals must be received and time stamped in by the Town Clerk, either by mail or hand delivery, no later than 2:00 p.m. local time on November 2, 2009. A public opening will take place at 2:00 p.m. at the Town Office at 14579 Southern Blvd, Suite 2, Loxahatchee Groves, Florida 33470). Any Proposals received after 2:00 p.m. local time on said date will not be accepted under any circumstances. Any uncertainty regarding the time a Proposal is received will be resolved against the Offeror.

TOWN reserves the right to reject any or all Proposals, to waive any informalities or irregularities in any Proposals received, to re-advertise for Proposals, to award in whole or in part to one or more Offerors, or take any other such actions that may be deemed to be in the best interests of the TOWN.

Michelle Kantor
Town Clerk

I. INTRODUCTION

A. GENERAL INFORMATION

The Town of Loxahatchee Groves is requesting proposals from qualified firms of certified public accountants to audit its financial statements for an initial three (3) year period beginning with the fiscal year ending September 30, 2009. These audits are to be performed in accordance with generally accepted auditing standards and the standards for financial audits set forth in the U.S. Government Accountability Office's (GAO) Government Auditing Standards "the Yellow Book", the provisions of the Federal Single Audit Act Amendments of 1996, U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and the provisions of the Florida Single Audit Act.

B. TERM OF ENGAGEMENT

A three (3) year contract is contemplated, with annual renewal options, subject to the annual review and recommendation of the Financial Advisory and Audit Committee, the satisfactory negotiation of terms (including a price acceptable to both the Town of Loxahatchee Groves and the selected firm), the concurrence of the Town Council and the annual availability of an appropriation.

II. SCOPE OF SERVICES

A. GENERAL

The Town of Loxahatchee Groves is soliciting the services of qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2009 for three (3) years, with two one-year renewal options, to audit the Town of Loxahatchee Groves financial statements. These audits are to be performed in accordance with the provisions contained in this request for proposals.

B. SCOPE OF WORK TO BE PERFORMED

The Town of Loxahatchee Groves desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with accounting principles generally accepted in the United States of America and the financial reporting requirements of Governmental Accounting Standards Board Statement No. 34, "Basic Financial Statements – and Management's Discussion and Analysis for State and Local Governments" and related pronouncements.

The auditor is not required to audit the combining and individual fund and account group financial statements and supporting schedules. However, the auditor is to provide an "in-relation-to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements. The auditor is not required to audit the statistical section of the report.

The auditor shall also be responsible for performing certain limited procedures involving the required Management's Discussion and Analysis and the required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.

The auditor is required to audit and express opinions on internal controls and compliance of the schedule of federal and state financial assistance.

The auditor may be requested to perform other auditing services at the discretion of the Town. Any such additional work agreed to between the Town of Loxahatchee Groves and the firm shall be performed only after a written agreement has been made.

C. AUDITING STANDARDS TO BE FOLLOWED

To meet the requirements of this request for proposals, the audit shall be performed in accordance with:

1. Generally accepted auditing standards and Audits of State and Local Governmental Units (revised) as issued by the American Institute of Certified Public Accountants (AICPA);
2. Government Auditing Standards, as issued by the Comptroller General of the United States;
3. Circular No. A-133, Audits of State and Local Governments "the Yellow Book", Office of Management and Budget as well as the following additional requirements;
4. The provisions of the Federal Single Audit Act (as amended);
5. The provisions of the Florida Single Audit Act (as amended);
6. State of Florida Department of Banking and Finance Regulations;
7. Rules of the Auditor General for the State of Florida relating to Section 11.45(3)(a) 4 of the Florida Statutes; and
8. Other applicable federal, state and local laws or regulations.

D. REPORTS TO BE ISSUED

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue the following:

1. A report on the fair presentation of the basic financial statements as a whole, in conformity with generally accepted accounting principles.
2. A report on the internal control based on the auditor's understanding of the control structure and assessment of control risk.
3. A report on compliance with laws and regulations.

