



CITY of NOVI CITY COUNCIL

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**Agenda Item 1
July 2, 2007**

SUBJECT Consideration of alternatives related to the process by which City bond proceeds will be expended if the measure to expand the Novi Public Library is approved by the voters on November 6, 2007.

SUBMITTING DEPARTMENT: Pamela W. Antil, Assistant City Manager *PWA*
Kathy Smith-Roy, Finance Director
Mary Ellen Mulcrone, Interim Library Director

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

As previously communicated (see attached memorandum dated July 10th and related backup materials), the responsibility for the general obligation bonds received, if the Library millage passes, falls with the City Council. How that responsibility is addressed can be done in one of several ways. It has been the intention of the City to make certain that the City meet these legal requirements related to the oversight of the bond proceeds, as well as fully partner with the Library Board to support the expansion of the Novi Public Library. To that end, staff has met with the Interim Director, two Library Board members, and the Library's Community Relations representative to discuss options related to the "process" by which bond funds will be expended if approved by the voters. Staff determined that several options could be considered as described in the attached memorandums.

After review and discussion, staff recommends that the City Council consider delegating the authority to enter into contracts to the Building Authority or a combination of authority with the City Council. These options are more fully described in the attached memorandum dated July 10th. At their meeting on Wednesday, July 18th, the Library Board approved the attached resolution regarding an enhanced building authority by a vote of 4-0. An overview of possible changes to the Building Authority (e.g., expanding to include the Library Director, etc.) as supported by the Library Board has been provided by the City Attorney and is also attached.

RECOMMENDED ACTION: Consideration of alternatives related to the process by which City bond proceeds will be expended if the measure to expand the Novi Public Library is approved by the voters on November 6, 2007.

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

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				




MEMORANDUM

7-11-07
To: Members of the City
Council

For discussion at July 23
City Council meeting.

A handwritten signature in black ink, appearing to read 'Clay J. Pearson'.

TO: Clay J. Pearson, City Manager


FROM: Pamela W. Antil, Assistant City Manager 

RE: Library Bond Proceeds – Process

DATE: July 10, 2007

As previously communicated by the City Attorney (see attached memo), the responsibility for the general obligation bonds received, if the Library millage passes, falls with the City Council. How that responsibility is addressed can be done in one of several ways. It has been the intention of the City to make certain that the City meet these legal requirements related to the oversight of the bond proceeds, as well as fully partner with the Library Board to support the expansion of the Novi Public Library. To that end, staff has met with the Interim Director, two Library Board members, and the Library's Community Relations representative to discuss options related to the "process" by which bond funds will be expended if approved by the voters.

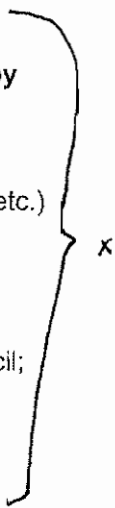
Recent City building projects that were discussed with Library representatives as past models included the Ice Arena and Meadowbrook Commons. In both cases, the projects were City projects paid for with revenue bonds and the Building Authority was convened to oversee the projects. Currently, the City is moving forward with the Police Firing Range project which is being funded by Federal drug asset forfeiture funds and will be managed by a combination of City staff and a general contractor (to be hired). The Library project will be funded with general obligation bonds which will require some specific oversight by the City. As a result, the Council must determine which components of the project may be best or appropriately managed by the City and which pieces would be more appropriately overseen by the Library Board and/or staff. These include bid preparation and review, architecture services, construction/project management services, and construction services.

Another consideration related to the options discussed was the importance of the balance between **time, quality, and cost** during the project. Since all three components are related, a change in one impacts the others. In other words, the more time a project takes to complete, the greater the cost. This is also true with quality – the higher the quality, the greater the cost. Finally, the faster the project, the quality generally declines, and so on. Because the new Library construction budget was projected based on the construction beginning in 2008 to ensure that the materials and construction estimates stay on target, it was determined that time and cost were the most important factors to 

consider in recommending an option to the City Council for consideration. As a result, Staff determined that several options could be considered:

**Staff Technical Review/Recommendation to Building Authority
Building Authority Discussion/Award major services/contracts as designated by
the City Council
Contract Project Management/Building Authority Combination**

- (A) Major services/contracts (e.g., architecture, project management, etc.) bid preparation and review (City and Library staff using QBS system);
- (B) Review and make recommendations for architecture, construction/project management, and construction services (major services/contracts) by City and Library staff to Building Authority for discussion, final selection, and award as designated by the City Council;
- (C) Project management by outside construction/project manager (including e.g., change orders) and Building Authority (including e.g., material selections) as designated ^{delegated} by the City Council.



