

OCT 02 2006


Wesley J. Kremmel
City Clerk

ORDINANCE NO. 2499

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO
EMPLOY CUSTOM COATINGS, INC. OF ST. CHARLES,
MISSOURI TO PREPARE AND EXTERIOR SURFACE
PAINT THE MULE ROAD WATER TANK IN THE CITY OF
COLUMBIA, ILLINOIS**

WHEREAS, the City Council of the City of Columbia, Illinois (the "City") accepted the bid and awarded the contract to Custom Coatings, Inc. of St. Charles, Missouri (the "Contractor") at a regular meeting of the City Council held September 18, 2006 for the preparation and exterior surface painting of the Mule Road water tank in the City for a total price or sum of Fourteen Thousand Nine Hundred Fifty Dollars (\$14,950.00);

WHEREAS, the Notice of Award was given to the Contractor by the City on September 21, 2006 and the Contractor has agreed to 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 shall provide the City with the required performance bond, labor and material bond, and certificate of comprehensive liability insurance which names the City as an additional insured with the Public Works Employment Contract aforesaid, all of which shall be 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 preparation and exterior painting of the City's Mule Road water tank in the City.

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 to employ the Contractor to perform the preparation and exterior surface painting of the City's Mule Road water tank work described above (which is more particularly described in the Public Works employment Agreement attached hereto), and which is hereby approved as to form, 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 Acting City Engineer, Larry Kremmel, is directed to deliver to the Contractor a minimum of three (3) copies of the Agreement for the signature and return of two (2) fully executed copies to the City's Acting City Engineer 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 Conrad moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Agne, and the roll call vote was as follows:

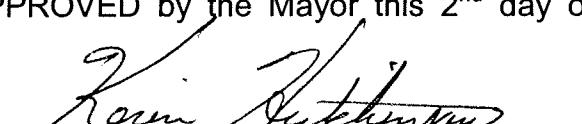
YEAS: Aldermen Conrad, Ebersohl, Agne, Niemietz, Unnerstall, Koesterer, Row and
Huch.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 2nd day of October, 2006


KEVIN B. HUTCHINSON, Mayor

ATTEST:

Wesley J. Hoeffken, City Clerk
WESLEY J. HOEFFKEN, City Clerk
by Storm K. Metoffey, Deputy Clerk
(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

I, Wesley J. Hoeffken, 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. 2499, entitled:

**"AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO
EMPLOY CUSTOM COATINGS, INC. OF ST. CHARLES,
MISSOURI TO PREPARE AND EXTERIOR SURFACE
PAINT THE MULE ROAD WATER TANK 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 2nd day of October, 2006.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 2nd day of October, 2006.

(SEAL)

Wesley J. Hoffken, City Clerk
WESLEY J. HOEFFKEN, City Clerk
by Anna J. Meloffey, Deputy
Clerk

AGREEMENT

BETWEEN OWNER AND CONTRACTOR

Project Name: City of Columbia, Illinois

Contract Name: 2006 Water Tank Painting Project

THIS AGREEMENT is dated as of the 18 day of September in the year 2006 by and between City of Columbia, Illinois (hereinafter called Owner) and Custom Coatings, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work under this Contract is generally described as follows:
The preparation and exterior surface painting of the Mule Road water tank.

ARTICLE 2 - CONTRACT TIME

2.01 TIME OF THE ESSENCE:

- A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

2.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within 30 days after the date when the Contract is executed by the Owner, and completed and ready for final payment within 45 days after the contract is executed by the Owner.

2.03 LIQUIDATED DAMAGES:

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not Substantially

AGREEMENT: continued

Completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner two hundred and fifty dollars (\$250.00) for each day that expires after the time specified for completion and readiness for final payment.

ARTICLE 3 - CONTRACT PRICE

3.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs below:

A. LUMP SUM CONTRACT PRICE: For all work, a lump sum of:

Fourteen thousand nine hundred fifty and 00/100 Dollars (\$14,950.00)

ARTICLE 4 - PAYMENT PROCEDURES

4.01 SUBMITTAL AND PROCESSING OF PAYMENTS:

A. Contractor shall submit Applications for Payment in accordance with the BID DOCUMENTS. Applications for Payment will be processed by Owner as provided in the BID DOCUMENTS.

