

CITY OF ANN ARBOR
REQUEST FOR PROPOSAL



ENVIRONMENTAL SITE ASSESSMENT SERVICES

RFP No. 932

Proposal Due Date: September 10, 2015 10:00 AM

Community Services
Parks and Open Space Preservation/Greenbelt Program
Administering Service Area/Unit

Issued By:
City of Ann Arbor
Procurement Unit
301 East Huron Street
Ann Arbor, Michigan 48107-8647

Contents

SECTION 1 GENERAL INFORMATION	2
SECTION 2 SCOPE OF SERVICES	8
SECTION 3 INFORMATION REQUIRED FOR ALL PROPOSALS	12
SECTION 4 ATTACHMENTS	15
ATTACHMENT A LEGAL STATUS OF RESPONDENT	16
ATTACHMENT B CITY OF ANN ARBOR DECLARATION OF COMPLIANCE.....	17
ATTACHMENT C CITY OF ANN ARBOR LIVING WAGE ORDINANCE DECLARATION OF COMPLIANCE.....	18
ATTACHMENT D VENDOR CONFLICT OF INTEREST DISCLOSURE FORM	19
ATTACHMENT E CITY OF ANN ARBOR NON-DISCRIMINATION ORDINANCE	20
ATTACHMENT F CITY OF ANN ARBOR LIVING WAGE ORDINANCE.....	21
APPENDIX A SAMPLE PROFESSIONAL SERVICES AGREEMENT	22
APPENDIX B SAMPLE NON-DISCLOSURE AGREEMENT	33

SECTION 1 GENERAL INFORMATION

A. OBJECTIVE

The purpose of this Request for Proposal (RFP No. 932) is to select a qualified environmental site assessment firm(s) to provide services as specified in Section 2 below for the City's Open Space and Parkland Preservation Program.

B. QUESTIONS ABOUT OR CLARIFICATIONS OF RFP REQUIREMENTS; ADDENDA

All questions regarding this RFP shall be submitted via email. Emailed questions and inquiries will be accepted from any and all prospective Respondent's in accordance with the terms and conditions of this RFP.

All questions or requests for clarification shall be submitted on, or before 3:00 P.M. (Local Time), August 21, 2015 and should be addresses as follows:

RFP 932 Scope of Work/Proposal Content questions emailed to Ginny Trocchio at gltrocchio@a2gov.org

RFP 932 Process and Non-Discrimination and Living Wage Ordinance Compliance questions to Colin Spencer, at cspencer@a2gov.org

The person making the request shall be held responsible for delivery and verification of receipt.

Should any prospective Respondent be in doubt as to the true meaning of any portion of this Request for Proposal, or should a prospective Respondent find any ambiguity, inconsistency or omission therein, the Respondent shall make a written request for an official interpretation or correction. Such requests must be submitted via email to cspencer@a2gov.org

All interpretations, corrections, or additions to this RFP will be made only as an official addendum that will be posted to a2gov.org and MITN.info and it shall be the respondent's responsibility to ensure they have received all addenda before submitting a Proposal. Any addendum issued by the City shall become part of the RFP and must be incorporated in the Proposal where applicable.

Each respondent must in its proposal, to avoid any miscommunications, acknowledge all addenda which it has received, but the failure of a respondent to receive or acknowledge receipt of any addenda shall not relieve the respondent of the responsibility for complying with the terms thereof.

The City will not be bound by oral responses to inquiries or written responses other than official written addenda.

C. PROPOSAL REQUIREMENTS

Respondents must submit 1 Original and 3 copies of the sealed Proposal including the fee proposal in the manner specified.

To be considered, each Respondent must submit a response to this RFP using the format provided in Section III (Information Required and Evaluation criteria). No other distribution of Proposals is to be made by the Respondent. The Proposal must be signed in ink by an official

authorized to bind the Respondent to its provisions. Each person signing the Proposal is required to certify that he/she is the person in the Respondent's firm/organization responsible for the decision as to the fees being offered in the Proposal and has not and will not participated in any action contrary to the terms of this provision.

Each Proposal must remain valid for at least ninety (90) days from the due date of this RFP.

Proposals should be prepared simply and economically providing a straightforward and concise description of the Respondent's ability to meet the requirements of the RFP. Proposals shall be written in ink or typewritten.. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the Proposal. The proposal shall be no more than 25 pages in length, printed in a double-sided format. Additional information provided in the appendices will not count towards the page limitations (i.e., sample presentation and other documentation required under Section 3).

D. PROPOSAL SUBMISSION

All Proposals are due and must be delivered to the City Procurement Unit on or before **September 10, 2015 by 10:00 am (local time)**. Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile **will not** be considered or accepted.

Each Respondent must submit one (1) original Proposal, and (3) three additional Proposal copies in a sealed envelope and two (2) copies of the Fee Proposal in a separate sealed envelope marked fee proposal contained within the Respondent's sealed Proposal.

Proposal submitted must be clearly marked: **RFP 932, ENVIRONMENTAL SITE ASSESSMENT SERVICES** and then list Respondent's name and address.

Proposals must be addressed and delivered to:

City of Ann Arbor
Procurement Unit,
c/o Customer Services, 1st Fl
301 East Huron Street
P.O. Box 8647
Ann Arbor, MI 48107

All Proposals received on or before the Due Date will be publicly opened and recorded immediately. No immediate decisions are rendered.

Hand delivered Proposals will be date/time stamped/signed by the Procurement Unit at the address above in order to be considered. Normal business hours are 9:00 a.m. to 3:00 p.m. Monday through Friday, excluding Holidays.

