

ORDINANCE NO. 2628

FEB 04 2008

**AN ORDINANCE TO EMPLOY THOUVENOT, WADE &
MOERCHEN, INC. OF SWANSEA, ILLINOIS TO RENDER
PROFESSIONAL SERVICES TO THE CITY OF COLUMBIA,
ILLINOIS IN CONNECTION WITH THE CONSTRUCTION
ENGINEERING ASSOCIATED WITH THE VALMEYER ROAD
PEDESTRIAN IMPROVEMENTS PROJECT.**

Wiley J. Joffre
City Clerk

WHEREAS, the City Council of the City has further found and determined and does hereby declare that it is necessary and appropriate that the City employ Thouvenot, Wade & Moerchen, Inc. to provide professional services to the City for the construction engineering services associated with the Valmeyer Road Pedestrian Improvements Project;

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 City Council of the city does hereby authorize the employment of Thouvenot, Wade & Moerchen, Inc. to provide the professional services to the city with regard to the City's Valmeyer Road Pedestrian Improvements Project. The Mayor is hereby authorized and directed to execute and deliver to Thouvenot, Wade & Moerchen, Inc., for and on behalf of the City, the "Engineering Services Agreement" between the City of Columbia, Illinois and Hoelscher Engineering, P.C. for a sum not to exceed Twelve Thousand Six Hundred Eleven Dollars (\$12,611.00) in the form attached hereto, which is hereby approved as to form, in as many counterparts as the Mayor shall determine and the City Clerk is hereby authorized and directed to attest the same and to affix thereto the corporate seal of the City.

Section 3. This ordinance shall be in full force and effect from and after its passage, as provided by law.

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

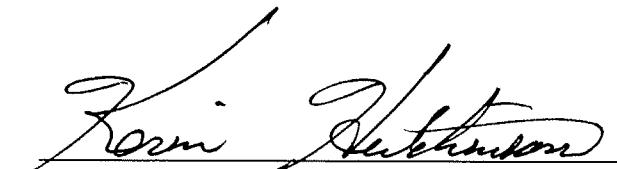
YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberfell,
Stumpf and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 4th day of February, 2008.



Kevin B. Hutchinson

Kevin B. Hutchinson, Mayor

ATTEST:



WESLEY J. HOEFFKEN, City 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. 2628, entitled:

“AN ORDINANCE TO EMPLOY THOUVENOT, WADE & MOERCHEN, INC. OF SWANSEA, ILLINOIS TO RENDER PROFESSIONAL SERVICES TO THE CITY OF COLUMBIA, ILLINOIS IN CONNECTION WITH THE CONSTRUCTION ENGINEERING ASSOCIATED WITH THE VALMEYER ROAD PEDESTRIAN IMPROVEMENTS PROJECT.”

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 4th day of February, 2008.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 4th day of February, 2008.

day of February, 2008.

WESLEY J. HOEFFKEN, City Clerk

(SEAL)

**CITY OF COLUMBIA, ILLINOIS
PUBLIC WORKS CONTRACT**

This Agreement, is made and entered into this 30TH day of JANUARY, 2008, by and between the City of Columbia, Illinois, a municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois with City Hall located at 208 South Rapp Avenue, Columbia, Illinois (the "City" or "Columbia") and Thouvenot, Wade & Moerchen, Inc., with professional offices located at 4940 Old Collinsville Road, City of Swansea, State of Illinois (the "Consultant"), WITNESSETH:

WHEREAS, the City intends to employ the Consultant to do and perform the Public Works Project hereinafter described and the Consultant has agreed to the employment by the City on the terms set forth in this Agreement.

Now, therefore, in consideration of the premises and the mutual representations, covenants, and agreements contained in this Agreement, the City hereby employs the Consultant and the Consultant hereby agrees to the employment by the City for the Public Works Project involved herein, on the following terms:

(1) Public Works Project. The Consultant agrees to perform the Public Works Project for the City that is described in the contract documents attached to this Agreement as exhibit "A" Scope of Work. The contract documents shall consist of the following, in descending order of priority.

| | |
|---------------------------------|---------------------------------|
| 1.1 this Agreement | 1.3 Work Schedule - Exhibit "B" |
| 1.2 Scope of Work - Exhibit "A" | 1.4 Price - Exhibit "C" |

(2) Payment. Unless provided for otherwise in Exhibit "C", payment to Consultant shall be on a monthly basis made as follows:

2.1 For fixed price contracts, progress payments will be made on up to 90% of the contract price based upon the completion of milestone events described in the Work Schedule (Exhibit "B"). In addition to providing a schedule of milestone events for the Work, the Work Schedule will contain a percentage that equates to the amount of work required to achieve that milestone event. Consultant's payment will be based upon the assigned percentage times 0.90 (90%). The remaining 10% of the contract price will be held as retainage and paid to the Consultant when the City Engineer has determined that all the terms of this Agreement have been satisfactorily performed in compliance with the codes and ordinances of the City, applicable State and Federal laws and the contract documents.

