



CITY of NOVI CITY COUNCIL

**Agenda Item I
May 17, 2010**

SUBJECT: Approval of an intergovernmental agreement with the City of Farmington Hills to provide construction inspection services and construction staking for the 2010 Pathway Gap project in the estimated amount of \$7,200.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$2,400 (Ten Mile segments 71 and 140) \$1,200 (Ten Mile/Nilan crossing) \$3,600 (Willowbrook segment 139) \$7,200 TOTAL for Engineering Inspection
AMOUNT BUDGETED	\$55,000 (Ten Mile segments 71 and 140) \$17,000 (Ten Mile/Nilan crossing) \$62,500 (Willowbrook segment 139) \$134,500 TOTAL for Engineering and Construction
LINE ITEM NUMBER	204-204.00-974.413 (Ten Mile segments 71 and 140) 204-204.00-974.414 (Ten Mile/Nilan crossing) 204-204.00-974.415 (Willowbrook segment 139)

BACKGROUND INFORMATION:

The proposed 2010 Pathway Gap project includes three pathway segments shown on the attached map and summarized in the following table:

Gap Location	Path Width (FT)	Approx. Gap Length (LF)
North side of Ten Mile Road between Myrtle Court and Hampton Hill Road	5	825
East side of Willowbrook Drive between Oak Tree Road and Guilford Road	5	1150
Crossing of Ten Mile at Nilan Drive	5	N/A

The construction phase engineering includes two components: 1) construction inspection, and 2) contract administration (including construction staking). Typically, these services are provided by our engineering consultant, and the fees are calculated based on Exhibit B of the Agreement for Professional Engineering Services for Public Projects.

As part of a city-wide effort to find cost-saving partnerships with other municipalities, staff identified an opportunity with the City of Farmington Hills to provide construction inspection services at a lower cost than the city's consultants (\$400 per crew day versus \$615 per crew day for a savings of \$2,580 over an estimated 12 crew days). Additional

savings in the amount of approximately \$3,500 can be realized on this project by using Novi's Engineering Division staff to perform the contract administration tasks in-house, with the exception of construction staking which can be performed by Farmington Hills at an estimated cost of \$2,400. Therefore, the savings recognized by utilizing a combination of staff from Farmington Hills and Novi under this scenario is approximately \$6,080. Because this project is relatively small and the administration of the project is relatively straight forward, this project is a good candidate to try this alternate method of project management.

Based on the proposed agreement, the construction inspection fee will be paid at an hourly rate to reimburse Farmington Hills for actual costs. However, the construction contract will include cost per inspection (crew) day multiplied by the number of days of inspection specified by the contractor, similar to the standard consulting engineering agreements for construction phase services. Additional inspection days caused by slow contractor progress can still be recouped from the contractor.

The approved project budget is \$134,500, of which \$10,092 was awarded for design engineering in September 2009, \$7,200 is recommended for award to the City of Farmington Hills for construction inspection services, and \$110,242 is recommended elsewhere on this agenda for construction, for total contract awards in the amount of \$127,534 (or \$6,966 under budget).

The intergovernmental agreement was developed by the City Attorney in cooperation with the city attorney for Farmington Hills (see Beth Kudla's May 10, 2010 letter, attached).

Construction is scheduled to begin in June 2010 and completion is anticipated by fall 2010.

RECOMMENDED ACTION: Approval of an intergovernmental agreement with the City of Farmington Hills to provide construction inspection services and construction staking for the 2010 Pathway Gap project in the estimated amount of \$7,200.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

May 10, 2010

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P.O. Box 3040
Farmington Hills, MI 48333-3040
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Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Brian Coburn, Senior Civil Engineer
City of Novi
Public Services – DPW Garage
26300 Delwal Drive
Novi, MI 48375

Re: Intergovernmental Agreement for Construction Services
Our File No. 55142 NOV

Dear Mr. Coburn:

At your request, we have prepared the enclosed Intergovernmental Agreement for Construction for the City of Farmington Hills to provide construction inspection services for the 2010 Pathway Gap project.