4. A "management letter" required by Section 218.3(9)(4), Florida Statutes.
5. Reports required by the Single Audit Act of 1996 and OMB Circular A-133 to include:
 - a. An opinion on the financial statements and on the supplementary schedule of expenditures of federal awards and state financial assistance.
 - b. A report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards.
 - c. A report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133.
 - d. A schedule of findings and questioned costs.
 - e. Non-reportable conditions discovered by the auditors shall be reported in the management letter required by Florida Statutes 218.3(9)(4), which shall be referred to in the report on internal control structure and compliance.
 - f. For any irregularities and illegal acts the auditor shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the Director of Finance, Town Manager and Town Council as appropriate.

Use of the audited financial statements, opinions or any of the above named reports will not result in additional compensation unless their use requires additional certification or services on the part of the firm.

The auditor shall submit a signed audit report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America no later than March 12, for the previous fiscal year ending September 30, along with the required reports on internal control structure and compliance with laws and regulations.

E. SPECIAL CONSIDERATIONS

1. The Town of Loxahatchee Groves will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the auditor will be required to provide special assistance to the Town of Loxahatchee Groves to meet the requirements of that program by providing technical advice.
2. The schedules of federal and state financial assistance and related auditor's report, as well as the reports on the internal control and compliance, are to be issued in conjunction with the comprehensive annual financial report.

3. The Town may, during the period of this contract, prepare one or more official statements in connection with the sale of debt securities, which will contain the basic financial statements and the auditor's report thereon. The auditor shall be required, if requested by the financial advisor and/or the underwriter, to issue a "consent and citation of expertise" as the auditor and any necessary "comfort letters."
4. Read the financial report of the Town filed with the Department of Banking and Finance, State of Florida, pursuant to Section 218.32, Florida Statutes, to verify that it is in agreement with the financial statements for the year ended September 30.
5. The auditor will assist the Town in complying with changes in reporting requirements to remain in conformity with accounting principles generally accepted in the United States of America.
6. The auditor will offer, at no expense to the Town, an annual government-training seminar to the Town's staff and FAAC members. This seminar will be offered locally and award sixteen (16) hours of CPE credits.
7. Comprehensive Annual Financial Report (CAFR) Preparation
 - a. The auditor shall draft and prepare all individual, combining and entity wide Financial Statements (including all conversions from fund level to government wide), the notes to the Financial Statements, and the Independent Auditor's reports. The auditor shall maintain depreciation schedules for government wide statements, with the information supplied by the Town. The Auditor shall prepare the schedule of state and federal awards. Additionally, the Auditor shall prepare the data collection form. The Town of Loxahatchee Groves will be responsible for supplying the auditor with the appropriate financial records from the Town's work papers. Additionally, the Town will provide the information for the introductory section (including the transmittal letter), management's discussion and analysis and information for statistical schedules. Upon receipt of all of the appropriate information, the auditor will be responsible for finalizing the CAFR, and delivering a camera-ready original of the CAFR in accordance with Section III B, Schedule for Conducting Audits. The Town will be responsible for supplying the tabs and covers, and for the printing of the CAFR.
8. The Auditor's proposal should include a brief explanation of the impact of GASB Statements 43, 44 and 45, and their affect on the preparation of the CAFR, including any audit implications. The Town will be implementing GASB 44 for fiscal year 2009. The Town will require assistance from the Auditor in the implementation of all existing and future GASB pronouncements.
9. Performance Standards

- a. A minimum of 95% of all responses to any of the Town's questions or inquiries should occur within two (2) business days of notification to auditor. For example, the Town may have a technical question about a transaction.
- b. The auditor shall respond to any emergency request for service within eight (8) business hours. For example, if the Town detects a problem such as fraud or illegal action, the Town would likely need immediate assistance.
- c. The deadlines in Section III (Time Requirements) B (Schedule for Conducting Audits) and C (Date Final Report is Due) shall be met.

In addition to the performance measures above, the auditor will also be evaluated by FAAC with input from Town staff on a regular basis regarding the quality of service and the timeliness of data exchange.

