

Statement of Qualifications

Design, Fabrication and Installation of Public Art at Argo Cascades

SOQ- 844
Ann Arbor, Michigan



Date Due: March 6, 2013
By 11:00 AM

Issued by:
City of Ann Arbor
Procurement Unit On Behalf of
Public Services, Public Art
301 E. Huron Street, P.O. Box 8647
Ann Arbor, Michigan 48107-8647

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SECTION ONE

GENERAL INFORMATION

A. OBJECTIVE

The purpose of this Statement of Qualifications (SOQ) is to complete the first step of a two-step process. The first step is to pre-qualify up to five artists who will be invited to submit proposals for the second step, which will be to select an artist to provide professional services to complete the: "Design, Fabrication and Installation of Public Art at Argo Cascades."

Mission Statement of the Argo Cascades Public Art Project:

The Argo Cascades public art project will be informed by the historical connection of the urban city and the natural river at this location. The public art here will be a marker of the community's interest in "facing the river" and will celebrate the river as an asset and a source of drinking water. Because of the celebration of the river as a source of drinking water, the design must convey the importance of water quality and conservation in the use of water to preserve it as a resource.

B. QUESTIONS ABOUT THE SOQ

The SOQ is issued by the City of Ann Arbor. All questions regarding the SOQ are due by March 1, 2013 by 4:00 pm, and must be in writing to:

Questions regarding the SOQ content must be in writing and directed to:
Aaron Seagraves, Public Art Administrator at: aseagraves@a2gov.org

All questions regarding the SOQ submissions process must be addressed in writing to:
Linda Newton, Procurement Officer at: lnewton@a2gov.org

C. BUDGET

A budget of \$115,000 has been established for the selected public art project. This budget must include all artist fees, materials, design, engineering consultation, insurance, travel, fabrication and installation. Periodic communications and/or Task Force/Project review meetings, presentations and design reviews at various stages are also to be included.

Those artists are selected as finalists will receive an honorarium of \$1,000 per artist (or per artist team), to produce a full proposal. It will be paid upon receipt of the full proposal. See Section III – "Selection."

Final art proposal must include an estimate of the annual cost of maintenance for the artwork. (Future maintenance and operation costs are not included in the project budget stated above.)

D. QUALIFICATIONS SUBMISSION

All SOQ submissions are due and must be delivered to the City of Ann Arbor Procurement Unit on or before **March 6, 2013 by 11:00 AM**. A SOQ submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile will not be considered or accepted.

Artist SOQs responses must include one (1) original, two (2) hardcopies, and ONE (1) digital copy (PDF) of the artist's qualifications shall be submitted (on CD or Flashdrive) in a sealed envelope clearly marked: SOQ 844 - Design and Installation of Public Art Argo Cascades.

In addition, artists must include up to 15 images (JPEG) on the CD or Flashdrive. The information included therein should be as concise as possible. The total submittal should not be more than 12 pages, with material on two sides (for a total of 24 pages). All materials submitted shall become the property of the City.

To be considered, each artist must submit a response to this SOQ using the format provided in Section III. No other distribution of qualifications is to be made by the submitter.

Submissions must be addressed and delivered to:

City of Ann Arbor
Linda Newton
Procurement Unit, 5th Floor
301 East Huron Street
P.O. Box 8647
Ann Arbor, MI 48107

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

SOQs should 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. The City will not be liable to any for any unforeseen circumstances, delivery or postal delays. Postmarking to the Due Date will not substitute for receipt of the SOQ. Each Artist is responsible for submission of their RFP.

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

E. SELECTION PROCESS

Responses to this SOQ will be evaluated, as shown in Section III. The evaluation will be completed by a selection panel of members of the community, some members of the Ann Arbor Public Art Commission and possibly some members of City staff.

The initial evaluation is to determine top applicants. The City will then determine which, if any, artists will be interviewed.

During the interviews, the selected artists will be given the opportunity to discuss in more detail their qualifications and past experience. If the City of Ann Arbor chooses to interview any applicants, the interviews will be held in March 2013. Applicants will be expected to be available for the interview. Online, virtual interviews will be conducted.

