

REQUEST FOR QUALIFICATIONS  
FOR  
ARCHITECTURE,  
LANDSCAPE ARCHITECTURE  
AND  
ENGINEERING SERVICES



RFQ # 793  
Due Tuesday, March 29, 2011

City of Ann Arbor  
Community Services Area  
City Hall, 100 North Fifth Avenue  
Ann Arbor, Michigan 48107-8647

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## SECTION I

### GENERAL INFORMATION

#### A. OBJECTIVE

The purpose of this Request for Qualifications (RFQ) is to select a firm or firms to provide professional consulting services for:

“Architecture, Landscape Architecture and Engineering Services”

#### B. ISSUING OFFICE

This RFQ is issued by the City of Ann Arbor, Parks and Recreation Services Unit. All questions regarding this RFQ shall be addressed to:

Dee Lumpkin  
Procurement Assistant, Financial Services  
City of Ann Arbor  
100 N. Fifth Ave.  
Ann Arbor, MI 48104

PHONE: (734) 794-6000 ext. 45206 FAX: (734) 994-1795  
EMAIL: dlumpkin@a2gov.org

Questions regarding proposal content shall be directed to:

Amy Kuras  
(734) 794-6230 ext.42590  
akuras@a2gov.org

Proposals are to be submitted to the Procurement Office as detailed in Section G.

#### C. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held on Monday, March 21 at 9:00 a.m. in the 7<sup>th</sup> floor conference of the City Center Building, 220 East Huron (corner of Huron and Fifth). Attendance at this meeting is highly recommended.

#### D. PROPOSALS

Three copies of the proposal should be submitted. The information included therein should be as concise as possible. The total submittal should not be more than 50 pages, with material on two sides.

To be considered, each firm must submit a response to this RFQ using the format provided in Section III. No other distribution of proposals is to be made by the submitter. The proposal must be signed in ink by an official authorized to bind the submitter to its provisions. Each proposal must remain valid for at least ninety days from the due date of this RFQ.

**E. SELECTION CRITERIA**

Responses to this RFQ will be evaluated using a point system, as shown in Section III. The evaluation will be completed by a selection committee composed of staff from the Parks and Recreation Services Unit.

The initial evaluation will determine which, if any, firms are to be interviewed. During the interviews, the selected firms will have the opportunity to discuss in more detail their qualifications statement and experience.

**F. CHANGES IN THE RFQ**

Should any prospective proposer be in doubt as to the true meaning of any portion of this Request for Qualifications, or should the proposer find any ambiguity, inconsistency, or omission therein, the Proposer shall make a written request for an official interpretation or correction. Such requests must be received by the Procurement Office on the Fifth Floor of City Hall not less than seven days prior to the final date of submittal of the proposals.

Such interpretation or correction, as well as any additional RFQ provisions that the City may decide to include, will be made only as an official addendum, and will be sent to each firm recorded as having received a copy of the RFQ. Any addendum issued by the City shall become part of the RFQ and will be incorporated in the proposal.

**G. SEALED PROPOSAL RECEIPT**

All proposals must be received by the Procurement Office on the Fifth Floor of City Hall as referenced on page 1 of Section I, on, or before, 2:00 p.m., Tuesday, March 29, 2011. Prospective submitters are responsible for the timely receipt of their proposal. Late proposals will not be considered.

**H. DISCLOSURES**

Under the Freedom of Information Act (Public Act 442), the City is obligated to permit review of its files, if requested by others. All information in a submitter's proposal is subject to disclosure under this provision. This act also provides for a complete disclosure of contracts and attachments thereto.

**I. TYPE OF CONTRACT**

A sample of the standard Professional Services Agreement (PSA) is included in Section IV. Those who wish to submit a proposal to the City are required to carefully review the Professional Services

Agreement. The City will not entertain changes to the standard Professional Services Agreement.