The proposed Agreement form is similar to the City's current contract format for construction services, subject to the following modifications relating to the intergovernmental nature of the Agreement:

1. It is the intent under the Agreement that Farmington Hills maintains governmental immunity as a governmental agency for inspection and staking services provided pursuant to this contract and receives any statutory immunity Novi is entitled to.
2. Novi and Farmington Hills shall each add the other as an additional insured party on each one's policy of public liability insurance in relation to risks relating to construction inspection and staking services.
3. Standard recitations have been included regarding authority and requirements for intergovernmental agreements pursuant to Public Act 25 of 1951, authorizing intergovernmental contracts between municipal corporations.

The form and content of the Agreement have also been reviewed and approved by City of Farmington Hills staff and counsel. We see no legal impediment to entering into the Agreement as provided.

Mr. Brian Coburn, Senior Civil Engineer
May 10, 2010
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Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

cc: Clay Pearson, City Manager (w/Enclosure)
Rob Hayes, DPS Director (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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INTERGOVERNMENTAL
AGREEMENT FOR CONSTRUCTION SERVICES
(2010 PATHWAY PROJECT)

This Agreement is between the City of Novi, a Michigan municipal corporation, ("Novi"), whose address is 45175 W. Ten Mile Road, Novi, MI 48375, and the City of Farmington Hills, a Michigan municipal corporation, ("Farmington Hills"), whose address is 31555 W. Eleven Mile Road, Farmington Hills, MI 48336.

RECITALS:

WHEREAS, Novi and Farmington Hills both require construction services for municipal projects, including inspections and staking, within their respective jurisdictions; and

WHEREAS, both Novi and Farmington Hills employ construction inspectors for this purpose; and

WHEREAS, Novi has determined to utilize the services of Farmington Hills to perform construction inspections and staking for Novi 2010 Pathway Project ; and

WHEREAS, the parties have agreed that it is appropriate to prepare an agreement indicating the terms and conditions upon which Farmington Hills will provide construction services to Novi for such project, and to set forth compensation to Farmington Hills for such services:

NOW, THEREFORE, THE PARTIES AGREE that Farmington Hills will provide construction inspectors employed by Farmington Hills to perform the following construction services for Novi's 2010 Pathway Project:

1. General Scope of Services and Term of Agreement:

- a. For and in consideration of payment by Novi as provided in this Agreement, Farmington Hills shall perform the services described herein, including the services described in Exhibit A, in a manner consistent with that degree of care and skill ordinarily exercised by inspectors currently practicing under similar circumstances, and in compliance with all terms and conditions of this Agreement.
- b. Farmington Hills shall submit an individual work plan and schedule based upon the scope of the project as described in accordance with Exhibit A.
- c. Performance of this Agreement shall commence immediately upon execution by both parties, and performance of the work shall be completed when the project is complete pursuant to the contract documents for the project. Either party may terminate this Agreement for any reason upon forty-five (45) days' written notice to the other party. This Agreement may be terminated by either party upon 7 days' prior written notice to the other party in the event of substantial failure by

the other party to fulfill its obligations under this agreement through no fault of the terminating party. Paragraphs 2 and 3 of this Agreement shall survive completion of the work and any termination of this Agreement.

- d. This Agreement is based on the ordinances, policies, procedures, or requirements in effect on the date of the Agreement. Any additional field services required as a direct and apparent result of the change of such ordinances, policies, procedures, or requirements shall be mutually negotiated by Novi and Farmington Hills.

2. Payment for Services:

- a. Farmington Hills shall invoice Novi monthly on account of Farmington Hills' services. Subject to sub-paragraph 2(b) below, Novi shall pay Farmington Hills, in accordance with the fee schedule set forth in Exhibit A, within thirty (30) calendar days of the time of receipt of invoice from Farmington Hills. If payment is not maintained on a thirty (30) day current basis, Farmington Hills may suspend further performance until payments are current.
- b. Novi agrees that the invoices from Farmington Hills are presumed to be correct, conclusive with regard to the services provided, and binding on Novi unless Novi, within thirty (30) calendar days from the date of receipt of such billing, notifies Farmington Hills in writing of alleged disagreements with regard to the billing. Errors or discrepancies in a billing recognized within 30 calendar days of receipt of invoice from Farmington Hills shall be resolved to the mutual satisfaction of both parties.
- c. All fees and/or costs associated with or due to any governmental or review agencies arising from the services are the sole responsibility of Novi.
- d. Novi shall confirm the correctness of any progress estimates made for billing purposes, and may use Novi's own Engineer for such purposes. Monthly statements for services shall be accompanied by such properly completed reporting forms and such other evidence of progress as may be required by Novi.
- e. In the event of termination for a substantial failure by Farmington Hills to fulfill its obligations under this agreement through no fault of Novi, Farmington Hills shall be paid as compensation in full for services performed to that date an amount calculated in accordance with Exhibit A. Such amount shall be paid by Novi upon Farmington Hills' delivering or otherwise making available to Novi all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been prepared and/or accumulated by Farmington Hills in performing the services up to the date of termination.

