

Amendment of Agreement

Amendment of Agreement dated July 21, 2010, to the SPACECO, Inc. ("Engineer") General Terms and Conditions relative to Engineer's Professional Engineering Services Proposal dated June 21, 2010 (the "Agreement") between Engineer and the Hanover Township Road District (the "Road District" or "HTRD" or "Client") regarding the Sherwood Oaks pavement rehabilitation/resurfacing project (the "Project").

1. Section 5 of the Agreement is amended by adding the following thereto: "provided Engineer is not in default hereunder."

2. Section 6 of the Agreement is amended by adding the following thereto: "Notwithstanding the foregoing, Engineer consents to Drawings, Specifications and other contract documents prepared by Engineer and/or its consultants being reproduced and submitted to Contractors who may be submitting bids for the Project Work. Engineer understands and agrees that such Drawings, Specifications and other contract documents prepared by Engineer will be subject to disclosure and/or copying in the event the Road District receives a Freedom of Information Act request for said documents and/or is otherwise required by law to furnish and/or disclose said documents."

3. Section 6 of the Agreement is further amended by deleting "and indemnify" from the third and fourth paragraphs thereof and substituting "hold harmless" for "indemnification" in the last sentence of said Section 6.

4. Section 7 of the Agreement is amended by deleting "indemnify and" therefrom.

5. Section 9 of the Agreement is amended by deleting the following therefrom: "As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed."

6. Section 10 of the Agreement is amended to read as follows: "Engineer shall indemnify and hold harmless the Hanover Township (the "Township"), the Road District, and their respective officers, officials, employees, and volunteers from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from the performance of Engineer's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use there from, and (ii) is caused in whole or in part by any wrongful or negligent act or omission of Engineer, any subcontractor, and/or consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent attributable to the negligence of a party indemnified hereunder. Such obligation shall not be construed

to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Engineer shall similarly protect, indemnify and hold and save harmless the Township and Road District, and their respective officers, officials, employees, and volunteers against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Engineer's breach of any of its obligations under or Engineer's default of, any provision of the Contract. Engineer's obligations to indemnify hereunder shall survive the expiration and/or termination of the Agreement."

7. Section 22 of the Agreement is amended to read as follows: "It is intended by the parties to this Agreement that the Engineer's services in connection with the Project shall not subject the Engineer's individual employee, officers, principals, or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the HTRD and the Township agree that any claim, demand or suit by the HTRD and/or the Township hereunder shall be directed and/or asserted only against the SpaceCo, Inc., an Illinois corporation and not personally and individually against the Engineer's, employees, officers, directors, and/or principals."

8. Section 23 of the Agreement, the third paragraph thereof, is amended to read as follows: "The Parties agree that Contractor shall be required to provide the following indemnification: Indemnity. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless Hanover Township, HTRD, and SpaceCo, Inc., and their respective officials, officers, directors, employees, consultants and agents (collectively, the "Indemnified Parties") against all injuries, deaths, damage to property, loss, damages, claims, patent claims, suits, liens, lien rights, liabilities, judgments, costs and expenses, which may in any way arise directly or indirectly from (i) the Project Work, Repair Work, and/or Warranty Work provided hereunder; and/or (ii) any acts and/or omissions of or on behalf of the Contractor, its employees, contractors, sub-contractors of any tier, suppliers, and/or agents; except to the extent attributable to the negligence of the Indemnified Parties, or any of them; in which case Contractor shall at its own expense, appear, defend and pay all charges of attorneys and costs and other expenses arising therefrom or incurred in connection therewith, and if any judgments shall be rendered against the Indemnified Parties, or any of them, in such action, Contractor agrees that any bond or insurance protection required herein, or otherwise provided by Contractor, shall in now way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties, and each of them, as herein provided. Contractor shall similarly protect, indemnify and hold and save harmless the Indemnified Parties against and from any and all claims, costs, causes, actions and expenses, including but not limited to, attorney's fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Agreement. This obligation shall survive the expiration and/or termination of the Agreement.