F. ADDENDUMS TO THIS DOCUMENT

The City's staff will make such interpretation or correction, as well as any additional SOQ provisions that the City may decide to include, only as an SOQ addendum. Any addendum issued by the City shall become a part of the SOQ. Artists should consider issued addendums in preparing his or her SOQ submission.

G. DISCLOSURES

All information in a submitter's SOQ response is subject to disclosure under the provisions of Public Act No. 442 of 1976 known as the "Freedom of Information Act". This act also provides for the complete disclosure of contracts and attachments thereto.

H. PROFESSIONAL SERVICES AGREEMENT

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

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

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

I. COST LIABILITY

The City of Ann Arbor assumes no responsibility or liability for costs incurred by the artist prior to the execution of a contract.

J. NONDISCRIMINATION AND LIVING WAGE REQUIREMENTS

To the extent applicable, a selected artist must comply with the nondiscrimination provisions of MCL 37.2209, with the City of Ann Arbor's nondiscrimination requirements (Chapter 112, Section 9:161 of the City Code) and with living wage provisions of Chapter 23 of the Ann Arbor City Code.

For reference, the following are attached:

- Contract compliance form to report employment data
- Living wage declaration form
- Copy of the current living wage poster

L. RESERVATION OF RIGHTS

The City of Ann Arbor reserves the right to accept any qualifications in whole or in part, to reject any or all qualifications in whole or in part and to waive irregularity and/or informalities in any qualifications and to make the award in any manner deemed in the best interest of the City.

SECTION II

Background

The Argo Cascades has been selected as a site for public art by the Ann Arbor Public Art Commission. A Project Development Task Force has met and developed the following mission for the public art project:

The Argo Cascades public art project will be informed by the historical connection of the urban city and the natural river at this location. The public art here will be a marker of the community's interest in "facing the river" and will celebrate the river as an asset and a source of drinking water. Because of the celebration of the river as a source of drinking water, the design must convey the importance of water quality and the conservation of water to preserve it as a resource.

Argo Cascades, at the Argo Canoe Livery, were installed in late 2011. The Cascades replace the canoe portage past Argo Dam at the site of the Huron River millrace. The millrace was created in 1830 and has not contained open flowing water since—until now.

The Argo Cascades consist of a series of nine water-vessel drops and pools creating a canoe bypass around Argo Dam. People traveling on the water pass through the Cascades and gradually drop nine feet down to the lower river from the height of the water above the dam. The drops are formed and channeled by large boulders of limestone. The limestone extends from the land banks on both sides of the millrace's shore. They have come to be used as areas to climb and sit on, to watch the water flow and people paddling boats in the Cascades. On the south shore passes the Border-to-Border trail, a non-motorized trail roughly following the Huron River that currently extends to Ypsilanti. The trail was widened and paved when the Cascades were installed. Nearby, around the bend of the river to the north, are Argo Pond and the Argo Canoe Livery, an Ann Arbor Parks and Recreation facility and service. It is the largest public livery in Michigan. The site is within a ten minute walk of downtown.

The Huron River is the cleanest "urban" river in Michigan. Eighty-five percent of the city's drinking water comes from the Huron River. Several Native American trails—of the Chippewa, Potawatomi, Ottawa, Wyandot and Huron tribes—crossed the Huron River at the center of what is now Ann Arbor, then followed the Huron north, near the current site of the Argo Cascades. European settlement started with John Allen and Elisha Rumsey who purchased a site in 1824 near the Huron River because, in addition to providing water, it was a potential source of transportation as well as power for water mills. Ann Arbor's strategic location on the Huron River, the Territorial Road, and the Michigan Central Railroad, which runs beside the Argo Cascades, contributed to its development as a trading center. The first dam on the site was built in 1830 to power flour and woolen mills. In 1905 the Argo Mill burned down and electric generating equipment was installed. The Edison Illuminating Company of Michigan, now Detroit Edison, purchased that dam and flowage rights and reconstructed the dam and millrace in 1914. The dam was sold to the City of Ann Arbor in 1963 after power generation decommissioning in 1959. The City reconstructed the dam in 1972.

General Expectations

The artwork theme must serve to increasing public awareness of water quality and conservation of water in the context of the sources of drinking water. As an example, and without limiting possible themes, a contrast between the historical use of the river as a natural resource and the necessity of sustainable stewardship of sources of drinking water today could be a compatible theme that is addressed in the artwork.

