



# CITY of NOVI CITY COUNCIL

**Agenda Item C**  
**September 12, 2011**

**SUBJECT:** Approval to award a one-year renewal option of the Agreement for Professional Engineering Services to Orchard, Hiltz & McCliment, URS Corporation, and Spalding DeDecker Associates with no changes to the terms, conditions, or fee structure through September 24, 2012.

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

**CITY MANAGER APPROVAL:**

**BACKGROUND INFORMATION:**

The City uses three pre-qualified consultants to provide professional engineering services for public projects. The design phase and construction phase services provided by these consultants are necessary for the implementation of the City's Capital Improvements Program. The current agreements for Public Project Engineering Services were awarded to Orchard, Hiltz & McCliment; Spalding DeDecker Associates; and URS Corporation on August 10, 2009, with an effective date of September 24, 2009. This agreement contained a two-year term (through September 24, 2011) with a single one-year renewal.

All three consultants have requested consideration of the one year renewal of the existing agreement with no changes to the terms, conditions, or fee structure (see letters from consultants, attached).

Staff is satisfied with the work performed by each of the three consultants and recommends a one-year renewal of the agreement through September 24, 2012.

**RECOMMENDED ACTION:** Approval to award a one-year renewal option of the Agreement for Professional Engineering Services to Orchard, Hiltz & McCliment, URS Corporation, and Spalding DeDecker Associates with no changes to the terms, conditions, or fee structure through September 24, 2012.

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

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



## MEMORANDUM

**TO:** CLAY PEARSON, CITY MANAGER  
**FROM:** BRIAN COBURN, P.E.; ENGINEERING MANAGER *BCC*  
**SUBJECT:** PUBLIC PROJECT ENGINEERING SERVICES RENEWAL  
**DATE:** JULY 26, 2011

7/27/11  
To: Mayor and City  
Council members  
FYI on item forthcoming for renewal.  
Clay

The City uses three pre-qualified consultants to provide professional engineering services for public projects. The design phase and construction phase services provided by these consultants are necessary for the implementation of the City's Capital Improvements Program. The current agreements for Public Project Engineering Services were awarded to Orchard, Hiltz & McCliment; Spalding DeDecker Associates, and URS Corporation, on August 10, 2009 with an effective date of September 24, 2009. This agreement contained a two year term (through September 24, 2011) with a single one year renewal.

The enclosed letters from each of the consultants request consideration of the one year extension of the existing agreement with no fee increase. Staff is satisfied with the work performed by each of the three consultants and recommends a one year renewal of the agreement through September 24, 2012.

An excerpt of the original motion packet along with the executed agreements is attached for your reference.

We can prepare for consideration on a future City Council agenda as appropriate.

cc: Victor Cardenas, Assistant City Manager  
Rob Hayes, Director of Public Services/City Engineer  
Kathy Smith-Roy, Finance Director

June 6, 2011



Brian T. Coburn, P.E., Engineering Manager  
Department of Public Services  
Field Services Complex  
City of Novi  
26300 Delwal Drive, Novi, MI 48375

Regarding: Agreement for Professional Engineering Services  
for Public Projects

Dear Mr. Coburn:

As follow up to our meeting on May 25, 2011, we are writing this correspondence to express our interest in the 1 year extension to our original agreement for professional engineering services dated September 24, 2009. It has been a pleasure to work with you and your staff in implementing projects to serve the community. We also appreciate the opportunity to have met with you to discuss how the agreement has functioned over the first two years and to offer suggestions on how it could potentially be improved.

We sincerely appreciate the opportunity to work for the City of Novi and look forward to continuing our relationship with the City.

Please feel free to call with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "James C. Stevens". The signature is fluid and cursive, with a horizontal line underneath it.

James C. Stevens, P.E.

cc: Vyto P. Kaunelis, P.E.





June 21, 2011

Mr. Brian Coburn, P.E.  
Engineering Manager  
Department of Public Services  
Field Services Complex – Engineering Division  
26300 Delwal Drive  
Novi, MI 48375

**Re: City of Novi  
Engineering Consultant Services for Public Projects**

Dear Mr. Coburn:

In accordance with our contract with the City of Novi for Engineering Consultant Services for Public Projects, Spalding DeDecker Associates, Inc. is requesting a one year extension to the contract under the current terms and conditions. We propose to perform all work during this additional year of service under the current contract rate structure.

If you have any questions, please do not hesitate to contact us at our office.

Sincerely,

**SPALDING DeDECKER ASSOCIATES, INC.**

James L. Van Tiflin, PE  
Project Manager

cc: Ben Croy, PE, Civil Engineer (e-mail)  
Aaron Staup, Construction Engineering Coordinator (e-mail)  
Ted Meadows, Contract Administrator (e-mail)



June 21, 2011

Mr. Brian T. Coburn, P.E.  
City of Novi, Department of Public Services  
Field Services Complex  
26300 Delwal Drive  
Novi, MI 48375

**Reference: Contract Extension Request**

Dear Mr. Coburn:

Please accept this letter as our official request to extend our Professional Engineering Services for Public Projects contract, dated September 24, 2009, for the additional 1-year term in accordance with Paragraph 1.c. of the contract. We are in agreement to keep all the terms, conditions and fees defined and documented in the contract the same for the extension year.

We have enjoyed our relationship over the years and are very appreciative of your support and trust in the services we provide. We look forward to continuing our relationship.

If you have any questions, please feel free to contact me at the number below.

Sincerely,

**URS CORPORATION**

A handwritten signature in blue ink that reads "Jan M. Hauser". The signature is fluid and cursive, written over the printed name and title.