4.02 PROGRESS PAYMENTS, RETAINAGE:

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during construction. All such payments will be measured by the schedule of values established in the BID DOCUMENTS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made 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 Owner shall determine, or withhold, in accordance with the BID DOCUMENTS.

AGREEMENT: continued

- a. 90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, Owner may determine that as long as the character and progress of the Work subsequently remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be an amount equal to 100% of the Work completed less the aggregate of payments previously made; and
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Owner shall determine, or Owner may withhold, in accordance with the BID DOCUMENTS.

4.03 FINAL PAYMENT:

- A. Upon final completion and acceptance of the Work in accordance with the BID DOCUMENTS, Owner shall pay the remainder of the Contract Price as provided in the BID DOCUMENTS.

ARTICLE 5 - INTEREST

5.01 All moneys not paid when due hereunder shall bear interest at the rate of 5% per annum in accordance with the BID DOCUMENTS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Bid Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

AGREEMENT: continued

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that Owner does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- E. Contractor has obtained and carefully studied (or assumes responsibility of having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, and furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 CONTENTS:

- A. The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the BID DOCUMENTS:

AGREEMENT: continued

1. This Agreement.
2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice of Award.
 - b. Contractor's Bid.
 - c. Documentation submitted by Contractor prior to Notice of Award.
3. Performance and Labor & Material Payment Bonds.
4. Bid Documents.
5. Contractor's Insurance Certificate(s).
6. Specifications.
7. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the BID DOCUMENTS.

ARTICLE 8 - MISCELLANEOUS

8.01 TERMS:

- A. Terms used in this Agreement which are defined in the BID DOCUMENTS shall have the meanings stated in the BID DOCUMENTS.

8.02 ASSIGNMENT OF CONTRACT:

- A. 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.

8.03 SUCCESSORS AND ASSIGNS:

- A. Owner and Contractor each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal

AGREEMENT: continued

representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 SEVERABILITY:

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

AGREEMENT: continued

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor

This Agreement will be effective on _____, 20____, which is the Effective Date of the Agreement.

CONTRACTOR Custom Coatings, Inc.

OWNER City of Columbia, Illinois

By: _____

By: Karen Hutchinson

Title: President
(SEAL)

Title: Mayor
(SEAL)

Attest _____
Address for giving notices

1835 Scherer Parkway

St. Charles, MO 63303-3822

License No. _____
(if required by Law)

Agent for Service of process

(if required by law)
(If Contractor is a corporation,
attach evidence of authority to
sign.)

Attest Wesley J. Hoffken, City Clerk
City Clerk Anna K. McHaffey
Address for giving notices
Secretary Clerk

208 South Rapp Avenue

Columbia, IL 62236

(If Owner is a public body, attach
evidence of authority to
sign and resolution or other documents
authorizing execution of Agreement)

END OF DOCUMENT

NOTICE OF AWARD

To: Custom Coatings, Inc.
 1835 Scherer Parkway
 St. Charles, Missouri 63303-3822

Project Name: City of Columbia, Illinois
 2006 Water Tank Painting Project

Owner: City of Columbia, Illinois

You are notified that your Bid, dated September 5, 2006 for the above Contract has been considered. You are the apparent successful Bidder and are being awarded the Contract for the above stated Project, which is described as follows: The preparation and exterior surface painting of the Mule Road water tank.

The Contract Price of your Contract is fourteen thousand nine hundred fifty and 00/100
Dollars (\$14,950.00)

Three copies of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award, that is by October 12, 2006.

1. You must deliver to the Owner three fully executed counterparts of the Agreement between Owner and Contractor including all the Contract Documents.
2. You must deliver with the executed Agreement the Contract security Bonds as specified in the Instruction to Bidders, General Conditions, and Supplementary Conditions as applicable.

Failure to comply with these conditions within the time specified will entitle Owner to consider your Bid in default, to annul this Notice of Award, and to declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you 1 fully signed counterparts of the Agreement with the Contract Documents attached.

NOTICE OF AWARD: Continued

You are required to return an acknowledgement copy of this Notice of Award to the Owner.

Dated this 21st day of September, 2006.

OWNER

City of Columbia

By _____

Title Acting City Engineer

ACCEPTANCE OF AWARD

CONTRACTOR

By _____

Title _____

Date _____ 20____