The City reserves the right to award the total proposal, to reject any and all proposals in whole or in part, and to waive any informality or technical defects if, in the City's sole judgment, the best interests of the City will be so served.

**J. COST LIABILITY**

The City of Ann Arbor assumes no responsibility or liability for costs incurred by the consultant prior to the execution of a Professional Services Agreement. The liability of the City is limited to the terms and conditions outlined in the Agreement.

**K. SCHEDULE**

The City of Ann Arbor may begin utilizing the services outlined in the "SCOPE OF SERVICES" elsewhere in this document, after the City Council's approval of the selected consultant(s) and as early as May, 2011. However, no consultant may withdraw their proposal within 120 days after the proposal due date identified above.

## SECTION II SCOPE OF SERVICES

### 1. Objective

The City of Ann Arbor is requesting proposals from professional landscape architecture, architecture and engineering firms able to provide a variety of studies, designs and construction management services required by the City of Ann Arbor and to assist the Parks and Recreation Services Unit as needed. The services desired include, but are not limited to, design and preparation of plans, specifications and cost estimates for construction projects, construction inspection/observation, construction contract administration, grant applications submittal preparation, and permit applications.

Firms do NOT need to provide all three types of professional services, but only those that are the expertise of that particular firm. For example, an architecture firm is welcome to submit a RFQ which would be evaluated on its own merit. If firms include both architecture and landscape architecture, for example, then they will be reviewed in that light. It is envisioned that up to three firms from each discipline will be chosen to have standing contracts with the City for a period of approximately three years. If a firm regularly partners with other disciplines, such as an architecture and structural engineering firm, you may submit the qualifications of those firms, but they will be considered for informational purposes rather than as a formal part of the proposal.

Most of the engineering work will be for civil engineering type projects, but if an engineering firm has multiple specialties within the firm (structural, mechanical, electrical, etc), they may submit a proposal including the various types of expertise.

Selected firms will be asked to submit proposals specific to each project. Firms will be chosen based on how closely their expertise fits with the particular projects, their proposed work plan and fees. If a partnership is required for a particular project between two firms, then the lead firm will submit qualifications, work plan and fee proposal for the sub-consultant, which will be evaluated as part of the proposal.

### 2. Description

General services to be provided may include any of the following:

- A. Prepare plans and specifications for capital improvement projects varying in complexity, for a portion or the entire project, including but not limited to park master plans, recreation facility renovations, structural repairs, detail designs, planting plans and wetland delineation and park infrastructure including roads, pathways, game courts, parking lots, bridges and boardwalks. Services may include preliminary plans and cost estimates, field work, drafting, design, stake out, construction inspection, and project management.
- B. Prepare grant applications and assist with administration if awarded.

- C. Provide special reports on a variety of subjects including but not limited to park master plans, storm water studies and greenway planning.
- D. Prepare the state and federal permits.
- E. Coordinate, facilitate and/or attend project-related meetings, such as public information gathering meetings, Park Advisory Commission, other City review meetings, pre-bid and pre-construction meetings.
- F. Provide construction administration, including, but not limited to, review and approval of material submittals, construction observation, change order oversight, attend construction progress meetings and provide meeting minutes, punch list development, and final review for project close out.
- G. Provide as-built drawings in AutoCAD.
- H. Coordinate with other City service areas and local agencies.

3. Examples of Projects

Projects to be completed wholly or in part under this RFQ may include, but not be limited to:

- A. Riverside Park and Buhr Park Service Road, pool and ice arena parking lot and pathways. (engineering and landscape architecture) This project would include evaluating the grading, drainage and stormwater issues, barrier free accessibility of the parking lot and pedestrian walks, and would include detail design, construction documents and construction observation. This project may require a DEQ permit.
- B. Island Park Greek Revival Shelter and historic bridge and West Park Pergola renovations. (architecture and structural engineering) This project would involve an evaluation of the deterioration of the structures towards making recommendations for repair and renovations. The project would include construction documents and construction observation.
- C. Leslie Science and Nature Center Barrier Free Path – This project would involve grading and site materials to provide a barrier free path to the raptor enclosures including innovative materials that would provide drainage and fit with the character of the site.
- D. Miscellaneous recreation facility and park renovations.