9. Section 24 of the Agreement is amended by deleting "indemnify and" therefrom.

10. Section 25 of the Agreement is amended to provide that any late payments by the Road District shall be in accordance with the Prompt Payment Act (50 ILCS 505/2 et seq.).

11. Section 27 of the Agreement is amended by deleting the following therefrom: "any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings."

12. Section 28 of the Agreement is amended by deleting the second paragraph therefrom.

13. The Agreement is further amended by adding the following Sections thereto:

"30. Engineer shall obtain and maintain at its sole cost insurance of the types of coverages and in the minimum amounts listed below:

A. Commercial General and Umbrella Liability Insurance

Engineer shall maintain commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, and Excess Umbrella Liability Coverage of \$5,000,000 each occurrence and aggregate.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 1093, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Hanover Township, Hanover Township Road District, and their respective officials, officers and employees, shall be included as an insured under the CGL using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the Excess Umbrella Liability Coverage (collectively, the "Additional Insured"). This insurance shall apply as a primary insurance with respect to any other insurance or self-insurance afforded to the Additional Insured, or any of them.

B. Professional Liability Insurance

Engineer shall maintain professional liability insurance with a limit of not less than \$2,000,000 each claim, and \$4,000,000 aggregate.

C. Business Auto Liability Insurance

Engineer shall maintain business auto liability with a limit of not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00, 05, CA 00, 12, CA 00, 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Worker's Compensation Insurance

Engineer shall maintain workers compensation as required by statute and employers liability insurance. The employers liability limits shall not be less than \$500,000 each accident for bodily injury by accident and \$500,000 each employee for bodily injury by disease.

If Hanover Township and/or HTRD have not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Engineer waives all rights against the Additional Insured, and all of them, for recovery of damages arising out of the Engineer's work.

E. General Insurance Provisions

i. Evidence of Insurance

Prior to beginning work, Engineer shall furnish HTRD with a certificate(s) of insurance and applicable policy endorsement(s) including but not limited to additional insured endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Hanover Township and HTRD prior to the cancellation or material adverse change of any insurance referred to therein. Written notice to Hanover Township and HTRD shall be by certified mail, return receipt requested.

Failure of the Township and/or HTRD to demand such certificate endorsement or other evidence of full compliance with these insurance requirements or failure of Hanover Township and/or HTRD to identify a deficiency from evidence that is provided shall not be construed as a waiver of Engineer's obligation to maintain such insurance.

HTRD shall have the right, but not the obligation, of prohibiting Engineer from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by HTRD.

Failure to maintain the required insurance may result in termination of this Contract at the option of HTRD.

Engineer shall provide certified copies of all insurance policies required above within ten (10) days of the Township and HTRD's written request for said copies.

ii. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A, VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A, VII or a Best's rating is not obtained, the Road District has the right to reject insurance written by an insurer it deems unacceptable.

iii. Cross-Liability

If Engineer's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

iv. Deductibles and Self-Insured Protection

Any deductibles or self-insured retentions must be declared to the Hanover Township and HTRD. At the option of the Township and/or HTRD, the Engineer may be asked to eliminate such deductibles or self-insured retentions as respects Hanover Township and HTRD, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

v. Subcontractors and Consultants

Engineer shall cause each subcontractor and consultant, employed by or acting on behalf of Engineer to purchase and maintain insurance of the type specified above. When requested by Hanover Township and/or HTRD, Engineer shall furnish copies of certificates of insurance evidencing coverage for such Consultants.

31. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of Hanover Township, HTRD and/or their respective officials, officers, employees, volunteers and/or agents.

32. In the event of breach and/or default under the Agreement, the non-defaulting/non-breaching party shall be entitled to all right and remedies available at law and/or equity, including reasonable attorney's fees. In the event of default by Engineer hereunder, Hanover Township shall also be entitled to all rights and remedies at law and equity, including reasonable attorney fees and costs.

