

# CONTRACT ROUTING FORM

SUBMITTED BY: Nicholas S. Hutchinson, P.E. *NSH*

DATE: April 13, 2017

SERVICE UNIT: Public Services Area - Project Management Services Unit

CONTRACTOR: Fishbeck, Thompson, Carr & Huber, Inc.

PURPOSE: As-Needed General Engineering and Surveying

CONTRACT TYPE:  SERVICES  MATERIALS AND CONSTRUCTION

CONTRACT AMOUNT: \$250,000.00

RESOLUTION REQUIRED:  YES  NO

RESOLUTION NO. R-17-090 (ATTACHED)

SIGNATURES: **PLEASE MARK PAGES**  
(IN ORDER)

	REQUIRED	SIGNED	DATE SIGNED
CONTRACTOR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>4/11/2017</u>
DEPARTMENT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u><del>4</del> 4/13/17</u>
CITY ATTORNEY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5-25-17</u>
CITY ADMINISTRATOR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5-26-17</u>
MAYOR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5-26-17</u>
CITY CLERK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/31/17</u>

RETURN CONTRACT TO: Brian Slizewski Ext.43607

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
FISHBECK, THOMPSON, CARR & HUBER, INC. (FTC&H)  
AND THE CITY OF ANN ARBOR  
FOR GENERAL CIVIL ENGINEERING AND SURVEYING SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Fichbeck, Thompson, Carr & Huber, Inc. ("Contractor") a Michigan corporation with its address at 39500 MacKenzie Drive, Suite 100, Novi, Michigan 48377 agree as follows on this 3/5/17 day of May, 2017.

The Contractor agrees to provide services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means Public Services Area / Project Management Services Unit.

Contract Administrator means Nicholas S. Hutchinson, P.E., City Engineer, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means General Civil Engineering and Surveying Services, RFP #995.

Work Statement means a request for specific services or deliverables by the City, a proposal of Consultant, or another written instrument that meets the following requirements:

1. Includes substantially the following statement: "This is a Work Statement under Consultant Services Agreement Dated...."
2. Is signed on behalf of both parties by their authorized representatives. The required signatures for the City are: (a) City Administrator; (b) Administrator of the Administering Service Area/Unit approved as to substance; and (c) City Attorney approved as to form and content.
3. Contains the following three mandatory items:
  - a. Description and/or specifications of the services to be performed and the Deliverables to be delivered to City
  - b. The amount of payment
  - c. The time schedule for performance and for delivery of the Deliverables

In addition, when applicable, the Work Statement may include such other terms

and conditions as may be mutually agreeable between parties.

## **II. DURATION**

This Agreement shall become effective on \_\_\_\_\_, 2017, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article XI.

## **III. SERVICES**

- A. The Contractor agrees to provide General Civil Engineering and Surveying Services ("Services") in connection with the Project as described in Exhibit A. Specific projects within the scope may be described from time to time by the City for performance within a Work Statement. Upon acceptance of the Work by Contractor, the Work Statement shall become part of this Agreement and shall be performed in accordance with its described scope. The City retains the right to make changes to the quantities of service within the general scope of the agreement or within a Work Statement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original agreement. The Contractor understands that there is no guarantee or implied promise of any nature that any Work Statements at all will be issued and that the City is under no obligation to issue or consent to any Work Statements.
- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

## **IV. INDEPENDENT CONTRACTOR**

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

## **V. COMPENSATION OF CONTRACTOR**

- A. The Contractor shall be paid on the basis of reasonable time spent and materials used at the rates and prices specified in Exhibit B for acceptable work performed and acceptable Deliverables received. The total fee to be paid the Contractor for the Services shall not exceed \$250,000. Payment shall be made monthly following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

## **VI. INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

## VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## VIII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.
- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other perform or firm to submit or not to submit a proposal for the purpose of restricting competition.

**IX. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

**X. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

**XI. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
Project Management Service Unit  
Nicholas S. Hutchinson, P.E., City Engineer  
301 E. Huron St.  
Ann Arbor, Michigan 48104

#### **XIV. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

#### **XV. OWNERSHIP OF DOCUMENTS**

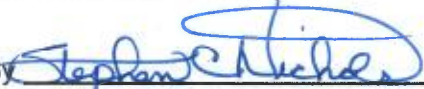
Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.


