

CITY of NOVI CITY COUNCIL

**Agenda Item K
July 23, 2012**

SUBJECT: Approval to award the second renewal option for the 2010 heating, ventilation, and air conditioning (HVAC) services contract to R. W. Mead & Sons, Inc. for one year based on the same terms, conditions and pricing as the original contract at an estimated amount of \$63,000.

SUBMITTING DEPARTMENT: Facility Operations Division

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	Estimated \$63,000
AMOUNT BUDGETED	\$63,000
LINE ITEM NUMBER	Various 814 accounts (Contract Services) and Various 934 accounts (Building Maintenance)

BACKGROUND INFORMATION:

The City of Novi contracts heating, ventilation, and air conditioning (HVAC) services for the following municipal facilities: Civic Center, Police Station, Indoor Gun Range, Department of Public Services, CEMS Building, Fire Stations 1, 2, 3, and 4, and the Ice Arena.

The scope of services provided by the vendor is as follows: scheduled preventive maintenance/inspections, repairs, and seasonal startup/shutdown. Vendor also updates the complete inventory of HVAC units and components including serial numbers, belt sizes, filter types and sizes on an annual basis.

RECOMMENDED ACTION: Approval to award the second renewal option for the 2010 heating, ventilation, and air conditioning (HVAC) services contract to R. W. Mead & Sons, Inc. for one year based on the same terms, conditions and pricing as the original contract at an estimated amount of \$63,000.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

AMENDMENT TO 2010 CONTRACT
FOR HVAC SERVICES
(R. W. MEAD & SONS, INC.)

THIS AMENDMENT TO CONTRACT FOR HEATING, VENTILATION, AND AIR CONDITIONING SERVICES ("Contract"), dated July 19, 2010, 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 R. W. Mead & Sons, Inc. whose address is: 33795 Rivera, Fraser, MI 48026 (hereinafter referred to as "Contractor").

RECITALS

The City and Contractor entered into a Contract for heating, ventilation, and air conditioning (HVAC) services effective July 19, 2010 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 year.

The City has agreed to extend the term of the Contract for one year (July 19, 2012 – July 19, 2013). The Contractor has agreed to hold the fee structure as originally stated in the July 19, 2010 contract.

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

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Meryanne Cornelius, City Clerk

R. W. Mead & Sons, Inc.

By: Kara Bulchak
Representative Name: Kara Bulchak
Title: Contract/Project Manager

Dated: _____

CONTRACT FOR HVAC MAINTENANCE SERVICES

THIS CONTRACT FOR SERVICES AND MATERIALS ("Contract"), dated July 19, 2010 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 "Client"), and R.W. Mead & Sons, Inc. whose address is 33795 Riviera, Fraser, Mi 48026 (hereinafter referred to as "Contractor").

THE CLIENT AND CONTRACTOR AGREE AS FOLLOWS:

Article I. Statement and Performance of Work.

For payment by the Client as provided under this Contract, Contractor shall provide the services and materials described on and in Schedule A (the "Work"), which is attached hereto and made a part of this Contract by this reference, in a competent, accurate, efficient, timely, good, professional, thorough, complete and responsible manner, and in compliance with the terms and conditions set forth below.

Article II. Term of Agreement.

Performance of this Contract shall commence on July 19, 2010 and end on July 19, 2011. Upon mutual consent of the Client and the Contractor, the contract may be renewed two (2) additional years in one (1) year increments at the same prices, terms, and conditions of the original contract.

Article III. Contract Price and Payment.

Subject to the terms and conditions of this Contract, the Client agrees to pay Contractor an amount for services and materials as specifically set forth in the completed Proposal attached which are part of the attached Schedule A. Such payments are in exchange for and consideration of the timely and satisfactory performance and completion of the work required under and pursuant to this Contract. The Client agrees to pay Contractor amounts due within thirty (30) days of receipt of an itemized billing/invoice from Contractor detailing all materials provided and work performed in connection with the billing and the hours and charges applicable to each such item. Such itemized billings shall be submitted and shall be paid only upon satisfactory completion of the work itemized in the billing.