The Cascades have been designed to appear natural and have been constructed using natural materials. Public art at the site shall preserve the natural quality and appeal of the area.

Artwork cannot be an obstruction to the area of the embankment maintained by the State of Michigan and the Water Treatment Services Unit. This area of the embankment is located between the entry to the Cascades and the dam. The embankment cannot be penetrated in that area. All artwork proposals will be subject to a technical and safety review by the appropriate city staff. The feasibility of the artwork's compatibility with the site requirements must meet their approval.

The paths that border the recreation area will not be obstructed. View of the recreational activities cannot be obstructed by the placement, size and shape of the artwork. The artwork should add value to the site and not interfere with the recreational uses or the natural appearance of the area.



Ariel photo depicting the State regulated embankment. Photo taken before the Cascades were built.

Possible locations for artwork at the Argo Cascades:

1) Exit Bridge

Newly constructed bridges have been put in place at the entry and at the exit to the Argo Cascades. Artwork can be installed at the exit bridge; however, it cannot interfere with passage of maintenance vehicles and pedestrian traffic. It must be durable enough to last under regular traffic. The underpass and the riverbanks supporting the bridge are locations for artwork, as well. The artwork should be visible from the surface water of the Cascades and by the foot traffic that crosses the bridge.



Exit Bridge; north side, facing west

2) West-end of Cascades

Near the entry bridge at the west end of the Cascades is a section of land where the Cascades begin and the Border-to-Border trail splits. The trail meets the walkway across Argo Dam, to the other side of the river, and it continues onto the Argo Canoe Livery. Installation can be on the limestone surface that descends into the Cascades, if it does not disrupt the embankment and does not interfere with maintenance and the monitoring of the area. The embankment between the entry to the Cascades and the dam cannot be penetrated.



West end of Cascade; south side of Cascades, facing north-west and the Entry Bridge

3) Riverbank at the Toe of the Cascades

At the end of the Cascades there is a large riverbank that descends from the hilltop to the “toe” of the Cascades. Upon the riverbank are multiple large limestone boulders. The exit bridge and the Border-to-Border trail are just to the south of this area. Public art sited here will be visible from the water surface.



Riverbank at Cascade's toe and Exit Bridge, from hilltop; facing west



Riverbank at Cascade's toe and Exit Bridge, facing east

4) Top of the Hill, East-end of Cascades

A section of park-land on top of the hill beside a sidewalk that runs between the street and the Border-to-Border trail is another possible location for public art. This section is an “island” of land—approximately 30 feet average diameter—surrounded by sidewalk. There is a healthy tree in the center of the island, a drinking fountain, and a utility pole. The location overlooks the Cascades at the peak of the hill. Space for vehicle passage needs to be maintained to access adjacent building.



Hilltop east of the Cascades; facing west

Argo Cascades Locations
Locations are numbered



SECTION THREE MINIMUM INFORMATION REQUIRED

Artist should demonstrate their capabilities and competence in their field. The statement of qualifications must contain the following information, as outlined. Please review these items carefully.

Be sure to **provide the information in bold**. The checklists provided below will be used by the reviewing selection panel to ensure that all of the requirements have been addressed.

A. Personal Information

1. Include a copy of your **résumé**.
2. Include **contact information**. Provide an address, phone number and email.

B. Qualifications and Experience with Public Art Projects

State in a written **letter of interest** the relevance of your work as an artist to this particular public art project. Indicate how your qualifications as artist fit this project. Provide **details of past work**. Indicate if you have worked on public art projects in the past, if you have worked collaboratively with a project development team, if you were within budget and completed the work on time, and give a general statement of approach to public art projects. Describe your ability to create and design artwork that will relate to the “drinking water” theme of the project and other criteria described in the General Expectations. List **three work references** (letters of recommendation not required).