Jan M. Hauser PE  
Vice President  
248-204-4140  
[Jan\\_hauser@urscorp.com](mailto:Jan_hauser@urscorp.com)

Cc: Sean Kelsch  
Terry Woodward



## MEMORANDUM

TO: CLAY PEARSON, CITY MANAGER  
FROM: ROB HAYES, P.E.; DIRECTOR OF PUBLIC SERVICES <sup>R74</sup>  
BRIAN COBURN, P.E.; SENIOR CIVIL ENGINEER <sup>BCC</sup>  
SUBJECT: ENGINEERING CONSULTANT SELECTION PROCESS  
DATE: JULY 15, 2009

7/16/09  
To Mayor and City  
Council Members  
BCC

The qualification period for the six engineering consultants that we currently use for City infrastructure projects ended in March 2009. We have been working to develop a new request for qualifications (RFQ) and have reviewed our existing system to identify improvements.

Staff identified two performance goals for an improved process, one of which is to improve the level of service provided by the consultants that are pre-qualified. There are times when staff has had difficulty with responsiveness of most of the firms. Part of this is caused by the process, because firms are not assured that they will receive enough work to justify dedicated resources solely to Novi. Using fewer firms would provide a consistent flow of Novi projects to the selected firms, thereby enabling them to provide resources that are dedicated to Novi, and giving us a much better level of service.

The second goal is to reduce the amount of time that is spent by staff developing and evaluating requests for proposals (RFPs). Currently, a list of qualified firms is identified through the RFQ process, and then the selected firms are solicited for detailed proposals for each project. Each RFP requires approximately 30 hours of staff time to prepare, review, and award. In a typical year, we review proposals for approximately 13 projects for a total of 390 hours of staff time. In looking for a more efficient way to solicit and award engineering projects, we investigated how other communities handle the procurement of engineering services.

// The City of Warren has a system that is similar to ours, but it is more efficient (while still competitive) and meets the goals outlined above. Warren uses a list of pre-qualified firms, as we do; however, at the beginning of the qualification period, fees are solicited based on a percentage of construction. Warren staff then negotiates with the selected firms so that all firms use the same fee structure. The projects are then awarded to each qualified firm in a rotation with the fee to be determined based on the agreed percentage of estimated construction costs.

We propose that the same methodology be applied to our engineering procurement process in the following manner:

- Publicly advertise an RFQ for engineering services (RFQ was posted on MITN and qualifications were received on June 19, as described below).
- Develop a short list of firms based on review of the qualifications for each discipline: 1) road and pathway construction and 2) water/sanitary/storm sewer construction.
  - Request proposals from the firms selected for each discipline (see attached request for proposals) that will outline a typical scope of work and require the firm to provide fee percentages based on construction values (fee curves) for various project types in each discipline.

- The fees will be evaluated by staff who will negotiate the firms into a common fee structure (as was done in Warren). The final outcome will be a standard fee curve for all consultants based on each type of project. (An example fee curve is attached.)
- Atypical projects such as water studies, storm water analyses, etc., would still require a detailed RFP similar to our current system.
- An award order will be randomly determined prior to the first project award. Occasionally, a firm could be selected out of order if the firm has previous knowledge or experience relating to the project site that would benefit that project. We will maintain a list of award amounts to make sure that the volume of work is evenly distributed to firms based on dollar value.
- We would anticipate that the selected firms would enter into a general contract (see draft agreement in Exhibit B in the attached RFP) with the City at the beginning of the qualification period that would cover general terms and conditions, such as insurance requirements, indemnification, deliverables, etc.
- When a firm is selected for a project, a kick-off meeting would be held to agree on scope and construction cost estimates. Following award by City Council, the City would enter into a supplemental contract (see draft in Exhibit C in the attached RFP) specific to the scope and cost for each project.

A total of 13 firms submitted qualification packages on June 19. Our review team (consisting of four staff members from Engineering Division, one from Water & Sewer Division, one from Finance and one from Community Development) completed the review of the qualification packages on June 30 in order to select firms for the two categories of projects using Qualification Based Selection (QBS) criteria. A summary of the review scores is as follows:

Summary of Review Scores for Roads & Pathways:

<b>FIRM:</b>	<b>Totals</b>	<b>Rank</b>
Spalding DeDecker	1998	1
Orchard Hiltz McCliment	1796	2
URS Corp.	1778	3
Stantec Consulting Michigan Inc.	1641	4
Fishbeck Thompson Carr & Huber	1626	5
Anderson, Eckstein & Westrick	1598	6
Rowe Professional Services	1356	7
Professional Engineering Associates	1313	8
Boss Engineering	749	9
Zeimet Wozniak & Associates	690	10
Charles E. Raines Company	542	11
Michael L. Priest & Associates	444	12
SAM Consultants PLLC	394	13

Summary of Review Scores for Utilities

<b>FIRM:</b>	<b>Totals</b>	<b>Rank</b>
Spalding DeDecker	2038	1
Orchard Hiltz McCliment	1998	2
URS Corp.	1714	3
Stantec Consulting Michigan Inc.	1697	4
Anderson, Eckstein & Westrick	1573	5
Fishbeck Thompson Carr & Huber	1538	6
Professional Engineering Associates	1426	7
Rowe Professional Services	1173	8
Boss Engineering	721	9
Zeimet Wozniak & Associates	659	10
Charles E. Raines Company	567	11
Michael L. Priest & Associates	442	12
SAM Consultants PLLC	379	13

\* A recommendation was presented to the Consultant Review Committee to proceed with the qualification and project award process outlined above, and to send an RFP to the top three pre-qualified firms. The recommendation was approved by the Consultant Review Committee at its July 6<sup>th</sup> meeting, and the attached RFP was subsequently sent to Spalding DeDecker, Orchard Hiltz & McCliment and URS Corporation. As stated previously, one of the goals of the new process is to provide enough work to each of the firms so that it will dedicate the necessary resources to Novi projects (which did not always occur when work was distributed to six firms).

We believe that using three firms will meet this goal of improved level of service. In addition, implementing this new qualification and project award process will help to free-up staff to provide value to the City in other important areas.