4. Requirements

- A. Ability to work effectively with the City’s Park Planning staff with respect to any of the design work required by the City.

- B. Ability to work effectively with the public and public agencies including the Park Advisory Commission, Planning Commission, City Council and other parks boards and commissions.
- C. The ability to function in a support role to the Parks and Recreation Services Unit.
- D. The ability to effectively manage construction contracts.
- E. The ability to make presentations at public hearings and commission meetings and to respond to public comments and input.

5. Other considerations

- A. Preference will be given to local firms.

6. Tasks

- A. **Plans and Specifications**  
Preparation of plans and specifications shall include preliminary reports, identification of alternatives, cost estimates, and contract documents.
- B. **Construction Projects**  
Construction Project shall include bidding, preconstruction meetings, answering questions concerning projects, and coordination with contractors. The consultants shall assist in securing all necessary permits from all approving agencies including but not limited to the City of Ann Arbor, Washtenaw County, and State of Michigan Agencies. (MDOT, MDEQ, MDNR, etc.)
- C. **Supervision and Administration**  
Contract administration shall require the performance of all general field services required on construction projects such as stake out, continuous monitoring of the project, coordination and supervision of testing services, review and approval of shop drawings, attendance at meetings and construction conferences, 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.
- D. **As-Built Construction Plans**  
As-built construction plans reflecting actual field measurements and other records as required by the City shall be furnished to the City on all projects assigned to the consultant. As-built plans shall be provided within one month of completion of the project and shall be delivered as AutoCAD drawings with the ownership of documents being the City of Ann Arbor.

## **SECTION III**

### **MINIMUM INFORMATION REQUIRED FOR PROPOSALS**

#### **A. PROFESSIONAL QUALIFICATIONS - 40 points**

1. State the full name and address of your organization and, if applicable, the branch office or other subordinates element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include the state in which it is incorporated. If appropriate, indicate whether it is licensed to operate in the State of Michigan.
2. Include the number of executive and professional personnel by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate by name and title which of these individuals you consider key to the successful completion of projects. Resumes or qualifications are required for proposed project personnel who will be assigned to the projects. Explain the specific roles each personnel will play in proposed projects. Qualifications and capabilities of any sub-consultants shall be included.
3. State history of firm, in terms of length of existence, types of services provided, etc. Identify the technical details that make the firm uniquely qualified for this work.
4. Provide a description of how the consultant intends to provide the requested technical services. Include a discussion of staff availability, ability to respond to short lead requests, proximity of critical staff to the City, how multiple tasks will be managed, and how accountability and quality control will be maintained.

#### **B. PAST INVOLVEMENT WITH SIMILAR PROJECTS - 45 points**

The written proposal must include a list of specific experience in the project areas listed as examples in the Scope of Services section and indicate proven ability in developing detailed designs and implementing similar projects for the firm and the individuals to be involved in the projects. The proposal should also indicate the ability to have projects completed within the budgeted amounts. A summary of related projects with the original deadline and cost estimate versus the actual design completion date and final cost of the design is appropriate with this section. A complete list of client references must be provided for similar projects recently completed. It shall include the firms/agencies name, address, telephone number, project title, and contact person. List the personnel and their specific roles with similar projects that have been completed.

Include any other information that you believe to be pertinent but not specifically requested elsewhere.

**C. FEE SCHEDULE - 15 points**

Fee schedules are to include the names, titles, hourly rates, and overhead factors for those personnel that will be assigned to projects. This schedule should include a summary table of the base and loaded hourly rate for every individual proposed to work under this contract. Include a multiplier to convert base rate to fully burdened rate. The City will not cover travel costs associated with work performed under this contract. The consultants selected to be interviewed shall be capable of justifying the details of the fees relative to personnel costs, overhead, how the overhead rate is derived, material, and time.

