

JAN 07 2008

ORDINANCE NO. 2619

**AN ORDINANCE TO EMPLOY CRAIG D. HISER OF  
COLUMBIA, ILLINOIS TO RENDER PROFESSIONAL  
SERVICES TO THE CITY OF COLUMBIA, ILLINOIS IN  
CONNECTION WITH EASEMENT AND RIGHT-OF-WAY  
ACQUISITION FOR THE MILTON STREET IMPROVEMENT  
PROJECT FROM SOUTH RAPP AVENUE TO THE DEAD END  
WEST OF OLYMPIA STREET.**

*Wiley J. Jaffer*  
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 Craig D. Hiser to provide professional services to the City for acquisition of temporary construction easements and right-of-way associated with the improvement of Milton Street, from South Rapp Street to the Dead End West of Olympia Street;

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 Craig D. Hiser to provide the professional services to the city with regard to the City's Milton Street Improvement Project. The Mayor is hereby authorized and directed to execute and deliver to Craig D. Hiser, for and on behalf of the City, the "Professional Services Agreement" between the City of Columbia, Illinois and Craig D. Hiser for the rates as outlined 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 Stumpf, and the roll call vote was as follows:

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

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 7<sup>th</sup> day of January, 2008.

  
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. 2619, entitled:

**“AN ORDINANCE TO EMPLOY CRAIG D. HISER OF COLUMBIA, ILLINOIS TO RENDER PROFESSIONAL SERVICES TO THE CITY OF COLUMBIA, ILLINOIS IN CONNECTION WITH EASEMENT AND RIGHT-OF-WAY ACQUISITION FOR THE MILTON STREET IMPROVEMENT PROJECT FROM SOUTH RAPP AVENUE TO THE DEAD END WEST OF OLYMPIA STREET.”**

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 7<sup>th</sup> day of January, 2008.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 7<sup>th</sup> day of January, 2007. / / 11

day of January, 2007.  
  
WESLEY J. HOEFFKEN, City Clerk

(SEAL)

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

This Agreement, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 CMJP Properties, Inc., with professional offices located at 384 Northridge Road, City of Columbia , 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 Negotiation 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, if any, 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.

(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	\$500,000 each occurrence
	\$1,000,000 aggregate
Professional Liability Insurance	
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 additionally 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.

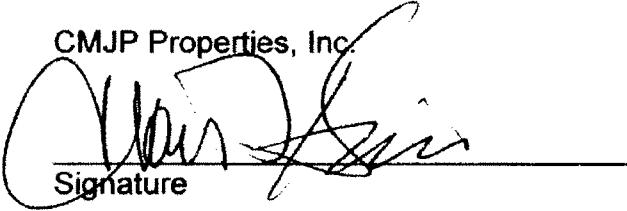
(19) Dispute Resolution. Any difference between the City and the Consultant that cannot be resolved after reasonable attempts to do so by both parties shall be referred to a committee of disinterested parties. One member of the committee shall be appointed by the Consultant, one member by the City, and 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:

CMJP Properties, Inc.

  
Signature

Craig D. Hiser, President

CITY:

City of Columbia, Illinois

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

SCOPE OF WORK - EXHIBIT "A"

The services of this contract include certain negotiation activities for the acquisition of rights-of-way for the City. The services called for in this contract will be conducted by the following named individual whose qualifications have previously been approved by the City Engineer.

Craig D. Hiser d/b/a CMJP Properties, Inc.

All negotiation services provided under this contract shall be generally conducted in accordance with Chapters 3 & 4 of the Illinois Department of Transportation's Land Acquisition Policies and Procedures Manual.

Consultant shall make every reasonable effort to negotiate settlements for the acquisition of each parcel based on the approved appraisal amount or an amount approved by the City Engineer. Upon closing each acquisition, the Consultant shall obtain and furnish City with curative documents necessary to satisfy any and all title objections or unrecorded interests in said parcel, sufficient for approval of title by City.

No offer in excess of the approved appraisal amount shall be made by Consultant without prior written approval of the City.

