

AGREEMENT FOR ACOUSTIC AND MEDIA EQUIPMENT CONSULTING SERVICES

This agreement is made this the 28th day of November, 2012, by and between the City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, hereinafter called the "City" and Wavesolutions LLC, DBA Sound Decision, 37625 Ann Arbor Road, Suite 112, Livonia, Michigan 48150, hereinafter called the "Consultant."

NOW, THEREFORE, the Consultant and the City for the consideration hereinafter named, agree as follows:

Section 1 – Services/Compensation

The Consultant agrees to provide Acoustic and Media Equipment Consulting Services, including all labor, materials, equipment and the means of work, in accordance with the City's Request for Proposals (RFP-RH-12-054) dated September 20, 2012, and Consultant's Proposal dated October 17, 2012. Additional services, not included in this agreement, shall be by mutual consent between the City and Consultant.

The City, in consideration of the performance of this agreement, agrees to pay Consultant the not-to-exceed amount of Two Thousand Five Hundred Sixty Five (\$2,565.00) Dollars for Phase I of the project, the not-to-exceed amount of Five Thousand Seventy (\$5,070.00) Dollars for Phase II of the project, the not-to-exceed amount of Five Thousand Five Hundred Eighty Five (\$5,585.00) Dollars for Phase III of the project, and the not-to-exceed amount of Three Thousand One Hundred (\$3,100.00) Dollars for Phase IV of the project. Phase II, III and IV shall not commence until requested by the City. Revisions or additional services shall be by mutual agreement prior to the commencement of services. Fees shall remain firm throughout the term of the contract.

Consultant will invoice the City monthly for services performed pursuant to this Agreement based on costs identified in the Request for Proposal. Invoices shall include the following detailed information:

Information for each discipline on each individual project:

- Amount of monthly payment
- Itemization of all services performed
- Number of hours spent on services
- Fees associated with these hours
- Balance of costs remaining

This contract shall continue in effect from the date of execution until the completion of the City's Acoustic and Media Upgrades project.

Section 2 – Consultant Services

The Consultant agrees to furnish all services and materials necessary to undertake the project for the City. The Consultant agrees that in performance of its duties as outlined in the City's Request for Proposals dated September 20, 2012 and Consultant's Proposal dated October 17, 2012, it will be bound by the code of ethics applicable to its industry.

The Consultant shall not directly or indirectly enter into any agreement, participate in any collusion or otherwise take any action in submitting an independent estimate of fees for any project assignment, except as otherwise set out herein. The Consultant will complete all work required and referenced in the contract expeditiously and on time, or as mutually agreed by the City and Consultant.

Revisions due to error or oversight to work submitted to the City by the Consultant, shall be submitted to the City within ten (10) days from receipt of City's request. If a revision becomes necessary because of revised plans or additional requirements of the City, revisions shall be completed by mutual agreement between the City and the Contractor.

Section 3 – City Cooperation

The City shall cooperate with the Consultant to furnish documentation timely, as appropriate and as legally possible in the possession of the City relevant to the nature of the work assignments.

Section 4 - Compensation

For and in consideration of the faithful and professional performance and delivery of the above services as set forth, the City shall pay the Consultant for services pursuant to this Contract within sixty (60) days by check, forty-five (45) days by ACH or twenty (20) days by credit card of receipt of said invoices, after acceptance of the work and receipt from the Consultant of an itemized invoice describing services performed.

Any change in services to be performed by the Consultant involving extra compensation must be authorized in writing by the City prior for the performance thereof by the Consultant.

In case the Consultant deems extra compensation will be due it for work or materials not clearly covered in this agreement, or not ordered by the City as a change, or due to changed conditions, the Consultant shall notify the City in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the Consultant to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the Consultant shall not in any way be construed to establish the validity of the claim. Such extra compensation shall be provided only by Amendment to this Agreement.

Section 5 – Delays

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 work, resulting, through no fault of the Consultant, in delays of such extent as to require the Consultant to perform its work under changed conditions not contemplated by the parties, the City will consider 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. Authorization of such supplemental compensation shall be by an amendment to this agreement.

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.

Section 6 – Compliance with All Laws and Regulations

In the provision of the services described herein, the Consultant agrees to comply with all applicable Federal, State and local laws and applicable regulations. In addition, the Consultant shall be licensed and/or certified and professionally designated by the State of Michigan and licenses and/or certifications shall be maintained as active during the term of this agreement.

Section 7 – Independent Consultant

The Consultant shall perform duties as an independent contractor and in an independent manner without supervision and control by the City. The Consultant shall not be deemed to be an employee of the City for purposes of payroll deductions, withholding tax, social security, workers' compensation, unemployment compensation, disability benefits, vacations, fringe benefits or any other purpose. In the performance of duties, the Consultant shall supply and operate their own vehicles.