F. WORKING PAPER RETENTION AND ACCESS TO WORKING PAPERS

All working papers and reports must be retained in accordance with requirements and procedures set forth by the General Records Schedule for Local Government Agencies as promulgated by the Division of Archives, History and Records Management (a division of the Florida Department of State) at the auditor's expense, unless the firm is notified in writing by the Town of Loxahatchee Groves of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- Town of Loxahatchee Groves,
- U.S. Government Accountability Office (GAO),
- Auditors of entities of which the Town of Loxahatchee Groves is a sub-recipient of grant funds,
- Parties designated by the federal or state governments or by the Town of Loxahatchee Groves as part of an audit quality review process.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

G. SELF-INSURANCE

None.

H. NAME AND TELEPHONE NUMBER OF CONTACT PERSONS

The auditor's principal contact with the Town of Loxahatchee Groves will be Frank R. Spence, Town Manager (561-793-2418) who will coordinate the assistance to be provided by the Town of Loxahatchee Groves through his Finance Director Holly Hugdahl (954) to the auditor.

I. BACKGROUND INFORMATION

1. The Town of Loxahatchee Groves serves an area of 7687 acres of land with a population of approximately 3400.

The Town of Loxahatchee Groves fiscal year begins on October 1st and ends on September 30th. The Town of Loxahatchee Groves has no payroll and has a contractual agreement with Town Staff (Clerk, Manager and Attorney.)

The Town of Loxahatchee Groves is organized into three (3) departments:

1. Town Council
2. Town Management (Manager & Clerk) (Contracted Services)
3. Town Attorney (Contracted Services)

The total net budget for fiscal year 2009 is \$2.039 million.

More detailed information on the government and its finances can be found in the Town's Annual Budget document, Comprehensive Annual Financial Report, and Code of Ordinances available through the Town Management Office, located at Town of Loxahatchee Groves Management Office. All requests for this additional information shall be directed to the Frank R. Spence at (561) 793-2418.

J. FUND STRUCTURE

The Town of Loxahatchee Groves uses the following fund types in its financial reporting:

<u>Fund Type</u>	<u>Number of Individual Funds</u>	<u>Number With Legally Adopted Annual Budgets</u>
General fund	<u>1</u>	<u>1</u>
Special revenue funds	_____	_____
Debt service fund	_____	_____
Capital projects funds*	_____	_____
Enterprise funds*	_____	_____
Internal service funds	_____	_____
*Possible additions in the future		

The Town of Loxahatchee Groves prepares its budget on a basis consistent with GAAP. The Town implemented GASB 34 in fiscal year 2007-2008.

K. BUDGETARY BASIS OF ACCOUNTING

The Town of Loxahatchee Groves prepares its budgets on a basis consistent with generally accepted accounting principles (GAAP) for the General Fund.

L. FEDERAL AND STATE FINANCIAL ASSISTANCE

None

M. FEDERAL EQUITABLE SHARING

None

O. COMPONENT UNITS:

The Town of Loxahatchee Groves is defined, for financial reporting purposes, in conformity with the Governmental Accounting Standards Board's Codification of Governmental Accounting and Financial Reporting Standards, Section 2100. Using these criteria, component units are included in the Town of Loxahatchee Groves financial statements.

P. JOINT VENTURES

The Town of Loxahatchee Groves does not participate in joint ventures with other governments.

Q. SIZE OF FINANCE OPERATIONS

The Finance Department is headed by Holly Hugdahl and overseen by Town Manager Frank R. Spence.

S. AVAILABILITY OF PRIOR AUDIT REPORTS AND WORKING PAPERS

Interested proposers who wish to review prior years' audit reports and management letters should contact Frank R. Spence at (561) 793-2418. The Town of Loxahatchee Groves will use its best efforts to make prior audit reports and supporting working papers available to proposers to aid their response to this request for proposal.

III. TIME REQUIREMENTS

A. PROPOSAL CALENDAR AND NOTIFICATION AND CONTRACT DATES

The schedule of events, relative to the procurement shall be as follows:

<u>Event</u>	<u>Date (on or by)</u>
1. Issuance of Request for Proposals	Thursday, October 22, 2009
2. Due Date of Proposals	Monday, November 2 – 2 pm
3. Public Opening	Monday, November 2 – 2 pm
4. Shortlist by FAAC	Thursday, November 5 – 6 pm
3. Presentation to FAAC	Thursday, November 12
4. Award of Contract by Council	Tuesday, November 17 – 6 pm

TOWN reserves the right to change and/or delay scheduled dates.