**Staff Technical Review/Recommendation to City Council
City Council to award major services/contracts
Contract Project Management/Building Authority Combination**

- (A) Major services/contracts (e.g., architecture, project management, etc.) bid preparation and review (City and Library staff using QBS system);
- (B) Recommendations for architecture, construction/project management, and constructions services (major services/contracts) by staff to City Council for discussion and final selection, and award (for major services/contracts above);
- (C) Project management by outside construction/project manager (including e.g., change orders) and Building Authority (including e.g., material selections) as designated by the City Council.

**Staff Technical Review/Recommendation to Library Board
Library Board to award major services/contracts
Contract Project Management/Building Authority Combination**

- (A) Major services/contracts (e.g., architecture, project management, etc.) bid preparation and review (City and Library staff using QBS system);
- (B) Recommendations for architecture, construction/project management, and constructions services (major services/contracts) by staff to Library Board for discussion, final selection, and award (for major services/contracts above) as designated by the City Council;
- (C) Project management by outside construction/project manager (including e.g., change orders) and Building Authority (including e.g., material selections) as designated by the City Council.

**Staff Technical Review/Recommendation to Library Board
Library Board Discussion/Recommendation to City Council
City Council to award major services/contracts
Contract Project Management/Building Authority Combination**

- (A) Major services/contracts (e.g., architecture, project management, etc.) bid preparation and review (City and Library staff using QBS system);
- (B) Review and make recommendations for architecture, construction/project management, and construction services (major services/contracts) by City and Library staff to Library Board for discussion;
- (C) After Library Board discussion and recommendation, the final recommendation, selection, and award by City Council (for major services/contracts above);
- (D) Project management by outside construction/project manager (including e.g., change orders) and Building Authority (including e.g., material selections) as designated by the City Council.

**Staff Technical Review/Recommendation to Library Board
Library Board Discussion/Recommendation to Building Authority
Building Authority to award major services/contracts
Contract Project Management/Building Authority Combination**

- (A) Major services/contracts (e.g., architecture, project management, etc.) bid preparation and review (City and Library staff using QBS system);
- (B) Review and make recommendations for architecture, construction/project management, and construction services (major services/contracts) by City and Library staff to Library Board for discussion;
- (C) After Library Board discussion and recommendation, the final recommendation, selection, and award by Building Authority as designated by the City Council.
- (D) Project management by outside construction/project manager (including e.g., change orders) and Building Authority (including e.g., material selections) as designated by the City Council.

There are likely other alternatives to consider, but these are a few that immediately came to mind when this item was discussed internally with representatives from the Library.

You will also note from the attached memo from Finance Director Kathy Smith-Roy regarding the use of the Building Authority that a few changes to the make-up of the Building Authority are recommended including the replacement of the Building Official with the Community Development Director and the replacement of the ACM with the City Manager. In addition, the inclusion of the Library Director and the City Engineer (or designees) would be appropriate given the scope and cost of the project for a total of seven members including the Finance Director and two members at large appointed by the City Council.

*Consider Member
of City Council
as smyth.
-CJ*

} *

Attached to this memo you will also find information from City Engineer Rob Hayes regarding the QBS process that staff has been using on a consistent basis for the selection of consultants/ vendors from road construction projects to health benefits consultants. The Library Board previously engaged Plante & Moran to serve as a quasi-Owner's Representative to draft the qualifications and conduct the pre-qualification process as a foundation for the selection of an architect. Once selected, an architect could complete "Phase I" such as some preliminary work including a building program statement. Plante & Moran understands and has incorporated the City's QBS process into their pre-qualifications statement for this preliminary work. } x

The architectural pre-qualification meeting is scheduled to be held on Monday, July 16th. ✓
The Library Board will use its library budget funds (approximately \$50,000) for this "Phase I" work and understand it cannot be reimbursed by bond proceeds if the ballot measure passes since this contract will be awarded by the Library Board and not the Council. The Library Board is also anxious to award a soil borings contract in the near future but will likely hold off on that contract until the Council has an opportunity to discuss the options and make a determination as to the appropriate process for bond proceeds contract awards.

I am available to discuss further upon your review of these materials.

cc Mary Ellen Mulcrone, Interim Library Director
Kathy Smith-Roy, Finance Director
Rob Hayes, City Engineer
Steve Rumble, Community Development Director
Thomas Schultz, City Attorney



May 24, 2007

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Clay J. Pearson, City Manager
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Re: ***Authority to Contract for Library Construction and Related Professional Services***
Our File No. 55142 NOV

Dear Mr. Pearson:

The City Council has been asked to consider approving a ballot question for the November, 2007 election to authorize the City to borrow \$16 Million for construction of a new library building and issue its general obligation bonds to repay that debt. The Library Board does not have the authority to bond for that purpose. Our office has been asked to give an opinion as to which body—the City Council or the Library Board—would then enter into contracts for the construction of the proposed new library building and for related professional services to be paid for from the bond funds if the proposal passes. In our opinion, the City will need to be a party to any contract for services that will be paid for from the bond funds, and will need to establish an appropriate level of oversight to ensure the proper expenditure of those funds.

