

**ORDINANCE NO. 3083**

JAN - 6 2014

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO EMPLOY D & A BUILDERS, LLC OF WATERLOO, ILLINOIS TO PERFORM THE INSTALLATION AND CONSTRUCTION OF THE METTER PARK PAVILION IN THE CITY OF COLUMBIA, ILLINOIS**

  
City Clerk

WHEREAS, the City Council of the City of Columbia, Illinois (the "City") accepted the bid and awarded the contract to D & A Builders, LLC of Waterloo, Illinois (the "Contractor") at a regular meeting of the City Council held January 6, 2014 to perform the Metter Park Pavilion project in the City for a total price or sum of Forty Eight Thousand Six Hundred Nineteen Dollars and No Cents (\$48,619.00);

WHEREAS, the Notice of Award will be given to the Contractor by the City after January 6, 2014 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 an additional 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 Metter Park Pavilion 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 January 6, 2014 to employ the Contractor to perform the Metter Park Pavilion Project 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 Niemietz moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Huch, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Niemietz, Roessler, Huch, Mathews, Reis and Holtkamp.

NAYS: None.

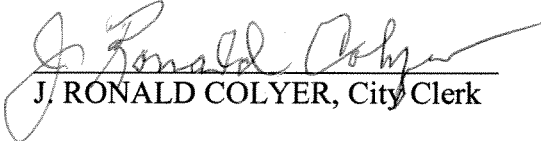
ABSENT: Alderman Agne.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 6<sup>th</sup> day of January, 2014.

  
\_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
\_\_\_\_\_  
J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF MONROE        )

**CERTIFICATE OF TRUE COPY**

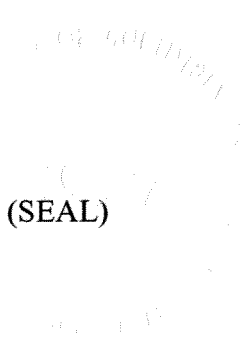
I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 3083, entitled:

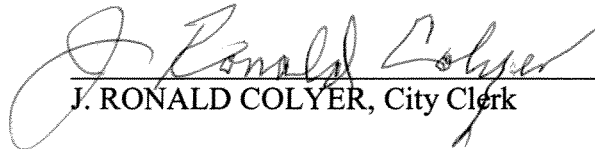
**"AN ORDINANCE TO AUTHORIZE AN AGREEMENT TO EMPLOY D & A BUILDERS, LLC OF WATERLOO, ILLINOIS TO PERFORM THE INSTALLATION AND CONSTRUCTION OF THE METTER PARK PAVILION IN THE CITY OF COLUMBIA, ILLINOIS"**

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 6<sup>th</sup> day of January, 2014.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 6<sup>th</sup> day of January, 2014.



(SEAL)

  
\_\_\_\_\_  
J. RONALD COLYER, City Clerk

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

This Agreement, is made and entered into this 6<sup>th</sup> day of January, 2014, 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 D & A Builders, LLC., with professional offices located at 1187 Moore Street, City of Waterloo, State of Illinois, (the "Contractor"), WITNESSETH:

WHEREAS, the City intends to employ the Contractor to do and perform the Public Works Project hereinafter described and the Contractor 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 Contractor and the Contractor hereby agrees to the employment by the City for the Public Works Project involved herein, on the following terms:

(1) Public Works Project. The Contractor agrees to perform the Public Works Project for the City that is described in the contract documents attached to this Agreement as exhibits, including providing all necessary labor and services, facilities, materials, tools and equipment, and obtaining necessary licenses, permits, all royalties required for performance of the work involved, without regard to whether the same be specifically identified in the contract documents, where the same are reasonably required to be supplied in order to perform and complete the specifically described scope of work described in the contract documents. The contract documents shall consist of the following, in descending order of priority.