All costs and expenses incurred by Contractor under this Contract are deemed to be included in the amounts set forth in Schedule A, unless specifically identified in Schedule A as reimbursable expenses and such expenses have been approved by the Client or its designee. The Client reserves the right to remove items from Schedule A (Preventive Maintenance/Inspections) should those items be covered under warranty. Contractor will obtain written approval of the Client prior to proceeding with any work that is not stated on Schedule A; otherwise, the Client will not be billed for such extra/additional work.

Payments shall be made upon verification of invoices received by the Client. All payments to Contractor shall be submitted by mail at Contractor's address first listed above, unless Contractor provides written notice of a change in the address to which such payments are to be sent.

Article IV: Termination.

- A. 1. For cause: In the event that either party shall breach the terms and conditions of this Contract, the aggrieved party may notify the other party, in writing via certified mail, of such breach and demand that the same be remedied within ten (10) days. If the defaulting party fails to remedy the breach as demanded, the aggrieved party shall then have the right to terminate by giving the defaulting party thirty (30) days written notice. In addition, if at any time a voluntary petition in bankruptcy shall be filed against either party and shall not be dismissed within thirty (30) days, or if either party shall take advantage of any insolvency law, or if a receiver or trustee of any of a party's property shall be appointed and such appointments shall not be vacated within thirty (30) days, the other party shall have the right, in addition to any other rights of whatsoever nature that it may have at law or in equity, to terminate by giving thirty (30) days notice in writing of such termination.
2. For convenience: The Client may terminate the agreement, in whole or in part, without showing cause upon giving thirty (30) days written notice to the Contractor. The Client shall pay all reasonable costs incurred by the Client up to the date of notice of termination. The Contractor will not be reimbursed for any anticipatory profits that have not been earned up to the date of notice of termination.
- B. In the event this Contract is terminated before completion, the Client shall not be responsible to make any further payments for work performed after the effective date of such termination, and shall pay Contractor for such materials as have been delivered and for such work as has been completed and is eligible for payment under the terms of this Contract through the date of such termination. In all events, the Client shall only be responsible to make the payments described in the preceding sentence if, at the Client's request, Contractor continues to fully perform its duties and obligations in full compliance with the terms of this Contract through the effective date of the termination.

Article V: Independent Contractor/Vendor Relationship.

- A. In the performance of this Contract, the relationship of Contractor to the Client shall be that of an independent contractor and/or vendor and not that of an employee or agent of Client. Contractor is and shall perform under this Contract as an independent contractor and/or vendor, and no liability or responsibility with respect to benefits of any kind, including without limitation, medical benefits, worker's compensation, pension rights, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party as a result of the performance of this Contract.

Contractor, as an independent contractor and/or vendor, is not authorized to enter into or sign any agreements on behalf of the Client or to make any representations to third parties that are binding upon the Client.

- B. Contractor represents that it will dedicate sufficient resources and provide all necessary personnel required to perform the work described in Schedule A in accordance with the terms and conditions of this Contract. Except as may be specifically stated and agreed to in Schedule A, Contractor shall perform all of the work under this Contract and no other person or entity shall be assigned or sub-contracted to perform the work, or any part thereof, unless approved by the Client in advance.

Article VI: Liability and Insurance.