The Novi library is established under Act 164 of 1877 as amended, MCL 397.201, *et seq.* Under that statute, the City Council determines whether to create a library. The Mayor appoints the Board with the approval of Council. The Council has the authority to approve an annual levy of one “mill” to “be deposited in a fund to be known as the ‘library fund.’” MCL 397.201. Under MCL 397.205, the Library Board adopts its own bylaws, rules, and regulations for the government of the library. The Board’s powers with respect to running the library are broad. They include:

. . . the exclusive control of the expenditure of *all monies collected to the credit of the library fund and of the construction of any library building*, and of the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose: Provided, That all monies received for such library shall be deposited in the treasury of said city to the credit of the library fund, and shall be kept separate and apart from other monies of such city, and drawn

upon by the proper officers of said city, upon the properly authenticated vouchers of the library board. Said board shall have *the power to purchase and lease grounds, to occupy, lease, or erect an appropriate building or buildings for the use of said library*; shall have power to appoint a suitable librarian and necessary assistants, and fix their compensation; and shall also have the power to remove such appointee; and shall, in general, carry out the spirit and intent of this act in establishing and maintaining a public library and reading room.¹ (Emphasis added.)

Given this language, the question that has been asked would be easier to answer if the construction of the library building and any professional services connected with that construction were being paid for out of the library fund. The references in the statute to the Board's "exclusive control" of "the construction of any library building," combined with the Board's substantial control of the library fund (subject to the City Council's budget approval as described in our April 17, 2005 letter regarding the Board's status as a separate legal entity, a copy of which is attached) would appear to allow the Board to commit those funds for a new library building. In such a situation, the Board would likely be the body to approve and administer a contract for that purpose.

What complicates the matter here is that the funds that will be obligated for the construction of the building and the related professional services are almost exclusively bond funds that are *not* deposited into the library fund and are *not* under the control of the library board. The library statute does not mention the issuance of bonds by the City and does not regulate the City's issuance of the bonds. The bonds being contemplated are voted general obligation bonds; they are backed not by the library's full faith and credit, but the full faith and credit of the City itself. They are placed into a City Capital Projects Construction Fund, for which the City is accountable.

In our view, this distinction makes particularly important the proviso in MCL 397.205 above "that all monies received for such library shall be deposited in the treasury of said City to the credit of the library fund, and shall be kept separate and apart from other monies of such City. . . ." In our view, MCL 397.205 must be read as a whole as a statement of the Library Board's responsibility and authority to control the construction of a library building *with monies from the library fund only*.

¹ This statutory language is generally mirrored in the City's ordinance, although the ordinance, Section 19-26, does *not* separately list among the Board's powers the "power to purchase or lease grounds, to occupy, lease, erect an appropriate building or buildings for the use of said library" as the statute does. However, in an earlier opinion from our office, dated April 17, 2005 we concluded that the Library Board would in fact have that authority.

The statute simply does not address the Library Board's authority where the funds to pay for construction of a library building come from elsewhere.

The issue is as much practical as it is legal. If the Library Board were, for example, to enter into an agreement with a contractor to construct the library building, it would be committing itself to pay a contract amount, but would not have sufficient funds in its control (the library fund) to satisfy that commitment—a point that a reasonably observant contractor or professional service provider would likely raise at the time of entering into such an agreement. In turn, the bond proceeds would be “promised” to an entity with which the City had no contract and no authority with respect to the enforcement of the contract terms, including payment for the adequate performance of services. Section 12.2 of the City Charter states that “the authority to contract on behalf of the City is vested in the Council. . . .” To the extent that the bond funds are City funds until expended, and are not part of the library fund, the Council is the entity with the authority to contract for payment from them.

In sum, we see nothing in the library statute relating to the control of library fund monies that would require the City to obligate itself to pay for the library construction without benefit of being a party to a contract. We suggest that the City should be reluctant to commit its funds and its full faith and credit without appropriate contractual rights and oversight authority, including the use of the City's usual processes to guarantee the selection of high quality candidates for both construction services and professional services.

