



# CITY of NOVI CITY COUNCIL

**Agenda Item B**  
**October 26, 2009**

**SUBJECT:** Approval to award a contract for design engineering services for the 2010 Major and Local Roads Capital Preventative Maintenance Program to Orchard, Hiltz & McCliment, Inc. (OHM) for a not-to-exceed design fee of \$28,160

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

**CITY MANAGER APPROVAL:** *[Signature]*

<b>EXPENDITURE REQUIRED</b>	<b>\$15,194.00 - Local Road CPM</b> <b>\$12,966.00 - Major Road CPM</b> <b>\$28,160.00 TOTAL</b>
<b>AMOUNT BUDGETED</b>	<b>\$281,250 - Local Road CPM (Eng and Construction)</b> <b>\$218,750 - Major Road CPM (Eng and Construction)</b> <b>\$500,000 TOTAL</b>
<b>APPROPRIATION REQUIRED</b>	<b>N/A</b>
<b>LINE ITEM NUMBER</b>	<b>203-203.00-866.500 Local Road CPM</b> <b>202-202.00-866.500 Major Road CPM</b>

**BACKGROUND INFORMATION:**

One of the primary goals of the Department of Public Services' asset management program is the preservation of the City's local and major roadways. A key component of road preservation is preventative maintenance, which is often neglected because the worst roads often receive the most attention. The objective of preventative maintenance is to preserve good quality roads using low-cost rehabilitation techniques, rather than allowing the roads to deteriorate to a point that requires road reconstruction involving much more effort at a higher cost. A preventative maintenance program (to keep the good roads in good condition) in conjunction with the annual Neighborhood Road Program, will result in an overall improvement in the quality of the City's roadways and increase the overall PASER rating for the roadway network.

This year, the City Council included a Capital Preventative Maintenance Program (CPM) in the budget to help improve the City's local and major roadways with the intention of preventing further deterioration of existing pavement defects and extending the life of the pavement. Staff has identified many street segments needing various levels of maintenance, and is currently evaluating these road segments to determine the best candidates to receive preventative maintenance. One or more rehabilitation treatments may be used such as concrete joint repair, concrete slab replacement, asphalt overlay (ultra-thin hot mix asphalt, cape seal, slurry seal, chip seal) and others, along with base repairs as necessary. Preventative maintenance typically addresses discrete areas or short segments of streets containing minor cracks or pavement defects. Some pictures have been included showing the condition of some potential pavement areas to receive treatment under this maintenance program. The streets receiving capital preventative maintenance generally have PASER ratings of 4 through 6.

A portion of the Capital Preventative Maintenance work was completed under the 2009 Neighborhood Road Program. Concrete slab replacements were completed this month at discrete

areas on Kingspointe and Broquet at a cost of \$30,000. The remainder of the funding will be used for a more comprehensive Capital Preventative Maintenance Program in early 2010.

The engineering for this project will be completed using the new engineering consultant selection process (approved by City Council on August 10, 2009) in which the three pre-qualified engineering consultants are awarded projects on a rotating basis. Each project will be presented to Council for consideration of award with an accompanying supplemental agreement which will provide details related to the project's scope, budget and schedule. OHM has been selected to assist the City with this project.

OHM's engineering fees are based on the fixed fee schedule established in the Agreement for Professional Engineering Services for Public Projects. The design fees for this project will be \$28,160, which is 7.00% of the remaining budget for construction of \$404,840 (original budget of \$500,000 less \$28,160 for design engineering, \$37,000 for construction engineering, and \$30,000 for the completed work on Kingspointe and Broquet). The construction phase engineering fees will be awarded at the time of construction award and will be based on the contractor's bid price and the fee percentage established in the Agreement for Professional Engineering Services for Public Projects. A draft of the Supplemental Professional Engineering Services Agreement for this project is enclosed and includes the project scope and schedule.

OHM has recently completed engineering services for the federally funded roads project (Meadowbrook Road and Nine Mile Road). The road rehabilitation is anticipated to begin in the spring 2010 and be completed in summer 2010.

