

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

This agreement is made this 5th day of August, 2020, by and between the City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, hereinafter called the "City" and HUBBELL, ROTH & CLARK, INC., 555 Hulet Drive, Bloomfield Hills, Michigan 48302, 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 all professional engineering services as needed, including all labor, materials, equipment and the means of work, in accordance with the City's Request for Proposals RFP-RH-19-063, and Consultant's Proposal dated December 4, 2019. Additional services, not included in this agreement, shall be mutually agreed to by the City and Consultant.

The City, in consideration of the performance of this agreement, agrees to pay Consultant fees based on Consultants Hourly Rate Schedule for services actually provided, which includes all direct and indirect costs, reimbursables and any and all related costs and/or on a subsequent project estimates or scope and cost proposals, as mutually agreed by the City and Consultant. Hourly rates shall remain firm throughout the three-year term of the base contract.

Section 2 – Consultant Services

The Consultant agrees to furnish all materials and services necessary to undertake the above services for the City. The Consultant agrees that in performance of its duties as outlined in the City's Request for Proposals RFP-RH-19-063 and Consultant's Proposal dated December 4, 2019, it will be bound by the code of ethics applicable to its industry. 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.

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.

During the performance of the services herein provided for, the Consultant shall be responsible for any loss or damage to the document owned by the City while they are in its possession. Restoration of lost or damaged documents shall be at the Consultant's expense.

Consultant shall attend City meetings and make such trips to the offices of the City and to the site of the work to confer with representatives of the City, as may be necessary in the carrying out of the work under this Agreement.

Consultant shall follow standard accounting practices and permit representatives of the City, to audit and inspect its project books and records at any reasonable time. Such records are to be kept available for three (3) years from the date of final payment for work conducted under this Agreement.

Consultant shall permit the City to have full access thereto during the progress of the services being performed thereon.

Upon completion of a project and final approval by the City, Consultant shall deliver to the City the appropriate number of document copies as determined by the City.

Consultant shall commence services under this Agreement only upon receipt of written notice from the City.

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.

All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work shall be decided by the City.

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 net thirty (30) days after acceptance of the work and receipt from the Consultant of an itemized invoice describing services performed. Consultant will invoice the City upon completion of the project.

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 the event the Consultant deems extra compensation will be due 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.

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.

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.

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.

In the event 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 the project agreement.

Section 6 – Compliance with All Laws and Regulations

In the provision of the services described herein, the Consultant, an approved subcontractor or anyone acting in its behalf, 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 its own vehicles.

Section 8 – Permits and Licenses

Consultant shall procure at its expense all permits and licenses necessary, pay all charges and fees and give all notices necessary and incident to the prosecution of the work.

Section 9 – Safety

Consultant shall comply with all Occupational Safety and Health Act (OSHA) standards and any other Federal, State or Local rules and regulations applicable. Consultant shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site.

Section 10 – Ownership of Documents

Ownership of all data, materials and documentation, including electronic files, 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 11 – 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. The City shall be named as certificate holder.

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

Liability; C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable. Coverage should include terrorist liability

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. Professional Liability Insurance. Errors and Omission on a “claims Made Basis” of not less than \$2,000,000.
6. Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating 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.”
7. Cancellation Notice. Workers’ Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following “It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.”
8. If any of the above coverages expire during the term of the contract, the Consultant shall deliver renewal certificates and/or policies to the City of Rochester Hills at least ten (10) days prior to the expiration date. Failure to comply with the insurance requirements contained in this agreement shall constitute a material violation and breach of the agreement and may result in termination of the agreement.

Section 12 - 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 connected herewith, 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 13 – 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. Nothing contained in this Contract shall create any contractual relation between any subcontractor and the City.

Section 14 – 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 consultant/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 consultant's/contractor's work.

Section 15 – 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 16 – Governing Law

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

Section 17 – 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 18 – 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.

In the event that funds to enable the City to effect continued payment under this contract are not appropriated or otherwise made available. The consultant acknowledges that, if this contract extends for several fiscal years, continuation of this contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the City shall have the right to cancel this agreement at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the consultant. The City shall give the consultant written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

Section 19 – Entire Agreement

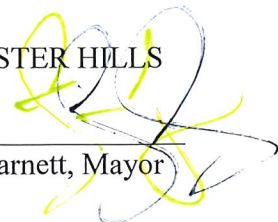
This agreement constitutes the entire agreement between the City and the Consultant and shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors, assigns and third parties claiming under this Agreement or by virtue of Agreement between the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

By: _____
Bryan K. Barnett, Mayor



HUBBELL, ROTH & CLARK, INC.

By: _____
Daniel W. Mitchell, PE