The proposals are due from the three pre-qualified firms on July 21, and then staff will negotiate fees with the firms to establish a common fee curve for all firms in each defined project category. We anticipate preparing the general engineering contracts for City Council consideration at the August 10, 2009 meeting.

Please feel free to contact us with any questions.



STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

**AGREEMENT FOR PROFESSIONAL ENGINEERING  
SERVICES FOR PUBLIC PROJECTS**

**BETWEEN**

**CITY OF NOVI**

**AND**

**ORCHARD HILTZ & McCLIMENT, INC.**

This Agreement is effective this 24<sup>th</sup> day of SEPTEMBER, 2009, and is between the **City of Novi**, 45175 West Ten Mile Road, Novi, Michigan 48375 (hereafter "**City**") and **Orchard, Hiltz & McCliment, Inc.**, 34000 Plymouth Road, Livonia, Michigan 48150 (hereafter "**Consultant**").

**RECITALS:**

The City desires to engage the professional services of the Consultant to perform design and construction engineering services for public projects on behalf of the City.

The Consultant desires to provide such services, as set forth below and in the attached and incorporated Exhibits, under the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. General Scope of Services and Term of Agreement:**

- a. For and in consideration of payment by the City as provided in this Agreement, Consultant shall perform the services described herein, including the services described in Exhibit A—*Fee Proposal for Engineering Consultant Services*, if and when such services are assigned by the City to Consultant by execution of a Supplemental Agreement, in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, and in compliance with all terms and conditions of this Agreement.

- b. For design and construction engineering services for individual projects, if and when assigned to Consultant, including roadway construction and rehabilitation work, sidewalk and pathway construction, water main construction, sanitary sewer/storm sewer construction, detention basin retrofit projects, and sanitary lift station upgrades, consultant shall submit an individual work plan and schedule for each project assigned to Consultant by the City based upon the scope of the particular project as described in accordance with Exhibit B—*Engineering Fees by Construction Value and Type of Project* for that particular type of project. Services shall be assigned to Consultant by approval by the City of a supplemental agreement (“Supplemental Agreement”), which shall be prepared for each individual project assigned to Consultant setting forth the specific scope and cost of the particular project. Consultant shall comply with the work description, insurance requirements, and other terms applicable to each individual project as set forth in the Supplemental Agreement.
- c. The term of this Agreement shall be two years from the date set forth above, and will be open for review and negotiation by mutual agreement of Consultant and the City of Novi for an additional 1-year term. However, either party may terminate this Agreement for any reason upon ninety (90) 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
- d. This Agreement is based on the ordinances, policies, procedures, or requirements in effect on the date of the Agreement. Any additional office or field services required as a direct and apparent result of the change of such ordinances, policies, procedures, or requirements shall be negotiated to the mutual consent of the City and Consultant.
- e. City agrees that the plans, drawings, or other contracted services are primarily for the use of City. All documents prepared by the engineer, including tracings, drawings, estimates, specifications, field notes, investigations, studies, reports, computer files, field data, notes, etc., in connection with the performance of its duties under this agreement shall become the property of the City upon completion of the services and payment in full of all monies due to the Consultant with respect to the preparation of such document. Reuse of any such materials by City on any extension of a project or any other project without the written authorization of Consultant shall be at City’s sole risk. Consultant shall have the right to retain copies of all such materials.

**2. Payment for Services:**

- a. Consultant shall invoice City monthly on account of Consultant's services. City shall pay Consultant within thirty (30) calendar days of the time of receipt of invoice from Consultant on account. Subject to sub-paragraph 2(b) below, the City shall pay the undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. If payment is not maintained on a thirty (30)

day current basis, Consultant may suspend further performance until payments are current.

- b. City agrees that the periodic billing from Consultant to City are presumed to be correct, conclusive with regard to the services provided, and binding on City unless City, within thirty (30) calendar days from the date of receipt of such billing, notifies Consultant in writing of alleged disagreements with regard to the billing. Errors or discrepancies in a billing recognized after 30 calendar days but not more than 180 calendar days after receipt of invoice from Consultant shall be resolved to the mutual satisfaction of both parties. After 180 calendar days after receipt of invoice from Consultant, the professional services provided by Consultant shall be viewed as acceptable and closed.
- 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 the City.
- d. For individual projects assigned to Consultant in accordance with Section 1(b) above, a more specific procedure for submission and approval of billing statements may be set forth in the Supplemental Agreement for each project. The City shall confirm the correctness of any progress estimates made for billing purposes, and may use the City'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 the City.
- e. In the event of termination for a substantial failure by the Consultant to fulfill its obligations under this agreement through no fault of the City, Consultant shall be paid as compensation in full for services performed to that date an amount calculated in accordance with the Supplemental Agreement for that particular project. Such amount shall be paid by the City upon Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been prepared and/or accumulated by Consultant in performing the services up to the date of termination.

### **3. Indemnification and Liability:**

- a. The Consultant agrees to hold harmless and indemnify the City, its officers, agents, employees from and against all claims, demands, suits liability, losses, damages or costs (including reasonable attorney fees and costs) arising out, of or resulting from the Consultant's tortious or negligent acts, errors, or omissions in performing this Agreement and all Supplemental Agreements.
- b. The City and Consultant acknowledge that the Consultant's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that