33. All references to mediation and arbitration in the Agreement shall be deleted in their entirety.

34. The Agreement and all Addendums thereto shall be construed, and governed in accordance with Illinois law, and the exclusive venue for enforcement of this Agreement shall be the Circuit Court of Cook County, Illinois.

Dated: July 26, 2010

Hanover Township Road District:

By: P. Craig Ochoa
Highway Commissioner

Attest:

Katey Dolan Baumer
Clerk

Dated: July 21, 2010

SPACECO, Inc.

By: J. M. Calver
Vice President



9575 W. Higgins Road, Suite 700, Rosemont, Illinois 60018
Phone: (847) 696-4060 Fax: (847) 696-4065

CONSULTING ENGINEERS
SITE DEVELOPMENT ENGINEERS
LAND SURVEYORS

June 21, 2010

Craig Ochoa
Highway Commissioner
Hanover Township
250 South Route 59
Bartlett, Illinois 60103

VIA MAIL & EMAIL

**RE: PROFESSIONAL ENGINEERING SERVICES PROPOSAL
Hanover Township, Illinois**

Dear Craig:

In response to your request, SPACECO, Inc. is pleased to provide you with this proposal for professional engineering and surveying services related to the resurfacing and reconstruction of the Township streets in the Sherwood Oaks Subdivision. The following describes our Understanding of the Assignment, Scope of Services, and Fee.

UNDERSTANDING OF THE ASSIGNMENT

- The proposed plan is to reconstruct and repave the streets in a residential subdivision, including storm sewer reconstruction in selected areas. Our services will include an overall opinion of probable cost based on knowledge of current pricing in the industry. We understand that this project may be constructed in phases based on the budget numbers presented to the Client.

SCOPE OF SERVICES

The following is our scope of services for the project:

- **Topographic Survey/ Field Coordination:** Prepare a topographic survey of the areas where drainage is a concern and where the storm sewer sections are to be removed and replaced. The remainder of the site will be drawn based on available aerial topography. After completion of the existing condition drawings, walk the site and locate areas that will require additional pavement or full depth patching.
- **Final Engineering:** Design services shall include preparation of the plans and specifications for the work. Plans shall locate the areas of grinding, pavement removal, patching and new pavement in the roadway. Prepare an opinion of probable cost and submit to the Client for review and approval of final phasing of the project
- **Construction Administration:** Prepare bidding packages for the work and assist the Client in soliciting and obtaining bids from qualified contractors. Review the bids with the Client and recommend the lowest qualified bid to the Client. During construction, make periodic site visits to observe the work being performed, answer questions of the Client or contractor, review payment submittals and waivers of lien, and recommend payment to the contractor when appropriate.

ASSUMPTIONS

In preparing this proposal, we have attempted to provide you with a complete package of the engineering services anticipated at this point in time. In doing so, we have made some assumptions, based on the available information, which will need to be verified during the engineering process. If any findings differ from these assumptions, additional design may be needed, which will be considered in a separate agreement for services after the limits of work are clarified.

- The site was never used for storage of hazardous materials.
- There will be no modifications to existing adjacent streets. Therefore, no access permits will be obtained from IDOT, County, or Village for this development.
- The utilities to be used have adequate capacity and are immediately adjacent to the parcel.
- A drainage study and design for any drainage identified as located outside of the project area is not included.

Soils Investigation Review: It is recommended that a geotechnical firm provide borings and recommendations for building foundation design, pavement design, retaining wall design, general earthwork, and construction feasibility. The cost to complete a geotechnical investigation is not included in our costs, but we will obtain proposals, if requested, and review them with you. The contractual obligations for any geotechnical investigations will be between you and the Geotechnical Consultant.

