City of Birmingham
A Walkable Community

MEMORANDUM

Engineering Dept.

DATE: **April 16, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Paul T. O'Meara, City Engineer**

SUBJECT: **Hubbell Roth, & Clark, Inc.**
Engineering Services Contract Renewal

Attached is an engineering consultant agreement between the City of Birmingham and HRC. HRC is a multi-disciplinary consulting firm that has assisted the Engineering Department with the majority of its sewer and water system design issues for over two decades. Over the past decade, as federal rules with respect to storm water quality become more demanding, they have also assisted our office significantly in this area. They have also assisted with other needed services as the opportunity arises. For example, they are the design engineer for our project at Quarton Rd. & Chesterfield Ave. Since they act as the City Engineer for the City of Bloomfield Hills, they are better able to represent their interests, as well as ours, in this project. Their current five year contract with the City recently expired, and needs to be renewed.

We have had a good working relationship with the current HRC team. Due to their knowledge of our system, as well as their connections with other agencies in the immediate area, such as the Oakland Co. Water Resources Commissioner's office, Bloomfield Twp., Beverly Hills, Troy, etc., we recommend that this relationship continue. The current rate structure, plus the rate structure that applied at the time the agreement was last authorized (2010), are attached.

It is recommended that the City of Birmingham continue to engage Hubbell, Roth, & Clark, Inc., to provide engineering services according to the attached agreement, which has been approved by the City Attorney.

SUGGESTED RESOLUTION:

To authorize the Mayor and Clerk to sign the general services agreement between Hubbell, Roth, & Clark, Inc., and the City of Birmingham.

CITY OF BIRMINGHAM
HUBBELL, ROTH & CLARK, INC.
ENGINEERING CONSULTANT CONTRACT

THIS AGREEMENT, made and entered into this ___ day of _____, 2015, by and between the CITY OF BIRMINGHAM, a Michigan Municipal Corporation located at 151 Martin Street, Birmingham, Michigan, hereinafter referred to as the CITY, and HUBBELL, ROTH & CLARK, INC., located at 555 Hulet Drive, Bloomfield Hills, Michigan 48303, hereinafter referred to as the CONSULTANT.

W I T N E S S E T H:

WHEREAS, the CITY would like to engage the professional services of the CONSULTANT to perform engineering services, including inspections and surveying, and,

WHEREAS, the CONSULTANT is willing to render such services desired by the CITY for the considerations hereinafter expressed.

NOW, THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, all as hereinafter set forth, it is agreed by and between the parties as follows:

1. The CONSULTANT shall perform engineering services for the CITY, including, but not limited to, investigations, studies and preliminary engineering, design engineering, construction engineering and field layout, perform inspection services and surveys, update CITY'S record keeping as directed, obtain detailed "as built" information in the field and properly transfer this information to the CITY'S electronic mapping/GIS system.

Prior to the final acceptance of a project, the design engineer shall submit as-built plans, in both digital and hardcopy format, to the CITY. As-built plans shall be submitted for all projects involving sanitary sewer, storm sewer, and water main installation or modification. As-builts shall adhere to the CITY of Birmingham CAD/GIS submittal standards found under separate cover.

The CONSULTANT will provide said services only when requested to do so by the City Engineer.

2. The CONSULTANT shall perform all work under the direction of the City Engineer or a designated representative.

3. The CITY agrees to pay the CONSULTANT for services rendered on the basis of actual direct payroll wages times a multiplier of 2.8. The CONSULTANT shall submit billings on a regular basis, but no more than once a month.

4. This Agreement shall commence on May 1, 2015, and shall terminate on April 30, 2020. However, notwithstanding the term of the agreement, the City shall have the right to terminate this Agreement on ten (10) days written notice. In the event of termination, the

CONSULTANT shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results to the date the termination takes effect and the City shall be entitled to retain and use the results of all information, documents and recommendations prepared by the CONSULTANT through such date.

5. If the CONSULTANT fails to perform its obligations hereunder, the CITY may take any and all remedial actions permitted by law.

6. The CONSULTANT shall hire personnel of good character and fitness to perform the duties under this Agreement.

7. The CONSULTANT agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The CONSULTANT shall inform the CITY of all claims or suits asserted against it by the CONSULTANT'S employees who work pursuant to this Agreement. The CONSULTANT shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

8. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

9. To the fullest extent permitted by law, the CONSULTANT and any entity or person for whom the CONSULTANT is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the CONSULTANT including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the

sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

The CITY agrees that the contractors shall be solely responsible for job site safety and all contractors shall be required in the CITY'S contract with such contractors to indemnify the CONSULTANT for any liability incurred by the CONSULTANT as a result of the contractor's negligent acts or omissions. However, such indemnification shall not extend to liability resulting from the negligence of the CONSULTANT.

10. The CONSULTANT shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham. The CONSULTANT shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: CONSULTANT shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: CONSULTANT shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability Insurance: CONSULTANT shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: The Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from CONSULTANT under this Section.