The City will not be liable to any Respondent for any unforeseen circumstances, delivery or postal delays. Postmarking on the Due Date will not substitute for receipt of the Proposal. Each Respondent is responsible for submission of their Proposal.

Additional time will not be granted to a single Respondent; however, additional time may be granted to all Respondents when the City determines that circumstances warrant it.

A Proposal will be disqualified if:

1. If the Fee Proposal is not contained within a separate sealed envelope.

2. If the Fee Proposal is submitted as part of the digital copy. Provide Fee Proposal in hardcopy only.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system, as shown in Section III. The evaluation will be completed by a selection committee of staff from and/or consultants acting for the City of Ann Arbor.

At the initial evaluation, the fee proposals will not be reviewed. After initial evaluation, the City will determine top applicants, and open only those fee proposals.

The City does not anticipate holding interviews for these services. However, the City has the right to request interviews with selected Respondents when necessary. If the City elects to interview Respondents, during the interviews, the selected firms will be given the opportunity to discuss their Proposal, qualifications, past experience, and their fee proposal in more detail. The City further reserves the right to interview the key personnel assigned by the selected consultant to provide these services. Respondents are expected to be available for interviews if requested.

All Proposals submitted may be subject to clarifications and further negotiation. All agreements resulting from negotiations that differ from what is represented within the RFP or in the Respondent's response shall be documented and included as part of the final contract.

F. 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 Respondent's proposal is subject to disclosure under this provision. This act also provides for a complete disclosure of contracts and attachments thereto.

G. TYPE OF CONTRACT

A sample of the standard Professional Services Agreement (PSA) is included in Appendix A. Those who wish to submit a Proposal to the City are required to carefully review the Professional Services Agreement. Respondents should specifically note that the Insurance requirements under a City contract are listed in the sample PSA. **The City will not entertain changes to the terms of the standard Professional Services Agreement.**

Under the terms of the PSA services will be provided on per property/ as-needed basis, the selected Environmental Assessment firm(s) will receive notice electronically (i.e., email or FAX) of bid properties as they are identified. Firms will normally have one week to review the work statement and electronically submit their bid form for the advertised bid properties. Work will be awarded based on the Firm's response to the bid form, statement of qualifications (on file with the Community Services Area Administrator) and the Firm's past performance.

H. NONDISCRIMINATION AND LIVING WAGE ORDINANCE REQUIREMENTS

The City's standard Professional Services Agreement outlines the requirements for fair employment practices under City of Ann Arbor contracts. All respondents are required to complete and return with their proposal completed copies of the Non-Discrimination Ordinance Declaration form.. All respondents agree to comply with the terms of the contract compliance administrative policy adopted by the City Administrator in accordance with Section 9:158 of the Ann Arbor City Code. For Firm(s) selected, breach of this obligation shall be a material breach of a contract. Selected Firm(s) will be required to post a copy of Ann Arbor's Non-Discrimination

Ordinance at all work locations where its employees provide services under a contract with the City.

All respondents proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations by the Administrator and approved by City Council, agree to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a “covered employer” as defined therein, to pay those employees providing services to the City under this agreement a “living wage” as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance. Living Wage forms should be submitted with the proposal.

The following forms are attached:

- Living wage declaration form
- Copy of the current living wage poster
- Non-Discrimination Ordinance Declaration form
- Non-Discrimination Ordinance poster

I. CONFLICT OF INTEREST DISCLOSURE

The City of Ann Arbor Purchasing Policy requires that all respondents proposing to do business with the City complete a Conflict of Interest Disclosure form. A contract may not be awarded to the selected Firm(s) unless and until the Procurement Unit and the City Administrator have reviewed the Disclosure form and determined that no conflict exists under applicable federal, state, or local law or administrative regulation. Not every relationship or situation disclosed on the Disclosure Form may be a disqualifying conflict. Depending on applicable law and regulations, some contracts may awarded on the recommendation of the City Administrator after full disclosure, where such action is allowed by law, if demonstrated competitive pricing exists and/or it is determined the award is in the best interest of the City. A copy of the Conflict of Interest Disclosure Form is attached.

J. DEBARMENT

Submission of a proposal in response to this RFP is certification that the Respondent is not currently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal departments or agency. Submission is also agreement that the City will be notified of any changes in this status.

K. 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. By submitting a Proposal, Respondent agrees to bear all costs incurred or related to the preparation, submission and selection process for the Proposal.

L. AWARD PROTEST

All Proposal protests must be in writing and filed with the Purchasing Agent within five (5) business days of the award action. The Respondent must clearly state the reasons for the protest. If a Respondent contacts a City Service Area/Unit and indicates a desire to protest an award, the Service Area/Unit shall refer the Respondent to the Purchasing Agent. The Purchasing Agent will provide the Respondent with the appropriate instructions for filing the protest. The protest shall be reviewed by the City Administrator or designee whose decision shall be final.

M. SCHEDULE

The Proposals submitted should define an appropriate schedule in accordance with the requirements of the Proposed Work Plan in Section III.

The following is the anticipated schedule for this RFP and PSA procurement.

Activity/Event	Anticipated Date
Advertise RFP 932	August 7, 2015
Question/Clarification Deadline	August 21, 2015
Proposal Deadline	September 10, 2015
Expected City Council Authorization of PSA	November 2015

Note: The above schedule is for information purposes only and is subject to change at the City's discretion.