Soil Erosion and Sediment Control Plan: We will prepare a Soil Erosion and Sediment Control Plan for inclusion into the Final Engineering Plans. We will also file with the Illinois Environmental Protection Agency (IEPA) a National Pollutant Discharge Elimination Systems (NPDES) Notice of Intent (NOI) form for the grading activities. The plan will include the appropriate notes, details, and specifications that are the anticipated minimum initial controls and measures that will be required during the duration of construction activities until the site is stabilized and the Notice of Termination (NOT) form is filed. This plan is an integral component of the Storm Water Pollution Prevention Plan (SWPPP) that the IEPA requires as part of the NPDES NOI filing. We assume that the Client is familiar with the requirements of the IEPA NPDES and SWPPP programs and that you will be undertaking the required reporting, monitoring, and maintenance aspects of the programs. If requested, SPACECO, Inc. can provide the required reporting and monitoring work under a separate agreement of services.

SPACECO is not responsible for implementation of the Storm Water Pollution Prevention Plan (SWPPP), including maintenance and/or repair of soil erosion and sediment control measures, for compliance with the General NPDES Permit for Storm Water Discharges from Construction Site Activities.

Opinion of Probable Construction Cost: Based upon the information contained in the final design documents, we shall prepare one opinion of probable construction cost for the site improvements.

Construction meetings, observation, inspection or testing: Supervision, direction, or surveillance of the work of the Contractor(s), his employees or agents, will not be provided and we shall not be liable for the results of any such interpretations or decisions rendered in good faith. The Contractor(s) will be informed by the Client that neither the presence of SPACECO, Inc. field staff nor the observation by our firm shall excuse the Contractor in any way for defects discovered in the work. We understand that others will provide inspection and testing services. SPACECO, Inc.'s presence on-site shall not be construed to relieve the Contractor in any way from his sole responsibility for the quality and workmanship of the work and for strict compliance with the permitted plans and specifications. SPACECO, Inc. shall not be deemed to be in charge of the work or scheduling of the Contractor's work. SPACECO, Inc. shall not be responsible for construction means, methods, procedures, techniques, sequences, time of performance or safety precautions in the prosecution of the work. SPACECO,

Inc. may monitor the Contractor's schedule and may monitor progress for the benefit of the Client and report to the Client when, in SPACECO, Inc.'s opinion work is falling behind schedule. The Client shall hold the Contractor responsible for traffic control and protection on the project 24-hours a day, and the presence of SPACECO, Inc. personnel shall not relieve the Contractor of this responsibility. It is understood that SPACECO, Inc. will not be responsible for job and site safety on this project. Job and site safety shall be the sole responsibility of the Contractor(s). SPACECO, Inc. does not have the right to stop work and will not advise/schedule/coordinate/supervise the Contractor(s) nor the Contractor's means and methods of their work. Construction observation services provided by SPACECO, Inc. staff shall be limited only to and for general compliance with the Contract Documents plans and specifications.

Utility Record Drawings: Locations, rim and invert elevations will be surveyed for storm sewer and sanitary sewer. For valve vaults, we will survey rim and top of watermain elevations; also fire hydrant grade ring elevations. Service locations will be shown based on measurement notes provided by the utility contractor.

FEES

	<u>Amount</u>
Task - Topographic Survey/ Field Coordination	\$ 3,200.00
Task - Final Engineering	\$ 12,600.00
Task – Construction Administration	\$ 2,400.00
Total Fee	\$ 18,200.00

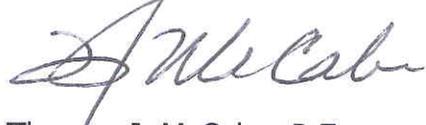
Our services will be invoiced monthly on a percent complete basis. Payments are due within thirty days after invoicing.

All reproductions and delivery services will be billed to the Client on a cost plus 10% basis.

If this proposal meets with your approval, please sign both copies and return one to us for our files.

Sincerely,

SPACECO, Inc.



Thomas J. McCabe, P.E.
Vice President

c: R. Stawik - SPACECO, Inc.
File Copy

ACCEPTED FOR: HANOVER TOWNSHIP ROAD DISTRICT

BY: P. Cecilia Ochoa

TITLE: HIGHWAY COMMISSIONER

DATE: JULY 23, 2010