#### **XVI. CONFLICTS OF INTEREST OR REPRESENTATION**

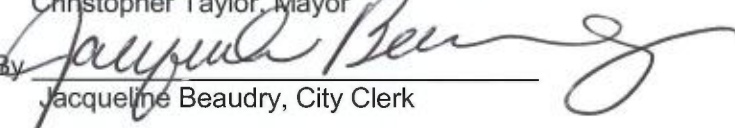
Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

**FOR FTC&H, CONTRACTOR**


By   
Stephen C. Nichols  
Senior Vice President

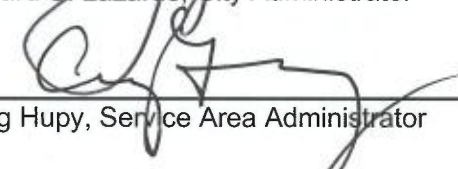
**FOR THE CITY OF ANN ARBOR**

By   
Christopher Taylor, Mayor

By   
Jacqueline Beaudry, City Clerk

**Approved as to substance**

  
Howard S. Lazarus, City Administrator

  
Craig Hupy, Service Area Administrator

**Approved as to form and content**

  
Stephen K. Postema, City Attorney



Engineering and Survey Services RFP do not need to include these services in their proposal.

## 2. Survey

Perform various topographical surveying tasks as requested for the preparation of civil engineering construction plans. The desired surveying services will include, but not be limited to, the gathering of topographical survey data and providing digital submissions. It is understood that the final work product will be a complete survey that will contain all known site features and will be ready for use as a base drawing for final engineering plans.

Perform construction staking for projects including but not limited to sanitary sewer, storm sewer, road paving, street resurfacing, water mains, sidewalks, and bridges.

Perform other miscellaneous survey tasks as requested by the City.

### A. Data collection:

- i. State Plane Coordinate system and City of Ann Arbor datum is to be used. Datum to be in the City's official vertical datum of NAVD88 and horizontal datum of NAD83 (Michigan State Plane coordinates, international feet).
- ii. All topographic features on a project site will be located. This includes man-made and natural terrain features that the surveyor will come across. Elevation data will be obtained as needed for sufficient project design, quantity computations and drainage studies.
  1. Locate all surface features within and a minimum of 25' beyond the right-of-way along a street.
  2. All public and private utilities located and identified.
  3. Driveways - locate to a minimum of 40 feet beyond right-of-way or sidewalk for grading design.
  4. Intersecting streets - Sidewalks to a sufficient distance beyond first driveway/lead walk; minimum 20 feet. Roadway to 200 feet from intersection.
  5. Curb ramps should have all 4 corners of the "turning space" and 10 adjacent flags of the walk transition located.
  6. Sufficient ground elevations for creation of a digital terrain model (DTM) for one (1) foot contours, including around curb radii and through intersections.
  7. Survey feature lines, 3D break lines, shall be included as part of the final digital submittal.
  8. All ground door locations and elevations are to be included survey and shown pictorially in the base drawing (typical in areas where buildings are at or near ROW).
  9. Retaining walls (top and both sides at bottom) and steps (top and bottom steps, at both ends of each) are to be included.

- iii. Planimetrics to be AutoCAD 2016 or earlier, layering standards to be provided by the City of Ann Arbor. All linework in the base topographic drawing are to be comprised of polylines with an elevation of 0. Text heights for labels are to be Simplex with a paper space height of 0.08”.
- iv. Coordinate with other city service areas, local agencies, etc.

**3. Plans and Specifications**

Preparation of construction plans and specifications shall include preliminary reports, identification of alternatives, cost estimates, and contract documents. The consultants shall also secure all necessary permits from all approving agencies including but not limited to the Michigan State Department of Environmental Quality and Michigan Department of Transportation.

**4. Capital Improvements Plan**

Participate in the establishment of project scope, preparation of cost estimates, and construction schedules in terms of project planning for the City’s Capital Improvement Program.

**5. Construction Administration**

Construction Administration shall include general construction management services required on projects to coordinate and document activities such as construction staking, continuous monitoring of projects, coordination and supervision of testing services, approval and correction of shop drawings, attendance at meetings, final inspection and measurement, periodic reporting of progress, preparation of progress payments, review and recommendation of claims, preparation of change orders and preparation of final payment.

**EXHIBIT C  
INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

- A. The Contractor shall have insurance that meets the following minimum requirements:
1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
  2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:  
  
Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit
  3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:  
  
\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury
  4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
  5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.