3. Liability:

- a. Novi acknowledges that Farmington Hills is performing a valuable and essential governmental function for and on behalf of Novi. Further, it is the intent of the parties that, in performing the construction services obligations under this Agreement Farmington Hills has and shall retain governmental immunity as a governmental agency, and shall also have and receive any immunity conferred by virtue of the performance of the obligations that are, by statute or otherwise, the responsibility of Novi and for which it is immune. Neither party, its officers, officials, council members, employees, or agents shall be liable for intentional or negligent acts of the other party, its officers, officials, council members, employees, or agents, and each party shall indemnify and hold harmless the other party for such acts.
- b. Novi and Farmington Hills acknowledge that the scope of services described in Exhibit A does not include any services related to the presence of any hazardous or toxic materials. In the event Farmington Hills or any other party encounters any hazardous or toxic materials, or should it become known to Farmington Hills that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of Farmington Hills' services, Farmington Hills may, at its option and without liability for consequential damages, suspend performance of its services under this Agreement until such time as Novi retains appropriate contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.
- c. Farmington Hills makes no representations concerning site conditions, and Farmington Hills is not responsible for any liability that may arise out of the failure to make site surveys, or subsurface tests, or general testing. Farmington Hills shall not be liable for damages resulting from the actions or inactions of any governmental agencies, including, but not limited to, plan processing.
- d. Except as specifically set forth in Exhibit A, Novi acknowledges that Farmington Hills is not responsible for the performance or work by third parties, including, but not limited to, construction contractors or their subcontractors.

4. Insurance:

- a. During the term of this Agreement, the parties shall maintain insurance coverage in full force, at their own expense. Novi and Farmington Hills shall each add the other as an additional insured party on their existing policies of public liability insurance in relation to risks relating to construction inspection and staking services, as contemplated under this Agreement. Proof of insurance shall be provided.

- b. If any service is sublet in connection with this Agreement, Farmington Hills shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the Farmington Hills.

5. Entire Agreement:

This Agreement contains the entire agreement between Novi and Farmington Hills relating to services to be provided by Farmington Hills to Novi. Any prior agreements, promises, negotiations, and representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both Novi and Farmington Hills.

6. Assignment:

Neither Novi nor Farmington Hills shall assign this Agreement without the prior written consent of the other.

7. Severability:

Waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on Novi and Farmington Hills, unless the court's action or holding has the effect of frustrating the purpose of this Agreement.

8. Delays:

It is expected that Farmington Hills will perform the work in a timely fashion in accordance with the schedule that is agreed upon at the commencement of the project. Novi shall provide requested items within ten (10) working days of the request. Deliverables (approval letters, rejection letters, sign-offs, punch lists, inspection reports, Inspector's Daily Reports or IDR's, etc.) shall be submitted to appropriate Novi staff within ten (10) working days after the work is performed.

Farmington Hills is not responsible for delay caused by activities or factors beyond Farmington Hills' reasonable control, including but not limited to, delays by reason of strikes, lockouts, service slowdowns or stoppages, accidents, acts of God, failure of Novi to furnish timely information or approve or disapprove of Farmington Hills' services promptly, faulty performance by Novi or Novi's other contractors or government agencies. When such delays beyond Farmington Hills's reasonable control occur, Novi agrees Farmington Hills is not responsible for damages nor shall Farmington Hills be deemed to be in default of this Agreement.

No charges or claims for damages shall be made by Farmington Hills for delays or hindrances from any cause whatsoever during the progress of any portions of the services specified in this Agreement, except as hereinafter provided.

