

**CITY OF ROCHESTER HILLS
AND
HUBBELL, ROTH & CLARK, INC.**

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, made and entered into as of this ____ day of _____, 2004, by and between HUBBELL, ROTH & CLARK, INC. Consulting Engineers, of 555 Hulet Drive, Bloomfield Hills, Michigan 48302, hereinafter referred to as the "CONSULTANT", and the CITY OF ROCHESTER HILLS, of 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, hereinafter referred to as the "LOCAL AGENCY".

WITNESSETH:

WHEREAS, the LOCAL AGENCY is desirous of proceeding with the Engineering services required to provide Plan Reviews on an as needed basis, said work to be hereinafter referred to as the "PROJECT"; and

WHEREAS, the LOCAL AGENCY desires to engage the professional services and assistance of the CONSULTANT to perform the engineering services as outlined in Exhibit A, said work to be hereinafter referred to as the "SERVICES"; and

WHEREAS, the CONSULTANT is willing to render the SERVICES desired by the LOCAL AGENCY for the considerations hereinafter expressed; and

WHEREAS, the parties hereto have reached an understanding regarding the performance of the SERVICES on the PROJECT and desire to set forth this understanding in the form of a written agreement;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that:

THE CONSULTANT SHALL:

1. Review Site Development Plans as needed by the LOCAL AGENCY in accordance with all the features outlined in **Exhibit A – Scope of Work**.
2. During the performance of the SERVICES herein provided for, be responsible for any loss or damage to the documents, owned by the LOCAL AGENCY while they are in its possession. Restoration of lost or damaged documents shall be at the CONSULTANT'S expense.
3. Attend City Meetings and make such trips to the offices of the LOCAL AGENCY and to the site of the work to confer with representatives of the LOCAL AGENCY, as may be necessary in the carrying out of the work under this Agreement.

4. Follow standard accounting practices and permit representatives of the LOCAL AGENCY, 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 the final payment for work conducted under this Agreement.
5. Permit the LOCAL AGENCY to have full access thereto during the progress of the SERVICES being performed thereon.
6. Upon completion of the PROJECT and final approval thereof by the LOCAL AGENCY, deliver to the LOCAL AGENCY the appropriate number of copies to be determined.
7. Commence SERVICES as set forth in this Agreement only upon receipt of written notice from the LOCAL AGENCY'S Project Manager that the CONSULTANT'S SERVICES are desired.
8. Submit billings to the LOCAL AGENCY, as hereinafter set forth in Section 10.

THE LOCAL AGENCY SHALL:

9. For and in consideration of the SERVICES rendered by the CONSULTANT as set forth in this agreement, pay the CONSULTANT on the basis of actual payroll, plus a multiplier of 1.9. The estimated cost for the SERVICES is unknown at this time since each individual plan review is unique and is dependent on the quality of each submittal.

Actual costs for PROJECT work required and performed will be determined in accordance with the following terms:

- a. Direct Salary Costs: Actual labor costs of personnel performing the PROJECT work. This cost will be based on the employee's actual hourly rate of pay and the actual hours of performance on the PROJECT as supported by employee time records.
 - b. Direct Costs: Actual cost of materials and services, other than salaries, as may be required hereunder but which are not normally provided as a part of the overhead of the CONSULTANT. All actual costs shall be itemized and certified as paid to specifically named firms or individuals, and shall be supported by proper receipts.
 - c. Overhead (Indirect Costs): The overhead rate which will be applied to direct labor costs for progress payments, is set forth in Exhibit A and noted above.
10. Make payments to the CONSULTANT in accordance with the following procedures:
 - a. Progress payments may be made for reimbursement of amounts earned to date and shall include direct costs, other direct costs and calculated amounts for overhead using overhead rates, set forth hereinbefore.
 - b. Partial payments will be made upon the submission by the CONSULTANT of a billing, accompanied by properly completed reporting forms and such other evidence of progress as

may be required by the LOCAL AGENCY. Partial payments shall be made only once a month.

- c. Final billing under this agreement shall be submitted in a timely manner but not later than twelve (12) months after completion of the SERVICES. Billings for work submitted later than twelve (12) months after completion of SERVICES will not be paid.
11. Pay the CONSULTANT as follows if SERVICES, or any part thereof, are terminated before completion:
 - a. Pay the CONSULTANT actual costs plus overhead, as defined herein, incurred for the work completed up to the time of termination, plus an amount determined as agreed to between the parties at the time of termination to compensate the CONSULTANT in full for work completed.
 - b. In no case, shall the compensation paid to the CONSULTANT for SERVICES, or any part thereof, exceed the amount the CONSULTANT would receive had the SERVICES, or the terminated portion thereof been completed.

