



# CITY of NOVI CITY COUNCIL

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**Agenda Item 8**  
**January 22, 2007**

**SUBJECT:** Approval of Consultant Review Committee's recommendation to grant a one-year extension and fee increase with Orchard, Hiltz & McCliment, Inc. for traffic engineering consulting services through January 31, 2008

**SUBMITTING DEPARTMENT:** Assistant City Manager *AA*

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

<b>EXPENDITURE REQUIRED</b>	<b>N/A</b>
<b>AMOUNT BUDGETED</b>	<b>N/A</b>
<b>APPROPRIATION REQUIRED</b>	<b>N/A</b>
<b>LINE ITEM NUMBER</b>	<b>N/A</b>

### BACKGROUND INFORMATION:

Orchard, Hiltz & McCliment, Inc. (OHM) was awarded a one-year contract for traffic engineering consulting services in October 2004 with the option for two (2) one-year extensions. The extension recommended tonight would be the last extension allowed under the terms of the original agreement. Services provided under this agreement include:

- Site plan review work for traffic compliance with all City codes, master plan for land use, thoroughfare plan, quality development expectations, practicality, and functional excellence;
- Review of traffic impact studies;
- Review of rezoning proposals;
- Inspection services for signage and striping in compliance with site plans, including for previously approved projects that have outstanding work pending which has financial guarantees posted with the City for completion;
- Coordination with all other disciplines (e.g., engineering, planning, City Attorney, etc.);
- Court testimony for ordinance enforcement, litigation, etc.;
- Review of neighborhood traffic issues as assigned (e.g., stop and yield sign requests, speed studies, etc.); and
- Attend public meetings, hearings, homeowner association meetings, etc. as directed by the City.

OHM requested an extension with a fee increase from the rates they have been charging the past two years. The Consultant Review Committee reviewed the fees proposed, as well as information provided by staff and voted to recommend the extension with proposed fee increase. OHM has agreed to amend the current agreement to include a provision recommended by the Consultant Review Committee that provides for a fee penalty if the consultant review work is not completed within fifteen (15) business days. The amendment provides that late delivery of project work shall entitle the City to reduce the fee paid to the consultant by five percent (5%) for each day the review/work is not delivered on time, not to exceed \$500 per day. This language was added to meet the improvement recommendations made by the Sikich Group related to process improvements in the Planning and Building departments to encourage reviews to be completed quicker.

Granting the extension will allow the various consultant contracts to be on different schedules so all of the agreements will not expire at the same time. These services will go out to bid in fall 2007 for award effective February 5, 2008.

**RECOMMENDED ACTION:** Approval of Consultant Review Committee's recommendation to grant a one-year extension and fee increase with Orchard, Hiltz & McCliment, Inc. for traffic engineering consulting services through January 31, 2008.

	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				

**AMENDMENT TO OCTOBER 2004 CONTRACT  
FOR PROFESSIONAL TRAFFIC ENGINEERING SERVICES  
(ORCHARD, HILTZ & McCLIMENT, INC.)**

**THIS AMENDMENT TO CONTRACT FOR PROFESSIONAL SERVICES** ("Contract"), dated October 22, 2004, is by and between the **City of Novi**, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi Michigan, 48375 (hereinafter referred to as "City"), and **Orchard, Hiltz & McCliment, Inc.**, whose address is: 3400 Plymouth Road, Livonia, Michigan 48150 (hereinafter referred to as "Consultant").

**RECITALS**

The City and Consultant entered into a Contract for professional traffic engineering services effective October 22, 2004 and has remained in effect since that date with no changes to the original fee schedule.

Under the Contract, the parties may extend the term of that Contract for an additional two years in one year increments.

The City has agreed to extend the term of the Contract for the last of the one year increments and to the fee changes attached hereto as Exhibit B (2006-07), subject to an amendment to the Contract that added a provision relating to the timely delivery of project reviews, and Consultant has agreed to such amendment.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. That **Section 4. Terms of Payment** is hereby amended to add, effective February 5, 2007, the following provision:
  - d. Consultant acknowledges that the contract includes certain "pay for performance" provisions. Assigned project reviews shall be due no later than fifteen (15) business days from the date of delivery to Consultant by the City (or by an applicant directly) of all materials necessary to complete a review assignment. For project reviews delivered on time, Consultant shall be entitled to 100% of the fee established in Exhibit B for the review. On time delivery of reviews means delivery to the City employee responsible for coordination of a project on or before the due date. Late delivery of a project plan review shall entitle the City to reduce the fee paid to Consultant by five (5%) percent for each day the review is not delivered on time not to exceed \$500 per day. At Consultant's request, in unusual circumstances in which delivery of the review on time is prevented by circumstances beyond Consultant's control, such as a delay in required response(s) by other consultants or City employees or information requests made of the applicant during review, this reduction may be waived by the City Manager or his or her designee. Consultant may also request an extension of the project due date in advance, in the case of an usually extensive or complicated review or project.

