

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of the Right-of-Way Utilization Permit Maintenance Bond for Chuluota Waste Water Treatment Plant

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord **CONTACT:** Lee Shaffer **EXT:** 7346

MOTION/RECOMMENDATION:

Authorize the release of the Chuluota Waste Water Treatment Right-of-Way Utilization Permit Maintenance Bond #929373721MTC in the amount of \$22,440.00 for the Chuluota Waste Water Treatment Plant road improvements.

District 1 Bob Dallari

Lee Shaffer

BACKGROUND:

Section 35.44 (e) of the Seminole County Land Development Code, concerning Additional Required Legal Submittals, required the Chuluota Waste Water Treatment Plant project to have a Right-of-Way Utilization Maintenance Bond, specifically, Maintenance Bond #929373721MTC for \$22,440.00 (Western Surety Company), to insure against any significant degradation in operating conditions resulting from any defective work covered by this bond. Staff conducted a two year maintenance inspection for this project located at Tenth Street and Avenue C and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the Chuluota Waste Water Treatment Plant Right-of-Way Utilization Permit Maintenance Bond #929373721MTC in the amount of \$22,440.00 for the Chuluota Waste Water Treatment road improvements.

ATTACHMENTS:

- 1. ROW Utilization Permit Maintenance Bond
- 2. Power of Attorney

<p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (Kathleen Furey-Tran)</p>

RIGHT-OF-WAY USE PERMITTING

RIGHT-OF-WAY UTILIZATION PERMIT MAINTENANCE BOND
(Streets, Curbs, Storm Drains)

Bond No. 929373721MTC

KNOW ALL MEN BY THESE PRESENTS:

That we Wharton-Smith, Inc., whose address is 750 Monroe Road, Sanford, FL 32771, hereinafter referred to as "PRINCIPAL" and Western Surety Company, hereinafter referred to as "SURETY" are held and firmly bound unto Seminole County, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the COUNTY in the sum of \$ 22,440.00 for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, PRINCIPAL has constructed certain improvements, including streets, curbs, storm drains and other appurtenances in that certain public right-of-way known as Tenth Street, recorded in Plat Book #2, Page(s) 54-58, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated April 5th, 2005, and filed with the County Engineer of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said improvements for a period of two (2) years from May 14th, 2007;

NOW, THEREFORE, the condition of this obligation is such that if PRINCIPAL shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid improvements for a period of (2) years from May 14th, 2007, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

The SURETY unconditionally covenants and agrees that if the PRINCIPAL fails to perform, within the time specified, the SURETY, upon 30 days written notice from COUNTY, or its authorized agent or officer, of the default will forthwith correct such defect or defects and pay the cost thereof, including, but not limited to engineering, legal and contingent cost. Should the SURETY fail or refuse to correct said defects, the COUNTY, in view of the public interest, health, safety, welfare and factors involved, and the consideration in approving the said permit shall have the right to resort to any and all legal remedies against the PRINCIPAL and SURETY and either, both at law and in equity, including specifically, specific performance to which the PRINCIPAL and SURETY unconditionally agree.

Project Title: Chuluota Wastewater Treatment Facility Expansion, 125 East 10th Street, Chuluota, FL 32766

The PRINCIPAL and SURETY further jointly and severally agree that the COUNTY at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, caused to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL and the SURETY shall be jointly and severally hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent cost, together with any damages either direct or consequent which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the Principal and the Surety have executed these presents this the 16th day of May, 2007.

Name and Address:
750 Monroe Road
Sanford, FL 32771

Wharton-Smith, Inc. (Seal)

PRINCIPAL

By: Ronald F. Davoli Its: President/CEO

(If a corporation)

Ronald F. Davoli

Attest: William C. Robinson, Jr. Its: Corporate Secretary

(If a corporation)

William C. Robinson, Jr.

Name and Address:
P.O. Box 5077
Sioux Falls, SD 57117-5077

Western Surety Company (Seal)

SURETY

By: Jennifer L. McCarta Its: Attorney-In-Fact

Its Attorney-in-Fact & Florida Licensed Resident Agent

Jennifer L. McCarta

Attest: Kathy Clawson
Kathy Clawson, Witness

Inquiries: (407) 834-0022

(App E, LDC, through Supp 16).

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

J W Guignard, Bryce R Guignard, M Gary Francis, April L Lively, Paul J Ciambriello, Jennifer L McCarta, Margie L Morris, Brett A Ragland, Individually

of Longwood, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 11th day of October, 2006.



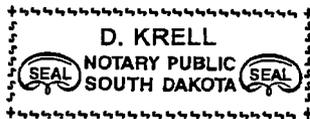
WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 11th day of October, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 16th day of May, 2007.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.