IT IS FURTHER AGREED THAT:

12. No portion of the PROJECT work, heretobefore defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the LOCAL AGENCY. Consent to sublet, assign or otherwise dispose of any portion of the SERVICES shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this agreement
13. 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 LOCAL AGENCY'S Project Manager.
14. Any change in SERVICES to be performed by the CONSULTANT involving extra compensation must be authorized in writing by the LOCAL AGENCY prior to the performance thereof by the CONSULTANT and requires an amendment to this Agreement.
15. 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 fee, 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 LOCAL AGENCY 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.

16. The CONSULTANT specifically agrees that in the performance of SERVICES herein enumerated by it, or by an approved subcontractor, or anyone acting in its behalf, they will, to the best of their professional knowledge and ability, comply with any and all applicable State, Federal, and Local statutes, ordinances, and regulations.
17. 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 LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY, 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 LOCAL AGENCY of any of its rights herein set forth.

18. 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 LOCAL AGENCY as a change, or due to changed conditions, the CONSULTANT shall notify the LOCAL AGENCY 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.
19. Prior to the commencement of any work under this Agreement, CONSULTANT shall furnish to the LOCAL AGENCY certificates of insurance showing that CONSULTANT has obtained the following insurance policies with insurance companies licensed and admitted to do business in the State of Michigan.
 - a. Worker's Compensation Insurance – CONSULTANT shall procure and maintain during the life of this Agreement, Worker's Compensation Insurance, including Employer's Liability Coverage, in accordance with all applicable Michigan statutes.
 - b. Commercial General Liability Insurance – CONSULTANT shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance, on an

“occurrence basis” with limits of liability not less than \$1,000,000 per occurrence for personal injury, bodily injury, and property damage. Coverage shall include the following extensions: (1) contractual liability; (2) products and completed operations; (3) independent contractors coverage; and (4) broad form general liability extensions, or equivalent.

- c. Motor Vehicle Liability – CONSULTANT shall procure and maintain during the life of this Agreement, Motor Vehicle Liability Insurance, including Michigan No Fault coverages, with limits of liability not less than \$2,000,000 per occurrence for bodily injury and property damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- d. Professional Liability: Errors and Omissions – CONSULTANT shall procure and maintain during the life of this Agreement, Professional Errors and Omissions Insurance with liability limits of no less than \$2,000,000 per policy year.
- e. Additional Insured – Commercial General Liability Insurance 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.*
- f. Cancellation Notice – Worker’s 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, and/or material change in coverage shall be sent to Barbara J. Key, Contract Specialist, the City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033.
- g. Failure to Comply: Failure to comply with the insurance requirements contained in this contract shall constitute a material violation and breach of the contract and may result in termination of the contract.

If any of the above coverages expire during the term of this Agreement, CONSULTANT shall deliver renewal certificates and/or policies to LOCAL AGENCY at least ten (10) days prior to the expiration date.

Indemnification (Hold Harmless) Clause – To the fullest extent permitted by law, the CONSULTANT agrees to defend, pay in behalf of, indemnify and hold harmless the LOCAL AGENCY, its elected and appointed officials, employees, volunteers and others working in behalf of the LOCAL AGENCY 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 LOCAL AGENCY, its elected and appointed officials, employees, volunteers or others working in behalf of the LOCAL AGENCY 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.

20. This Agreement shall be terminated upon advisement to the CONSULTANT by the LOCAL AGENCY that its SERVICES are completed and accepted.
21. Upon execution of this Agreement by the parties hereto, the same shall become binding on the parties hereto and their successors and assigns, until such time as all work contemplated hereunder is complete, or until such time as this agreement is terminated by mutual consent of the parties hereto.

In addition, this Agreement may be terminated by the LOCAL AGENCY for cause upon thirty (30) days written notice to CONSULTANT in case of a breach of any of CONSULTANT'S duties under this Agreement. If CONSULTANT does not cure such breach within said ten (10) day period, this Agreement shall terminate and CONSULTANT shall be paid in accordance with Section 11 hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized agents and representatives the day and year first above written.

IN THE PRESENCE OF:

CITY OF ROCHESTER HILLS

BY: _____
Pat Somerville, Mayor

BY: _____
Beverly A. Jasinski, Clerk

IN THE PRESENCE OF:

HUBBELL, ROTH & CLARK, INC.

BY: _____
Walter H. Alix, Vice President

BY: _____

EXHIBIT A SCOPE OF WORK

As identified in Section 4 – Scope of Services of the August 2004 HRC Proposal, the following excerpts entitled “**Understanding of the Project**” and “**Deliverables**” describe the **SCOPE OF WORK**. Also included is the 2005 Hourly Rate and Reimbursable Schedule that was included in Section 5, - Fees for Services and Rate Schedule.