- 1.1 this Agreement
- 1.2 Bid Proposal
- 1.3 Bid Form
- 1.4 Performance and Labor and Material Bonds
- 1.5 Certificate of Insurance

(2) Payment. Unless provided for otherwise, payment to Contractor shall be 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. Contractor'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 Contractor 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 Contractor overhead and profit. Reimbursement to Contractor for materials shall be at Contractor's actual cost (without mark-up). The remaining 10% of contract price will be held as retainage and paid to the Contractor 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 Contractor's invoice is disputed, the City shall pay the undisputed portion within thirty (30) days of receipt. The City shall advise Contractor in writing of the basis for any disputed portion of an invoice.

(3) Compliance with Laws. Contractor 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 and/or materials to be provided to or for the City in the performance of this Agreement, and which are in addition thereto, to the extent that the same results in an increase in cost to the Contractor 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 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 Contractor, and not owing to the fault or neglect of the Contractor, the Contractor 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 Contractor 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 Contractor necessary to be incurred due to impossibility of performance within the time allowed by this Agreement. If the parties are unable to agree upon an extension of time for performance of the Agreement, either party may request arbitration of the dispute with the USA&M Midwest, Inc. which currently has its corporate offices at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. The cost of the arbitration shall be shared equally by the parties and the decision of the arbitrator shall be binding upon both parties and be enforceable by a court of competent jurisdiction.

(5) Performance. All services shall be performed with reasonable skill, care, and diligence in accordance with locally accepted construction and engineering standards and practices applicable at time of reference in the Metro-East Illinois area. All materials provided shall be of good quality and (unless agreed otherwise) new (not previously used), suitable for the contemplated application as established by current trade and industry practice. The Contractor 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 Contractor's failure to meet these standards.

(6) Employment of Subcontractors. Any and all subcontractors proposed to be used by the Contractor 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 Contractor shall submit a written list of all subcontractors the Contractor 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 and thereby made part of this Agreement. If the Contractor proposes to use a subcontractor 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 Contractor. If the Agreement is rescinded by the City, neither party shall be under any further obligation to the other party to this Agreement and the Agreement shall be of no further force and effect. The Contractor shall be fully responsible and liable to the City for all acts and omissions of approved subcontractors, suppliers, and other persons and organizations performing or furnishing any of the work involved in this Agreement, to the same extent as the Contractor is responsible for the Contractor's own acts and omissions in the performance or failure of performance under this Agreement.

(7) Labor. If this is a time and materials type contract, 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 Contractor 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 on five (5) days prior written notice to the Contractor. In the event of the rescission of the

Agreement by the City, neither of the parties shall be under any further obligation to the other party and the Agreement shall be of no further force and effect.

(8) Liquidated Damages for Delays. The Contractor and the City recognize that time is of the essence in the performance of this Agreement in that the City will suffer damages which may be difficult to measure if the work is not completed within a reasonable time frame.

(9) Contractors Performance and Payment Guarantees. Unless waived by the City, the Contractor shall be required to provide to the City a Performance Guarantee in the form of either (i) a Performance Bond issued by a duly qualified surety company licensed to do business in the State of Illinois that is acceptable to the City, or (ii) a Letter of Credit issued by a duly qualified bank or other financial institution authorized to do business in the State of Illinois, which is acceptable to the City. The Performance Guarantee shall be in a sum to the total bid amount of the work to guarantee the timely and faithful performance of this Agreement by the Contractor. The Performance Guarantee shall be part of the contract documents and shall be attached hereto.

Unless waived by the City, the Contractor shall be required to provide to the City a Labor and Material Payment Guarantee in the form of either (i) a Labor and Material Payment Bond issued by a duly qualified surety company licensed to do business in the State of Illinois that is acceptable to the City, or (ii) a Letter of Credit issued by a duly qualified bank or financial institution authorized to do business in the State of Illinois, which is acceptable to the City. The Labor and Material Payment Bond shall be in a sum deemed adequate by the City, guaranteeing delivery of the completed Public Works Project to the City on completion of the work, and good and merchantable title thereto, free of all claims, demands, causes of action, or liens (including but not limited to mechanics, material men, and laborers liens) on the part of any other party whatsoever. The Labor and Material Payment Guarantee shall be one of the contract documents and shall be attached hereto.