**AMENDMENT TO OCTOBER 2004 CONTRACT  
FOR PROFESSIONAL TRAFFIC ENGINEERING SERVICES  
(ORCHARD, HILTZ & McCLIMENT, INC.)**

2. The term of the Contract is extended one year, as authorized in **Section 1. General Terms and Conditions**, with a new expiration date of January 31, 2008.

IN WITNESS WHEREOF, the parties hercunto have executed this amendment on the date below stated.

CITY OF NOVI

By: \_\_\_\_\_  
David Landry, Mayor

By: \_\_\_\_\_  
Maryanne Cornelius, City Clerk

Orchard, Hiltz & McCliment, Inc.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

889627(OHM)

**AGREEMENT FOR PROFESSIONAL TRAFFIC ENGINEERING  
CONSULTING SERVICES**

This Agreement shall be considered as made and entered into this 22<sup>nd</sup> day of October, 2004, and is between the City of Novi, 45175 W. Ten Mile Road, Novi, Michigan 48375 (hereafter "City") and Orchard-Hiltz-McCliment, ~~535 West William Suite 101, Ann Arbor, Michigan 48103~~ (hereafter "Consultant"). 34000 Plymouth Road Livonia, MI 48150

**RECITALS:**

The City desires to engage the services of the Consultant for consulting traffic engineering services, to perform certain site plan review, day-to-day and project-based services as required by a growing municipality.

The Consultant desires to provide such services, as set forth below and in the attached and incorporated Exhibits, under the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**GENERAL TERMS AND CONDITIONS**

1. General Responsibility:
  - a. This Agreement contains the entire agreement between the City and Consultant relating to services to be provided by Consultant to the City. Any prior agreements, promises, negotiations, and representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both City and Consultant.
  - b. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
  - c. The term of this Agreement shall be one year from the date set forth above. However, either party may terminate this Agreement upon ninety (90) day written notice to the other party. In the event of termination, Consultant shall be paid as compensation in full for services performed to that date an amount calculated in **accordance with Exhibit B this agreement**. Such amount shall be paid by the City upon 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 Consultant in performing the services included in this agreement, whether completed or in progress. The City may, at its sole discretion, renew this contract for no more than two additional years. The fee

schedule for any additional time would be negotiated to the mutual agreement of the parties.

2. Responsibility for Documents and Legal Compliance:

- a. For and in consideration of payment by the City as provided in this Agreement, Consultant shall perform the work described herein, including the work described in **Exhibit A** hereto, in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, and in compliance with all terms and conditions of this Agreement.
- b. This Agreement is based on the ordinances, policies, procedures, or requirements in effect on the date of the Agreement. Any additional office or field services required as a direct and apparent result of the change of such ordinances, policies, procedures, or requirements shall be negotiated to the mutual consent of the City and Consultant.
- c. City agrees that the plans, drawings, or other contracted work are primarily for the use of City. All documents prepared by the engineer, including tracings, drawings, estimates, specifications, field notes, investigations, studies, reports, computer files, field data, notes, etc., in connection with the performance of its duties under this agreement shall become the property of the City upon completion of the services and payment in full of all monies due to the Consultant with respect to the preparation of such document.

3. Actions of Others:

- a. Consultant shall not be liable for damages resulting from the actions or inactions of any governmental agencies including, but not limited to, plan processing; provided, however, that this provision shall not relieve Consultant of its obligations under this Agreement, including all Exhibits hereto, with respect to its securing, or assisting the City in securing, various governmental permits and appraisals in a manner consistent with the standard of care set forth in Paragraph 2 above.
- b. Except as specifically set forth in Exhibit B, City acknowledges that Consultant is not responsible for the performance or work by third parties including, but not limited to, construction contractors or their subcontractors.

4. Terms of Payments:

- a. Consultant shall invoice City monthly on account of Consultant's services. City shall pay Consultant within forty-five (45) days of the time of receipt of invoice from Consultant on account.

- b. City agrees that the periodic billing from Consultant to City are *presumed* to be correct, conclusive with regard to the Scope of Service, and binding on City unless City, within thirty (30) calendar days from the date of receipt of such billing, notifies Consultant in writing of alleged disagreements on the Scope of Services. Errors or discrepancies in billing recognized after 30 days shall be resolved to the mutual satisfaction of both parties.
- c. All fees and/or costs associated with or due to any governmental or review agencies arising from the services are the sole responsibility of the City.