N. NON-DISCLOSURE AGREEMENT

The selected respondent will be required to execute a Non-Disclosure Agreement (see Appendix B Sample Agreement).

O. INDEPENDENT FEE DETERMINATION

1. By submission of a proposal, the Respondent certifies, and in the case of joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a) They have arrived at the fees in the proposal independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such fees with any other proposal Respondent or with any competitor.
 - b) Unless otherwise required by law, the fees which have been quoted in the proposal have not been knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to award directly or indirectly to any other prospective Respondent or to any competitor.
 - c) No attempt has been made or shall be made by the proposal Respondent to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
 - d) Each person signing the proposal certifies that she or he is the person in the proposal Respondent's organization responsible within that organization for the decision as to the fees being offered in the proposal and has not participated (and will not participate) in any action contrary to 1.a), b), or c) above.

2. A proposal will not be considered for award if the sense of the statement required in the Fee Analysis portion of the proposal has been altered so as to delete or modify 1.a), c), or 2 above. If 1.b) has been modified or deleted, the proposal will not be considered for award unless the Respondent furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the Issuing Office determines that such disclosure was not made for the purpose of restricting competition.

P. IRS FORM W9

The selected Respondent will be required to provide the City of Ann Arbor an IRS form W-9.

Q. RESERVATION OF RIGHTS

1. The City reserves the right in its sole and absolute discretion to accept or reject any or all Proposals or alternative Proposals, in whole or in part, with or without cause.
2. The City reserves the right to waive, or not waive, informalities or irregularities in bids or bidding procedures, and to accept or further negotiate cost, terms, or conditions of any bid determined by the City to be in the best interests of the City even though not the lowest bid.
3. The City reserves the right to request additional information from any or all Respondent's.
4. The City reserves the right not to consider any Proposal which it determines to be unresponsive and deficient in any of the information requested within RFP.
5. The City reserves the right to determine whether the scope of the project will be entirely as described in the RFP, a portion of the scope, or a revised scope to be implemented.
6. The City reserves the right to select one or more Respondent's to perform services.
7. The City reserves the right to retain all Proposals submitted and to use any ideas in a Proposal regardless of whether that Proposal is selected. Submission of a Proposal indicates acceptance by the firm of the conditions contained in this Request for Proposals, unless clearly and specifically noted in the Proposal submitted.
8. The City reserves the right to disqualify Proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within the RFP.

SECTION 2 SCOPE OF SERVICES

Background Information

In November 2003, City of Ann Arbor voters approved a ballot proposal commonly known as the Parks and Greenbelt Ballot Proposal. The purpose of the ballot proposal is to provide funds to preserve and protect open space, natural habitats, and the city's source waters inside and outside the city limits. The voters authorized a one-half mill tax for 30 years, to replace the existing Land Acquisition Millage of .5 mill that expired in 2004 to provide funds for preservation and protection of parkland, open space, natural habitats, and city source waters by the acquisition and management of land and land rights within and outside the City of Ann Arbor.

On May 3, 2004, the Ann Arbor City Council adopted Chapter 42, "Open Space and Parkland Preservation," of the Ann Arbor City Code. The Chapter establishes and defines a Greenbelt District and the criteria and selection process for purchase of development rights (PDR) and other property rights within the District, specifically:

- A. Only land voluntarily offered by the owner will be considered.
- B. Whenever possible, purchases of land, land rights, and conservation easements outside the city limits will be achieved using all available funding sources including: joint purchase agreements with owners, townships, cities and county; state and federal grants; land conservancies and trusts.
- C. Greenbelt acquisitions that fulfill the following criteria will be preferred
 - i. Purchases where the city's cost does not exceed 1/3 of the appraised land value;
 - ii. Purchases that partner with a township or other governmental agency;
 - iii. Conservation easements are preferred to outright purchase;
 - iv. Purchases with matching state or federal grants;
 - v. Proximity to the city limits;
 - vi. Desirable characteristics of the property (natural beauty, species diversity, age of trees, presence of streams and wetlands, proximity to the Huron River); Size;
 - vii. Proximity to other protected lands;
 - viii. Current or projected future use of adjacent property;
 - ix. Management proposals that incorporate joint agreements with purchase partners.

The City of Ann Arbor has contracted with The Conservation Fund to assist in the implementation of its Parks and Open Space Program. An Environmental Consultant will be expected to work with The Conservation Fund and the City Attorney in conducting and providing the above mentioned environmental site assessment services. The City and / or The Conservation Fund on behalf of the City, will provide the following public record information, to the extent available, to assist in the Environmental Consultant : GIS aerial photo map of the property with the property boundaries delineated; if applicable additional aerial photos showing floodplain or other features; GIS cadastral map with the location of the property; legal description of the property from the deed; preliminary title commitment on the property (if available); landowner contact information including name, address, phone and e-mail if applicable; if the property is on the market listing sheet and relevant information provided by the realtor; tax parcel number and property address; and soil map outlining prevalence of varying soil types within property boundaries.

Any information provided from the public record is provided for informational purposes only and the City makes no guarantee as to the completeness or accuracy of the information.

Services Overview

The City of Ann Arbor is requesting Proposals from experienced Environmental Site Assessment firms to conduct and report Phase I Environmental Site Assessments (ESAs) and additional investigations as may be required or requested by the City, including but not limited to Phase II ESAs, Baseline Environmental Assessments (BEAs) and Environmental Compliance Audits (ECAs) (collectively “Environmental Site Assessment Services”) on properties within the City and/or Greenbelt District.