may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential damages, suspend performance of its services under this Agreement until such time as the City retains appropriate Consultants or 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. The City agrees, to the extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees, stockholders, and sub-consultants (collectively Consultant) from and against any and all claims, suits, demands, liability, losses, damages or costs, including reasonable attorney's fees and costs arising out of or resulting from the City's tortious or negligent acts or errors in performing this Agreement.
- d. Consultant makes no representations concerning site conditions, and Consultant is not responsible for any liability that may arise out of the making or failure to make site surveys, or subsurface tests, or general testing; provided, however, that if the provision of such surveys and testing is required in order for Consultant to provide the particular service being rendered by Consultant under this Agreement, or any Supplemental Agreement, in accordance with the professional standard of care set forth in Paragraph 1.a. above, the making of such representations or the provision of such surveys and testing shall be required.
- e. In providing opinions of probable construction costs, it is recognized that neither the City nor the Consultant has control over the costs of labor, equipment, materials, contractor safety practices, or over a contractor's methods of determining prices or bidding. An opinion of probable construction costs shall be based on a reasonable professional judgment and experience, but shall not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the City's budget or from any opinion of probable cost prepared by the Consultant.
- f. Consultant shall not be liable for damages resulting from the actions or inactions of any governmental agencies, including, but not limited to, plan processing; provided, however, that this provision shall not relieve Consultant of its obligations under this Agreement, including all Exhibits hereto, with respect to its securing, or assisting the City in securing, various governmental permits and appraisals in a manner consistent with the standard of care set forth in Paragraph 1.a. above.
- g. Except as specifically set forth in the Work Description Exhibit, attached hereto as Exhibit A or any Supplemental Agreement, the City acknowledges that Consultant 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, Consultant shall obtain and maintain in full force, at its own expense, the following insurance coverage in not less than the following amounts:
  - i. Worker's Compensation insurance relative to all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than that required by applicable law,
  - ii. Comprehensive General Liability Public Liability, to protect all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than the amount of \$1,000,000 per occurrence;
  - iii. Professional Liability (Including Errors and Omissions) Insurance in the amount of \$1,000,000 per claim
  - iv. Automotive Insurance covering all owned, hired, and non-owned vehicles with insurance to comply with the Michigan No-Fault Insurance Law, including Regional Liability Insurance with minimum bodily injury limits of \$1,000,000 each occurrence and minimum property damage of \$1,000,000 per occurrence.
- b. Consultant shall be responsible for all deductibles contained in any insurance required hereunder.
- c. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate existing insurance limits, the Consultant will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such reasonable additional insurance coverage cost shall be paid for by the City of Novi, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City. The cost of insurance for individual projects shall be factored into the established fee curves in Exhibit B—*Engineering Fees by Construction Value and Type of Project* for each particular type of project
- h. All policies shall name the Consultant as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice to the City.
- i. With the exception of Professional Liability, all insurance policies shall name the City of Novi, its officers, agents, and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Sue Morianti, Purchasing Manager, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 prior to the commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.



- j. If any service is sublet in connection with this Agreement, the Consultant shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the Consultant.
- k. The provisions requiring the Consultant to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Consultant under this Agreement.

**5. Entire Agreement**

- a. Except for the terms of each Supplemental Agreement, which shall be deemed additional terms to this Agreement, this Agreement contains the entire agreement between the City and Consultant relating to services to be provided by Consultant to the City. 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 City and Consultant.
- b. With respect to any direct conflict between the terms of this Agreement and any Supplemental Agreement as defined in Section 1(b) above, the terms of the Supplemental Agreement shall control with respect to that individual project set forth in the particular Supplemental Agreement only. Notwithstanding this subsection, Section 3, Indemnification and Liability, shall be additional to those indemnity and hold harmless provisions set forth in any Supplemental Agreement, except that Section 3(c) of this Agreement shall not apply to individual design and/or construction management projects.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

**6. Assignment:**

Neither City nor Consultant 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 City and Consultant, unless the court's action or holding has the effect of frustrating the purpose of this Agreement.

## **8. Delays:**

It is expected that the consultant will perform the work in a timely fashion in accordance with the schedule that is agreed upon at the commencement of each project. The City shall provide requested items within ten (10) working days of the request. Deliverables (review sets, bid documents, approval letters, rejection letters, sign-offs, punch lists, inspection reports, Inspector's Daily Reports or IDR's, etc.) shall be submitted to appropriate City staff no later than ten (10) working days after the work is performed.

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

No charges or claims for damages shall be made by the Consultant 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 the City in providing to the Consultant either the necessary information or approval to proceed with the service resulting through no fault of the Consultant, in delays of such extent as to require the Consultant to perform its services under changed conditions not contemplated by the parties, the City 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 the Consultant as determined by the City, the Consultant shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the Consultant to proceed to complete the services, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein set forth.

## **9. Disclosure:**

Consultant affirms that it has not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of the person's immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional design services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by Michigan law shall not be considered as a valuable gift for the purposes of this Agreement.

**10. Nondiscrimination:**

The Consultant 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. The Consultant 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 the consultant or subcontractor employed in the performance of this Agreement.

**11. Approval; No Release:**

Approval of the City shall not constitute nor be deemed release of the responsibility and liability of Consultant, its employees, associates, agents and consultants for the accuracy and competency of their designs, drawings, and specifications, or other documents and services; nor shall that approval be deemed to be an assumption of that responsibility by the City for any defect in the designs, drawings and specifications or other documents prepared by Consultant, its employees, subcontractor, agents and consultants.

**12. Compliance With Laws:**

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

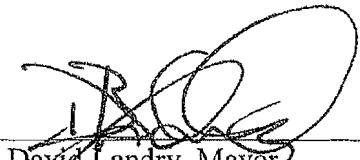
**13. Notices:**

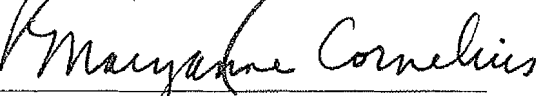
Written notices under this Agreement shall be given to the parties at their addresses on page one by personal or registered mail delivery to the attention of the following persons:

**City of Novi:**            **Rob Hayes, P.E., Director of Public Services and Maryanne Cornelius, Clerk, with a copy to Thomas R. Schultz, City Attorney**


**Consultant:**            **Vyto Kaunelis, Principal and Daniel Fredendall, Executive Vice President**

**CITY OF NOVI**

By   
\_\_\_\_\_  
David Landry, Mayor

By   
\_\_\_\_\_  
Maryanne Cornelius, Clerk

**ORCHARD HILTZ & McCLIMENT, INC.**

By   
\_\_\_\_\_

1280231

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

AGREEMENT FOR PROFESSIONAL ENGINEERING  
SERVICES FOR PUBLIC PROJECTS

BETWEEN

CITY OF NOVI

AND

URS CORPORATION GREAT LAKES

This Agreement is effective this 24<sup>th</sup> day of SEPTEMBER, 2009, and is between the **City of Novi**, 45175 West Ten Mile Road, Novi, Michigan 48375 (hereafter "**City**") and **URS Corporation Great Lakes**, 27777 Franklin Road, Suite 2000, Southfield, Michigan 48034 (hereafter "**Consultant**").