**RECOMMENDED ACTION:** Approval to award a contract for design engineering services for the 2010 Major and Local Roads Capital Preventative Maintenance Program to Orchard, Hiltz & McCliment, Inc. (OHM) for a not-to-exceed design fee of \$28,160.

	1	2	Y	N
<b>Mayor Landry</b>				
<b>Mayor Pro Tem Gatt</b>				
<b>Council Member Burke</b>				
<b>Council Member Crawford</b>				

	1	2	Y	N
<b>Council Member Margolis</b>				
<b>Council Member Mutch</b>				
<b>Council Member Staudt</b>				

**2010 CAPITAL PREVENTATIVE MAINTENANCE  
Pavement Condition Examples**



Asphalt street in generally good condition with small area of failure. Candidate for discrete partial-depth or full-depth repair.



Asphalt street still structurally sound, but contains many cracks in the wheel path. Candidate for thin asphalt overlay.



Concrete street in good condition containing bad center joint. Repair of joint is important to prevent further deterioration of adjacent concrete slabs.



Concrete street in generally good condition with discrete failure. Candidate for discrete partial-depth or full-depth repair.

**SUPPLEMENTAL PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

**2010 CAPITAL PREVENTATIVE MAINTENANCE PROGRAM**

This Agreement shall be considered as made and entered into as of the date of the last signature hereon, and is between the City of Novi, 45175 W. Ten Mile Road, Novi, MI 48375-3024, hereafter, "City," and Orchard, Hiltz & McCliment, Inc., 34000 Plymouth Road, Livonia, Michigan 48150, hereafter, "Consultant."

**RECITALS:**

This Agreement shall be supplemental to, and hereby incorporates the terms and conditions of the AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC PROJECTS, and attached exhibits, entered into between the City and the Consultant on \_\_\_\_\_, 2009.

Project includes the pavement design for the capital preventative maintenance (CPM) program on various major and minor.

NOW, THEREFORE, in consideration of the foregoing, the City and Consultant agree as follows:

**Section 1. Professional Engineering Services.**

For and in consideration of payment by the City as provided under the "Payment for Engineering Services" section of this Agreement, Consultant shall perform the work described in the manner provided or required by the following scope of services, which is attached to and made a part of this Agreement as Exhibit A, all of said services to be done in a competent, efficient, timely, good and workmanlike manner and in compliance with all terms and conditions of this Agreement.

Exhibit A                      Scope of Services

**Section 2. Payment for Professional Engineering Services.**

1. Basic Fee.
  - a. Design Phase Services: The Consultant shall complete the design phase services as described herein for a lump sum fee of \$28,160, which is 7.00% of the estimated construction cost (\$404,840) as indicated on the Design and Construction Engineering Fee Curve, attached.
  - b. Construction Phase Services will be awarded at the time of construction award, should it occur.
  
2. Payment Schedule for Professional Engineering Services Fee.

Consultant shall submit monthly statements for professional engineering services rendered. The statements shall be based on Consultant's estimate of the proportion of the total services actually completed for each task as set forth in Exhibit A at the time of billing. The City shall confirm the correctness of such estimates, and may use the City's own Engineer for such purposes. The monthly statements should be accompanied by such properly completed reporting forms and such other evidence of progress as may be required by the City. Upon such confirmation, the City shall pay the amount owed within 30 days.

Final billing under this agreement shall be submitted in a timely manner but not later than three (3) months after completion of the services. Billings for work submitted later than three (3) months after completion of services will not be paid. Final payment will be made upon completion of audit by the City.

3. Payment Schedule for Expenses.

All expenses required to complete the scope of services described herein, including but not limited to costs related to mileage, vehicles, reproduction, computer use, etc., shall be included in the basic fee and shall not be paid separately. However, as compensation for expenses that are not included in the standard scope of services, when incurred in direct connection with the project, and approved by the City, the City shall pay the Consultant its actual cost times a factor of 1.15.

**Section 4. Ownership of Plans and Documents; Records.**

1. Upon completion or termination of this agreement, all documents prepared by the Consultant, including tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of service shall become the property of the City.

2. The City shall make copies, for the use of the Consultant, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Consultant under this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.

3. The Consultant shall furnish to the City, copies of all maps, records, field notes, and soil tests that were developed in the course of work for the City and for which compensation has been received by the Consultant.