The “gray” area between the library statute and the rules governing the City's use of bond funds leaves a fair amount of room to define an appropriate level of involvement for both the Board, whose expertise involves the review of the design and use of the library facilities, and the City, whose credit is at issue and who is regularly engaged in the carrying out of capital improvement projects. The Council can consider fully joint Requests For Proposals (RFPs) and “three party” contracts (e.g., among the contractor/service provider, the library, and the City). The Council could also delegate some recommendation and/or oversight responsibilities to the Library Board (or to the City's Building Authority or staff), with sufficient directives and conditions to accommodate the City's interests. The Council could also simply solicit recommendations by the Board to the City prior to the City's entry into appropriate agreements.

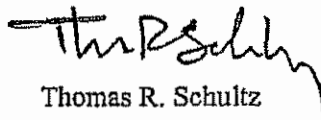
We understand that the original improvements to the library back in the 1970s (also with some debt being incurred) were undertaken with some contractual participation by the Library Board. We also understand that there were certain later improvements that were undertaken apparently with the approval of only City Council. However, we did not find anything in the correspondence from the City's prior attorneys that directly addressed this question in the context of the references in the library statute to the library fund or of the City's obligations as the entity issuing

Clay J. Pearson, City Manager
May 24, 2007
Page 4

the bonds. Our position is that, because the City's debt is at issue and the library fund is not primarily involved, the Library Board cannot commit the bond funds by entering into construction or professional service contracts without prior City approval. The City must be a party to any contracts for the construction of the new library building to the extent they will be paid for with funds borrowed by the City for which the City will issue its general obligation bonds.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz


TRS/jes
Enclosure
cc: Maryanne Cornelius, City Clerk

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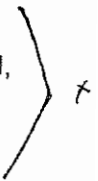


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MEMORANDUM

To: Pam Antil
From: Kathy Smith-Roy 
Subject: Library Construction
Date: June 16, 2007

One of the options suggested and available to the City Council for purposes of constructing the new library upon passage of the November ballot is to utilize the Building Authority.

The Building Authority is currently made up of five commissioners: Two members appointed by City Council (currently Larry Czekaj and Mark Sturing), Assistant City Manager, Building Official, and Finance Director. The Articles of Incorporation can be amended by resolution of City Council. As requested the articles can be amended to change the Assistant City Manager and Building Official positions to the City Manager and Community Development Director positions. 

The Building Authority was utilized to obtain *Revenue* bonds and construct the Meadowbrook Commons and Novi Ice Arena facilities. Revenue bonds are utilized for projects that do not require a vote since the repayment of the bonds comes from the revenue generated by the project (i.e. enterprise funds like water and sewer, senior housing or ice arena).

Bond counsel at the time indicated that this mechanism would provide the lowest interest rate for financing these projects. The bonds for these projects are in the name of the Building Authority. The City then entered into a lease agreement with the Building Authority.

The bonds to be sold for the library construction project will be *General Obligation Bonds* (to be voted on and paid by the taxpayers) in the name of the City of Novi, as approved by City Council. Since the Novi bonds for the ice arena and senior housing projects were in the name of the Building Authority the Authority approved the architect and the construction contracts. In the case of the library construction, City Council may designate the Building Authority to proceed with the request for bid/proposal process and provide a recommendation for the various contracts to City Council for their final approval. The City Council may further designate to the Building Authority approval of pay estimates and change orders (up to 10% of the project) throughout the project.

The Building Authority would meet as needed (weekly, monthly, etc.) with the architect, project manager and/or construction manager. The Building Authority's function would be to authorize pay estimates throughout the project, and to provide answers to construction related questions throughout the project (including materials and color selections – i.e. the Building Authority hired a designer for the Meadowbrook Commons facility, who made recommendations, and the Building Authority made the final selection).

While only the commissioners of the Authority have the right to vote, significant input was received by the authority from various staff members (i.e. department director, operations manager, etc.) whom attended the meetings on a regular basis.



MEMORANDUM

To: Clay Pearson, City Manager
Pam Antil, Assistant City Manager

From: Rob Hayes, City Engineer *RH*

Re: **Novi Library Construction – Selection of a Project Architect**

Date: June 7, 2007

At our Tuesday morning meeting, Mary Ellen Mulcrone indicated that in order to help get the new library's bond proposal passed in November, the Library Board needs to be able to convey to the public what the new building may look like. Consequently, an architect must be retained to give the public the opportunity to visualize the proposed conceptual design of the new facility before November. Because design parameters for the new building have not yet been fully defined, the City has an ideal opportunity to use the *Qualifications-Based Selection* process (as opposed to a price-based process) to identify and retain an architectural firm for the project.