- 2.2 For time and materials contracts, reimbursement for labor and materials will be made on up to 90% of the contract price based upon the hourly rates contained in Exhibit "C" for work actually performed. Exhibit "C" labor rates shall include all Consultant overhead and profit. Reimbursement to Consultant for materials shall be at Consultant's actual cost (without mark-up). The remaining 10% of contract price will be held as retainage and paid to the Consultant when the City Engineer has determined that all of the terms of this Agreement have been satisfactorily performed in compliance with the codes and ordinance of the City, applicable State and Federal laws and the contract documents.
- 2.3 The City shall pay all undisputed invoices within thirty (30) days of receipt. A late payment charge of 1.0% per month will be added to all undisputed amounts not paid within thirty (30) days of receipt of invoice. If a portion of Consultant's invoice is disputed, the City shall pay the undisputed portion within thirty (30) days of receipt. The City shall advise Consultant in writing of the basis for any undisputed portion of an invoice.

(3) Compliance with Laws. Consultant shall perform the work in accordance with all applicable Federal, State, and local laws, ordinances, and regulations.

(4) Scope of Work Changes.

(A) Should the City request services to be provided to or for the City in the performance of this Agreement which are not included in the Exhibit "A" Scope of Work, and which are in addition thereto, to the extent that the same results in an increase in cost to the Consultant the parties shall make and enter into an amendment of this Agreement which provides for the description of the scope of the additional work, the price the City will pay for the same and the terms for the performance of the new and additional work involved, which written amendment of the Agreement will be signed by the parties and attached to this Agreement as an addendum or amendment of Exhibit "A" of the original Agreement and the parties thereto shall thereby be bound thereby.

(B) Should performance of the Agreement, or any mutually agreed upon amendment thereto, become impossible to perform within the time required by the contract documents due to the occurrence of an event or events beyond the control of the Consultant, and not owing to the fault or neglect of the Consultant, the Consultant may apply to the City, in writing, for an extension of the work schedule applicable thereto, and if applicable, may request additional compensation from the City caused by the unavoidable delay of performance. The written request to the City shall be made as soon as practicable, but in all events within five (5) working days, after the Consultant becomes aware of the occurrence of an event causing the delay of performance. While the City shall be under no obligation to incur and pay the additional costs for performance, the parties shall attempt to agree on a written amendment to the Agreement to allow and provide for the additional time for completion of the work involved, and, if applicable,

additional compensation for costs of the Consultant necessary to be incurred due to impossibility of performance within the time allowed by this Agreement.

(5) Performance. All services shall be performed with reasonable skill, care, and diligence in accordance with locally accepted surveying and engineering standards and practices applicable at time of reference in the Metro-East Illinois area. The Consultant shall perform at its own cost, and without reimbursement from the City, all efforts necessary to correct errors and omissions which are caused by the Consultant's failure to meet these standards.

(6) Employment of Sub-Consultants. Any and all Sub-Consultants proposed to be used by the Consultant on the City Public Works Project involved in this Agreement must be pre-approved by the City Engineer. Prior to the parties making and entering into this Agreement, the Consultant shall submit a written list of all Sub-Consultants the Consultant proposes to use in the performance of this Agreement to the City Engineer. The City Engineer shall indicate on the list those which are acceptable and those which are not acceptable. The list shall be attached to this Agreement as Exhibit "D" and thereby made part of this Agreement. If the Consultant proposes to use a Sub-Consultant that is not acceptable to the City Engineer, the City shall have the right to rescind this Agreement, on five (5) days prior written notice to the Consultant. If the Agreement is rescinded by the City, all terms and conditions as detailed in Article (10) Termination for Convenience shall apply. The Consultant shall be fully responsible and liable to the City for all acts and omissions of approved Sub-Consultants involved in this Agreement, to the same extent as the Consultant is responsible for the Consultant's own acts and omissions in the performance or failure of performance under this Agreement.

(7) Labor. Anytime after commencement of the work involved, any change in personnel for which labor hours will be charged to the City under this Agreement, shall require the approval of the City Engineer. If the Consultant cannot provide suitable personnel for performance of the work which are acceptable to the City Engineer, the City shall have the right to rescind this Agreement in accordance with the terms of Article (11) Termination for Default.

(8) Timeliness. Timeliness in meeting the Project Schedule attached as Exhibit "B" will be a factor that will be considered in the Consultants performance rating. An unfavorable rating is a penalty that will be reflected when future agreements are being considered.

(9) Ownership of Documents. Consultant agrees that for the fees to be paid to Consultant by the City all survey data, reports, drawings, studies, specifications, estimates, maps, and computations prepared pursuant to this Agreement either by Consultant or sub-consultants, shall for all uses be and remain the sole and exclusive property of the City. All documents furnished by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on extensions of this work, or on any other work. Any reuse without specific written verification or adaptation by the Consultant will be at the user's risk and without liability to the Consultant.