UNDERSTANDING OF THE PROJECT

HRC proposes to provide professional engineering services to review site plans and construction drawings for subdivisions, condominium developments, apartment complexes, commercial and industrial developments to determine that the plans are in compliance with the municipality's requirements and are consistent with the engineering standards and overall master planning of utilities, drainage, and roads in the community. As-Built plans will be reviewed for completeness, compliance and accuracy with the City of Rochester Hills Standards.

HRC's typical turn-around for municipal plan reviews is 7 to 10 working days. When a project is received, it is logged into a status report and assigned to a reviewer by the Project Manager. The review package is also assigned a due date of 7 working days following the date of receipt. Any projects that are not completed by the seventh review date are then flagged and prioritized to assure the project is processed within the 10 day review time. If necessary, HRC is staffed to provide faster review service and can also provide in-house review of compliance with local building codes and ordinances for commercial and industrial structures. In addition, HRC has the capability to conduct reviews for compliance with the Michigan Building Code.

HRC is familiar with the City of Rochester Hills ordinances, engineering standards and master plans. In fact, HRC worked with the City of Rochester Hills in the development of many of these standards and master plans, including the recently revised Engineering Design Standards. In addition, HRC is familiar with many other agencies standards and requirements that may arise during various construction plan reviews, such as the Road Commission of Oakland County (RCOC), the Oakland County Drain Commissioner (OCDC), the Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Transportation (MDOT).

DELIVERABLES

In addition to the Rochester Hills check-list for construction plan as-builts and the periodic electronic format status sheets described in the RFP, HRC will also provide various review and approval letters that list noted comments and concerns identified during the plan review process. HRC would also produce meeting minutes when requested to attend meetings by the City of Rochester Hills.

Payment

Payment for our services shall be based on Rochester Hills Ordinance ARTICLE V, "PLANNING", DIVISION 2., UNPLATTED LAND DEVELOPMENT, Sec 110-372. Department of Public Services as amended and Sec 110-373., Planning Department, as amended. These Sections of the City ordinances outline various payment bases, from set fees to percentage of construction, to time and material basis depending on what is to be under-taken. We have attached a 2005 Hourly Rate and Reimbursable Schedule that would be used for the time and material portions of the engineering services.

The primary employees that will be used for these engineering services are listed below with their respective hourly rates:

Daniel Mitchell, P.E., Associate	\$112.00/hour
James Surhigh, P.E. Sr. Project Engineer	105.00/hour
Bradley Shepler, Staff Engineer	86.00/hour
Colleen Hill, P.E. Transportation Engineer	75.00/hour
James Lakatos, P.E. Structural Engineer	97.00/hour
Donald Beagle, Sr. Project Environmental Analyst	124.00/hour
Steven Pyc, Staff Environmental Analyst	73.00/hour

2005
**HOURLY RATE
 AND REIMBURSABLE SCHEDULE
 HUBBELL, ROTH AND CLARK, INC.
 PROVIDED FOR CITY OF ROCHESTER HILLS**

<u>Category</u>	<u>Hourly Rate</u>
Principal	155.00 - 155.00
Associate/Managing Engineer	105.00 - 115.00
Department Manager	100.00 - 108.00
Sr. Project Engineer/Architect	96.00 - 106.00
Project Engineer/Architect	87.00 - 97.00
Staff Engineer/Architect	77.00 - 87.00
Graduate Engineer / Architect	75.00 - 85.00
GIS Specialist	88.00 - 98.00
GIS Analyst	60.00 - 70.00
Sr. Project Environmental Analyst	115.00 - 125.00
Staff Environmental Analyst	64.00 - 74.00
Graduate Environmental Analyst	52.00 - 58.00
Sr Designer	90.00 - 97.00
Designer	82.00 - 92.00
Sr. Technician	70.00 - 80.00
Technician II	55.00 - 60.00
Transportation Project Specialist	80.00 - 90.00
Transportation Staff Specialist	68.00 - 78.00
Registered Surveyor	85.00 - 92.00
Survey- Office Tech	66.00 - 72.00
Survey Crew- 2 man	130.00 - 140.00
Survey Crew- 3 man	175.00 - 185.00
Field Project Representatives	85.00 - 95.00
Field- Supervisors	80.00 - 85.00
Field Senior Tech	62.00 - 72.00
Field Technician	58.00 - 68.00
Field Technician- In-Training	42.00 - 52.00
Construction Engineer	80.00 - 90.00
Testing Technician	40.00 - 60.00

*Wage rates shown above are for 2005 based on 2.9 times the direct payroll. Wage rates for 2006 and 2007 will be escalated an average of 4% per year.

Billable rates for Hubbell, Roth & Clark, Inc. include Unemployment and Payroll taxes, contributions for Social Security, Retirement benefits, Medical and Life insurance benefits, normal printing cost, telephones, fax, computer time, mileage, other overhead costs and profit.

Reimbursable expenses will be invoiced at our cost which is defined as the direct costs plus 15%.