B. SCHEDULE FOR CONDUCTING AUDITS

During the period of the External Audit Services contract, the auditor shall complete each of the following no later than the dates indicated below for each audit:

1. Interim Work

The auditor shall complete interim work by February 28 of the first year and January 30 of each year thereafter.

2. Draft Reports

The auditor shall have drafts of the audit report and recommendations with Town Management responses to the FAAC for review by March 15th of each year.

3. Final Report

The auditor will be responsible for delivery of a camera ready original of the Comprehensive Annual Financial Report (CAFR) to the Town Management Office by March 30th of each year. The Town of Loxahatchee Groves will be responsible for supplying the tabs, covers, and for the printing of the CAFR.

C. DATE FINAL REPORT IS DUE

It is anticipated that the auditor will deliver the opinion letter, management letter, and all requested reports by March 15th of each year.

IV. PROPOSAL REQUIREMENTS

A. SUBMISSION OF PROPOSALS

The following materials should be submitted for a proposing firm to be considered:

1. An original copy (so marked) of the Proposal and seven (7) copies should be submitted to the Town of Loxahatchee Groves, 14579 Southern Blvd, Suite 2, Loxahatchee Groves, FL 33470 to the attention of Frank R. Spence, Town Manager. It should include the following:
 - a. Title Page. Title page showing the request for proposals' subject, the firm's name, the name, address and telephone number of contact person, and the date of the proposal.
 - b. Table of Contents. The table of contents of the proposal should include a clear and complete identification of the materials submitted by section and page number.
 - c. Transmittal Letter. This letter will summarize in a brief and concise manner the Proposer's understanding of the work to be performed, the commitment to perform the work within the anticipated time period, a statement why the firm believes itself to be best qualified to perform the engagement, and a statement that the proposal remains in effect for ninety (90) days. An authorized agent of the Proposer must sign the Letter of Transmittal indicating the agent's title or authority.
 - d. Technical Proposal The detailed proposal should follow the order set forth in Section IV (B) of this Request for Proposal.
 - e. Price Proposal As detailed in Section IV (C) of this request for proposals.
 - f. Addenda Refer to Section IV (D), Addenda, Additional Information.
2. Proposals must be submitted in a sealed envelope clearly marked with the name of the audit firm "Request for Proposal RFP 2009-006, Financial Auditing Services, Deadline: November 2, 2009, 2:00 p.m."

B. TECHNICAL PROPOSAL

1. General Requirements

The purpose of the technical proposal is to demonstrate the qualifications, competence of the firms seeking to undertake an independent audit of the Town of Loxahatchee Groves in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than their form or manner of presentation. The technical proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

The technical proposal should address all the points outlined in the request for proposals. The Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item Nos. 2 through 9, must be included. They represent the areas in which the proposal will be evaluated.

2. Independence

The firm should provide an affirmative statement that it is independent of the Town of Loxahatchee Groves as defined by generally accepted auditing standards and the U.S. General Accounting Office's Government Auditing Standards. The firm also should provide an affirmative statement that it is independent of all of the component units of the Town of Loxahatchee Groves as defined by those same standards.

The firm should also list and describe the firm's professional relationships involving the Town of Loxahatchee Groves or any of its component units for the past three (3) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

In addition, the firm shall give the Town of Loxahatchee Groves written notice of any professional relationships entered into during the period of this agreement.

3. License to Practice in Florida

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in Florida.

4. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be noted, if applicable.

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition,

the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

The firm shall also disclose any on-going litigation or regulatory investigation in which any partners or staff may have been involved in.

5. Partner, Supervisory and Staff Qualifications and Experience

Identify the engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in Florida. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the prior written permission of the Town of Loxahatchee Groves. However, in either case, the Town of Loxahatchee Groves retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the prior written permission of the Town of Loxahatchee Groves, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

6. Prior Engagements with the Town of Loxahatchee Groves

List separately all engagements within the last three years, for the Town of Loxahatchee Groves by type of engagement (i.e., audit, management advisory services, other). Indicate the scope of work, date, engagement partners, the location of the firm's office from which the engagement was performed, and the name and telephone number of the principal client contact.