In case of a substantial delay on the part of Novi in providing to Farmington Hills either the necessary information or approval to proceed with the service resulting through no fault of Farmington Hills, and delays of such extent as to require Farmington Hills to perform its services under changed conditions not contemplated by the parties, Novi will be responsible for supplemental compensation limited to increased costs incurred as a direct result of such delays. Any claim for supplemental compensation must be in writing and accompanied by substantiating data.

When delays are caused by circumstances or conditions beyond the control of Farmington Hills, Farmington Hills shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties.

9. Nondiscrimination:

Farmington Hills shall not discriminate against any employee, or applicant for employment because of race, color, sex, age or handicap, religion, ancestry, marital status, national origin, place of birth, or sexual preference. Farmington Hills further covenants that it will comply with the Civil Rights Act of 1973, as amended; and the Michigan Civil Rights Act of 1976 (78 Stat. 252 and 1976 PA 4563) and will require a similar covenant on the part of contractors employed in the performance of this Agreement.

10. Approval; No Release:

Approval of Novi shall not constitute nor be deemed release of the responsibility and liability of Farmington Hills, its employees, associates, agents and Farmington Hills for the accuracy and competency of their services.

11. Compliance With Laws:

This Contract and all of Farmington Hills's services and practices shall be subject to all applicable state, federal and local laws, rules or regulations, including without limitation, those which apply because Novi is a public governmental agency or body. Farmington Hills represents that it is in compliance with all such laws and eligible and qualified to enter into this Agreement.

12. Notices:

Written notices under this Agreement shall be given to the parties at their addresses on page one by personal or registered mail delivery to the attention of the following persons:

City of Novi: Rob Hayes, P.E., Director of Public Services and Maryanne Cornelius, Clerk.

Farmington Hills: Tom Biasell, Public Services Director and Kathy Dornan, Clerk

13. This Agreement shall be construed under the laws of the State of Michigan. If any part, term, provision of the Agreement is held to be illegal or in conflict with any law of the State of Michigan or of the United States, the validity of the remaining portion of the provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or privilege and held to be invalid.

14. Authority:

The parties are authorized to enter into this Agreement by virtue of the provisions of the Urban Cooperation Act, Public Act 7 of 1967, as amended, being MCL 124.501, et seq.

15. No Third Party Beneficiaries:

Except as provided for the benefit of the parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation and/or any other right in favor of any other person or entity.

16. Reservation of Rights:

This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of the parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity.

17. Agreement Modifications or Amendments:

Any modifications, amendments, recessions, waivers, or releases to this Agreement must be in writing and agreed to by the parties.

18. The parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each party have legal authority to sign this Agreement and bind the parties to the terms and conditions contained here.

CITY OF NOVI

By: _____
David B. Landry, Mayor

By: _____
Maryanne E. Cornelius, Clerk

Dated:

1423343

CITY OF FARMINGTON HILLS

By: _____
Steve Brock, City Manager

By: _____
Kathryn A. Dornan, Clerk

Dated:

EXHIBIT A

2010 PATHWAY PROJECT

FEE SCHEDULE
CONSTRUCTION INSPECTION AND STAKING SERVICES
By the City of Farmington Hills

The City of Farmington Hills shall provide the following services to the City of Novi in connection with the 2010 Pathway Project, Novi Project No. _____.

A. Construction Inspection Services

Construction inspection and related operations for purposes of this project are generally defined as, but are not limited to, all activities needed to inspect and evaluate the construction for compliance with the contract documents and other applicable rules and regulations, or as otherwise directed by Novi's Engineer, except for lawn and landscape restoration, for which Farmington Hills will provide only a final inspection.

The City of Farmington Hills shall provide a qualified Inspector for the project on a full-time basis.

Construction inspection services shall be paid at a rate of \$50 per hour during regular working hours and \$62 per hour outside of regular working hours. Regular working hours refers to an eight hour day on Monday through Friday, in accordance with the schedule of construction for the project, excluding weekends and holidays recognized by the City of Farmington Hills.

B. Construction Staking Services

This project will require the establishment of reference points as stated in the contract documents. Farmington Hills shall stake such reference points. The work shall be completed within 14 days of authorization to proceed by the City of Novi.

Construction staking services shall be paid at a rate of \$100 per hour during regular working hours and \$130 per hour outside of regular working hours. Regular working hours refers to an eight hour day on Monday through Friday, excluding weekends and holidays recognized by the City of Farmington Hills.