Environmental Site Assessment Services must be performed by a professional environmental consultant who has experience in the conduct of, and preparation of reports for Environmental Site Assessment Services. All Phase I ESAs must be performed in a manner that would satisfy the requirements for having made “all appropriate inquiries” under all of the following (as same may be amended hereafter) which are incorporated here by reference 42 U.S.C. 9601(35)(B), the U.S. Environmental Protection Agency’s regulations, currently found at 40 CFR 312.1 – 312.31; and the then current “Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process” of the American Society for Testing and Materials (ASTM), currently known as E 1527-13. Phase I ESAs and other Environmental Site Assessment Services must specifically satisfy all statutory and regulatory requirements and standards necessary to qualify for federal and state landowner protections.

The City estimates service requests will be issued for an estimated 3-5 properties in connection with parkland purchases (fee simple purchases) within the City and an estimated 3-5 purchases of conservation easements for acreage within the Greenbelt District. It is estimated that sites within the City will range in size from 0.5 acre to 20 acres and sites in the Greenbelt District will range in size from 40 to 360 acres.

The City will choose, and may execute contracts with, up to three (3) qualified firms for one (1) year with the option of two (2) one-year renewals. The term of this non-exclusive agreement will tentatively commence on November 2015. Award of a contract for these services is subject to the approval of City Council and negotiation of a satisfactory contract for services.

MINIMUM QUALIFICATIONS OF ENVIRONMENTAL SITE ASSESSMENT FIRM

- Environmental Consultant authorized to do business in the State of Michigan who (or in the case of a Firm the individuals performing the services) qualifies as an “environmental professional” under 40 CFR 312.10(b).
- Minimum five (5) years continuous business operation.
- Experience conducting and providing all types and categories of the previously mentioned Environmental Site Assessment Services, including without limitation for residential, commercial, industrial, agricultural and open space properties on a time sensitive basis per **American Society for Testing and Materials standard E 1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.**

The work to be performed includes all ASTM E 1527-13 Phase I ESA requirements and protocols, including without limitation:

1. A site visit to document: signs of underground tanks, fill areas, depressions, distressed vegetation, staining, and any other visible indicators of potential environmental concerns.

2. Inspection of any site buildings. ***No buildings are expected on the subject farmland parcels.***
 3. General description of soils and the hydrologic and hydrogeologic setting.
 4. An evaluation of potential paths of contamination to groundwater.
 5. Review of municipal building permit records or other records for property background, site improvements or installations (i.e. underground tanks), past uses, owners or occupants.
 6. Review of governmental agency records for hazardous waste activity, permits, and other environmentally related activities or violations. Review will include the following Federal and State lists:
 - a. Emergency Response Notification System (ERNS)
 - b. National Priorities List (NPL)
 - c. Resource Conservation and Recovery Information System (RCRIS)
 - d. Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS)
 - e. List of Leaking Underground Storage Tanks (LUST)
 - f. Michigan List of Spills
 - g. Registered Underground Storage Tanks (RUST)
 - h. Solid Waste Facility/Landfill Sites (SWF/LS)
 - i. State Hazardous Waste Sites (SHWS)
 - j. USEPA PCB Activity Database (PADS)
 - k. Resource Conservation and Recovery Act Administration Action Tracking System (RAATS)
 - l. Toxic Release Inventory System (TRIS)
 - m. Toxic Substances Control Act (TSCA)
 - n. Hazardous Materials Incident Report System (HMIRS)
 7. Review of United States Geologic Survey 7.5-minute quadrangle topographic map for indications of general drainage patterns.
 8. Review of Flood Insurance Maps
 9. Interviews with persons familiar with site histories, if possible, including local government personnel, present owners/operators, or former owner/operators. An environmental questionnaire will be completed based on interviews.
 10. Review of aerial photographs obtained from the local or regional planning commission, or a state or commercial source to determine historical property usage of both the site and the adjacent properties. When possible, review will include two to five photographs from representative years of the site's history.
 11. Review of historical fire insurance maps, if available, for potential contaminant sources such as underground tanks and flammable liquid storage areas.
- Experience with similar services for public clients. Respondents must provide a list of clients (including name of contact, address, phone numbers and date and description of work performed) for which similar services have been performed. In

addition the name and qualifications of key personnel involved in providing those services should be identified.

- Agreement to comply with the requirements of the City's Equal Employment Opportunity/Affirmative Action policies, living wage ordinance and Conflict of Interest policy.
- Ability to recognize and report circumstances in conducting environmental assessment services that are pertinent to the City and the success of the Parks and Open Space Program.
- Ability and commitment to provide continuous professional service during the contract period on a time sensitive basis.
 - Note: Any inability by the Respondent to maintain a fully trained, regular and consistent work force may result in default of contract. All employees shall be bonded under the Respondent's company name.

SECTION 3 INFORMATION REQUIRED FOR ALL PROPOSALS

Respondents should organize Proposals into the following Sections:

- A. Professional Qualifications
- B. Past Involvement Providing Similar Services
- C. Fee Proposal (include in a separate sealed envelope)
- D. Authorized Negotiator
- E. Attachments

The following Section describes the elements that should be included in each of these proposal sections and the weighted point system that will be used for evaluation of the proposals.