7. Similar Engagements With Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 5) performed in the last five years that are similar to the engagement described in this request for proposal. These engagements should be ranked on the basis of total staff hours.

Indicate the scope of work, date, engagement partners, and the name and telephone number of the principal client contact.

8. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposal. In developing the work plan, reference should be made to such sources of information as the Town of Loxahatchee Groves budget, financial and other management information, which is available by contacting the Management Office at (561) 793-2418.

Proposers will be required to provide the following information on their audit approach:

- a. Proposed segmentation of the engagement
- b. Level of staff to be assigned to each proposed segment of the engagement
- c. Sample size and the extent to which statistical sampling is to be used in the engagement
- d. Extent of use of EDP software in the engagement
- e. Type and extent of analytical procedures to be used in the engagement
- f. Approach to be taken to gain and document an understanding of the Town of Loxahatchee Groves internal control
- g. Approach to be taken in determining laws and regulations that will be subject to audit test work
- h. Approach to be taken in drawing audit samples for purposes of tests of compliance
- i. Approach to be taken concerning fraud

9. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problem and any special

assistance that will be requested from the Town of Loxahatchee Groves.

C. PRICE PROPOSAL

1. Submit your signed, firm, fixed fee performance-based cost proposal for providing all services, materials, etc., required for completion of services in accordance with your technical proposal. Include the cost of each audit for each of the next four (4) fiscal years: 2009 – 2013.
2. Rates for Additional Professional Services

If it should become necessary for the Town of Loxahatchee Groves to request the auditor to render any additional services to either supplement the services requested in this Request for Proposal or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only upon a written agreement between the Town of Loxahatchee Groves and the firm.

3. Manner of Payment

Payments will be based on a schedule of payments to be developed upon awarding of the contract. The Town reserves the right to inspect records supporting the auditor's billings.

D. ADDENDA, ADDITIONAL INFORMATION

Any addenda or answers to written questions supplied by the Town to participating Offeror's become part of this Request for Proposal and the resulting contract. This proposal form shall be signed by an authorized company representative, dated and returned with the proposal.

No negotiations, decisions or actions shall be initiated or executed by the Offeror as a result of any discussions with any Town employee. Only those communications which are in writing from the Purchasing Manager may be considered as a duly authorized expression. Also, only communications from Offerors which are signed and in writing will be recognized by the Town as duly authorized expressions on behalf of the Offeror.

V. EVALUATION OF PROPOSALS

A. Evaluation Method and Criteria

A selection committee appointed by the Town of Loxahatchee Groves will evaluate proposals submitted.

COST WILL NOT BE THE PRIMARY FACTOR IN THE SELECTION OF AN AUDIT FIRM.

As the best interest of the Town may require, the right is reserved to reject any and all proposals or waive any minor irregularity or technicality in proposals received.

The successful proposer shall be required to execute a Town contract covering the scope of services to be provided and setting fourth the duties, rights and responsibilities of the parties.

B. Oral Presentations

During the evaluation process, the Selection Committee may, at its discretion, request firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the Selection Committee may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

C. Final Selection

The Town of Loxahatchee Groves will select/award the firm which best meets the interests of the Town. The Town shall be the sole judge of its own best interests, the proposals, and the resulting negotiated agreement. The Town's decision will be final.

VI. SUMMARY OF DOCUMENTS TO BE SUBMITTED WITH PROPOSALS

Samples of the following documents (except the Certificate of Insurance), are attached and shall be executed as a condition to this offer:

- (a) Proposal and Offeror's Certification
- (b) Non-Collusive Affidavit
- (c) Qualifications Statement

VII. AWARD OF CONTRACT

The contract or contracts shall be awarded to the responsible Offeror whose proposal is determined to be the most advantageous to the Town, taking into consideration the evaluation factors and criteria set forth in the Request for Proposals.