C. Past Work

1. Send up to **15 digital images** of past applicable artwork; JPEGs, 1MB maximum size per image. Please provide images on a Compact Disc, or DVD.
2. Submit a **list of the digital images**; include title, medium, dimensions, location, year of completion, & artwork budget amount

SELECTION

A Selection Panel will evaluate each qualification submission to determine the top applicants. Evaluation will be based on a point system. The following table establishes the point values and the criteria that will be used in the selection process, determined by analysis of the above requirements (A through C), to select the top applicants:

Requirements with Evaluation Criteria	Value
A. Personal Information	10 points
1. résumé	
Experience fabricating and installing permanent artwork	
Experience working in public settings	
Quality of collected work	
2. contact information	
Completeness of required submitted material	
B. Qualifications and Experience with Public Art Projects	25 points
1. letter of interest	
Quality of presentation and artistic merit	
2. details of past work	
Proven ability to work effectively w/ a community and as a project team member	
Track record to complete projects on time and with a budget	
3. three work references	
Verification of artist qualifications	
C. Past Work	50 points
1. images	
Quality of past work	
Craftsmanship	
Originality and creativity	
Success in creating distinguishing site specific artwork	
Technical ability to implement projects; Evidence of artwork soundness & durability	
2. list of images	
Completeness of required submitted material	
D. Ability to meet the vision of the project	15 points

The top artists will be established by the total value given to their qualifications, as awarded by the Selection Panel. The Selection Panel will then determine which, if any, artists will be interviewed, to further evaluate the artist's expertise and work history. The City may contact references to verify material submitted by the artist. Interviews and the values assigned to the submitted qualifications will be the basis for selecting the finalists for the project.

A Request for Proposals will be drafted and sent to the artists selected as finalists. Up to five prequalified artists will be selected to develop full proposals and will receive the Request for Proposals.

The City reserves the right to not consider any submitted qualifications determined to be unresponsive and deficient in any of the information requested for evaluation.

TIMELINE

- March 6, 2012 Deadline for responses to this SOQ
- March, 2012 Selection Panel meets
- March, 2012 Artist Interviews

**Appendix A
Sample Contract**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN

AND THE CITY OF ANN ARBOR FOR
DESIGN, FABRICATION, AND INSTALLATION
OF PUBLIC ART AT
_____**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 (“City”) and _____, a(n) _____, whose address _____ (“Artist”), agree as follows this ___ day of _____, 201_.

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

I. DEFINITIONS

Administering Service Area/Unit means Public Services Area.

Contract Administrator means Public Services Area Administrator or whomever the Contract Administrator may from time to time designate.

II. DURATION

This agreement shall become effective on _____, 201_, and shall remain in effect until satisfactory performance of all services, unless terminated for breach or as provided in this agreement.

III. SERVICES

- A. General Scope: The Artist agrees to provide design, fabrication, and installation services for an installation as specified in Exhibit A. The City makes no guarantee that any of the designs developed by the Artist will be implemented.
- B. Quality of Services: The Artist’s standard of service under this agreement shall be of the level of quality performed by professionals regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

- C. City Review of Services: The services shall, at all times, be subject to the City's general review and approval. The Artist shall confer with the City periodically during the progress of the services, and shall prepare and present such information and materials as may be pertinent, necessary or requested by the City to determine the adequacy of the services or the Artist's progress. Upon reasonable prior notice to the Artist, the City and its elected officials, officers, employees and agents shall have the right to make reasonable inspections and reviews of the Artist's progress with respect to the services.
- D. Compliance with Applicable Law: The Artist shall perform his services under this agreement in compliance with all applicable laws, ordinances and regulations.
- E. Additional Work: The City may desire to have the Artist perform work or render services in connection with this project other than that expressly provided for in the "Scope of Services" section of Exhibit A. This will be considered extra work, supplemental to this agreement and shall not proceed unless authorized by a written amendment signed by both parties. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this agreement or an amendment.

IV. COMPENSATION OF ARTIST

The Artist shall be paid as specified in Exhibit A. The total fee to be paid the Artist for the Services, including all design, installation, administrative and any other costs incurred, will be _____ (\$_____), provided all of the Services performed are accepted as specified in Exhibit A.

Payment shall be made upon satisfactory completion and delivery of the Services as provided in Exhibit A. It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Artist may be entitled.

