

RESOLUTION NO. 22-16

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN APPROVING AN AGREEMENT WITH THOUVENOT, WADE & MOERCHEN, INC. FOR BRIDGE INSPECTION SERVICES.**

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**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby approves, and the Mayor is hereby authorized to execute, a contract substantially in the form of "Exhibit 1" attached hereto and incorporated herein, on behalf of Twin Oaks with Thouvenot, Wade & Moerchen, Inc., d/b/a TWM, for services relating to inspecting the wooden bridge over the pond in Twin Oaks Park and providing a report on its condition to be provided under the terms set forth in Exhibit 1.

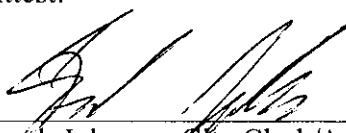
**Section 2.** This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 15<sup>th</sup> DAY OF <sup>6<sup>th</sup></sup> ~~JUNE~~ <sup>July</sup> 2022, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



\_\_\_\_\_  
Russ Fortune, Mayor

Attest:



\_\_\_\_\_  
Frank Johnson, City Clerk/Administrator

**Twin Oaks, Missouri**  
**CONSULTANT SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of \_\_\_\_\_ 2022, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Thouvenot, Wade & Moerchen, Inc.**, d/b/a TWM, an Illinois corporation, with its principal office located at 4940 Old Collinsville Road, Swansea, IL 62226, hereinafter referred to as "Consultant."

WITNESSETH: That the parties hereto for the considerations hereinafter set forth agree as follows:

**I. SCOPE OF SERVICES**

Consultant's services are necessary for the following Project of City: *Bridge Inspection and Condition Report — Wooden Pond Bridge in Twin Oaks Park.*

Except as expressly specified herein, Contractor hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, to perform all the services and do all the things necessary for the proper completion of the consultant services, which are particularly described as inspecting the wooden pond bridge in Twin Oaks Park and issuing a report on its condition with recommendations for maintenance of the structure and as more specifically set forth in the proposal attached **Exhibit A**, incorporated herein (the "Services").

Consultant shall perform the Services to the highest standard of care for such consultant services.

The Services shall be provided by the Consultant in accordance with all the provisions of the Contract and the attached **City of Twin Oaks Consultant/Professional Services Contract General Conditions** for the Project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any exhibit.

**II. COMPENSATION**

A. **Basic Compensation.** The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto an amount not to exceed \$5,000 as is set forth on an attached Exhibit A.

**III. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted to the City and payment shall be made by City within thirty (30) days of receipt of an invoice received after confirmation by the City of satisfactory performance of the Services for the fees, prices, rates, or schedule of values set forth above

**IV. CONTRACT SCHEDULE**

Time is of the essence. The Services to be performed under the Contract shall be commenced on \_\_\_\_\_, and shall be completed in a reasonable manner no later than 15 days after the commencement of the services.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

**THOUVENOT, WADE & MOERCHEN, INC.  
D/B/A TWM**

By \_\_\_\_\_

Title \_\_\_\_\_

DATED: \_\_\_\_\_

**CITY OF TWIN OAKS**

By \_\_\_\_\_

Title \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

## GENERAL CONDITIONS

### CITY OF TWIN OAKS, MISSOURI CONSULTANT/PROFESSIONAL SERVICES CONTRACT

**Independent Consultant.** The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.

**Compliance with Laws.** The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. Specifically, Consultant shall comply with the following state law requirements:

- *Work Authorization Program.* If the Contract is for services expected to cost more than \$5,000.00, the Consultant shall comply with Section 285.530 RSMo., pertaining to enrollment and participation in a federal work authorization program (as defined therein) and shall provide verification through an affidavit (attached as **Exhibit B**) that the Consultant (1) does not knowingly employ any person who is an unauthorized alien in connection with the Contract and (2) is enrolled in a federal work authorization program and provide documentary proof thereof. The affidavit shall contain the notarized signature of the registered agent, legal representative or corporate officer of the business entity including but not limited to the human resources director or their equivalent.
- *Proof of Lawful Presence.* Section 208.009 RSMo., requires that all applicants *at the time of application* for any contract provided by a local government provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States." Consultant's affirmative proof must be established through (i) a Missouri driver's license, (ii) any "documentary evidence recognized by the department of revenue when processing an application for a driver's license," or (iii) "any document issued by the federal government that confirms an alien's lawful presence in the United States." §208.009.3.

**Subcontracts.** The Consultant shall not subcontract any of the Services to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant.

**Attorney Fees' and Costs.** The Consultant shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Contract, which may result from the Consultant's breach of the Contract, the Consultant's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Contract.

**Indemnification.** To the fullest extent permitted by law, the Consultant agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents, and employees from and against any and all liabilities, damages, losses, claims, or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from negligent acts, errors, or omissions of the Consultant, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Consultant under the terms of this Contract. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the City. Nothing in this Contract shall require the City to indemnify Consultant. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Contract.

**Insurance.** The Consultant shall obtain and maintain during the term of the Services and this Contract comprehensive general liability insurance, comprehensive automobile insurance, and employers liability insurance coverages of at least \$2,000,000 aggregate and \$450,000 per occurrence. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Contract Sum and no additional payment will be made therefor by the City.

In addition, the Consultant and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services. Before commencing any Services, the Consultant shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the Consultant under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 R.S.MO. OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the Consultant has adequate insurance to cover the Consultant for tort claims that may arise out of the Services. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO

THE LIMITED EXTENT OF any claims against the City arising out of the Consultant's Services and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Twin Oaks as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity."

**Nondisclosure.** The Consultant agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the City.

**Changes.** No change in this Contract shall be made except in writing executed by all parties prior to the change in Services or terms being performed. The Consultant shall make any and all changes in the Services without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Services. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

**Termination.** The City shall have the right to terminate this Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under this Contract an amount equal to the cost of all Services performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in this Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Contract during the next occurring fiscal year (an "Event of Nonappropriation"), this Contract will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Contract in any subsequent fiscal year shall not be deemed a breach of this Contract by any party. If applicable, this Contract may be annually renewed at each fiscal year by inclusion of specific appropriation for this Contract, from year to year not to exceed the maximum renewal period or term as set forth in the Contract.

**Accounting.** During the period of this Contract, the Consultant shall maintain books and accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall, at reasonable times, have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

**Other Consultants.** The City reserves the right to employ other consultants in connection with the Services.

**Request for Proposals.** If the City issued a request for proposals in connection with the Services, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant/Services Contract or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Contract shall control and supersede unless a change thereto is specifically stated in this Contract.

**Project Records and Work Product.** The Consultant shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title, and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant created in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests, and evaluations in connection with the Services.

**Personnel.** The Services shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Services without the express written approval of the City.

**Compliance with State Immigration Statutes.** As a condition for the award of this Contract, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an

unauthorized alien in connection with the Services. Such affidavits shall be in substantially the form provided in Exhibit B. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "**Applicant**") shall be the person authorized to prepare, submit, and sign contract documents on behalf of the Consultant and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any Contract awarded to the Consultant.

**Representations.** Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

**Governing/Choice of Law.** This Contract shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

**Counterparts.** This Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