As you know, we have been using QBS to select consulting engineering firms for nearly three years. QBS is embraced by the construction industry community, to include owners (such as the federal government, the State of Michigan - especially MDOT, and local units of government), as well as engineering/architectural firms. In addition to the American Society of Civil Engineers and the National Society of Professional Engineers, the American Institute of Architects (AIA) is a major proponent of the QBS process (see attached).

Under the QBS process, the City would prepare and advertise a Request for Qualifications (RFQ) and have interested firms submit Qualifications Statements listing (among other things) relevant projects, references and company information. Next, the City would rank the submitting firms and develop a short-list of firms to interview. As part of the interview process and depending on whether design parameters are included in the RFQ, there may be an opportunity for candidate firms to present renderings or schematic design concepts to demonstrate their level of expertise and share ideas of what the new building may look like. Upon completion of the interview process, the short-listed firms would be ranked, and the highest-ranking firm selected. Fees for architectural services would be negotiated with the selected firm once the project's scope of work has been finalized.

Please let me know if you have any questions or comments in regards to my suggestion to use the QBS process for this project.

cc: Mary Ellen Mulcrone, Interim Library Director
Kathy Smith-Roy, Finance Director



THE AMERICAN
INSTITUTE
OF ARCHITECTS

Issue Brief

The American Institute of Architects • Government Advocacy • Current Issue Position and Analysis

Qualifications Based Selection

Key Points:

- *Congressional reports have found that price-based selection of A/E services diminished the quality of design received by the federal government (H.Rept. 92-1188, H.Rept. 98-621).*
- *A 1985 AIA report comparing price-based and QBS systems for A/E services in two separate states found that QBS was more efficient and less costly for the government than a low-bid process.*
- *The American Bar Association endorses QBS in its "Model Procurement Code for State and Local Governments."*
- *47 states follow QBS procedures for procuring A/E services. Among these are:*
 - *Colorado (C.R.S. 24-30-1403)*
 - *Maine (5 M.R.S. §1743)*
 - *New Jersey (N.J. Stat § 52:34-9.5)*
 - *Oregon (ORS §279C.110)*
 - *Pennsylvania (62 Pa C.S. §905)*

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Qualifications Based Selection

AIA Position

The American Institute of Architects strongly supports the concept of Qualifications Based Selection (QBS) for the procurement of professional design services for public projects. QBS is currently required for federal projects as described by the Brooks Architect/Engineer Act (Public Law 92-582, 40 U.S.C. 541 et seq.)

Action Sought

The AIA urges state legislators to support the use of Qualifications Based Selection procedures for the procurement of architectural services whenever possible.

Explanation and Justification

QBS stands for Qualifications Based Selection. QBS provides owners with a selection process that is not only straightforward and easy to implement, but is objective and fair. It recognizes that design professionals play a critical role in the public building process.

As QBS is predicated on the notion that qualifications, not price should be the determining factor in selecting an architect, it places the negotiation of fees to the end of the selection process. While price may have its place within the selection process, it alone should not be the determining factor.

The reason for this is clear -- projects that are contracted solely on price do not take into account the myriad number of additional factors that go into architectural design. Architectural design is an evolving process and much goes into it after the drawings are signed, sealed and delivered. In fact, one of an architect's principal duties is to ensure that the construction process goes smoothly.

It is an architect's experience, expertise and ability to resolve unforeseen problems creatively that will keep a construction project moving forward and these intangibles are common throughout the process. Because of this, these duties simply can not be reduced to the lowest possible cost. As a result, owners who rely on a submitted bid only as the cost of a project may be placed in a difficult position if the actual final cost is significantly higher than the original bid's price.

QBS resolves the projected vs. final cost dilemma by negotiating the project's cost with the most qualified firm selected to deliver the project. By fostering a collaborative environment, the roles of all stakeholders are known, documented and understood. Finally, because the selection process is well documented, decisions the owner makes are more likely to stand up to public scrutiny.

AIA staff contact: Jonathan Levy, program manager, State and Local Affairs
202-626-7513 or jlevy@aia.org

MEMORANDUM

To: Clay J. Pearson, City Manager
From: Thomas R. Schultz, City Attorney *TR*
Re: *Library Building Process*
Date: July 18, 2007

You asked our office to provide information regarding what actions would be required of the City Council in the event it chose the option of having the Building Authority be the oversight entity for the library construction process, including a review of requests for proposals (RFPs) for professional services and construction contracts. Your inquiry noted that the Building Authority as currently constituted with five members could be expanded to seven members. You also asked us to address the question of what mechanism would be used to delegate responsibilities to the Building Authority.

Building Authority

The City has amended its Articles of Incorporation for the Novi Building Authority on a couple of occasions to adjust the personnel serving on the authority. We would anticipate the City following the same process, which includes the creation of an Amendment to the Articles of Incorporation and a resolution of the City Council approving the document. Drafts of an amendment and resolution are attached to this memorandum.