In the event Consultant, after having made every reasonable effort to negotiate with the owner of a parcel, is unable to obtain a settlement on the approved appraisal amount, Consultant shall prepare and submit a written report summarizing the progress of negotiations to date together with a copy of the Negotiator's Report completed to date with the names and addresses of all interested parties. Consultant's written report shall also include his recommendation for further action towards acquiring the parcel. The City may elect to prepare and forward a Final Offer Letter (with copy to Consultant) to the owner of the parcel and thereafter proceed with preparation of a condemnation complaint. In any case, the City reserves the right to require Consultant to make additional negotiation contacts with the parcel owner up until the actual date of filing a petition to condemn the parcel.

In the event this contract is accepted, it shall be effective as of the date it is approved by the City and shall be binding on the Consultant.

City will furnish the Consultant with parcel plats, legal descriptions, title reports, forms of deeds & easements to be used, project plans which include Plan & Profile and Cross Sections, and all such other curative documents preliminarily determined necessary to acquire such right title, and interest as specified by City for each parcel.

Consultant will, within 30 days of acceptance of this contract, provide to City an opinion of value for each parcel indicating its Fair Market Value for the right(s)-of-way being acquired for that parcel. This value will be derived without regard to any benefits and/or values which may accrue to the property owner as a result of the Improvement Project.

The City will provide Consultant the approved values for each individual parcel in order to commence negotiations. With the coordination of the Consultant, City will mail an Introductory Letter to each parcel recognizing that the Consultant has been retained by the City to negotiate the acquisition of the right(s)-of-way for the City.

## WORK SCHEDULE – EXHIBIT “B”

### Award of Contract

<20 days after Award of Contract-Consultant will provide to City an Opinion of Value for each parcel as discussed in Exhibit “A”.

<45 days after Award of Contract-City to determine and authorize approved amounts for compensation for each parcel. City will send Introductory Letters to owners. CMJP will be concurrently assembling individual parcel files in anticipation of meeting with the parcel owners.

<90 days after Award of Contract-CMJP will have met or will have attempted to meet with every parcel owner. Parcels will be signed as negotiations are successful.

<120 days after Award of Contract-Target for acquiring all parcels.

PRICE – EXHIBIT "C"

Invoices for negotiation services will be submitted for payment monthly, within five (5) days following the end of each month to the City Engineer. Invoice will show the parcel number or numbers and the rate of payment for each. Invoices for services in connection with pretrial conferences and court testimony will show the rates indicated in later in this Exhibit and in addition, will include a statement of the nature of services performed and amount of time thereon.

**Milton Street Project**

The Negotiation Services contracted for herein shall be for approximately 27 parcels to be paid at a rate as follows:

**\$400 for each parcel that has only a Temporary Construction Easement (TCE)  
(Currently 19+- parcels)**

**\$600 for each parcel that includes any Right-of Way (ROW) and/or Permanent Easement (PE). Parcel may also include TCE.  
(Currently 8+- parcels)**

**"Each Parcel" shall consist of one or more basic parcels of land required by City for the Renovation Project to be in the form of fee simple title, dedications and such other easements (temporary or permanent) for uses incidental to construction but which are not considered part of the existing right-of-way, all of which are under the same ownership involving a complete contiguous parcel.**

The above per parcel fee shall include all transportation, food, lodging, telephone or any other expenses incurred by Consultant in the performance of said services as herein set forth, excepting for those services set forth below.

It is understood that appearances in court and pretrial conferences may be required in relation to the negotiation services called for herein and it is agreed that such appearance or appearances shall be made upon request of the City or its trial counsel.

Such services will be provided as follows:

(a) Rate for each half day or fraction thereof for time spent in pretrial conferences.....\$500.00

(b) Rate for each half day or fraction thereof for time spent in court \$500.00

Payment for any services as listed above should be sent to:

CMJP Properties, Inc.  
384 Northridge Road  
Columbia, IL 62236

CMJP Properties is a Corporation and has a FEIN of 16-1631888