Section 8 – Ownership of Documents

Ownership of all data, materials and documentation originated and prepared for the City pursuant to this contract shall belong exclusively to the City.

Contractor may use the materials prepared for the City as promotion and marketing pieces in pursuit of work for others, provided prior written approval is obtained from the City.

Section 9 – Insurance

The Consultant shall not commence work until the certificate of insurance required under this paragraph has been delivered to the City. All insurance carriers must be acceptable to the City and licensed and admitted to do business in the State of Michigan.

A new certificate of insurance shall be provided to the City each year at the time of policy renewal. New certificates shall be delivered to the City in the same format as outlined in the sample certificate included in the City's Request for Proposal.

1. Workers' Compensation Insurance: The Consultant shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
2. Commercial General Liability Insurance. The Consultant shall procure and maintain during the life of the blanket purchase order, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; C) Independent Contractors Coverage; (D) Broad-Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
3. Motor Vehicle Liability. The Consultant shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
4. Umbrella Liability Insurance. The Consultant shall procure and maintain during the life of this contract Umbrella Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence.
5. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating: *"It is understood and agreed that the following shall be Additional Insureds: The City of Rochester hills, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess."*

6. Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named to the left."

Section 10 - Indemnification

To the fullest extent permitted by law, Consultant agrees to defend, pay in behalf of, indemnify and hold harmless the City of Rochester Hills, its elected and appointed officials, employees and volunteers and others working in behalf of the City of Rochester Hills against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Rochester Hills, its elected and appointed officials, employees, volunteers or others working in behalf of the City of Rochester Hills by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of the actual degree of fault of the Consultant.

Section 11 – Subcontractors

No contract may be sublet without the written consent of the City of Rochester Hills. Any subcontractor, so approved, shall be bound by the terms and conditions of this contract. The consultant shall be fully liable for all acts and omissions of its subcontractor(s) and shall indemnify the City of Rochester Hills for such acts or omissions.

Section 12 – Assignment of Agreement and Other Contractors

The Consultant shall not assign this Agreement or any part thereof without the written consent of the City. The City reserves the right to let other agreements in connection with this work, even if of like character, for work under an agreement. The Consultant shall coordinate work as required by the City. If any part of the Consultant's work depends on the proper execution of any other contractor, the Consultant shall inspect and promptly report to the City any defects in such work that renders it unsuitable for such proper execution. Failure to inspect and report shall constitute an acceptance of the other contractor's work.

Section 13 – Non-Discrimination

The Consultant agrees not to discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin or handicap. A breach of this Section shall constitute a material breach and may be cause for this Agreement to be canceled or terminated by the City.

Section 14 – Governing Law

The laws of the State of Michigan shall govern this Agreement.

Section 15 – Conflict of Interest

The Consultant agrees that in the performance of this Agreement, it shall at all times act in the best interest of the City of Rochester Hills and shall not have a financial interest in or otherwise benefit from any transaction between the City of Rochester Hills and the third party which might adversely affect the Consultant's performance of the services contemplated hereunder, except in the manner and to the extent provided in this Agreement.

Section 16 – Termination of Contract

The City reserve the right to terminate this agreement without penalty or handling fees upon 30 days written notice due to poor performance or for any reason deemed to be in its best interest.

The Consultant warrants that it has not employed or retained any company or person other than bonafide employees working solely for the Consultant, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than bonafide employees working solely for the Consultant, any fees, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon, or resulting from the award, or making of this agreement. For breach or violation of this warranty, the City or Rochester Hills shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

Section 17 – Entire Agreement

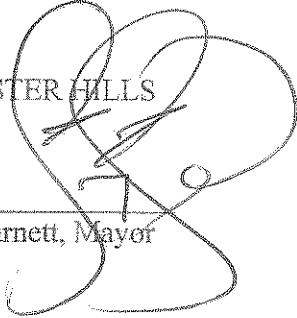
This agreement constitutes the entire agreement between the City and the Consultant and shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors, assigns and third parties claiming under this Agreement or by virtue of Agreement between the City and the Consultant.

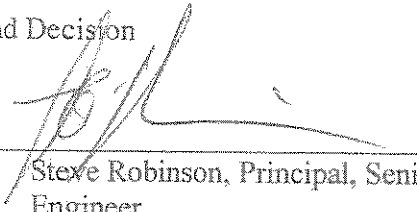
This agreement shall be construed in accordance with and governed in all respects by the laws of the State of Michigan.

IN WITNESS WHEREOF, the undersigned, warranting that each is fully authorized and empowered to do so, hereby execute these presents intending to bind themselves, and their respective principals, agents, assignees and successors thereby, as of the date first written above.

CITY OF ROCHESTER HILLS

Sound Decision

By: 
Bryan K. Barnett, Mayor

By: 
Steve Robinson, Principal, Senior
Engineer