Note that the Building Authority statute requires that, upon adoption of the amendment and resolution, the City Clerk is required to send a notice of adoption of the amendments to an appropriate newspaper (e.g., the Novi News) for publication, as well as to the County Clerk and to the State of Michigan (Office of the Great Seal). Upon the expiration of 60 days after these notices, the amendment is presumed to be valid.

The Building Authority as currently constituted can continue to act in accordance with the City Council's directions with regard to this project.

City Council Resolution Delegating Responsibilities

By City Charter, the authority to contract on behalf of the City is vested in the City Council. The authority is to be exercised in accordance with the provisions of statute and of the Charter. City Council by ordinance has delegated to the City Manager authority to award certain contracts below a dollar threshold. In our opinion the City Council can similarly delegate the authority to contract to an entity such as the Building Authority with proper standards and guidelines. The Building Authority is

itself a separate legal entity with authority to enter into and execute contracts. In this case, though, if Council chose to delegate authority to the Building Authority, it would be acting on behalf of the City.

Attached is a draft of the kind of resolution that the City Council could consider adopting in order to delegate the responsibility of securing and reviewing RFPs and awarding contracts based upon those RFPs. The terms of this draft resolution suggest the inclusion of certain parameters such as the requirement that the City's standard bid procedures and evaluation criteria be used, and that the City administration and staff be involved in the creation and review of the contracts, which would be executed on behalf of the City. The City Council can also consider (but need not provide for) a period of time to lapse before the action of the Building Authority becomes final, so that after the passage of that time the contract is deemed to be ratified, but that if the City Council wishes to review the decision it may do so.

The draft resolution also delegates the day-to-day authority for making decisions and smaller agreements (e.g., regarding interior finishes and the like) to the Building Authority. The Council could adopt a delegating resolution now (that is, before the millage vote) or wait until after it knows whether the project will proceed.

I trust this addresses the two questions you have raised. If you have any questions regarding the above, please do not hesitate to call.

cc: Maryanne Cornelius, Clerk
Pamela Antil, Assistant City Manager
Kathy Smith-Roy, Finance Director

ATTACHMENT "A"

**DRAFT AMENDMENTS TO ARTICLES OF
INCORPORATION**

AND

CORRESPONDING CITY COUNCIL RESOLUTION

DRAFT

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION APPROVING AMENDMENTS TO THE
ARTICLES OF INCORPORATION OF THE NOVI BUILDING AUTHORITY**

Minutes of a regular meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held in the City Hall in said City on the ____ day of _____, 2007, at 7:00 o'clock p.m., prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS, the City Council (the "Council") of the City of Novi, County of Oakland, State of Michigan (the "City"), deems it advisable and necessary and in the best interests of the City to amend the Articles of Incorporation of the Novi Building Authority (the "Authority") previously created and established by the City under the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, relating to the officers of the Authority; and

WHEREAS, Amendments to the Articles of Incorporation of the Authority under said Act have been prepared and carefully reviewed by the Council.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Amendments to the Articles of Incorporation of the Novi Building Authority are hereby approved and adopted.

2. The Mayor and the City Clerk of the City are hereby authorized and directed to execute said Amendments to the Articles of Incorporation.

3. The City Clerk of the City shall cause the executed Amendments to the Articles of Incorporation to be published in a newspaper of general circulation in the City.

4. The City Clerk shall deliver a certified copy of the Amendments to the Articles of Incorporation to the County Clerk of the County of Oakland for filing and to the Michigan Secretary of State of filing along with two newsprint copies of the Amendments to the Articles of Incorporation with publisher's affidavit of publication attached.

5. All resolutions and parts of resolutions insofar as they conflict with the provisions of the resolution be and the same hereby are rescinded.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this ____ day of _____, 2007, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

MARYANNE CORNELIUS, CITY CLERK

AMENDMENTS TO
ARTICLES OF INCORPORATION
OF THE
NOVI BUILDING AUTHORITY

These Amendments to Articles of Incorporation of the Novi Building Authority (the "Authority") are adopted, signed, and acknowledged by the City of Novi, County of Oakland, and State of Michigan (the "Incorporating Unit"), for the purpose of amending its Articles of Incorporation originally adopted on March 6, 1995, as amended on August 28, 2000, which formed a nonprofit municipal building authority under the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended. Sections 1 and 2 Article V of the Articles of Incorporation are amended to read as follows:

ARTICLE V

GOVERNING BODY OFFICERS:

Section 1. The Authority shall be directed and governed by a Board of Commissioners of seven (7) members known as the "Commission," one member to be the City Manager, one member to be the Finance Director, one member to be the Community Development Director, one member to be the City Engineer, one member to be the Library Director, and two additional members to be elected by the City Council of the City of Novi, which two additional members shall be residents of the City of Novi. No member of the legislative body of the incorporating unit shall be eligible for membership or appointment to the Authority.