A. Professional Qualifications – 40 points

1. State the full name and address of your organization and, if applicable, the branch office or other subordinate 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 whether it is licensed to operate in the State of Michigan.
2. State the specific qualifications that demonstrate the firm meets the City's minimum qualifications of environmental site assessments:
 - i. Environmental Consultant authorized to do business in the State of Michigan who (or in the case of a Firm the individuals performing the services) qualifies as an "environmental professional" under 40 CFR 312.10(b).
 - ii. Minimum five (5) years continuous business operation.
 - iii. Experience conducting and providing all types and categories of the previously mentioned Environmental Site Assessment Services, including without limitation for residential, commercial, industrial, agricultural and open space properties on a time sensitive basis per **American Society for Testing and Materials standard E 1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process***.
3. Include the name 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 which of these individuals you consider key to the successful completion of the project. Identify only individuals who will do the work on this project by name and title. Resumes and qualifications are required for all proposed project personnel.
4. State history of the firm, in terms of length of existence, types of services provided, etc. Identify the technical details which make the firm qualified for this work.
5. Describe any additional services available through your Firm and how the availability of these services can be beneficial to the City

B. Past Involvement Providing Similar Services - 30 points

The proposal must also indicate proven ability to complete similar services in a time sensitive manner within the budgeted amounts.

A list of references for environmental site assessment services for work performed in the last three (3) years must be included. The list shall include contact name, owner name,

address, and phone number, the type of survey work, size of property, and number of days to complete.

The proposal must include a sample presentation to a client for a hypothetical site highlighting the key findings of a Phase II ESA. This presentation should clearly demonstrate the ability of the contractor to convey key environmental findings to the client and highlight priority concerns and recommendations for further actions.

The proposal must include experience conveying ESA findings to decisionmakers and developing presentations for public meetings.

C. Fee Proposal - 30 points

Fee quotations shall be submitted in a separate sealed envelope as part of the proposal. Fee quotations are to include the names, title, hourly rates, overhead factors, and any other details by which the overall and project element costs have been derived. The fee quotation is to relate in detail to each item of the proposed work plan. Firms must be capable of justifying the details of the fee proposal relative to personnel costs, overhead, how the overhead rate is derived, material and time.

D. Authorized Negotiator

Include the name and phone number of persons(s) in your organization authorized to negotiate the Scope of Work with the City.

E. Attachments

The following attachments must be returned with the proposal submission:

Attachment A: - Legal Status of Respondent
Attachment B – Non-Discrimination Declaration of Compliance Form
Attachment C–Living Wage Declaration of Compliance Form
Attachment D – Vendor Conflict of Interest Disclosure Form

In addition to the above Attachments, Additional Information required (i.e., sample presentations (see (B) above) and resumes of key personnel should be submitted with the Proposal as appendices.

Included but not required to be returned are copies of the Non-Discrimination Ordinance Poster 2015 and Living Wage Ordinance Poster 2015 which the selected Firm(s) will be required to post at work sites (see Section 1)

Proposal Evaluation/Interview

The Selection Committee may include representatives from the Community Services Area, and Open Space and Parkland Preservation Program staff. Members of the Selection Committee will evaluate each proposal by the above described criteria and point system (A and B) to select a short list of firms for further consideration. The City reserves the right to not consider any proposal which it determines to be unresponsive and deficient in any of the information requested for evaluation. A proposal with all the requested information does not guarantee the proposing firm to be a candidate for an interview. The Committee may contact references to verify material submitted by the Proposers. Fee Proposals (C) will only be opened after the initial evaluation has been completed. The City will determine whether the final scope of the project to be negotiated will be entirely as described in this RFP, a portion of the scope, or a revised scope.

INTERVIEWS

The 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.

The Selection Committee will then schedule the interviews with the selected firms, if necessary. During the interview the selected firms will be given the opportunity to discuss in more detail their qualifications, past experience and their fee proposal. The interviews may include up to one-half hour of presentation by the firm, followed by approximately one-half hour of questions and answers. A firm's interview committee shall consist of no more than three 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 4 ATTACHMENTS

Attachment A: - Legal Status of Respondent

Attachment B – Non-Discrimination Ordinance Declaration of Compliance Form

Attachment C – Living Wage Declaration of Compliance Form

Attachment D – Vendor Conflict of Interest Disclosure Form

Attachment E – Non-Discrimination Ordinance Poster

Attachment F – Living Wage Ordinance Poster

**ATTACHMENT A
LEGAL STATUS OF RESPONDENT**

(The Respondent shall fill out the provision and strike out the remaining ones.)

The Respondent is:

- A corporation organized and doing business under the laws of the state of _____, for whom _____ bearing the office title of _____, whose signature is affixed to this proposal, is authorized to execute contracts on behalf of respondent.*

*If not incorporated in Michigan, please attach the corporation's Certificate of Authority

- A limited liability company doing business under the laws of the state of _____, whom _____ bearing the title of _____ whose signature is affixed to this proposal, is authorized to execute contract on behalf of the LLC.
- A partnership organized under the laws of the state of _____ and filed with the county of _____, whose members are (attach list including street and mailing address for each.)
- An individual, whose signature with address, is affixed to this RFP.

Respondent has examined the basic requirements of this RFP and its scope of services, including all Addendum (if applicable) and hereby agrees to offer the services as specified in the RFP.

Signature Date: _____,

(Print) Name _____ Title _____

Firm: _____

Address: _____

Contact Phone _____ Fax _____

Email _____

**ATTACHMENT B
CITY OF ANN ARBOR DECLARATION OF COMPLIANCE**

Non-Discrimination Ordinance

The "non discrimination by city contractors" provision of the City of Ann Arbor Non-Discrimination Ordinance (Ann Arbor City Code Chapter 112, Section 9:158) requires all contractors proposing to do business with the City to treat employees in a manner which provides equal employment opportunity and does not discriminate against any of their employees, any City employee working with them, or any applicant for employment on the basis of actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight. It also requires that the contractors include a similar provision in all subcontracts that they execute for City work or programs.