VIII. GENERAL CONDITIONS

A. PUBLIC ENTITY CRIMES INFORMATION STATEMENT: “A person or Affiliate who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplies, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

B. DISCRIMINATORY VENDOR LIST: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

IX. INSURANCE

The Proposer shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which shall be determined by the TOWN. Additionally, any subcontractor hired by the Proposer for this contract shall provide insurance coverage as well. The Town shall be named “additional insured” under the appropriate policies

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS AN INDIVIDUAL

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal

Form this _____ day of _____, 200__.

By: _____
Signature of Individual

Witness

Printed Name of Individual

Witness

Business Address

Town/State/Zip

Business Phone Number

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ (Name), who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A FICTITIOUS OR TRADE NAME

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this _____ day of _____, 200__.

Printed Name of Firm

By: _____
Signature of Owner

Witness

Printed Name of Individual

Witness

Business Address

Town/State/Zip

Business Phone Number

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____ (Name), who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp, or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A PARTNERSHIP

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this day of _____, 200__.

Printed Name of Partnership

By: _____
Signature of General or Managing Partner

Witness

Printed Name of partner

Witness

Business Address

Town/State/Zip

Business Phone Number

State of Registration

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____ (Name), _____ (Title) of _____ (Name of Company) who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Counciled)

OFFEROR'S CERTIFICATION

WHEN OFFEROR IS A CORPORATION

IN WITNESS WHEREOF, the Offeror hereto has executed this Proposal Form this _____
day of _____, 200__.

Printed Name of Corporation

Printed State of Incorporation

By: _____
Signature of President or other authorized officer

(CORPORATE SEAL)

Printed Name of President or other authorized
officer

ATTEST:

Address of Corporation

By _____
Secretary

Town/State/Zip

Business Phone Number

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____,
2006, by _____ (Name), _____ (Title) of
_____ (Company Name) on behalf of the
corporation, who is personally known to me or who has produced _____
_____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or type as Counciled)

NON-COLLUSIVE AFFIDAVIT

State of _____)

)ss.

County of _____)

_____ being first duly sworn, deposes and says that:

- (1) He/she is the _____, (Owner, Partner, Officer, Representative or Agent) of _____ the Bidder that has submitted the attached Bid;
- (2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from bidding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered
in the presence of:

By:

(Printed Name)

(Title)

ACKNOWLEDGMENT

State of
County of

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is

personally known to me or who has produced _____ as
identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or Type as Counciled)

**OFFEROR'S
QUALIFICATION STATEMENT**

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

SUBMITTED TO: Town of Loxahatchee Groves
ADDRESS: 14579 Southern Boulevard, Suite 2
Loxahatchee Groves, Florida 33470

CIRCLE ONE

SUBMITTED BY: Corporation
NAME: Partnership
ADDRESS: Individual
PRINCIPAL OFFICE: Other

1. State the true, exact, correct and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

The correct name of the Offeror is:
The address of the principal place of business is:

2. If Offeror is a corporation, answer the following:

- a. Date of Incorporation:
- b. State of Incorporation:
- c. President's name:
- d. Vice President's name:
- e. Secretary's name:
- f. Treasurer's name:
- g. Name and address of Resident Agent:

3. If Offeror is an individual or a partnership, answer the following:

- a. Date of organization:
- b. Name, address and ownership units of all partners:

c. State whether general or limited partnership:

9. State the names, telephone numbers and last known addresses of five (5) owners, individuals or representatives of owners with the most knowledge of work which you have performed, and to which you refer.

(name) (address) (phone number)

(name) (address) (phone number)

(name) (address) (phone number)

(name) address) (phone number)

(name) (address) (phone number)

10. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).

N/A Included in RFP Request

11. State the name of the individual who will have personal supervision of the work:

N/A Included in RFP Request

THE OFFEROR ACKNOWLEDGES AND UNDERSTANDS THAT THE INFORMATION CONTAINED IN RESPONSE TO THIS QUALIFICATIONS STATEMENT SHALL BE RELIED UPON BY OWNER IN AWARDING THE CONTRACT AND SUCH INFORMATION IS WARRANTED BY OFFEROR TO BE TRUE. THE DISCOVERY OF ANY OMISSION OR MISSTATEMENT THAT MATERIALLY AFFECTS THE OFFEROR'S QUALIFICATIONS TO PERFORM UNDER THE CONTRACT SHALL CAUSE THE OWNER TO REJECT THE PROPOSAL, AND IF AFTER THE AWARD TO CANCEL AND TERMINATE THE AWARD AND/OR CONTRACT.