E. Professional Liability Insurance: If Professional Liability Insurance is available, Professional Liability Insurance with limits of not less than $2,000,000 per claim if CONSULTANT will provide service that are customarily subject to this type of coverage.

F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, Professional Liability Insurance and Motor Vehicle Liability Insurance as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.

G. Proof of Insurance Coverage: CONSULTANT shall provide the CITY at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;

2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;

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

11. If, after the effective date of this Agreement, any official of the CITY, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the CONSULTANT, the CITY shall have the right to terminate this Agreement without further liability to the CONSULTANT if the disqualification has not been removed within thirty (30) days after the CITY has given the CONSULTANT notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

12. The CONSULTANT and the CITY agree that the CONSULTANT is acting as an independent contractor with respect to the CONSULTANT'S role in providing services to the CITY pursuant to this Agreement, and as such, shall be liable for its own actions and neither the

CONSULTANT nor its employees shall be construed as employees of the CITY. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the CITY nor the CONSULTANT shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The CONSULTANT shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the CITY.

13. The CONSULTANT agrees that it will apply for and secure all permits and approvals as may be required from the CITY in accordance with the provisions of applicable laws and ordinances of the CITY, State of Michigan or federal agencies.

14. This Agreement shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY and CONSULTANT. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this Agreement without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

15. The CITY shall be the owner of all the drawings, specifications or other documents prepared by the CONSULTANT. Any modifications made to the drawings by the CITY shall be clearly marked as such on the modified document. <u>The CITY may not use these documents for any purpose other than pursuant to the activities provided for in this Agreement.</u>

16. Notices shall be given to:

a. City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012-3001
Attention: Ms. Laura Pierce

With copies to:

Timothy J. Currier, City Attorney
Beier Howlett, P.C.
200 E. Long Lake Road, Ste. #110
Bloomfield Hills, MI 48304

b. Hubbell, Roth & Clark, Inc.
555 Hulet Drive
Bloomfield Hills, MI 48303
Attention: Mr. Walter Alix, Vice President

17. The CONSULTANT acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The CONSULTANT recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the CONSULTANT agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The CONSULTANT shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The CONSULTANT further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

18. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The CONSULTANT agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

19. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF BIRMINGHAM

_____
Stuart Lee Sherman, Mayor

_____
Laura Pierce, Clerk

HUBBELL, ROTH & CLARK, INC.

By: _____
Its:

APPROVAL (Sec 2-289 City Code)

_____
Paul T. O'Meara, City Engineer
as to Substance

_____
Joseph Valentine, City Manager as to
Substance

_____
Mark Gerber, Director of
Finance as to Financial Obligation

_____
Timothy J. Currier, City Attorney as to
Form

Hubbell,Roth & Clark, Inc.
2010 Hourly Rate Schedule
For:

City of Birmingham

Category	Billable Rates		
Principal	149.10	-	149.10
Associate/Managing Engineer	112.00	-	145.00
Sr. Project Engineer/Architect	105.00	-	126.00
Staff Engineer/Architect	69.30	-	90.00
Graduate Engineer / Architect I/II	56.00		93.10
Designer	83.44	-	110.60
Cadd Technician	57.40	-	95.90
Registered Surveyor	100.00		115.00
Survey Party Chief	77.00	-	93.10
Survey- Instrument Person	57.40	-	70.00
Survey - Survey Assistant	48.30	-	51.00
Construction- Office Technician	44.10	-	74.20
Senior Construction Observer	58.80	-	85.00
Construction Observer I/II	47.60	-	69.30
Testing Technician	46.90	-	73.50

***Wage rates shown above were recreated for 2010 and are based on direct payroll plus a multiplier of 1.8.**

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

Reimbursable expenses will be invoiced at our cost which is defined as the direct costs plus 10% to allow for Michigan Business Tax and Professional Liability Insurance.

HRC
HUBBELL, ROTH & CLARK, INC
Consulting Engineers

Hubbell, Roth & Clark, Inc.

2015 Hourly Rate Schedule

Prepared for:
City of Birmingham

Category	Billable Rates		
Principal	130.00	-	150.00
Associate/Managing Engineer	116.00	-	146.00
Sr. Project Engineer/Architect	100.00	-	128.00
Staff Engineer/Architect	81.00	-	93.00
Graduate Engineer/Architect I/II	66.00	-	73.00
Designer	87.00	-	108.00
Cadd Technician	70.00	-	96.00
Registered Surveyor	97.00	-	115.00
Survey Party Chief	81.00	-	100.00
Survey - Instrument Person	69.00	-	73.00
Survey - Survey Assistant	53.00	-	58.00
Construction - Office Technician	55.00	-	70.00
Sr. Construction Observer	65.00	-	92.00
Construction Observer I/II	48.00	-	68.00
Testing Technician	48.00	-	65.00

Wage rates shown above are reflective of the actual hourly rates of HRC staff for each classification plus a 1.8 multiplier.

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

Allowable Reimbursable expenses will be invoiced at our cost which is defined as the direct costs plus 5%.

HRC 100 YEARS
CONSULTING ENGINEERS SINCE 1915