- A. Contractor agrees to indemnify and hold harmless the Client, 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 Client by reason of (i) 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 Contractor in performing or failing to perform the work; or (ii) civil damages which arise out of any dispute between Contractor and its subcontractors, affiliates, employees or other private third parties in connection with this Contract. Contractor specifically agrees that it is Contractor's responsibility, and not the responsibility of the Client, to safeguard the property and materials used in performing this Contract. Contractor agrees to hold the City harmless from any loss of or damage to such property and materials used in connection with Contractor's performance of this Contract.
- B. Contractor shall provide evidence of adequate insurance coverage in the types and amounts set forth on Schedule B, which is attached hereto and incorporated herein by this reference. Such insurance shall be maintained at the specified level of coverage throughout the term of this Contract, including any extension of such term, and will cover all work, acts and omissions by and on behalf of Contractor in connection with this Contract, with the Client as named additional insureds, but with such coverage being primary and non-contributory as described in the attached Schedule B.

Article VII: Information.

It is expressly acknowledged and agreed that all reports, opinions, compilations, research work, studies, data, materials, artifacts, samples, documents, plans, drawings, specifications, correspondence, ledgers, permits, manuals, applications, contracts, accountings, schedules, maps, logs, invoices, billings, photographs, videotapes and all other materials generated by and/or coming into the possession of Contractor during the term of this Contract, and any extension thereof, that in any way relate to the performance of work by Contractor under this Contract or that are otherwise related or relevant to the work, belong exclusively to the Client and shall be promptly delivered to the Client upon the termination of this Contract or, at any time, upon the Client's request.

Article VIII: General Provisions.

- A. Entire Agreement. This instrument, together with the attached Schedules, contains the entire Contract between the Client and Contractor. No verbal agreement, conversation, or representation by or between any officer, agent, or employee of the parties hereto, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- B. Compliance with Laws. This Contract and all of Contractor's work and practices shall be subject to all applicable state, federal and local laws, ordinances, rules or regulations, including without limitation, those which apply because Client is a public governmental agency or body. Contractor represents that it is in compliance with all such laws and eligible and qualified to enter into this Contract.
- C. Governing Law. This Contract shall be governed by the laws of the State of Michigan.

- D. Assignment. Contractor shall not assign this Contract or any part thereof without the written consent of the Client. This Contract shall be binding on the parties, their successors, assigns and legal representatives.
- E. Dispute Resolution/Arbitration. The parties agree that any disputes regarding a claimed violation of this agreement shall first be submitted in writing to the other party in an attempt to settle the matter before pursuing other legal actions or notices provided for in this agreement. Such written communication shall clearly state the problem or concern, allow sufficient time for a written response from the other party, and culminate in a face-to-face meeting to determine if a remedial action is possible. In no event shall this process take more than thirty (30) days, unless a specific extended period of time is agreed to by both parties in writing as being necessary. The aforementioned initial written communications between the parties also shall indicate whether the party is willing to submit the dispute to binding arbitration, non-binding mediation or other form of alternate dispute resolution, and share equally the costs for same. Upon the parties agreeing to any such method of dispute resolution and a timetable for doing so, pursuit of other legal actions shall be deferred until the process has been completed. In any binding arbitration, the arbitrator shall provide a written statement of the reasons and basis for an award or decision, a judgment of the Oakland County Circuit Court may be entered based on the arbitration award or decision, and each party shall be responsible for their own costs and attorney fees.
- F. Third Parties. It is the intention of the parties hereto that this Agreement is not made for the benefit of any private third party. It is acknowledged that Client may receive a portion of the funding for the payments under this Contract from one or more private sources, and it is understood by Contractor that it is hired by Client to work exclusively for Client (and by extension for the Township should the work be accepted and implemented by the Township) and Contractor agrees that no private party or parties will be allowed to hold sway or influence, in any way, over Contractor's performance of the work.
- G. Notices. Written notices under this Contract shall be given to the parties at their addresses contained in this Contract by personal or registered mail delivery to the attention of the following persons:

 Client: City Manager Clay J. Pearson and City Clerk Maryanne Cornelius
 Contractor: R. W. Mead & Sons, Inc. Attn. John Mora
- H. Changes. Any changes in the provisions of this Contract must be in writing and signed by the Client and Contractor.
- I. Waivers. No waiver of any term or condition of this Contract 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.
- J. Jurisdiction and Venue of Contract. This Contract shall be considered for all purposes, including the establishment of jurisdiction and venue in any court action between the parties, as having been entered into and consummated in the City of Novi, Oakland County, Michigan.