Section 2. The terms of the seven (7) commissioners as of the date of this amendment shall be:

The Community Development Director's term shall end on _____.

The Finance Director's term shall end on _____.

The City Manager's term shall end on _____.

The City Engineer's term shall end on _____.

The Library Director's term shall end on _____.

One citizen representative's term shall end on _____ and the other on

_____.

Thereafter, succeeding Commissioners shall serve for three year terms.

These Amendments to Articles of Incorporation shall become effective and to be in full force and effect upon publication.

IN WITNESS WHEREOF, the Incorporating Unit has adopted and authorized to be executed these Amendments of Articles of Incorporation by the Mayor and City Clerk of the City of Novi, County of Oakland, and State of Michigan.

CITY OF NOVI

BY: _____
DAVID B. LANDRY, Mayor

BY: _____
MARYANNE CORNELIUS, Clerk

The foregoing Amendments to the Articles of Incorporation were adopted and authorized to be executed on behalf of the City of Novi, a municipal corporation of the State of Michigan, by the Mayor and City Clerk of the City of Novi, at a meeting duly held on the ___ day of _____, 2007.

MARYANNE CORNELIUS, Clerk

NOTICE OF ADOPTION
OF AMENDMENTS TO THE
ARTICLES OF INCORPORATION
OF THE NOVI BUILDING AUTHORITY

PLEASE TAKE NOTICE that on _____, 2007, the City Council of the City of Novi, County of Oakland, State of Michigan, did pursuant to Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, adopt the Amendments to the Articles of Incorporation of the Novi Building Authority, as follows:

The Amendments increase the membership of the Authority's Board of Commissioners to seven (7) from five (5) by adding the City Engineer and Library Director, and also replace the Building Official with the Community Development Director and the Assistant City Manager with the City Manager.

Said Amendments will be filed with the Oakland County Clerk and the Michigan Secretary of State, as required by said Act.

SAID ACT GRANTS THE RIGHT TO QUESTION THE VALIDITY OF SUCH AMENDMENTS IN A COURT OF COMPETENT JURISDICTION WITHIN SIXTY (60) DAYS AFTER THE LAST ABOVE FILING TO BE ACCOMPLISHED. AFTER SUCH TIME SUCH AMENDMENTS SHALL BE CONCLUSIVELY PRESUMED TO BE VALID.

Further information, including the time of the above filings, may be obtained from the office of the City Clerk of the City of Novi, County of Oakland, State of Michigan.

Maryanne Cornelius, City Clerk
City of Novi

NOTICE OF ADOPTION
OF AMENDMENTS TO THE
ARTICLES OF INCORPORATION
OF THE NOVI BUILDING AUTHORITY

PLEASE TAKE NOTICE that on _____, 2007, the City Council of the City of Novi, County of Oakland, State of Michigan, did pursuant to Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, adopt the Amendments to the Articles of Incorporation of the Novi Building Authority, as follows:

ARTICLE V

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Section 1. The Authority shall be directed and governed by a Board of Commissioners of seven (7) members known as the "Commission," one member to be the City Manager, one member to be the Finance Director, one member to be the Community Development Director, one member to be the City Engineer, one member to be the Library Director, and two additional members to be elected by the City Council of the City of Novi, which two additional members shall be residents of the City of Novi. No member of the legislative body of the incorporating unit shall be eligible for membership or appointment to the Authority.

Section 2. The terms of the seven (7) commissioners as of the date of this amendment shall be:

The Community Development Director's term shall end on _____.

The Finance Director's term shall end on _____.

The City Manager's term shall end on _____.

The City Engineer's term shall end on _____.

The Library Director's term shall end on _____.

One citizen representative's term shall end on _____ and the other on

_____.

Thereafter, succeeding Commissioners shall serve for three year terms.

These Amendments to Articles of Incorporation shall become effective and be in full force and effect upon publication.

Said Amendments will be filed with the Oakland County Clerk and the Michigan Secretary of State, as required by said Act.

SAID ACT GRANTS THE RIGHT TO QUESTION THE VALIDITY OF SUCH AMENDMENTS IN A COURT OF COMPETENT JURISDICTION WITHIN SIXTY (60) DAYS AFTER THE LAST ABOVE FILING TO BE ACCOMPLISHED. AFTER SUCH TIME SUCH AMENDMENTS SHALL BE CONCLUSIVELY PRESUMED TO BE VALID.