In addition the City Non-Discrimination Ordinance requires that all contractors proposing to do business with the City of Ann Arbor must satisfy the contract compliance administrative policy adopted by the City Administrator. A copy of that policy may be obtained from the Purchasing Manager

The Contractor agrees:

- (a) To comply with the terms of the City of Ann Arbor's Non-Discrimination Ordinance and contract compliance administrative policy.
- (b) To post the City of Ann Arbor's Non-Discrimination Ordinance Notice in every work place or other location in which employees or other persons are contracted to provide services under a contract with the City.
- (c) To provide documentation within the specified time frame in connection with any workforce verification, compliance review or complaint investigation.
- (d) To permit access to employees and work sites to City representatives for the purposes of monitoring compliance, or investigating complaints of non-compliance.

The undersigned states that he/she has the requisite authority to act on behalf of his/her employer in these matters and has offered to provide the services in accordance with the terms of the Ann Arbor Non-Discrimination Ordinance. The undersigned certifies that he/she has read and is familiar with the terms of the Non-Discrimination Ordinance, obligates the Contractor to those terms and acknowledges that if his/her employer is found to be in violation of Ordinance it may be subject to civil penalties and termination of the awarded contract.

Company Name

Signature of Authorized Representative

Date

Print Name and Title

Address, City, State, Zip

Phone/Email address

Questions about the Notice or the City Administrative Policy, Please contact:

Procurement Office of the City of Ann Arbor

(734) 794-6500

Revised 3/31/15 Rev. 0

NDO-2

ATTACHMENT C

**CITY OF ANN ARBOR
LIVING WAGE ORDINANCE DECLARATION OF COMPLIANCE**

The Ann Arbor Living Wage Ordinance (Section 1:811-1:821 of Chapter 23 of Title I of the Code) requires that an employer who is (a) a contractor providing services to or for the City for a value greater than \$10,000 for any twelve-month contract term, or (b) a recipient of federal, state, or local grant funding administered by the City for a value greater than \$10,000, or (c) a recipient of financial assistance awarded by the City for a value greater than \$10,000, shall pay its employees a prescribed minimum level of compensation (i.e., Living Wage) for the time those employees perform work on the contract or in connection with the grant or financial assistance. The Living Wage must be paid to these employees for the length of the contract/program.

Companies employing fewer than 5 persons and non-profits employing fewer than 10 persons are exempt from compliance with the Living Wage Ordinance. If this exemption applies to your company/non-profit agency please check here [] No. of employees ____

The Contractor or Grantee agrees:

- (a) To pay each of its employees whose wage level is not required to comply with federal, state or local prevailing wage law, for work covered or funded by a contract with or grant from the City, no less than the Living Wage. The current Living Wage is defined as \$12.81/hour for those employers that provide employee health care (as defined in the Ordinance at Section 1:815 Sec. 1 (a)), or no less than \$14.30/hour for those employers that do not provide health care. The Contractor or Grantor understands that the Living Wage is adjusted and established annually on April 30 in accordance with the Ordinance and covered employers shall be required to pay the adjusted amount thereafter to be in compliance (Section 1:815(3)).

Check the applicable box below which applies to your workforce

- [] Employees who are assigned to any covered City contract/grant will be paid at or above the applicable living wage without health benefits
- [] Employees who are assigned to any covered City contract/grant will be paid at or above the applicable living wage with health benefits

- (b) To post a notice approved by the City regarding the applicability of the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- (c) To provide to the City payroll records or other documentation within ten (10) business days from the receipt of a request by the City.
- (d) To permit access to work sites to City representatives for the purposes of monitoring compliance, and investigating complaints or non-compliance.
- (e) To take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee covered by the Living Wage Ordinance or any person contracted for employment and covered by the Living Wage Ordinance in order to pay the living wage required by the Living Wage Ordinance.

The undersigned states that he/she has the requisite authority to act on behalf of his/her employer in these matters and has offered to provide the services or agrees to accept financial assistance in accordance with the terms of the Living Wage Ordinance. The undersigned certifies that he/she has read and is familiar with the terms of the Living Wage Ordinance, obligates the Employer/Grantee to those terms and acknowledges that if his/her employer is found to be in violation of Ordinance it may be subject to civil penalties and termination of the awarded contract or grant of financial assistance.

Company Name

Signature of Authorized Representative

Date

Print Name and Title

Address, City, State, Zip

Phone/Email address

ATTACHMENT D



VENDOR CONFLICT OF INTEREST DISCLOSURE FORM
--

All vendors interested in conducting business with the City of Ann Arbor must complete and return the Vendor Conflict of Interest Disclosure Form in order to be eligible to be awarded a contract. Please note that all vendors are subject to comply with the City of Ann Arbor's conflict interest policies as stated within the certification section below.

If a vendor has a relationship with a City of Ann Arbor official or employee, an immediate family member of a City of Ann Arbor official or employee, the vendor shall disclose the information required below.