5. Indemnification and Liability:

- a. The Consultant agrees to hold harmless and indemnify the City, its officers, agents, employees from and against all claims, demands, suits liability, losses, damages or costs (including reasonable attorney fees and defense costs) arising out of or resulting from the Consultant's tortious or negligent acts, errors, or omissions in performing this Agreement.
- b. The City and Consultant acknowledge that the Consultant's Scope of Work does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential damages, suspend performance of its services under this Agreement until such time as the City retains appropriate Consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.
- c. The City agrees, to the extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees, stockholders, and Consultants (collectively Consultant) from and against any and all claims, suits, demands, liability, losses, damages or costs, including reasonable attorney's fees and defense costs arising out of or resulting from the City's tortious or negligent acts or errors in performing this Agreement.

6. Insurance:

- a. During the term of this Agreement, Consultant shall obtain and maintain in full force, at its own expense, the following insurance coverage in not less than the following amounts:
  - i. 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.

- ii. Comprehensive General Liability Public Liability to protect all Personnel engaged in performing services pursuant to this Agreement, with coverage not less than the amount of \$3,000,000 per occurrence;
  - iii. Professional Liability (Including Errors and Omissions) Insurance in the amount of \$3,000,000 per claim.
  - iv. Automotive Insurance covering all owned, hired, and non-owned vehicles with personal protection insurance to comply with the Michigan No-Fault Insurance Law, including Regional Liability Insurance with minimum bodily injury limits of \$3,000,000 each occurrence and minimum property damage of \$3,000,000 per occurrence.
- b. Consultant shall be responsible for all deductibles contained in any insurance required hereunder.
  - c. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate existing 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.
  - d. 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.
  - e. 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 Carol J. Kalinovic, Purchasing Director, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 prior to the commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.
  - f. If any work is sublet in connection with this Agreement, the Consultant shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the Consultant.
  - g. 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.

7. Assignment:

Neither City nor Consultant shall assign this Agreement without the prior written consent of the other.

8. Severability:

Waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on City and Consultant.

9. Delays:

Consultant is not responsible for delay caused by activities or factors beyond the Consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or work product promptly, faulty performance by the City or the City's other contractors or government agencies. When such delays beyond the Consultant's reasonable control occur, City agrees Consultant is not responsible for damages nor shall Consultant be deemed to be in default of this Agreement.

No charges or claims for damages shall be made by the Consultant for delays or hindrances from any cause whatsoever during the progress of any portions of the services specified in this Agreement, except as hereinafter provided.

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 be responsible for 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.

10. Conflict of Interest:

Consultant, during the term of this Agreement, shall undertake no private third party services for projects within the City of Novi boundaries. Consultant shall notify, in writing, the City of Novi within 15 days of entering into any private or public contracts during the duration of this contract for services outside the City of Novi boundaries with an entity that is also providing services within the City of Novi. The City acknowledges that Consultant provides services for the Michigan Department of Transportation, the Road Commission for Oakland County, the City of Northville, the City of Farmington Hills and Wayne County Department of Public Services, all of which may have projects within or adjacent to the City of Novi boundaries. The City approves of the Consultant's relationship with the above named public agencies.

11. Disclosure:

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 design 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.

12. 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 the consultant or subcontractor employed in the performance of this Agreement.

13. 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 consultants for the accuracy and competency of their designs, working drawings, and specifications, or other documents and work; 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, subcontractor, agents and consultants.

14. Compliance With Laws:

This Contract and all of Contractor's work 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.

15. 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 of Novi: Richard B. Helwig, City Manager

Consultant: Daniel G. Fredendall, Exec. Vice President

**CITY OF NOVI**

By Lou Csordas  
Lou Csordas, Mayor

By Maryanne Cornelius  
Maryanne Cornelius, Clerk

**ORCHARD-HILTZ-MCCLIMENT**

By Daniel Fredendall  
Daniel Fredendall  
Executive Vice President

## EXHIBIT A

### Scope of Work

#### MAJOR ACCOUNTABILITIES

1. Site Plan review for traffic for compliance with all City codes, master plan for land use, thoroughfare plan, quality development expectations, practicality, and functional excellence.
2. Review of traffic impact studies (approximately 35/year for non-residential and 8/year for residential).
3. Review of rezoning proposals (approximately 12/year). Each rezoning request requires either an abbreviated or full traffic studies, in 2003 there were seven abbreviated or five full traffic impact studies.
4. Inspection services for signage and striping in compliance with site plans, including for previously improved projects that have outstanding work pending which has financial guarantees posted with the City for completion.
5. Coordination with all other disciplines (e.g., engineering, planning, wetlands and woodland protections, City attorneys, etc.)
6. Must be able to provide court testimony for ordinance enforcement, litigation, etc.
7. Review of neighborhood traffic issues as assigned (e.g., stop and yield sign requests, speed studies, etc.)
8. Attend public meetings, hearings, homeowner association meetings, etc. as directed and coordinated by the City of Novi.