Further information, including the time of the above filings, may be obtained from the office of the City Clerk of the City of Novi, County of Oakland, State of Michigan.

Maryanne Cornelius, City Clerk
City of Novi

957388

ATTACHMENT "B"

**DRAFT RESOLUTION DELEGATING
RESPONSIBILITIES TO BUILDING AUTHORITY**

DRAFT

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION DELEGATING RESPONSIBILITIES IN
CONNECTION WITH LIBRARY CONSTRUCTION**

Minutes of a regular meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held in the City Hall in said City on the ____ day of _____, 2007, at 7:00 o'clock p.m., prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS, the City Council for the City of Novi by Charter has the authority to contract on behalf of the City of Novi; and

WHEREAS, the City of Novi expects that there will be various agreements entered into in connection with the professional architectural design, construction, and construction oversight for the new library building that is proposed to be funded primarily through general obligation bonds of the City [if approved by the voters]; and

WHEREAS, the construction of the library building and related improvements will likely include contracts for both major services (such as architectural design, project management, and

construction) and minor services, as well as decisions throughout the entire project with regard to contract change orders, material and fixture selections, and the like; and

WHEREAS, the City staff and administration have unique qualifications to undertake efforts toward the creation and processing of requests for proposals (RFPs) and bid documents and the review of same; and

WHEREAS, both the City staff and administration and the library staff have experience and qualifications in connection with the design and/or functioning of a public and/or library building and related improvements; and

WHEREAS, the City of Novi Building Authority has previously undertaken the successful management and completion of the construction of public buildings within the City (e.g., the City's senior center and ice arena); and

WHEREAS, the City Council believes that these unique experiences and qualifications will prove useful to the City in connection with the construction of a library building and related improvements, and that the oversight provided by a combination of all of these individuals and entities would be a significant benefit to the City Council in the carrying out of the various tasks related to this public building construction project, while recognizing that the City Council is ultimately responsible for the accomplishment of the project and the building construction;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. With regard to the preparation of RFPs and bid documents and similar materials for all major professional services and construction contracts, such as (but not limited to) architectural design, project management, and building construction, the City and library staff will jointly prepare such documents, with final approval by City staff, using the City's traditional proposal and bid regulations and forms and a QBS ranking system.

2. Upon receipt of proposals and bid documents in connection with such services and construction contracts, the City staff and library staff will jointly review the same and make recommendations to the Building Authority.

3. With regard to such major services and construction contracts, the Building Authority shall receive the recommendations of the City and library staff and review same and shall thereafter be responsible for the selection of any service providers and the award of such construction contracts. The City staff, together with the City Attorney, shall prepare and approve any contract documents for execution by the chair of the Building Authority [or City Manager]. The Project Manager, once chosen, shall assist in the preparation of contracts as requested.

4. With regard to ongoing project management, the City Council assumes that a professional project manager will be retained by the building through the above process. The professional project manager shall have responsibility for the day-to-day oversight of the planning and construction of the building, including causing and carrying out inspections, securing timely submission of plans and permit applications, and the timely and workmanlike accomplishment of the contracted services or construction work. The Building Authority shall be responsible for reviewing and approving the architectural design and building plans for the building and grounds. The Building Authority shall also be responsible for the selection and approval of materials and fixtures, with a recommendation where necessary or appropriate by the City and library staff and/or the project manager.

5. With regard to the final selection and award of the major professional services and construction contracts, the action of the Building Authority with regard to such award shall be deemed to be ratified by the City Council unless a motion is adopted by the City Council to review the award by or before the first regular City Council meeting scheduled after such award.

If such a motion is adopted, action of the City Council shall be required in order to award the contract.

6. The City Council reserves the right to revoke this resolution and the authority of the above-referenced individuals or entities upon the passage of an appropriate Council motion and alternative resolution.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this _____ day of _____, 2007, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

MARYANNE CORNELIUS, CITY CLERK

957450

RESOLUTION

The Library Board hereby delegates to the Enhanced Building Authority the ability to make final decisions for the building process of the new proposed library building contingent upon the Novi City Council likewise delegating its authority for the new library building process to the Enhanced Building Authority. The Enhanced Building Authority would consist of the following:

1. The two members from the public currently on the Building Authority
2. The Library Director
3. The City Manager
4. The City Engineer
5. The City Community Development Director
6. The City Finance Director

Each of the above seven members could delegate to a designee or proxy to meet and act on their behalf in their absence. Upon the completion of the new library building, the Library Building will be managed by the Novi Public Library/Library Board.

Approved by
Library Board
07/18/07
4-0