If the Contractor fails to perform the work as scheduled, defers corrections of defective or incomplete work, fails to promptly pay subcontractors, material men or suppliers, or otherwise fails to satisfactorily perform the Contractor's obligation under this contract, the City may give the notice of default required by the surety bond or Letter of Credit to the Contractor and the surety on the bond or financial institution issuing the Letter of Credit requiring performance of the work in accordance with the contract terms. In the event it is necessary for the City to file an action in a court of competent jurisdiction to enforce the Performance Guarantee and/or the Labor and Material Payment Guarantee, the Contractor shall be liable to the City for the City's reasonable attorneys' fees and court costs incurred in enforcing the same; and, the same may be made part of any judgment entered in a proceeding for enforcement of the guarantee or guarantees.

(10) Ownership of Documents. Contractor agrees that for the fees to be paid to Contractor by the City, the City has purchased all right, title, and interest in all materials, including but not limited to blueprints, designs, documents, abstracts, and summaries thereof, or any portion or components of the foregoing, created, developed, or designed

pursuant to this Agreement either by Contractor or Contractor's employees or subcontractors, and shall for all uses be and remain the sole and exclusive property of the City. The parties intend and agree that any materials to be produced by Contractor pursuant to this Agreement shall conclusively be deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. Section 101, and that the City will be the copyright and/or patent owner thereof and of all aspects, elements, and components thereof in which copyright or patent protection can exist.

(11) Termination for Convenience. The City may cancel this Agreement at any time by written notice. In the event of such cancellation, Contractor shall be compensated for all reasonable costs and expenses incurred for work performed up to and including the day of termination, and for the profit the Contractor lost by early cancellation of the Agreement, prorated to date of termination of the Agreement. If the parties are unable to agree on the amount due the contractor for early termination of the Agreement, either party may request arbitration of the dispute with the USA&M Midwest, Inc. which currently has its corporate offices at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. The cost of the arbitration shall be shared equally by the parties and the decision of the arbitrator shall be binding upon both parties and be enforceable by a court of competent jurisdiction.

(12) 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 Contractor by the Agreement, should the City terminate this Agreement pursuant to this paragraph of the Agreement and due to the Contractor's default of performance of the Agreement, the Contractor shall be liable to reimburse the City for all additional costs and expenses the City incurs in obtaining another Contractor or Contractors to complete the performance of the defaulting Contractor's obligations under this Agreement. If the City has a Performance Guarantee pursuant to this Agreement, in lieu of terminating the contract, the City may seek enforcement of the Performance Guarantee to obtain completion of the work involved in this Public Works Agreement.

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

(14) Indemnification. The Contractor 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 Contractor and/or the Contractor's agents, employees, and subcontractors.



(15) 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.

(16) Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party. Such written consent to assignment to be signed by necessary parties and attached to this Agreement, where after the same shall constitute a part of this Agreement.

(17) Liability Insurance. The Contractor shall maintain the following minimum limits of liability insurance coverage, with one or more qualified and rated insurance carriers acceptable to the City, with regard to the performance of this Agreement;

<u>Type of Coverage</u>	<u>Limits of Coverage</u>
Comprehensive General Liability	
Bodily Injury	\$1,000,000 each occurrence \$3,000,000 aggregate
Property Damage	\$500,000 each occurrence Or \$1,000,000 combined single limit \$3,000,000 aggregate limit

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 of cancellation.

(18) Professional Liability Insurance. Where the contractor under this Agreement is a Registered Land Surveyor or a Professional Engineer, the contractor shall provide professional liability insurance coverage for the City in the coverage limits and on the terms set forth in Exhibit "H" attached hereto.

(19) 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.

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

(21) 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. Parol evidence will not be admissible in a court of competent jurisdiction in a proceeding to terminate or enforce performance of this Agreement to alter, add to or change any of the terms of this written Agreement.

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

CONTRACTOR:

CITY:

D & A Builders, LLC  
1187 Moore Street  
Waterloo, Illinois 62223

City of Columbia, Illinois  
208 S. Rapp Avenue  
Columbia, Illinois 62236

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Kevin B. Hutchinson, Mayor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

ATTEST:  
  
\_\_\_\_\_  
J. Ronald Colyer, City Clerk

(SEAL)