Once consultants are selected, fee proposals will vary depending on the particular project. However, the firm is to provide an explanation of how fees will be derived for projects. The Professional Services Agreement is included in Section IV of this RFQ.

**D. AUTHORIZED NEGOTIATOR**

Include the name and phone number of person(s) in the organization authorized to negotiate the Professional Services Agreement with the City.

**E. INTERVIEW**

The consultant selection committee will evaluate each proposal by the above-described criteria to select the firms to be interviewed. The committee may contact references to verify material submitted by the proposers. As this request for proposal does not list in detail the precise scope of the project, the interviews will focus on similar work, on the selected firm's base of expertise, and relevant experience.

The selection committee will then schedule the interviews with the selected firms. The selected firms will be given the opportunity to discuss in more detail their proposals, qualifications, past experience and their fee proposal. The interviews may include up to one-half hour of presentation by the consultants, followed by approximately one-half hour of questions and answers. The consultant's interview committee shall consist of no more than five representatives of the Proposer's project team (including the person who will be project manager for this Contract). Audiovisuals aids may be used during the interviews. The interviews may be recorded by the selection committee.

The firms interviewed will then be re-evaluated by the above criteria, and adjustments to scoring will be made as appropriate. After evaluation of the proposals, further negotiation with the selected firms may be pursued leading to the award of a contract by City Council, if suitable proposals are received.

The City reserves the right to not consider any proposal, which is determined to be unresponsive and deficient in any of the information requested for evaluation.

The City will determine whether the final scope of the project to be negotiated will be entirely as described in this Request for Qualifications, a portion of the scope, or a revised scope.

SECTION IV

AGREEMENT BETWEEN

\_\_\_\_\_  
AND  
CITY OF ANN ARBOR  
FOR  
PROFESSIONAL SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("City"), and \_\_\_\_\_, a \_\_\_\_\_ (Corporation, LLC, etc.) \_\_\_\_\_ with its address at \_\_\_\_\_ ("Consultant"), agree as follows:

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

DEFINITIONS

- A. Administering Service Area/Unit means Parks and Recreation Services Unit.
- B. Contract Administrator means Sumedh Bahl, Community Services Area Administrator or whomever the Contract Administrator may from time to time designate.
- C. Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement.
- D. Project means the Architecture, Landscape Architecture and Engineering Services.

DURATION

This agreement shall become effective on \_\_\_\_\_, 2011, and shall remain in effect for 3 years from the effective date unless terminated as provided for in this agreement.

SERVICES

- A. The Consultant agrees to provide professional Architecture, Landscape Architecture and Engineering services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the agreement 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.
- B. Quality of Services under this agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all applicable

laws, ordinances and regulations. Unless otherwise noted, the Consultant shall perform its Services in accordance with the City's Public Services Area Standard Specifications.

- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City 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.

#### COMPENSATION OF CONSULTANT

- A. The Consultant 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 to the Consultant for the Services shall not exceed \$ 100,000 for any calendar year. Payment shall be made monthly following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.
- B. The Consultant 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 Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

#### INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this Contract, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
  - 1. Professional liability insurance protecting the Consultant 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. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. 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. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. 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 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.
- B. Insurance required under V.A.3 and V.A.4 of this Contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. In the case of all Contracts involving on-site work, the Consultant shall provide to the City before the commencement of any work under this Contract documentation demonstrating it has obtained the above-mentioned policies. Documentation must provide and demonstrate an unconditional 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this Contract, the Consultant shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to

the expiration date.

- D. Any insurance provider of Consultant 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.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Consultant 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, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortuous acts or omissions by the Consultant or its employees and agents occurring in the performance of this agreement.

#### COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Consultant agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code, Exhibit C.
- B. Living Wage. The Consultant is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant 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; 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. A copy of selected provisions of Chapter 23 of the Ann Arbor City Code is attached as Exhibit D. The current living wage rates under Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3) of the Ann Arbor City Code, is \$9.42 an hour for a covered employer that provides employee health care to its employees and \$10.91 an hour for a covered employer that does not provide health care to its employees.

#### WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.

- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services it is to provide pursuant to this agreement.
- C. The Consultant 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 Consultant 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.

#### TERMINATION OF AGREEMENT

- A. This agreement may be terminated by either party without further notice in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of the breach.
- B. The City may terminate this agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

#### OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant 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 Consultant of any defects in the Services of which the Contract Administrator has actual notice.

#### ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of the services without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant 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 Consultant shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

#### NOTICE

All notices and submissions required under this agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered

delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

#### CHOICE OF LAW

This agreement shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Consultant and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this agreement.

#### CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this agreement other than the compensation specified herein. Consultant 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.

#### SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties and circumstances.

#### EXTENT OF AGREEMENT

This agreement represents the entire understanding between the City and the Consultant and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this agreement. This agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

#### OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the Consultant, including tracings, drawings, estimates, specifications, field notes, investigations, studies and reports shall become the property of, and, at the option of the City, be delivered to, the City. 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 Consultant.

**For Consultant**

By \_\_\_\_\_

Its \_\_\_\_\_

**Approved as to form and content**

By \_\_\_\_\_  
Stephen K. Postema, City Attorney

**For City of Ann Arbor**

By \_\_\_\_\_  
John Hieftje, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

By \_\_\_\_\_  
Roger W. Fraser, City Administrator

By \_\_\_\_\_  
Sumedh Bahl, Community Services Area  
Administrator

## FAIR EMPLOYMENT PRACTICE

The consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts there from:

### 9:161 NONDISCRIMINATION BY CITY CONTRACTORS

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.
- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable Federal or State labor laws:
  - (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;
  - (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
  - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions

of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.

(6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:

- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
- (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
- (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
- (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 10,000 - 24,999	\$ 25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00
1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00

(e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

## LIVING WAGE REQUIREMENTS

If a "covered employer," Contractor will comply with all the requirements of Chapter 23 of the Ann Arbor City Code (Sections 1:811 B 1:821), in particular but not limited to the following sections thereof:

### **1:813. Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12 month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
  - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
  - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward

health care shall not exceed 50 cents an hour for the average work week for such employee.

- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other non-personnel costs.
- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

**1:814. Applicability.**

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a nonprofit contractor/vendor or nonprofit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

**1:815. Living Wages Required.**

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.

- (a) For a covered employer that provides employee health care to its employees, the living wage shall be as posted per by the City each year, or the adjusted amount hereafter established under Section 1:815(3).
  - (b) For a covered employer that does not provide health care to its employees, the living wage shall be as posted by the City each year, adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefore to the City Administrator or his/her designee.
- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2011, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2011 and 2012. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

**1:816. Employees Covered.**

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

**1:817. Exemptions.**

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.

- (2) For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:
  - (a) To avoid any application of this Chapter that would violate federal, state or local law(s); or
  - (b) The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a nonprofit organization, and the City Council finds that said harm outweighs the benefits of this Chapter; provided further that the otherwise covered nonprofit employer shall provide a written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the nonprofit organization sufficient time to reach full compliance with this Chapter.
- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

**1:818. Monitoring and Enforcement.**

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the

Human Rights Office and approved by the City Administrator.

(2)

- (3) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall provide satisfactory proof of compliance with the living wage provisions of this Chapter.
- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

**1:819. Penalties and Enforcement.**

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter

\* \* \* \* \*

**1:821. Other Provisions.**

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.

\* \* \* \* \*

- (2) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.

- (3) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (4) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for high school and/or college students:
  - (a) A bona fide training program;
  - (b) A summer or youth employment program;
  - (c) A work study, volunteer/public service, or internship program.