## Fixed Fee Schedule for 2006 - 07

### Site Plan Review

#### Pre-Application Plan Reviews

Traffic	\$0.00
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#### Accessory Structures and Minor Additions (<1,000 sq ft)

PRELIMINARY SITE PLAN	
Traffic	\$200 (If applicable)
FINAL SITE PLAN	
Traffic	\$200 (If applicable)

#### Commercial, Industrial and Office Review (Fee is based on acreage)

	5 Acres or less	5.1 - 20 Acres	Greater than 20 Acres
PRELIMINARY SITE PLAN			
Traffic	550	\$550 + \$20/acre over 5 acres	\$850 + \$10/acre over 20 acres
FINAL SITE PLAN			
Traffic	\$300	\$300 + \$20/acre over 5 acres	\$600 + \$10/acre over 20 acres

#### Multiple-Family and Single-Family Site Condominium Review

	20 Units or less	21 - 50 Units	Greater than 50 Units
PRELIMINARY SITE PLAN			
Traffic	\$640	\$640 + \$6/unit over 20 units	\$820 + \$4/unit over 50 units
FINAL SITE PLAN			
Traffic	\$220	\$220 + \$6/units over 20 units	\$400 + \$4/units over 50 units

### Subdivision Review

#### Tentative and Final Preliminary, Subdivision Engineering and Final Plat Review

	20 Lots or less	21 - 50 Lots	Greater than 50 Lots
TENTATIVE PRELIMINARY PLAT			
Traffic	\$600	\$600 + \$6/lot over 20 lots	\$780 + \$4/lot over 50 lots
FINAL PRELIMINARY PLAT			
Traffic	\$220	\$220 + \$6/lots over 20 lots	\$400 + \$4/lot over 50 lots
SUBDIVISION ENGINEERING			
Traffic	\$400	\$400 + \$6/lots over 20 lots	\$580 + \$2/lot over 50 lots
FINAL PLAT			
Traffic	\$200	\$200	\$300

#### Concept Plan for Subdivision and Site Condominium Projects

CONCEPT PLAN	
Traffic	\$330 + \$2/lot or unit (\$1,000 maximum)



## Fixed Fee Schedule for 2006 - 07

### Other Review Fees

	25 Acres or Less	Greater than 25 Acres
<b>RUD AND PUD PLAN REVIEW</b>		
Traffic	\$500	\$500 + \$4/acre over 25 acres (\$1,500 maximum)

	5 Phases or Less	6-15 Phases	Greater than 15 Phases
<b>REVISING PHASING PLAN REVIEW</b>			
Traffic	\$300	\$500	\$750

	50 Acres or Less	Greater than 50 Acres
<b>PLANNED DEVELOPMENT OPTIONS</b>		
Traffic	\$200	\$200

	25 Acres or Less	Greater than 25 Acres
<b>TRAFFIC STUDY REVIEW</b>		
Abbreviated Impact Assessment	\$500	
Full Impact Study	900	\$900 + \$5/acre over 25 acres (\$1,750 maximum)

### Additional Inspection/Review Fees

<b>REZONING REVIEW</b>	
Review (All Land-Use Districts)	\$200

	25 Acres or Less	Greater than 25 Acres
<b>OTHER REVIEW FEES</b>		
Shared Parking Study Review	\$500	\$600

	5 Acres or Less	5.1 - 20 Acres	Greater than 20 Acres
<b>OTHER INSPECTION FEES</b>			
Traffic Control Signs & Markings	\$250	\$400	\$400 + \$5/acre over 20 acres

OHM is agreeable to working with the City and charging developer applicants in cases where plans have excessive reviews or work not covered by the fee schedule.

OHM considers excessive reviews as those requiring three or more iterations of reviews and comments. For the third review, OHM shall charge a fee equal to one half the regular sum noted on this fee schedule. An additional one half the regular fee will be assessed for the fifth, and seventh reviews, as appropriate.

In the case of work not covered by the fee schedule, OHM shall charge by the hour for the actual time to review and comment.