V. WARRANTY OF SKILL BY ARTIST

- A. The Artist warrants that the quality of his/her services under this agreement shall conform to the level of quality performed by experts regularly rendering this type of service.
- B. The Artist warrants that he/she has all the skills and experience necessary to perform the services he/she is to provide pursuant to this agreement. The Artist may rely upon the accuracy of reports and surveys provided to him/her by the

City except when defects should have been apparent to a reasonably competent Artist or when he/she has actual notice of any defects in the reports and surveys.

VI. RELATIONSHIP OF PARTIES

- A. The parties to this agreement agree that it is not a contract of employment but is a contract to accomplish a specific result. Artist is an independent contractor performing services for the City. Nothing contained in this agreement shall be deemed to constitute any other relationship between the City and the Artist.
- B. The Artist certifies that he/she has no personal or financial interest in the project other than the fee he is to receive under this agreement. The Artist further certifies that he/she shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this agreement. Further Artist agrees and certifies that he/she does not and will not employ or engage any person with a personal or financial interest in this agreement.
- C. Artist does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.
- D. Artist certifies that he/she 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 or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

VII. ARTIST'S ACKNOWLEDGMENT OF RISKS AND WAIVER OF RIGHTS

The Artist understands that the City's willingness to enter into this contract is conditioned upon the Artist's agreement to the following provisions.

1. Acknowledgment of Risks of Damage. Artist acknowledges, for the benefit of the City, that installation of the work of art into the building, structure, landscape or other City facility for which it has been designed may subject such work of art to destruction, distortion, mutilation or other modification by reason of the removal of such work of art from such building, structure, landscape or other City facility.

2. Waiver of Rights Under Visual Artists Rights Act of 1990. The Artist understands and agrees that, as to his rights in the work of art, the provisions of this agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. § 101 et. seq., as amended, including but not limited

to § 106A(a) and § 113(d), as to the work of art, and that execution of this Agreement by the Artist shall constitute a waiver by the Artist, as permitted in 17 U.S.C. § 106A(e), as amended, of any and all rights or protections in the work of art, and any uses of the work of art whatsoever, set out in or otherwise granted by 17 U.S.C. § 101, et. seq., as amended, including but not limited to § 106A(a) or § 113(d), or otherwise in the nature of “Droit Moral” under which artists claim an interest in their work. The Artist understands that, despite the City’s commitment not to intentionally damage, alter or modify the work of art without the prior written approval of the Artist, alterations to the site and/or removal of the work of art from the site may subject the work of art to destruction, distortion, mutilation or other modification, by reason of such site alterations or its removal.

3. Maintenance, Repairs or Restorations. The City shall have the right to determine, in its sole discretion, after consultation with a knowledgeable professional selected by the City, when and if maintenance, repairs and restorations to the work of art will be made.

4. Damage. Subject to Paragraph 6 below, the City agrees that it will not intentionally damage, alter, or modify the work of art without the prior written approval of the Artist.

5. Notification to Artist. The City shall endeavor to notify the Artist, during the Artist’s lifetime, of any proposed alteration of the site that would affect the intended character of the work of art and shall endeavor to consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the work of art.

6. Removal, Relocation, Sale, Donation or Destruction. Nothing in this Agreement shall preclude any right of the City, in its sole discretion, to destroy the work of art.

VIII. OWNERSHIP OF DOCUMENTS AND WORKS OF ART; INTELLECTUAL PROPERTY RIGHTS; NON-INFRINGEMENT

- A. All intellectual property rights, including without limitation any material produced in the pursuance of the agreed professional services, shall vest in and at all times remain vested in the originator of the material produced. will identify and clearly mark all materials produced and given to the City that constitute intellectual property, the rights to which are vested in and retained by or vested in and retained by any other originator, including identification of such other originator.
- B. The design recognition of the input and intellectual property rights of shall be honored, including when there is no further involvement in the project. This includes recognition of basic concepts which through developments and evolutions persist though to the final constructed design object.