**Section 5. Termination.**

1. This Agreement may be terminated by either party upon 7- days' prior written notice to the other party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party.

2. This Agreement may be terminated by either party for its convenience upon 90 days' prior written notice to the Consultant.

3. In the event of termination, as provided in this Article, the Consultant shall be paid as compensation in full for services performed to the date of that termination, an amount calculated in accordance with Section 2 of this Agreement. Such amount shall be paid by the

City upon the Consultant's delivering or otherwise making available to the City, all data, drawings, specifications, reports, estimates, summaries, and that other information and materials as may have been accumulated by the Consultant in performing the services included in this Agreement, whether completed or in progress.

**Section 6. Disclosure.**

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

**Section 7. Insurance Requirements.**

1. The Consultant shall maintain at its expense during the term of this Agreement, the following insurance:

- A. Worker's Compensation insurance relative to all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than that required by applicable law.
- B. Comprehensive General Public Liability insurance with maximum bodily injury limits of \$1,000,000 (Three Million Dollars) each occurrence and/or aggregate and minimum Property Damage limits of \$1,000,000 (Three Million Dollars) each occurrence and/or aggregate.
- C. Automotive Liability insurance covering all owned, hired, and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law including Residual Liability insurance with minimum bodily injury limits of \$3,000,000 (Three Million Dollars) each occurrence and/or aggregate minimum property damage limits of \$3,000,000 (Three Million Dollars) each occurrence and/or aggregate.
- D. The Consultant shall provide proof of Professional Liability coverage in the amount of not less than \$3,000,000 (Three Million Dollars) per occurrence and/or aggregate, and Environmental Impairment coverage ?????? Potter doesn't know what it is.

2. The Consultant shall be responsible for payment of all deductibles contained in any insurance required hereunder.

3. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate insurance limits, the Consultant will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the Consultant's expense, under valid and

enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.

4. All policies shall name the Consultant as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice to the City.

With the exception of prof liability, All insurance policies shall name the City of Novi, its officers, agents, and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Sue Morianti, Purchasing Manager, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 prior to commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.

5. If any work is sublet in connection with this Agreement, the Consultant shall require each subconsultant to effect and maintain at least the same types and limits of insurance as fixed for the Consultant.

6. The provisions requiring the Consultant to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Consultant under this Agreement.

**Section 8. Indemnity and Hold Harmless.**

Is section 8 needed, not covered by general agreement, or at least be consistent with general.

A. The Consultant agrees to indemnify and hold harmless the City, its elected and appointed officials and employees, from and against any and all claims, demands, suits, losses and settlements, including actual attorney fees incurred and all costs connected therewith, for any damages which may be asserted, claimed or recovered against the City by reason of personal injury, death and/or property damages which arises out of or is in any way connected or associated with the actions or inactions of the Consultant in performing or failing to perform the work.

The Consultant agrees that it is its responsibility and not the responsibility of the City to safeguard the property and materials used in performing this Agreement. Further, this Consultant agrees to hold the City harmless for any loss of such property and materials used pursuant to the Consultant's performance under this Agreement.

**Section 9. Nondiscrimination.**

The Consultant shall not discriminate against any employee, or applicant for employment because of race, color, sex, age or handicap, religion, ancestry, marital status, national origin, place of birth, or sexual preference. The Consultant further covenants that it will comply with the Civil Rights Act of 1973, as amended; and the Michigan Civil Rights Act of 1976 (78. Stat. 252 and 1976 PA 4563) and will require a similar covenant on the part of any consultant or subconsultant employed in the performance of this Agreement.



**Section 10. Applicable Law.**

This Agreement is to be governed by the laws of the State of Michigan and the City of Novi Charter and Ordinances.

**Section 11. Approval; No Release.**

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

After acceptance of final plans and special provisions by the City, Consultant agrees, prior to and during the construction of this project, to perform those engineering services as may be required by City to correct errors or omissions on the original plans prepared by Consultant and to change the original design as required.

**Section 12. Compliance With Laws.**

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

**Section 13. Notices.**

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

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

Consultant: James Stevens, P.E.

