

SECTION V

If a contract is awarded, the selected Company(ies) 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:

AGREEMENT BETWEEN

AND THE CITY OF ANN ARBOR

FOR _____ SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E Huron Avenue, Ann Arbor, Michigan 48103 ("City"), and _____ ("____") a _____, with its address at _____, agree as follows on this _____ day of _____, 2014.

_____ agrees to provide professional 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 or delivered to City by _____ under this Agreement

Project means _____.

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 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 _____, 2014, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

III. SERVICES

- A. _____ agrees to provide professional _____ services ("Services") in connection with the Project as described in Exhibit A. Specific _____ projects within the scope may be described from time to time by the City for performance within a Work Statement. Upon acceptance of the Work by _____, 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. _____ 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 professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. _____ 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. _____ 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.

IV. COMPENSATION

- A. _____ shall be paid in the manner set forth in Exhibit B or applicable Work Statement. 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 _____, and approved by the Contract Administrator.

- B. _____ 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 payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. _____ shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by _____. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. **INSURANCE/INDEMNIFICATION**

- A. _____ shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, or in an executed Work Statement 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 acts were made by _____ by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, _____ shall provide to the City, before commencement of any work under this contract, documentation demonstrating it has obtained the policies and endorsements required by Exhibit C or the applicable Work Statement. Notwithstanding the foregoing, _____ shall not be liable for any Claims arising out of or related to any act or omission of a candidate, that was beyond its control.
- B. Any insurance provider of _____ 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, _____ 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 _____ or its employees and agents occurring in the performance of or breach in this Agreement.

VI. **COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. _____ agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209). _____ further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor

City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity

- B. Living Wage. _____ 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. _____ 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.

VII. WARRANTIES

- A. _____ 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. _____ warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. _____ warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. _____ 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.

VIII. 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 _____, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. _____ 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 _____. The Contract Administrator shall give _____ written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

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

X. ASSIGNMENT

- A. _____ 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, _____ 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. _____ shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. 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 _____ , 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
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107
Attn.:

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. 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.

XIII. CONFLICT OF INTEREST

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

XIV. 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.

XV. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and _____ 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. This Agreement may be altered, amended or modified only by written amendment signed by _____ and the City.

FOR _____

By _____

By _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Sumedh Bahl, Community Services
Administrator

Approved as to Form and Content

Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

General

In consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

SAMPLE

EXHIBIT B

FEE SCHEDULE

SAMPLE

EXHIBIT C

INSURANCE REQUIREMENTS

- A. Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, _____ 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.

1. Errors and Omissions Insurance protecting _____ 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 pbe 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. 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. 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

- B. Insurance required under.A 3 and .A.4 above 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.. 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 and copy of the required endorsement(s) may be provided as an indication of the required insurance. 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 and endorsement(s) to the Administering Service Area/Unit at least ten days prior to the expiration date.

SAMPLE