- C. When displayed or reproduced in any manner, all intellectual copyright materials belonging to the artist, including sketches drawn by the artist, that have been identified and marked in accordance with Paragraph A, above, must be acknowledged in writing with “©,” as appropriate, in immediate adjacency to the image, and recognized orally as appropriate.
- D. Will accept no liability for the further interpretation, design or implementation by others of ideas, concepts and intellectual copyright materials generated in the pursuance of this agreement.
- E. The City shall own the physical embodiment of the works of art, including but not limited to, the art work proposals and all preliminary studies, models, samples and maquettes thereof.
- F. The Artist represents and warrants that the art work designs do not infringe or violate any copyright, trade secret, trademark, patent or other proprietary or personal right held by any third party.

If any of the art work designs is in any action held to constitute an infringement of any third party’s rights and its use is enjoined, the Artist shall immediately and at his/her expense (a) procure for the City the right to continue its use of the art work design in accordance with this agreement, (b) alter the art work design to eliminate infringing portions, subject to the City’s approval, or (c) replace the art work design with a design acceptable to the City that is non-infringing.

- G. The warranties made and the rights granted by this section VIII of the agreement shall survive the expiration or earlier termination of this agreement.

IX. RISK OF LOSS; INSURANCE; INDEMNIFICATION

- A. The Artist shall take such measures as are reasonably necessary to protect the work from loss or damage until the Artist has completed delivery to the City of all materials specified herein and ownership is transferred to the City, which shall occur when delivery is complete.
- B. The Artist is responsible for procuring and maintaining at his own expense whatever insurance he/she requires during the life of this agreement to protect himself from claims for bodily injuries, death or property damage which may arise under this agreement and to cover bodily injuries, death, property damage or other losses he/she may suffer while performing the work under this agreement, including damage to or loss of the work while in his possession and control.

- C. To the fullest extent permitted by law, the Artist shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Artist or his agents occurring in the performance of this agreement.

X. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. This agreement may be terminated by either party in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of termination is given in conformance with the terms of this agreement.
- B. The City shall have the privilege, with or without cause, to cancel and annul this agreement at any time on 30 days written notice to the Artist in accordance with the notice provisions contained in this agreement.

If services are terminated for reasons other than the breach of the agreement by the Artist, the Artist shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination. As a condition of receiving the payment from the City, the Artist agrees to transfer title to all partially completed work, plans, notes, drawings, etc., to the City.

XI. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Artist access to staff and City owned properties as required to perform the necessary services under the agreement.
- B. The City shall notify the Artist of any defects in the services of which the City has actual notice.

XII. ASSIGNMENT

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

XIII. NOTICES

All notices, forms, reports, maintenance suggestions, and other textual materials required by this agreement shall be in writing, and all such material, together with any other material to be delivered hereunder, shall be delivered or mailed to the respective addresses of the parties hereto. The Artist’s failure to keep the City reasonably informed regarding the Artist’s current address shall be deemed a waiver of the Artist’s rights and opportunities under this agreement.

All notices, requests, demands or other communications that are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon receipt when addressed as follows:

If to the City, to:

Public Services Area Administrator
City of Ann Arbor
P.O. Box 8647
Ann Arbor, MI 48107-8647

If to the Artist, to:

or to such other address as may be specified hereafter by either party for itself, by written notice to the other party.

XIV. EXTENT OF AGREEMENT

This agreement represents the entire understanding between the City and the Artist and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this agreement.

This agreement may be altered, amended or modified only by written amendment signed by the Artist and the City.

XV. 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 or other circumstances.

XVI. CHOICE OF LAW

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

XVII. SIGNATURES

FOR ARTIST

By: _____

FOR THE CITY OF ANN ARBOR

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steve Powers, City Administrator

Craig F. Hupy, Public Services Area
Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

APPENDIX B FAIR EMPLOYMENT PRACTICE

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

9:161 NONDISCRIMINATION BY CITY CONTRACTORS

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

- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:
 - (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
 - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
 - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

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

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

**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 employers providing services to the City or recipients of grants for financial assistance (in amounts greater than \$10,000 in a twelve-month period of time) pay their employees who are working on the City project or grant, a minimum level of compensation known as the **Living Wage**. This wage must be paid to the employees for the length of the contract/project.

Companies employing fewer than 5 persons and non-profits employing fewer than 10 persons are exempt from the Ordinance. If this exemption applies to your firm, please check below:

- _____ This **company** is exempt due to the fact that we employ or contract with fewer than 5 individuals.
- _____ This **non-profit agency** is exempt due to the fact that we employ or contract with fewer than 10 employees.