**RECITALS:**

The City desires to engage the professional services of the Consultant to perform design and construction engineering services for public projects on behalf of the City.

The Consultant desires to provide such services, as set forth below and in the attached and incorporated Exhibits, under the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. General Scope of Services and Term of Agreement:**

- a. For and in consideration of payment by the City as provided in this Agreement, Consultant shall perform the services described herein, including the services described in Exhibit A—*Fee Proposal for Engineering Consultant Services*, if and when such services are assigned by the City to Consultant by execution of a Supplemental Agreement, in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under



similar circumstances, and in compliance with all terms and conditions of this Agreement.

- b. For design and construction engineering services for individual projects, if and when assigned to Consultant, including roadway construction and rehabilitation work, sidewalk and pathway construction, water main construction, sanitary sewer/storm sewer construction, detention basin retrofit projects, and sanitary lift station upgrades, consultant shall submit an individual work plan and schedule for each project assigned to Consultant by the City based upon the scope of the particular project as described in accordance with Exhibit B—*Engineering Fees by Construction Value and Type of Project* for that particular type of project. Services shall be assigned to Consultant by approval by the City of a supplemental agreement (“Supplemental Agreement”), which shall be prepared for each individual project assigned to Consultant setting forth the specific scope and cost of the particular project. Consultant shall comply with the work description, insurance requirements, and other terms applicable to each individual project as set forth in the Supplemental Agreement.
- c. The term of this Agreement shall be two years from the date set forth above, and will be open for review and negotiation by mutual agreement of Consultant and the City of Novi for an additional 1-year term. However, either party may terminate this Agreement for any reason upon ninety (90) 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
- d. This Agreement is based on the ordinances, policies, procedures, or requirements in effect on the date of the Agreement. Any additional office or field services required as a direct and apparent result of the change of such ordinances, policies, procedures, or requirements shall be negotiated to the mutual consent of the City and Consultant.
- e. City agrees that the plans, drawings, or other contracted services are primarily for the use of City. All documents prepared by the engineer, including tracings, drawings, estimates, specifications, field notes, investigations, studies, reports, computer files, field data, notes, etc., in connection with the performance of its duties under this agreement shall become the property of the City upon completion of the services and payment in full of all monies due to the Consultant with respect to the preparation of such document. Reuse of any such materials by City on any extension of a project or any other project without the written authorization of Consultant shall be at City’s sole risk. Consultant shall have the right to retain copies of all such materials.

## **2. Payment for Services:**

- a. Consultant shall invoice City monthly on account of Consultant's services. City shall pay Consultant within thirty (30) calendar days of the time of receipt of invoice from Consultant on account. Subject to sub-paragraph 2(b) below, the City shall

pay the undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. If payment is not maintained on a thirty (30) day current basis, Consultant may suspend further performance until payments are current.

- b. City agrees that the periodic billing from Consultant to City are presumed to be correct, conclusive with regard to the services provided, and binding on City unless City, within thirty (30) calendar days from the date of receipt of such billing, notifies Consultant in writing of alleged disagreements with regard to the billing. Errors or discrepancies in a billing recognized after 30 calendar days but not more than 180 calendar days after receipt of invoice from Consultant shall be resolved to the mutual satisfaction of both parties. After 180 calendar days after receipt of invoice from Consultant, the professional services provided by Consultant shall be viewed as acceptable and closed.
- 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 the City.
- d. For individual projects assigned to Consultant in accordance with Section 1(b) above, a more specific procedure for submission and approval of billing statements may be set forth in the Supplemental Agreement for each project. The City shall confirm the correctness of any progress estimates made for billing purposes, and may use the City'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 the City.
- e. In the event of termination for a substantial failure by the Consultant to fulfill its obligations under this agreement through no fault of the City, Consultant shall be paid as compensation in full for services performed to that date an amount calculated in accordance with the Supplemental Agreement for that particular project. Such amount shall be paid by the City upon Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been prepared and/or accumulated by Consultant in performing the services up to the date of termination.

### **3. Indemnification and Liability:**

- a. The Consultant agrees to hold harmless and indemnify the City, its officers, agents, employees from and against all claims, demands, suits liability, losses, damages or costs (including reasonable attorney fees and costs) arising out, of or resulting from the Consultant's tortious or negligent acts, errors, or omissions in performing this Agreement and all Supplemental Agreements.
- b. The City and Consultant acknowledge that the Consultant's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance

of the Consultant's services, the Consultant may, at its option and without liability for consequential damages, suspend performance of its services under this Agreement until such time as the City retains appropriate Consultants or 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. The City agrees, to the extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees, stockholders, and sub-consultants (collectively Consultant) from and against any and all claims, suits, demands, liability, losses, damages or costs, including reasonable attorney's fees and costs arising out of or resulting from the City's tortious or negligent acts or errors in performing this Agreement.
- d. Consultant makes no representations concerning site conditions, and Consultant is not responsible for any liability that may arise out of the making or failure to make site surveys, or subsurface tests, or general testing; provided, however, that if the provision of such surveys and testing is required in order for Consultant to provide the particular service being rendered by Consultant under this Agreement, or any Supplemental Agreement, in accordance with the professional standard of care set forth in Paragraph 1.a. above, the making of such representations or the provision of such surveys and testing shall be required.
- e. In providing opinions of probable construction costs, it is recognized that neither the City nor the Consultant has control over the costs of labor, equipment, materials, contractor safety practices, or over a contractor's methods of determining prices or bidding. An opinion of probable construction costs shall be based on a reasonable professional judgment and experience, but shall not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the City's budget or from any opinion of probable cost prepared by the Consultant.
- f. Consultant shall not be liable for damages resulting from the actions or inactions of any governmental agencies, including, but not limited to, plan processing; provided, however, that this provision shall not relieve Consultant of its obligations under this Agreement, including all Exhibits hereto, with respect to its securing, or assisting the City in securing, various governmental permits and appraisals in a manner consistent with the standard of care set forth in Paragraph 1.a. above.
- g. Except as specifically set forth in the Work Description Exhibit, attached hereto as Exhibit A or any Supplemental Agreement, the City acknowledges that Consultant 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, Consultant shall obtain and maintain in full force, at its own expense, the following insurance coverage in not less than the following amounts:
  - i. Worker's Compensation insurance relative to all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than that required by applicable law,
  - ii. Comprehensive General Liability Public Liability, to protect all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than the amount of \$1,000,000 per occurrence;
  - iii. Professional Liability (Including Errors and Omissions) Insurance in the amount of \$1,000,000 per claim
  - iv. Automotive Insurance covering all owned, hired, and non-owned vehicles with insurance to comply with the Michigan No-Fault Insurance Law, including Regional Liability Insurance with minimum bodily injury limits of \$1,000,000 each occurrence and minimum property damage of \$1,000,000 per occurrence.
- b. Consultant shall be responsible for all deductibles contained in any insurance required hereunder.
- c. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate existing insurance limits, the Consultant will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such reasonable additional insurance coverage cost shall be paid for by the City of Novi, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City. The cost of insurance for individual projects shall be factored into the established fee curves in Exhibit B—*Engineering Fees by Construction Value and Type of Project* for each particular type of project
- h. All policies shall name the Consultant as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice to the City.
- i. With the exception of Professional Liability, all insurance policies shall name the City of Novi, its officers, agents, and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Sue Morianti, Purchasing Manager, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 prior to the commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.

- j. If any service is sublet in connection with this Agreement, the Consultant shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the Consultant.
- k. The provisions requiring the Consultant to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Consultant under this Agreement.

**5. Entire Agreement**

- a. Except for the terms of each Supplemental Agreement, which shall be deemed additional terms to this Agreement, this Agreement contains the entire agreement between the City and Consultant relating to services to be provided by Consultant to the City. 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 City and Consultant.
- b. With respect to any direct conflict between the terms of this Agreement and any Supplemental Agreement as defined in Section 1(b) above, the terms of the Supplemental Agreement shall control with respect to that individual project set forth in the particular Supplemental Agreement only. Notwithstanding this subsection, Section 3, Indemnification and Liability, shall be additional to those indemnity and hold harmless provisions set forth in any Supplemental Agreement, except that Section 3(c) of this Agreement shall not apply to individual design and/or construction management projects.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

**6. Assignment:**

Neither City nor Consultant 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 City and Consultant, unless the court's action or holding has the effect of frustrating the purpose of this Agreement.



## **8. Delays:**

It is expected that the consultant will perform the work in a timely fashion in accordance with the schedule that is agreed upon at the commencement of each project. The City shall provide requested items within ten (10) working days of the request. Deliverables (review sets, bid documents, approval letters, rejection letters, sign-offs, punch lists, inspection reports, Inspector's Daily Reports or IDR's, etc.) shall be submitted to appropriate City staff no later than ten (10) working days after the work is performed.

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

No charges or claims for damages shall be made by the Consultant 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 the City in providing to the Consultant either the necessary information or approval to proceed with the service resulting through no fault of the Consultant, in delays of such extent as to require the Consultant to perform its services under changed conditions not contemplated by the parties, the City 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 the Consultant as determined by the City, the Consultant shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the Consultant to proceed to complete the services, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein set forth.

## **9. Disclosure:**

Consultant affirms that it has not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of the person's immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional design services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by Michigan law shall not be considered as a valuable gift for the purposes of this Agreement.

**10. Nondiscrimination:**

The Consultant 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. The Consultant 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 the consultant or subcontractor employed in the performance of this Agreement.

**11. Approval; No Release:**

Approval of the City shall not constitute nor be deemed release of the responsibility and liability of Consultant, its employees, associates, agents and consultants for the accuracy and competency of their designs, drawings, and specifications, or other documents and services; nor shall that approval be deemed to be an assumption of that responsibility by the City for any defect in the designs, drawings and specifications or other documents prepared by Consultant, its employees, subcontractor, agents and consultants.

**12. Compliance With Laws:**

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

**13. Notices:**

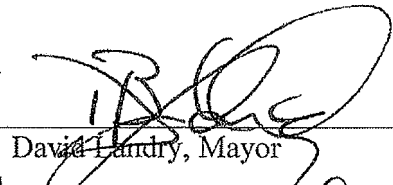
Written notices under this Agreement shall be given to the parties at their addresses on page one by personal or registered mail delivery to the attention of the following persons:

**City of Novi:**            **Rob Hayes, P.E., Director of Public Services and Maryanne Cornelius, Clerk, with a copy to Thomas R. Schultz, City Attorney**