(Signature)

State of _____
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

NOTARY PUBLIC

(Name of Notary Public: Print, Stamp,
or Type as Counciled)

Exhibit "B"

Response of AUDITOR to Request for Proposals 2009-006

(Proposal in Binder)

Exhibit "C"

November 24, 2009, Engagement Letter

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NOWLEN, HOLT & MINER, P.A.

CERTIFIED PUBLIC ACCOUNTANTS

 WEST PALM BEACH OFFICE
 215 FIFTH STREET, SUITE 200
 POST OFFICE BOX 347
 WEST PALM BEACH, FLORIDA 33402-0347
 TELEPHONE (561) 659-3060
 FAX (561) 895-0828

November 24, 2009

Frank R. Spence
 Town Manager
 Town of Loxahatchee Groves, Florida
 14579 Southern Blvd, Suite 2
 Loxahatchee Groves, Fl 33470

 EVERETT B. NOWLEN (1930-1994), CPA
 EDWARD T. HOLT, CPA
 WILLIAM B. MINER, CPA
 ROBERT W. HENDRIX, JR., CPA
 JANET R. BARICEVICH, CPA

 KATHLEEN A. MINER, CPA
 ROBERT W. HELMREICH, CPA
 TERRY L. MORTON, JR., CPA
 N. RONALD BENNETT, CPA
 J. MICHAEL STEVENS, CPA
 DANIEL A. KIRCHMAN, CPA
 ALEXIA G. VARGA, CPA
 BRIAN J. BRESCIA, CFP®, CPA
 DANIEL S. YOUNG, CPA
 KARA D. PETERSON, CPA

 BELLE GLADE OFFICE
 333 S. E. 2nd STREET
 POST OFFICE BOX 338
 BELLE GLADE, FLORIDA 33430-0338
 TELEPHONE (561) 998-5612
 FAX (561) 998-6248

Honorable Mayor, Town Council and Town Manager:

We are pleased to confirm our understanding of the services we are to provide the Town of Loxahatchee Groves, Florida for the years ended September 30, 2009, 2010, and 2011, with options to renew for 2012 and 2013. We will audit the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of Town of Loxahatchee Groves, Florida as of and for the years then ended. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany Town of Loxahatchee Groves, Florida's basic financial statements. As part of our engagement, we will apply certain limited procedures to Town of Loxahatchee Groves, Florida's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Budgetary Comparison Schedule – General Fund

The following additional information accompanying the basic financial statements which is part of the Comprehensive Annual Report (CAFR) will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will disclaim an opinion:

1. Introductory Section
2. Statistical Section

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records of the Town of Loxahatchee Groves, Florida and other procedures we consider necessary to enable us to express such opinions. If our opinions on the financial statements are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and compliance will include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity, and specific legislative or regulatory bodies and is not intended to be and should not be used by anyone other than these specified parties. If during our audit we become aware that the Town of Loxahatchee Groves, Florida is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will assist with preparation of your financial statements and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an

individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the Town of Loxahatchee Groves, Florida and the respective changes in financial position and cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other

noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Town of Loxahatchee Groves, Florida's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Engagement Administration, Fees, and Other

We will provide copies of our reports to the Town; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Nowlen, Holt & Miner, P.A. and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to the Florida Auditor General, a state agency providing direct or indirect funding, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Nowlen, Holt & Miner, P.A. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested. If we are aware that a federal awarding agency or auditee is contesting an audit

finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit in the beginning of December 2009 and to issue our reports no later than March 15, 2010. Edward T. Holt is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fee for these services will be as documented in our proposal. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2006 peer review report accompanies this letter.

We appreciate the opportunity to be of service to the Town of Loxahatchee Groves, Florida and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know.

Sincerely,



Nowlen, Holt & Miner, P.A.



Item 10.

NEW BUSINESS

None