(10) Termination for Convenience. The City may cancel this Agreement at any time by written notice. In the event of such cancellation, Consultant shall be compensated for all reasonable costs and expenses plus 10 percent incurred for work performed up to and including the day of termination.

(11) Termination for Default. Either party may terminate this Agreement for the default of performance by the other party, following thirty (30) days prior written notice of default and opportunity to cure the default, provided the default is not owing to the fault or neglect of the party seeking termination. The party receiving such termination notice shall not be subject to termination of the Agreement if that party commences to cure the default within seven (7) days of receiving said notice and cures the default within the thirty (30) day grace period aforesaid. In the event there is no Performance Guarantee required of the Consultant by this Agreement, should the City terminate this Agreement pursuant to this paragraph and due to the Consultants default of performance of the Agreement, the Consultant shall be liable to reimburse the City for all additional costs and expenses the City incurs in obtaining another Consultant to complete the performance of the defaulting Consultant's obligations under this Agreement.

(12) Limitation of Liability. Neither party shall be liable for incidental, consequential, or special damages to the other party.

(13) Indemnification. The Consultant agrees to indemnify and hold the City harmless, safe and free, including its officials and employees, from and against any and all claims, demands, actions, suits, causes of action, damages, and expenses (including reasonable attorneys' fees) for personal injury to or death of persons and damage to the City's property or facilities or the property of any other person or party due to the fault of the Consultant and/or the Consultants agents, employees, and Sub-Consultants.

(14) Binding Effect All of the covenants, terms, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. In the event an individual is a party to the Agreement, the same shall be binding upon and shall inure to the benefit of said individual party, their heirs, executors, administrators, other legal representatives, successors in interest, and assigns.

(15) Subletting Assignment, or Transfer. No professional or specialized portion of the work under this Agreement shall be sublet, sold, transferred, assigned or otherwise disposed of to other firms, without prior written consent of the City.

(16) Insurance. The Consultant shall maintain the following minimum limits of insurance coverage, with one or more qualified and rated insurance carriers authorized to do business in the State of Illinois.

| <u>Type of Coverage</u> | <u>Limits of Coverage</u> |
|--|---|
| Comprehensive General Liability | |
| Bodily Injury | \$1,000,000 each occurrence |
| Property Damage | \$3,000,000 aggregate \$ 500,000 each occurrence |
| Professional Liability Insurance | \$3,000,000 aggregate limit |
| Workmen's Compensation Insurance in accordance with the laws of the State of Illinois. | |

The City shall be named as an additional insured on the liability insurance policy or policies by special endorsement. The liability insurance policy or policies involved shall provide that the same may not be canceled without the City receiving at least thirty (30) days prior written notice.

A copy of the Consultants Certificate of Insurance listing all of the above policies will be made available to the City within 7 days of signing the agreement. The Certificate of Insurance shall also list the City of Columbia as additional insured.

(17) Notices. Any notice required pursuant to this Agreement shall be mailed to the party entitled to the notice at their address set forth above, or at such other address as they shall, from time to time, advise the other party in writing.

(18) Governing Law. The laws of the State of Illinois shall govern this Agreement.

(19) Dispute Resolution. Any difference between the City and the Consultant that cannot be resolved after reasonable attempts to do so by both parties shall be referred to a committee of disinterested parties. One member of the committee shall be appointed by the Consultant, one member by the City, and a third member appointed by the other two members. The disposition of that committee's decision shall be final.

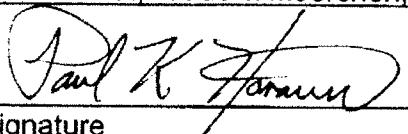
(20) Entire Agreement. This Agreement, including the contract documents attached hereto and by reference made part hereof, constitute the entire Agreement between the parties hereto with regard to the Public Works Project involved herein. All prior negotiations between the parties have been merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement to take effect on the date first above written.

Consultant:

Thouvenot, Wade & Moerchen, Inc.

Signature



CITY:

City of Columbia, Illinois

BY:

Mayor

Paul K. Homann P.E.

Printed Name

Vice-President

Title

ATTEST:

City Clerk

(SEAL)

CITY OF COLUMBIA
VALMEYER ROAD PEDESTRIAN IMPROVEMENTS
CONSTRUCTION SCOPE OF WORK
EXHIBIT A

Thouvenot, Wade & Moerchen, Inc. agrees to perform all or any of the following items as a time and materials contract as directed by the City Engineer:

- Construction Staking
- Construction Observation
- Construction Documentation
- Material testing

CONSTRUCTION WORK SCHEDULE
VALMEYER ROAD PEDESTRIAN IMPROVEMENTS
EXHIBIT "B"

| <u>ITEM OF WORK</u> | <u>COMPLETION DATE</u> | <u>PERCENTAGE</u> |
|-----------------------------|------------------------|-------------------|
| CONSTRUCTION ENGINEERING | MAY 2008 | 100% |