**Consultant:**            **Jan Hauser, P.E.; Vice President, Water/Wastewater**

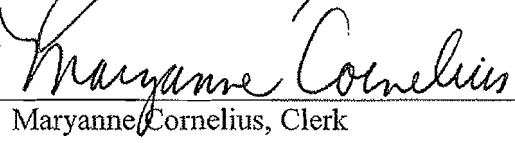
**CITY OF NOVI**

By



David Landry, Mayor

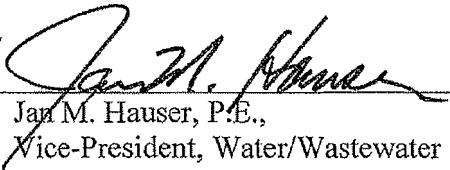
By



Maryanne Cornelius, Clerk

**URS CORPORATION GREAT LAKES**

By



Jan M. Hauser, P.E.,  
Vice-President, Water/Wastewater

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

**AGREEMENT FOR PROFESSIONAL ENGINEERING  
SERVICES FOR PUBLIC PROJECTS**

**BETWEEN**

**CITY OF NOVI**

**AND**

**SPALDING DEDECKER ASSOCIATES, INC.**

This Agreement is effective this <sup>24<sup>th</sup></sup> day of SEPTEMBER 2009, and is between the City of Novi, 45175 West Ten Mile Road, Novi, Michigan 48375 (hereafter "City") and Spalding DeDecker Associates, Inc., 905 South Boulevard East, Rochester Hills, MI 48307 (hereafter "Consultant").

**RECITALS:**

The City desires to engage the professional services of the Consultant to perform design and construction engineering services for public projects on behalf of the City.

The Consultant desires to provide such services, as set forth below and in the attached and incorporated Exhibits, under the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. General Scope of Services and Term of Agreement:**

- a. For and in consideration of payment by the City as provided in this Agreement, Consultant shall perform the services described herein, including the services described in Exhibit A—*Fee Proposal for Engineering Consultant Services*, if and when such services are assigned by the City to Consultant by execution of a Supplemental Agreement, in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under

similar circumstances, and in compliance with all terms and conditions of this Agreement.

- b. For design and construction engineering services for individual projects, if and when assigned to Consultant, including roadway construction and rehabilitation work, sidewalk and pathway construction, water main construction, sanitary sewer/storm sewer construction, detention basin retrofit projects, and sanitary lift station upgrades, consultant shall submit an individual work plan and schedule for each project assigned to Consultant by the City based upon the scope of the particular project as described in accordance with Exhibit B—*Engineering Fees by Construction Value and Type of Project* for that particular type of project. Services shall be assigned to Consultant by approval by the City of a supplemental agreement (“Supplemental Agreement”), which shall be prepared for each individual project assigned to Consultant setting forth the specific scope and cost of the particular project. Consultant shall comply with the work description, insurance requirements, and other terms applicable to each individual project as set forth in the Supplemental Agreement.
- c. The term of this Agreement shall be two years from the date set forth above, and will be open for review and negotiation by mutual agreement of Consultant and the City of Novi for an additional 1-year term. However, either party may terminate this Agreement for any reason upon ninety (90) 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
- d. This Agreement is based on the ordinances, policies, procedures, or requirements in effect on the date of the Agreement. Any additional office or field services required as a direct and apparent result of the change of such ordinances, policies, procedures, or requirements shall be negotiated to the mutual consent of the City and Consultant.
- e. City agrees that the plans, drawings, or other contracted services are primarily for the use of City. All documents prepared by the engineer, including tracings, drawings, estimates, specifications, field notes, investigations, studies, reports, computer files, field data, notes, etc., in connection with the performance of its duties under this agreement shall become the property of the City upon completion of the services and payment in full of all monies due to the Consultant with respect to the preparation of such document. Reuse of any such materials by City on any extension of a project or any other project without the written authorization of Consultant shall be at City’s sole risk. Consultant shall have the right to retain copies of all such materials.

## **2. Payment for Services:**

- a. Consultant shall invoice City monthly on account of Consultant’s services. City shall pay Consultant within thirty (30) calendar days of the time of receipt of invoice from Consultant on account. Subject to sub-paragraph 2(b) below, the City shall



pay the undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. If payment is not maintained on a thirty (30) day current basis, Consultant may suspend further performance until payments are current.

- b. City agrees that the periodic billing from Consultant to City are presumed to be correct, conclusive with regard to the services provided, and binding on City unless City, within thirty (30) calendar days from the date of receipt of such billing, notifies Consultant in writing of alleged disagreements with regard to the billing. Errors or discrepancies in a billing recognized after 30 calendar days but not more than 180 calendar days after receipt of invoice from Consultant shall be resolved to the mutual satisfaction of both parties. After 180 calendar days after receipt of invoice from Consultant, the professional services provided by Consultant shall be viewed as acceptable and closed.
- 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 the City.
- d. For individual projects assigned to Consultant in accordance with Section 1(b) above, a more specific procedure for submission and approval of billing statements may be set forth in the Supplemental Agreement for each project. The City shall confirm the correctness of any progress estimates made for billing purposes, and may use the City'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 the City.
- e. In the event of termination for a substantial failure by the Consultant to fulfill its obligations under this agreement through no fault of the City, Consultant shall be paid as compensation in full for services performed to that date an amount calculated in accordance with the Supplemental Agreement for that particular project. Such amount shall be paid by the City upon Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been prepared and/or accumulated by Consultant in performing the services up to the date of termination.