K. Conflict. In the event of any conflict or inconsistency between the above provisions of this Contract and either or both of the attached Schedules, the provisions in the above text shall govern.

IN WITNESS WHEREOF, the Client and the Contractor have executed this Contract in Oakland County, Michigan, as of the date first listed above.

WITNESS:

Marilyn S. Troutman
MARILYN S. TROUTMAN
Charlene McLean
CHARLENE McLEAN

City of Novi ("Client"):

By: [Signature]
David B. Landry
Mayor
By: Maryanne Cornelius
Maryanne Cornelius
City Clerk

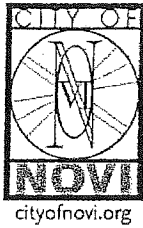
WITNESS:

Rodriguez Zamperini

Contractor / R.W. Mead & Sons, Inc.

By: [Signature]
Representative Name John Mora
Title Contract/Project Manager

1275476.3



**CITY OF NOVI
PROPOSAL FORM**

HVAC MAINTENANCE / PROFESSIONAL SERVICES CONTRACT

We the undersigned as proposer, propose to furnish to the City of Novi, according to the conditions and instructions attached hereto and made a part thereof according to the attached terms and conditions.

SCHEDULED PREVENTIVE MAINTENANCE (INSPECTIONS)

BASE BID	FREQUENCY	COST PER INSPECTION
Civic Center	Once per quarter	\$ 1,250.00
Police Department	Once per quarter	\$ 850.00
Indoor Gun Range	Twice per year (June/October)	\$ 280.00
DPS Facility	Twice per year (June/October)	\$ 780.00
CEMS Satellite Building	Twice per year (June/October)	\$ 200.00
Fire Station #1	Twice per year (June/October)	\$ 480.00
Fire Station #2	Twice per year (June/October)	\$ 280.00
Fire Station #3	Twice per year (June/October)	\$ 200.00
Fire Station #4	Twice per year (June/October)	\$ 800.00

ALTERNATES	FREQUENCY	COST PER INSPECTION
Alternate #1 – Novi Public Library	Once per quarter	\$ T&M
Alternate #2 – Novi Ice Arena	Once per quarter	\$ 390.00
Alternate #3 – Meadowbrook Commons	Twice per year (June/September)	\$ 3,600.00

REPAIRS/SERVICE CALLS/STARTUP/SHUTDOWN HOURLY RATES

DESCRIPTION	HOURLY RATE
Regular Working Hours M-F 8:00 AM -5:00 PM (DPS Working Hours M-F 7:30am-4 pm.)	\$ 69.00
Overtime Working Hours M-F after 8, first 8 on Sat.)	\$ 98.00
Sunday Hours (12 Midnight Sat – 8 AM Mon)	\$ 132.00

Holidays (5 PM prior night – 8 AM following day)	\$ 132.00
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MATERIALS

Materials Markup from Wholesale Cost (%)	15 %
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OTHER CHARGES

Are there any other costs or charges that have not been addressed? _____ Yes No
 If yes, please identify (i.e. disposal charges, etc.). All other charges must be clearly identified and described here, otherwise, they will not be allowed by the City.

TERMS & CONDITIONS:

The City of Novi retains the right to obtain competitive pricing for component parts with a cost in excess of \$1,000.

We acknowledge the following addendums: #1
 (please list numbers)

Exceptions to Specifications: _____

Comments: _____

Company R.W. Mead & Sons, Inc.

Address 33795 Riviera

City Fraser State MI Zip 48026

Telephone 586-296-3650 Fax 586-294-0410

Name (printed) John Mora Title: Contract/Project Manager

E-mail jmora@rwmead.com

Signature  Date 5/27/10