

MEMORANDUM
COMMUNITY AND ECONOMIC DEVELOPMENT

TO: Robert T. Hawes, Interim City Manager

SUBJECT: Wetlands Compensation Project

DATE: 10/08/11

On Wednesday, October 5 bids were opened for construction of a wetlands compensation project. This project consists of the construction of a wetland of approximately six and a-half acres to compensate for wetland removed by two development projects; the bike trail connection to the West Rock River Bridge (3.6 acres) and the 30th Street / Blackhawk Road site (2.8 acres). Seven bids were received for this work with the results as follows:

Langman Construction	\$188,002.81
Valley Construction	\$192,170.42
Brand Construction	\$246,917.45
Foley Construction	\$258,650.40
Miller Trucking & Excavating	\$264,213.00
Legacy Corporation	\$264,267.25
Fischer Excavating	\$279,813.61

Staff recommends award of the contract to Langman Construction. The approved FY12 budget includes an allocation of \$243,000 to complete this project.

Also attached is an agreement with Valdom Corporation to support their share of the wetland compensation costs which is calculated at \$133,355 (this figure includes a pro rata share of the design and construction costs plus 2.8 acres of land at \$12,000 per acre). The agreement stipulates that Valdom will pay one-half of their cost prior to the beginning of construction and the balance in three annual payments. In addition, the balance is to be secured by a letter of credit. The city's original agreement with Valdom stipulate that the city was to cover these costs, however, the lack of development at the 30th Street site resulted is a shift of this expense to Valdom. Staff recommends approval of the attached agreement.

RECOMMENDATION

Council award the contract for the Ridgewood Road Wetlands Compensation Project to Langman Construction and authorize the City Manager to execute an agreement with Valdom Corporation.

SUBMITTED BY: Greg Champagne, Community and Economic Development Director

APPROVED: Robert T. Hawes, Interim City Manager

AGREEMENT

THIS AGREEMENT is entered into this 24th day of October, 2011 by and between the Valdom Corporation ("Developer") and the CITY OF ROCK ISLAND, an Illinois Municipal Corporation ("City").

WHEREAS, the Developer wishes to undertake a wetlands mitigation project on land owned by the City in connection with a development project being constructed by the Developer at 30th Street and Blackhawk Road, and;

WHEREAS, the City is undertaking a wetlands mitigation project on land it owns in southwest Rock Island in connection with the bike trail project currently under construction at 44th Street, and;

WHEREAS, the city owned land has been proposed as a mitigation site for both projects;

NOW THEREFORE, the parties, in exchange for the promises herein contained the receipt and sufficiency of which are hereby acknowledged agree as follows:

1. Developer will pay to the City an amount equal to a pro rata share of the cost to design, construct and manage a wetland mitigation project with a total of 6.4 acres on city owned property. Said payment to also include the pro rata cost to acquire the property. The pro rata share shall be based on creation of a wetland of approximately 2.8 acres to be used by the Developer in fulfillment of a wetlands mitigation permit issued by the U.S. Army Corps of Engineers on November 20, 2006.
2. Payment by the Developer to the City shall be as follows:
 - (a). One half of the total pro rata share shall be paid not later than thirty (30) days after notification to the Developer from the City that construction of the wetlands mitigation project is ready to proceed.
 - (b). The balance of the total pro rata share shall be made in three equal installments with each installment due and payable annually by not later than October 1 of each subsequent year.
3. Developer agrees to purchase and post with the City an irrevocable Letter of Credit (LOC) from a financial institution acceptable to the City in an amount equal to one half of the total pro rata share of the costs to design, construct and manage the wetland mitigation project that is the subject of this Agreement.

The LOC will provide the City with legal assurance to guarantee the satisfactory payment of the Developer's pro rata share of the mitigation costs.

4. City agrees that the wetland to be constructed will comply with all rules and regulations regarding the construction and maintenance of wetland and with Section 404 permits issued by the US Army Corps of Engineers. In addition, City hereby agrees that it will be solely responsible for the management of the wetland project and of the completion and submittal of all reports required by federal regulations governing the maintenance and monitoring of wetlands.

5. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois with jurisdiction and venue Rock Island County.

6. In the event of a default under this Agreement by either party hereto which default is not cured within thirty (30) days of the date of receipt of notice to the defaulting party specifying that said party has failed to perform a particular obligation, the other party shall have an action for damage or, in the event damages would not fairly compensate the non-defaulting party of this Agreement, the non-defaulting party shall have such other equitable rights and remedies as are available at law or in equity.

7. Delays by the Developer or City in performing its obligations hereunder due to acts of God, strikes, fires, floods, explosions, delays in transportation or accidents to construction, military arrest or restraints, acts, demands or requirements of the United States or any state or territory thereof, or any governmental subdivision thereof, or due to any other causes whatsoever, whether similar or dissimilar to those above enumerated which are beyond the Developer's or City's control and not resulting from Developer's or City's fault shall cause an automatic extension of the starting and/or completion dates for the period attributive to any such cause. The affected component of this Agreement shall be deemed suspended for so long as its extension is prevented or delayed by such cause.

8. Time is of the essence of this Agreement.

9. The rights and obligations of the Developer are fully assignable by means of written notice to the City, provided that no assignment shall be deemed to release the assignor of its obligations to the City under this Agreement unless the consent of the City to release of the assignor's obligations is obtained.

10. Either party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any right or remedy thereafter, nor shall it be

deemed to constitute a party to waive any right or remedy thereafter nor shall it be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Agreement.

11. If any term or provision of this Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Agreement shall continue to be fully valid and enforceable.

12. Notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To Developer: Valdom Corporation
3130 47th Avenue
Rock Island, IL 61201

To City: City Clerk
City of Rock Island
1528 3rd Avenue
Rock Island, IL 61201

13. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their devisees, successors and assigns.

14. The preambles contained herein are incorporated in this Agreement by this express reference and made a part hereof.

15. This Agreement embodies the entire agreement between the parties and supersedes any written or oral agreement and may be amended or supplemented only by an instrument in writing executed by the parties hereto.

CITY

DEVELOPER

BY: _____
Thomas Thomas , City Manager

By: _____

ATTEST:

Aleisha Patchin, City Clerk