### **3. Indemnification and Liability:**

- a. The Consultant agrees to hold harmless and indemnify the City, its officers, agents, employees from and against all claims, demands, suits liability, losses, damages or costs (including reasonable attorney fees and costs) arising out, of or resulting from the Consultant's tortious or negligent acts, errors, or omissions in performing this Agreement and all Supplemental Agreements.
- b. The City and Consultant acknowledge that the Consultant's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance

of the Consultant's services, the Consultant may, at its option and without liability for consequential damages, suspend performance of its services under this Agreement until such time as the City retains appropriate Consultants or 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. The City agrees, to the extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees, stockholders, and sub-consultants (collectively Consultant) from and against any and all claims, suits, demands, liability, losses, damages or costs, including reasonable attorney's fees and costs arising out of or resulting from the grossly negligent acts or omissions of the City, its agents, or employees in performing this Agreement.
- d. Consultant makes no representations concerning site conditions, and Consultant is not responsible for any liability that may arise out of the making or failure to make site surveys, or subsurface tests, or general testing; provided, however, that if the provision of such surveys and testing is required in order for Consultant to provide the particular service being rendered by Consultant under this Agreement, or any Supplemental Agreement, in accordance with the professional standard of care set forth in Paragraph 1.a. above, the making of such representations or the provision of such surveys and testing shall be required.
- e. In providing opinions of probable construction costs, it is recognized that neither the City nor the Consultant has control over the costs of labor, equipment, materials, contractor safety practices, or over a contractor's methods of determining prices or bidding. An opinion of probable construction costs shall be based on a reasonable professional judgment and experience, but shall not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the City's budget or from any opinion of probable cost prepared by the Consultant.
- f. Consultant shall not be liable for damages resulting from the actions or inactions of any governmental agencies, including, but not limited to, plan processing; provided, however, that this provision shall not relieve Consultant of its obligations under this Agreement, including all Exhibits hereto, with respect to its securing, or assisting the City in securing, various governmental permits and appraisals in a manner consistent with the standard of care set forth in Paragraph 1.a. above.
- g. Except as specifically set forth in the Work Description Exhibit, attached hereto as Exhibit A or any Supplemental Agreement, the City acknowledges that Consultant 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, Consultant shall obtain and maintain in full force, at its own expense, the following insurance coverage in not less than the following amounts:
  - i. Worker's Compensation insurance relative to all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than that required by applicable law,
  - ii. Comprehensive General Liability Public Liability, to protect all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than the amount of \$1,000,000 per occurrence;
  - iii. Professional Liability (Including Errors and Omissions) Insurance in the amount of \$1,000,000 per claim
  - iv. Automotive Insurance covering all owned, hired, and non-owned vehicles with insurance to comply with the Michigan No-Fault Insurance Law, including Regional Liability Insurance with minimum bodily injury limits of \$1,000,000 each occurrence and minimum property damage of \$1,000,000 per occurrence.
- b. Consultant shall be responsible for all deductibles contained in any insurance required hereunder.
- c. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate existing insurance limits, the Consultant will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such reasonable additional insurance coverage cost shall be paid for by the City of Novi, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City. The cost of insurance for individual projects shall be factored into the established fee curves in Exhibit B—*Engineering Fees by Construction Value and Type of Project* for each particular type of project
- h. All policies shall name the Consultant as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice to the City.
- i. With the exception of Professional Liability, all insurance policies shall name the City of Novi, its officers, agents, and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Sue Morianti, Purchasing Manager, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 prior to the commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.

- j. If any service is sublet in connection with this Agreement, the Consultant shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the Consultant.
- k. The provisions requiring the Consultant to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Consultant under this Agreement.

**5. Entire Agreement**

- a. Except for the terms of each Supplemental Agreement, which shall be deemed additional terms to this Agreement, this Agreement contains the entire agreement between the City and Consultant relating to services to be provided by Consultant to the City. 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 City and Consultant.
- b. With respect to any direct conflict between the terms of this Agreement and any Supplemental Agreement as defined in Section 1(b) above, the terms of the Supplemental Agreement shall control with respect to that individual project set forth in the particular Supplemental Agreement only.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

**6. Assignment:**

Neither City nor Consultant 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 City and Consultant, unless the court's action or holding has the effect of frustrating the purpose of this Agreement.

**8. Delays:**

It is expected that the consultant will perform the work in a timely fashion in accordance with the schedule that is agreed upon at the commencement of each project. The City shall

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No charges or claims for damages shall be made by the Consultant 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 the City in providing to the Consultant either the necessary information or approval to proceed with the service resulting through no fault of the Consultant, in delays of such extent as to require the Consultant to perform its services under changed conditions not contemplated by the parties, the City 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 the Consultant as determined by the City, the Consultant shall be granted an extension of time for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the permitting of the Consultant to proceed to complete the services, or any part of them, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein set forth.

#### **9. Disclosure:**

Consultant affirms that it has not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of the person's immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional design services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by Michigan law shall not be considered as a valuable gift for the purposes of this Agreement.

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The Consultant 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. The Consultant 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 the consultant or subcontractor employed in the performance of this Agreement.

**11. Approval; No Release:**

Approval of the City shall not constitute nor be deemed release of the responsibility and liability of Consultant, its employees, associates, agents and consultants for the accuracy and competency of their designs, drawings, and specifications, or other documents and services; nor shall that approval be deemed to be an assumption of that responsibility by the City for any defect in the designs, drawings and specifications or other documents prepared by Consultant, its employees, subcontractor, agents and consultants.

**12. Compliance With Laws:**

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


**13. Notices:**

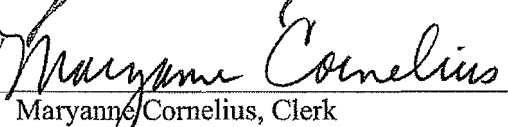
Written notices under this Agreement shall be given to the parties at their addresses on page one by personal or registered mail delivery to the attention of the following persons:

**City of Novi:**            **Rob Hayes, P.E., Director of Public Services and Maryanne Cornelius, Clerk, with a copy to Thomas R. Schultz, City Attorney**


**Consultant:**            **Dave Potter, P.E., Vice-President, Manager – Municipal Engineering Department**

**CITY OF NOVI**

By   
\_\_\_\_\_  
David Landry, Mayor

By   
\_\_\_\_\_  
Maryanne Cornelius, Clerk

**SPALDING DEDECKER ASSOCIATES, INC.**

By   
\_\_\_\_\_  
David L. Potter, Vice-President