**Section 14. Waivers.**

No waiver of any term or condition of this Agreement shall be binding and effective unless in writing and signed by all parties, with any such waiver being limited to that circumstance only and not applicable to subsequent actions or events.

**Section 15. Inspections, Notices, and Remedies Regarding Work.**

During the performance of the professional services by Consultant, City shall have the right to inspect the services and its progress to assure that it complies with this Agreement. If such inspections reveal a defect in the work performed or other default in this Agreement, City shall provide Consultant with written notice to correct the defect or default within a specified

number of days of the notice. Upon receiving such a notice, Consultant shall correct the specified defects or defaults within the time specified. Upon a failure to do so, the City may terminate this Agreement by written notice and finish the work through whatever method it deems appropriate, with the cost in doing so being ?????? a valid claim and charge against Consultant, or, preserve the claims of defects or defaults without termination by written notice to Consultant.

All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, and the interpretation of plans and specifications shall be decided by the City. All questions as to the satisfactory and acceptable fulfillment of the terms of this agreement shall be decided by the City.

#### **Section 16. 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.

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 17. Assignment.**

No portion of the project work, heretofore defined, shall be sublet, assigned, or otherwise disposed of except as herein provided or with the prior written consent of the City. 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.

#### **Section 18. Dispute Resolution.**

The parties agree to try to resolve any disputes as to professional engineering services or otherwise in good faith. In the event that the parties cannot resolve any reasonable dispute, the parties agree to seek alternative dispute resolution methods agreeable to both parties and which are legally permissible at the time of the dispute. The parties agree to use their best efforts to resolve any good faith dispute within 90 (ninety) days notice to the other party. In the event the parties cannot resolve that dispute as set forth above, they may seek such remedies as may be permitted by law.

WITNESSES

Orchard, Hiltz & McCliment, Inc.

\_\_\_\_\_  
\_\_\_\_\_

By: James Stevens, P.E.  
Its:

The foregoing \_\_\_\_\_ was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_ on behalf

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_

WITNESSES

CITY OF NOVI

\_\_\_\_\_  
\_\_\_\_\_

By:  
Its:

The foregoing \_\_\_\_\_ was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_ on behalf of the City of Novi.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

## **EXHIBIT A - Scope of Services**

### **City of Novi 2010 Major and Minor Road CPM Projects**

Orchard, Hiltz & McCliment, Inc. is pleased to provide engineering services to the City of Novi. We understand that the City wishes to perform capital preventative maintenance (CPM) on various major and minor roads in 2010.

The scope of engineering services shall include the following tasks:

1. Conduct a site visit and offer recommendations for preventative maintenance methods and techniques for each section of local roadway identified on the City's CPM "wish" list.
2. Attend one meeting with City staff to finalize the selected roads that will receive CPM and develop cost effective methods for each.
3. Prepare a preliminary opinion of probable construction costs for the selected local roadways and offer recommendations for determining the extent of CPM that can be accomplished within the City's allocated 2010 CPM budget.
4. Prepare preliminary "log" format plans and specifications with details of various construction methods intended to be utilized.
5. Attend one meeting with the City to review the "log" documents and address any requested revisions.
6. Prepare permit applications (if needed) for submittal to the Road Commission for Oakland County.
7. Prepare final "log" format plans, specifications and bidding documents with details of various construction methods intended to be utilized. Reference plans will be created to identify the proposed construction methods for each section of roadway.
8. Assist the City with advertising and soliciting bids, printing and distributing bidding documents to interested bidders, attend the bid opening, tabulate and review the bids, check contractor references and provide a recommendation of the award of the project construction to a qualified contractor.

The following services are not anticipated to be required for this project and have not included:

1. Permit or application fees
2. Coordination or design for utility relocations or repairs
3. Remediation or removal of contaminated or hazardous soils or materials

Schedule:

1. Design completed by January 31, 2009
2. Bids received by mid-March 2010
3. Construction to begin in April and be completed by July 2010

We can perform any of these above-mentioned services. In the event any of these services are required, an addendum to the supplemental engineering agreement will be submitted for your approval prior to performing said services.

We thank you for this opportunity to provide professional engineering service and we look forward to continuing to serve the City of Novi.