



AGENDA
Village Board of Trustees
Committee at Large Meeting

Monday, January 23, 2023 – 7:00 pm
Location: 1 Park Drive, Shiloh, IL 62269

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS \ ANNOUNCEMENTS

MINUTES – NOVEMBER 28, 2022

TREASURER'S REPORT – DECEMBER 2022

MAYOR'S REPORT

COMMITTEE REPORTS:
ADMINISTRATION & PERSONNEL (BURRELSMAN)

FINANCE & BUDGET (WILKE)

1. DRAFT RESOLUTION – DESIGNATING CERTAIN GENERAL FUNDS AS A COMMITTEE FUND BALANCE

PLANNING & DEVELOPMENT (HOLZUM)

1. ANNEXATION AGREEMENT: ANNEXATIONS FOR PROPERTY COMMONLY KNOWN AS RENNER FARMS (PARCEL NUMBERS #09200300001, 09200300003, 09200400010, 09200200004, 09210100001, 09160300008, 09210100002, 09210100005, 09210300006, 09280100006, 09280100007, 09210400010, 09280200004, 09280100002, 09280100008, 09280300015)
NOTE: THE VILLAGE BOARD WILL HOLD A PUBLIC HEARING ON THIS SUBJECT ON FEBRUARY 6, 2023 AT 6:45 PM.

PUBLIC PARKS & FACILITIES (WARCHOL)

PUBLIC SAFETY (O'NEIL)

STREETS (POWERS)

1. TWM ENGINEERING AGREEMENT FOR GREEN MOUNT ROAD & FRANK SCOTT PARKWAY TRAFFIC FLOW IMPROVEMENT AND SIGNAL OPTIMIZATION (ESTIMATED \$602,022.00)

OTHER BUSINESS

1. EXECUTIVE (CLOSED) SESSION - OCCASIONALLY HELD PURSUANT TO 5 ILCS - 120/2 (B)
(PERSONNEL MATTERS (C) 1, COLLECTIVE BARGAINING (C) 2, PURCHASE OR LEASE OF REAL ESTATE (C) 5, SALE OR LEASE OF REAL ESTATE (C) 6, LITIGATION (C) 11, AND DISCUSSION OF CLOSED SESSION MINUTES (C) 21)
2. ACTION TAKEN ON EXECUTIVE SESSION ITEMS (IF ANY)

BILLS

ADJOURNMENT

A RESOLUTION DESIGNATING CERTAIN GENERAL FUNDS AS A COMMITTED FUND BALANCE

Whereas, the Governmental Standards Accounting Board (GASB) has issued Statement No. 54, establishing a hierarchy clarifying constraints that govern how a governmental entity can use amounts reported as fund balance.

Whereas, the committed fund balance classification reflects amounts subject to specific internal constraints self-imposed by the Board.

Whereas, once the committed fund balance constraints are imposed, it requires the constraint to be revised, removed or redirected for other purposes by the Board in the same manner as the Board originally approved the commitment.

Whereas, the approved contract between the Village of Shiloh and the Illinois FOP Labor Council representing All Full-Time Sworn Patrolmen of the Village beginning May 1, 2022 (union contract) includes a provision for payment of accrued, unused sick leave at retirement as defined in the contract.

Whereas, the Board has elected to fund the estimated amount necessary to fully account for this accrued, unused sick leave payable at retirement, as reasonably calculated by the Village's Chief Financial Officer, using a portion of its General Fund ending fund balance.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board of Trustees hereby commits \$15,000 of its General Fund ending balance for the purpose of fully accounting for the estimated accrued, unused sick leave payable upon retirement for full-time sworn patrolmen of the Village.
2. These committed funds cannot be used for any purposes other than for payment of accrued, unused sick leave at the time of retirement of sworn police personnel as defined in the union contract, unless the Board adopts a successor resolution to revise or remove the constraint, or otherwise redirect the funds for other purposes.
3. The Village's Chief Financial Officer, or the designee of the Chief Financial Officer, is hereby authorized and directed to review and recalculate the estimated accrued, unused sick leave payable upon retirement amount annually at or approximate to the time of the Village's passage of its fiscal year budget and may adjust the committed amount solely for wage adjustments, the annual earning or use of accrued sick leave, the addition of full-time sworn personnel now qualifying based on age and years of service, and actual payments of accrued, unused sick leave to retirees.
4. Adjustments to the fund balance committed for accrued, unused sick leave payable upon retirement for full-time sworn patrolmen of the Village for reasons other than those described above shall require approval of the Board of Trustees.

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between **Village of Shiloh, IL** (“Owner”) and **Thouvenot, Wade & Moerchen, Inc. (TWM, Inc.)** (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: **Green Mount Road & Frank Scott Parkway Traffic Flow Improvement and Signal Optimization (TIP# 7262H-23)** (“Project”).

Engineer’s services under this Agreement are generally identified as follows:

Engineering services required for preliminary roadway and bridge design of the federally funded CMAQ project identified above. This includes Phase I Project Development Report and Phase II Plans, Specifications and Estimates, as required to providing bidding documents for IDOT Letting. Work includes:

- Replacement of 3-span bridge over Richland Creek tributary. Bridge width to carry 7 traffic lanes, with foundation widening for an additional future lane
- Widening of Green Mount Road, from Frank Scott Parkway south 1600’ to 150’ north of Cascade Lakes Drive as depicted in the CMAQ Grant Application.
- Pedestrian accommodations from White Castle entrance to south edge of bridge
- Signal optimization and synchronization for 11 signals along Frank Scott Parkway and Green Mount Road, including Construction Phase adjustments as depicted in the CMAQ Grant Application.*
- Plat of Highways and land acquisition deed exhibits (5 parcels)
- Geotechnical borings and analysis for bridge construction and roadway widening*
- PESA report*
- Shop Drawing Review of bridge elements (only) during Construction Phase

*work by subconsultants

Work does not include:

- FEMA/Floodplain Permit (if needed, cost to be borne by adjacent property owner)
- Drainage analysis or design beyond ROW/what is required for the CMAQ grant
- Design of any Intersection Design Studies or Geometric Details
- Design of any NEW traffic signals
- Investigation or design of roadway lighting
- Analysis of potential traffic noise impacts
- Analysis of potential air quality improvements or impacts
- Pedestrian accommodations south of the bridge
- Land Acquisition negotiation or appraisal services
- Phase III Construction Observation Services or Shop Drawing Review, other than noted above

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall proceed with work in a manner that would allow for a **FY 2025 Letting Date**. However, we obviously do not control the schedule by which regulatory agencies review or approve plans.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Owner shall pay Engineer for Services as follows:
 - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services and Engineer’s consultants’ charges, if any.
 - 2. Engineer’s Standard Hourly Rates are attached as Appendix 1 and subject to annual adjustment.
 - 3. The total compensation for Services and reimbursable expenses is estimated:
 - **\$526,271** **TWM, Inc.**
 - **\$17,450** **SCI Engineering**
 - **\$58,301** **CBB**
 - **\$602,022** **TOTAL**

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1 and subject to annual adjustment.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.i.

c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors,

executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. 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 this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.

- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$500,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.

- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 *Attachments:*

- CMAQ Grant Application Exhibits (Roadway Plan and Signal Optimization Map)
- Engineer's estimated Hours
- Engineer's Standard Hourly Rates
- Subconsultant Contract estimates