Certification: I hereby certify that to my knowledge, there is no conflict of interest involving the vendor named below:

1. No City official or employee or City employee's immediate family member has an ownership interest in vendor's company or is deriving personal financial gain from this contract.
2. No retired or separated City official or employee who has been retired or separated from the City for less than one (1) year has an ownership interest in vendor's Company.
3. No City employee is contemporaneously employed or prospectively to be employed with the vendor.
4. Vendor hereby declares it has not and will not provide gifts or hospitality of any dollar value or any other gratuities to any City employee or elected official to obtain or maintain a contract.
5. Please note any exceptions below:

Vendor Name	Vendor Phone Number
Conflict of Interest Disclosure *	
Name of City of Ann Arbor employees, elected officials, or immediate family members with whom there maybe a potential conflict of interest.	() Relationship to employee () Interest in vendor's company () Other

*Disclosing a potential conflict of interest does not disqualify vendors. In the event vendors do not disclose potential conflicts of interest and they are detected by the City, vendor will be exempt from doing business with the City.

I certify that the information provided is true and correct by my signature below:

Signature of Vendor Authorized Representative	Date	Printed Name of Vendor Authorized Representative
---	------	--

PROCUREMENT USE ONLY

- Yes, named employee was involved in Bid / Proposal process.
- No, named employee was not involved in procurement process or decision.

ATTACHMENT E

CITY OF ANN ARBOR NON-DISCRIMINATION ORDINANCE

Relevant provisions of Chapter 112, Nondiscrimination, of the Ann Arbor City Code are included below. You can review the entire ordinance at www.a2gov.org/departments/city-clerk

Intent: It is the intent of the city that no individual be denied equal protection of the laws; nor shall any individual be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, veteran status, victim of domestic violence or stalking, or weight.

Discriminatory Employment: In the hire, employment, compensation, work assignment, promotion, or termination of employment of any person, membership, conditions of membership or participation in a membership program.

Discriminatory Requirement: Any requirement or condition of employment which has the effect of discriminating against an individual because of perceived age, arrest record, color, disability, educational association, family responsibilities, gender expression, marital status, national origin, political beliefs, race, religion, sex, veteran status, victim of domestic violence or stalking, or weight. Such a requirement shall not be necessary to the performance of a person's job.

Nondiscrimination: The City of Ann Arbor shall ensure that all actions by the City of Ann Arbor, including those by the City Administration, shall ensure that applicable laws are followed in a manner that provides equal treatment based upon any classification prohibited by law. The City shall not discriminate against any person in its policies, conditions, or employment, because of any of the protected characteristics. To post a copy of Ann Arbor's Non-Discrimination Ordinance, its employees provide services under a contract.

Complaint Procedure: If any individual alleges a violation of this chapter, he/she has 180 calendar days from the date of the individual's knowledge of the allegedly discriminatory action or 180 calendar days from the date when the individual should have known of the alleged discriminatory action to file a complaint with the city's Human Rights Commission. If an individual fails to file a complaint alleging a violation of this chapter within the specified time frame, the complaint will not be considered by the Human Rights Commission. The complaint should be made in writing to the Human Rights Commission. The complaint may be filed in person with the City Clerk, by e-mail at aahumanrightscommission@gmail.com, or by mail (Ann Arbor Human Rights Commission, PO Box 8647, Ann Arbor, MI 48107). The complaint must contain information about the alleged discrimination, such as name, address, phone number of the complainant and location, date and description of the alleged violation of this chapter.

Private Actions For Damages or Injunctive Relief: To the extent allowed by law, an individual who is the victim of discriminatory action in violation of this chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this chapter.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND
MUST BE DISPLAYED WHERE EMPLOYEES CAN READILY SEE IT.

ATTACHMENT F

CITY OF ANN ARBOR LIVING WAGE ORDINANCE

RATE EFFECTIVE APRIL 30, 2015 - ENDING APRIL 29, 2016

\$12.81 per hour

If the employer provides health care benefits*

\$14.30 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
Mark Berryman at 734/794-6500 or mberryman@a2gov.org**

**APPENDIX A
SAMPLE
PROFESSIONAL SERVICES AGREEMENT**

If a contract is awarded, the selected Firm(s) will be required to adhere to a set of general contract provisions which will become a part of any formal agreement. These provisions are general principles which apply to all contractors/service providers to the City of Ann Arbor. The required provisions are:

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
AND THE CITY OF ANN ARBOR
FOR _____**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48103 ("City"), and _____

_____ ("Contractor") a(n) _____
(State where organized) (Partnership, Sole Proprietorship, or Corporation)
with its address at _____
agree as follows on this _____ day of _____, 20____.

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

I. DEFINITIONS

Administering Service Area/Unit means _____.

Contract Administrator means _____, 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 _____.
Project Name

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 _____, 20____, 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 professional _____
type of service
("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 in the manner set forth in Exhibit B or in signed Work Statement(s) as may be agreed upon from time to time. Payment shall be made monthly, unless another payment term is specified in Exhibit B or the applicable Work Statement, 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 the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- 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 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

accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

XIII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

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

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

City of Ann Arbor

(insert name of Administering Service Area Administrator)

301 E. Huron St.
Ann Arbor, Michigan 48103

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.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVII. 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.

XVIII. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

FOR CONTRACTOR

By _____
Type Name
Its

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor
By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Type Name
Service Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

AGREEMENT EXHIBITS

EXHIBIT A SCOPE OF SERVICES

(negotiated scope of work based on accepted terms of Proposal)

EXHIBIT B COMPENSATION

(negotiated compensation based on accepted terms of Proposal)

EXHIBIT C INSURANCE REQUIREMENTS (MINIMUM COVERAGE AND ENDORSEMENTS REQUIRED – NOT SUBJECT TO NEGOTIATION)

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance shall meet the following minimum requirements.

