

MAR 07 2011

ORDINANCE NO. 2849

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO
EMPLOY TRIKOTE, LLC OF ST. LOUIS, MISSOURI TO
PERFORM THE DIEHL WATER TANK INTERIOR
PAINTING PROJECT IN THE CITY OF COLUMBIA,
ILLINOIS**

J. Ronald Colyer
City Clerk

WHEREAS, the City Council of the City of Columbia, Illinois (the "City") accepted the bid and awarded the contract to Trikote, LLC of St. Louis, Missouri (the "Contractor") at a regular meeting of the City Council held March 7, 2011 to perform the Diehl Water Tank Interior Painting Project in the City for a total price or sum of Fifty Four Thousand Nine Hundred Dollars (\$54,900.00);

WHEREAS, the Notice of Award will be given to the Contractor by the City after March 7, 2011 and the Contractor will execute and deliver to the City an Agreement to employ the Contractor to provide the material and to do and perform the work involved and the Contractor will provide the City with the required performance bond, labor and material bond, and certificate of comprehensive liability insurance which names the City as additionally insured, all of which are in due and proper form; and,

WHEREAS, it is necessary and appropriate that the City make and enter into the Agreement to employ the Contractor to provide the materials and to do and perform the work involved for the Diehl Water Tank Interior Painting Project aforesaid.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The Mayor is hereby authorized and directed to make and enter into the Agreement dated March 7, 2011 to employ the Contractor to perform the Diehl Water Tank Interior Painting work described above (which is more particularly described in the employment Agreement), in the form attached hereto, in at least three (3) counterparts; and, the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 3. The City Engineer, Ronald J. Williams, P.E., is directed to deliver to the Contractor the Contractor's copy of the Agreement for execution and to proceed with the preconstruction conference, if any, and the performance of the work involved.

Section 4. This Ordinance shall be in full force and effect, from and after its passage, as provided by law.

Alderman Row moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Agne, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Row, Hejna, Oberkfell, Stumpf and Roessler.

NAYS: None.

ABSENT: None.

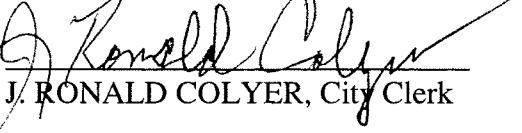
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 7th day of March, 2011.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2849, entitled:

"AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO EMPLOY TRIKOTE, LLC OF ST. LOUIS, MISSOURI TO PERFORM THE DIEHL WATER TANK INTERIOR PAINTING PROJECT IN THE CITY OF COLUMBIA, ILLINOIS."

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois City Council held on the 7th day of March, 2011.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 7th day of March, 2011.

J. Ronald Colyer
J. RONALD COLYER, City Clerk

(SEAL)

AGREEMENT FORM

This AGREEMENT is dated as of the _____ day of March in the year 2011 by and between the City of Columbia, Illinois (hereinafter called OWNER) and Trikote, LLC. (hereinafter called CONTRACTOR).

The OWNER and the CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Diehl Water Tank Interior Painting.

ARTICLE 2. ENGINEER

The Project has been designed by Horner & Shifrin, Inc., who is hereinafter called ENGINEER and who is to act as the OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1. The work will be substantially completed within 30 days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 45 days after the date when the Contract Time commences to run.

3.2. Liquidated Damages. The OWNER and the CONTRACTOR recognize that time is of the essence of this Agreement that OWNER will suffer financial loss if the Work is not substantially complete within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, the OWNER and the CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the OWNER Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if the CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the OWNER, CONTRACTOR shall pay the OWNER Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

4.1. The OWNER shall pay the CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

LUMP SUM CONTRACT PRICE:

Fifty Four Thousand Nine Hundred Dollars (\$54,900.00)
(Words) (Figures)

ARTICLE 5. PAYMENT PROCEDURES

The CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the ENGINEER as provided in the General Conditions.

5.1. Progress Payments. The OWNER will make progress payments on account of the Contract Price on the basis of the CONTRACTOR's Applications for Payment as recommended by the ENGINEER, on or about the 20th day of each month during Construction as provided below. All progress payments will be on the basis of the Work measured by the schedule of values established in paragraph 2.9 of the General Conditions.

5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as the ENGINEER shall determine, or the OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

90% of the Work completed. If Work has been 50% completed as determined by the ENGINEER, and if the character and progress of the Work have been satisfactory to the OWNER and the ENGINEER, the OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

5.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to the CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or the OWNER may withhold, in accordance with Paragraph 14.7 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 14.13 of the General Conditions, the OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in said paragraph 14.13.

ARTICLE 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce the OWNER to enter into this Agreement the CONTRACTOR makes the following representations:

7.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance of furnishing of the Work.

7.2. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by the CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including the provisions of paragraph 4.3 of the General Conditions.

7.3. CONTRACTOR has correlated the results of all such observations, examinations, investigations and explorations, with the terms and conditions of the Contract Documents.

7.4. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the OWNER and the CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 4, inclusive).
- 8.2. Payment Bond consisting of 2 pages.
- 8.3. Performance Bond consisting of 2 pages.
- 8.4. Notice of Award.
- 8.5. General Conditions (pages 1 to 42, inclusive)
- 8.6. Supplementary Conditions (pages 1 to 7, inclusive).
- 8.7. Specifications bearing the title Project Manual Diehl Water Tank Interior Painting, for the City of Columbia, Illinois.
- 8.8. CONTRACTOR'S Bid (3 pages).
- 8.9. Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 9. MISCELLANEOUS

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. The OWNER and the CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to the OWNER, the CONTRACTOR and the ENGINEER. All portions of the Contract Documents have been signed or identified by the OWNER and the CONTRACTOR or by the ENGINEER on their behalf.

This Agreement will be effective on March _____, 2011.

OWNER

CITY OF COLUMBIA, ILLINOIS

By _____

Kevin Hutchinson, Mayor

(CORPORATE SEAL)

Attest

By _____

J. Ronald Colyer, City Clerk

Address for giving notices:

City of Columbia
208 South Rapp Avenue
Columbia, Illinois 62236
Phone Number (618) 281-7144

CONTRACTOR

TRIKOTE, LLC.

By _____

Mark Breckenridge, Owner

(CORPORATE SEAL)

Attest

By _____

Address for giving notices:

TriKote, LLC.
P.O. Box 240622
St. Louis, Missouri 63024
Phone Number (314) 960-4582