\* \* \* \* \*

→ RATE EFFECTIVE APRIL 30, 2010-ENDING APRIL 29, 2011←

## LIVING WAGE ORDINANCE – CITY OF ANN ARBOR

**\$11.71** per hour

if the employer provides health care benefits\*

**\$13.06** per hour

if the employer does **NOT** provide health care benefits\*

Employers providing services to or for the City of Ann Arbor or recipients of grants or financial assistance from the City of Ann Arbor for a value of more than \$10,000 in a twelve-month period of time ***must pay those employees performing work on a City of Ann Arbor contract or grant, the above living wage.***

## ENFORCEMENT

The City of Ann Arbor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Persons denied payment of the living wage have the right to bring a civil action for damages in addition to any action taken by the City.

Violation of this Ordinance is punishable by fines of not more than \$500/violation plus costs, with each day being considered a separate violation. Additionally, the City of Ann Arbor has the right to modify, terminate, cancel or suspend a contract in the event of a violation of the Ordinance.

*\* Health Care benefits include those paid for by the employer or making an employer contribution toward the purchase of health care. The employee contribution must not exceed \$.50 an hour for an average work week; and the employer cost or contribution must equal no less than \$1/hr for the average work week.*

**The Law Requires Employers to Display This Poster Where Employees Can Readily See It.**

***For Additional Information or to File a Complaint Contact:***

**Dee Lumpkin, Procurement Assistant  
734/794-6576 or dlumpkin@a2gov.org LW-1**

**CITY OF ANN ARBOR PROCUREMENT OFFICE  
HUMAN RIGHTS CONTRACT COMPLIANCE FORM**

*Local Office (Only those employees that will do local or on-site work, if applicable)*

Name of Company/Organization \_\_\_\_\_ Date Form Completed \_\_\_\_\_

Name and Title of Person Completing this Form \_\_\_\_\_

Fax# \_\_\_\_\_ (Area Code) \_\_\_\_\_ Email Address \_\_\_\_\_

Job Categories	EMPLOYMENT DATA											TOTAL COLUMNS A-M
	Number of Employees (Report employees in only one category)											
	Male					Female						
White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	White	Black or African American	Asian	Hispanic Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	
A	B	C	D	F	G	H	I	J	K	L	M	
Exec/Sr. Level Officials Supervisors												
Professionals												
Technicians												
Sales												
Admin. Support												
Craftspeople												
Operatives												
Service Workers												
Laborers/Helper												
Apprentices												
Other												
<b>TOTAL</b>												
<b>PREVIOUS YEAR TOTAL</b>												

**Questions about this form? Call Procurement Office: (734) 794-6500 ext. 45206**

**CITY OF ANN ARBOR PROCUREMENT OFFICE  
HUMAN RIGHTS CONTRACT COMPLIANCE FORM**  
*(To be completed by all locations where applicable)*

Name of Company/Organization: \_\_\_\_\_ Date Form Completed: \_\_\_\_\_  
 Name and Title of Person Completing this Form: \_\_\_\_\_ Name of President: \_\_\_\_\_  
 Address: \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_ Phone #: \_\_\_\_\_ (Area Code) \_\_\_\_\_  
 Fax #: \_\_\_\_\_ (Area Code) \_\_\_\_\_ Email Address: \_\_\_\_\_

**EMPLOYMENT DATA**

Job Categories	Number of Employees (Report by employee in only one category)												TOTAL COLUMNS A-N	
	Male						Female							
	White	Black or African American	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	Mixed	White	Black or African American	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaska Native	Mixed		
A	B	C	D	F	G	H	I	J	K	L	M	N		
Execut. Level														
Offices														
Supervisors														
Professional														
Technicians														
Sales														
Admin. Support														
Craftpeople														
Operatives														
Service Industries														
Laborer/Helper														
Apprentices														
Other														
TOTAL														
PREVIOUS YEAR TOTAL														

Questions about this form? Call Procurement Office (734) 794-6576

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