- 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.
- B. Insurance required under A.3 and A.4 above 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. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. 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. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor 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 Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

**APPENDIX B
SAMPLE
NON-DISCLOSURE AGREEMENT**

BETWEEN _____ AND THE CITY OF ANN ARBOR

Whereas, the City of Ann Arbor, with municipal offices at 301 E. Huron Street, Ann Arbor 48107 ("City") is the owner of certain confidential information relating to _____, which is or may be classified as exempt or restricted information under the Michigan Freedom of Information Act ("Confidential Information").

Whereas, "[Click to Type Receiver]" (referred to as "Receiver") is desirous of receiving, reviewing, and/or evaluating the Confidential Information for the sole and exclusive purpose of gathering information for the "[Click to Type Development]" .

Therefore, it is agreed this ____ day of "[Click to Type Month]" , "[Click to Type Month]" :

That, the City shall, in its sole discretion, disclose to Receiver some or all of the Confidential Information based on Receiver's request for:

- "[Click to Type Items Requested]"

It is understood that Receiver will secure at its sole cost any and all licenses, authorizations or other intellectual property rights necessary for the transfer of Confidential Information in the format requested by Receiver. Receiver will be required to provide documentation of it having all necessary licenses, authorizations or rights prior to transfer of the Confidential Information in the requested format.

That, Receiver shall hold and use Confidential Information only for the above-stated purpose of this Agreement and shall restrict disclosure of such Confidential Information to its employees with a need to know. Each employee of Receiver identified as "need to know" in connection with the receipt, review or evaluation of the Confidential Information shall be required to execute a Non-Disclosure Agreement under the same terms as stated herein. The City shall be provided with a copy of the executed employee Non-Disclosure Agreements and a master list of the employees, their respective jobs, and the reason for their classification as "need to know."

That, Receiver will hold the Confidential Information or any part thereof in strict confidence and will not permit any disclosure thereof to any person or persons outside its organization and not use or derive any direct or indirect benefit from the Confidential Information or any part thereof without the prior written consent of the City. Receiver agrees that it will not disseminate in any manner any part of the Confidential Information.

If the Receiver receives a subpoena, request from an administrative agency or order from a court that requires Receiver to disclose all or any of the Confidential Information, the Receiver shall notify the City immediately, including a copy of the subpoena, request or order, and shall act in cooperation with the City to seek a protective order to prevent or limit disclosure and/or impose a non-disclosure obligation on the recipient(s). Recipient shall include a copy of this Non-Disclosure Agreement along with the Confidential Information it produces or discloses.

Confidential Information disclosed in accordance with this paragraph shall remain Confidential Information for all other purposes.

That, Receiver will not make or authorize to be made any copies of any reports, plans, drawings or electronic data files supplied by the City and showing or describing or embodying the Confidential Information unless authorized by the City in writing. At any time and for any reason, prior to the completion of the work performed by the Receiver, the City may request and Receiver agrees it will return all of the said reports, plans, drawings or electronic data files together with any reports, drawings or electronic data files, including any independent notations of the Confidential Information, made by Receiver showing or describing or embodying the Confidential Information or any part thereof to the City immediately. After completion of the work, the Receiver shall return to the City any drawings, extracts, reproductions, or other documentation comprising the Confidential Information, in whatever format or media, including any independent notations of the Confidential Information made by Receiver showing or describing or embodying the Confidential Information or any part thereof. In addition, access shall be controlled by the Receiver to all Confidential Information generated as part of the work performed by the Receiver. Although the Receiver is permitted to maintain copies of their work, dissemination of this Confidential Information is not permitted without written authorization from the City.

That, the restrictions on the use or disclosure of Confidential Information by Receiver shall not include any information which:

1. at the time of disclosure to Receiver was known to Receiver free of restriction and such previous knowledge is evidenced by documentation in the possession of Receiver. A copy of which documentation will be provided to the City if requested by the City; or
2. is publicly known or later made publicly known by the City; or
3. is evidenced by documentation in the possession of Receiver as being received from a third party to this Agreement who: (a) has the legal right to so furnish such information to Receiver, and (b) is not obligated to the City to keep such information confidential; or
4. is approved for release in writing by the City.

That, nothing in this Agreement shall be construed as conferring to Receiver any right of ownership in the Confidential Information or license to use any, patents, industrial designs, copyrights or other intellectual property rights owned or licensed by the City.

That, nothing in this Agreement shall be construed as restricting the City's right to restrain use or dissemination of the Confidential Information in accordance with applicable federal, state or local law and regulation or at common law.

Receiver acknowledges that a breach by him/her of the provisions of this Agreement will cause the City irreparable damage for which the City cannot be reasonably or adequately compensated in damages. The City shall therefore be entitled, in addition to all other remedies available to it including, but not limited to, attorney fees and costs, to injunctive and/or other equitable relief to prevent a breach of this Agreement, or any part of it, and to secure its enforcement.

This Agreement shall be construed in accordance with the laws of the State of Michigan.

This Agreement and any amendments hereto may be executed by facsimile signature and in any number of counterparts, all of which taken together shall constitute one and the same instrument.

CITY OF ANN ARBOR

"[Click to Type Applicant Name]"

By: _____
Steven D. Powers

By: _____

Title: City Administrator

Print Name: "[Click to Type Name]"

Title: "[Click to Type Title]"

Approved as to substance:

Sumedh Bahl, Community Services Area
Administrator

Approved as to form:

Stephen K. Postema
City Attorney