The Ordinance requires that all contractors/vendors and/or grantees agree to the following terms:

- a) To pay each of its employees performing work on any covered contract or grant with the City, no less than the living wage, which is defined as \$12.17/hour when health care is provided, or no less than \$13.57/hour for those employers that do *not* provide health care. It is understood that the Living Wage will be adjusted each year on April 30, and covered employers will be required to pay the adjusted amount thereafter. The rates stated above include any adjustment for 2012.
- b) Please check the boxes below which apply to your workforce:
 - Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage without health benefits Yes _____ No _____
 - OR**
 - Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage with health benefits Yes _____ No _____
- c) To post a notice approved by the City regarding the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- d) To provide the City payroll records or other documentation as requested; and,
- e) To permit access to work sites to City representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

The undersigned authorized representative hereby obligates the contractor/vendor or grantee to the above stated conditions under penalty of perjury and violation of the Ordinance.

Company Name

Address, City, State, Zip

Signature of Authorized Representative

Phone (area code)

Type or Print Name and Title

Email address

Date signed

Questions about this form? Please contact:
Procurement Office City of Ann Arbor
Phone: 734/794-6576

CITY OF ANN ARBOR LIVING WAGE ORDINANCE

RATE EFFECTIVE MAY 1, 2012 - ENDING APRIL 30, 2013

\$12.17 per hour

If the employer provides health care benefits*

\$13.57 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.

For Additional Information or to File a Complaint Contact:

**Linda Newton, Procurement Officer
734/794-6576 or Lnewton@a2gov.org**

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

City of Ann Arbor Procurement Office

INSTRUCTIONS FOR CONTRACTORS

For Completing CONTRACT COMPLIANCE FORM

City Policy

The “non discrimination in contracts” provision of the City Code, (Chapter 112, Section 9:161) requires contractors/vendors/grantees doing business with the City not to discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, condition of pregnancy, marital status, physical or mental limitations, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status against any of their employees, any City employee working with them, or any applicant for employment. It also requires that the contractors/vendors/grantees include a similar provision in all subcontracts that they execute for City work or programs.

This Ordinance further requires that each prospective contractor/vendor submit employment data to the City showing current total employee breakdown by occupation, race and gender. This allows the Human Rights Office to determine whether or not the contractor/vendor has a workforce that is reflective of the availability of women and under-represented minorities within the contractor’s labor recruitment area (the area where they can reasonably be expected to recruit employees). ***This data is provided to the City on the Human Rights Contract Compliance Forms (attached).***

To complete the form:

- 1) **If a company has more than one location, then that company must complete 2 versions of the form.**
 - **Form #1** should contain the employment data for the **entire corporation**.
 - **Form #2** should contain the employment data for those employees:
 - who will be working on-site;
 - in the office responsible for completing the contract; or,
 - in the case of non-profit grantees, those employees working on the project funded by the City grant(s).
- 2) If the company has only one location, fill out Form #1 only.
- 3) Complete all data in the upper section of the form including the name of the person who completes the form and the name of the company/organization’s president.
- 4) Complete the Employment Data in the remainder of the form. Please be sure to complete all columns including the Total Columns on the far right side of the form, and the Total row and Previous Year Total row at the bottom of the form.
- 5) Return the completed form(s) to your contact in the City Department for whom you will be conducting the work.

For assistance in completing the form, contact:

City of Ann Arbor Procurement Office at
734-794-6576

If a contractor is determined to be out of compliance, the Procurement Office will work with them to assist them in coming into compliance.

**CITY OF ANN ARBOR PROCUREMENT OFFICE
HUMAN RIGHTS CONTRACT COMPLIANCE FORM**
Entire Organization (Totals for All Locations where applicable)

Form #1

Name of Company/Organization _____ Date Form Completed _____

Name and Title of Person Completing this Form _____ Name of President _____

Address _____ County _____ Phone # _____
(Street address) (City) (State) (Zip) (Area Code)

Fax# _____ Email Address _____
(Area Code)

EMPLOYMENT DATA

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

**CITY OF ANN ARBOR PROCUREMENT OFFICE
HUMAN RIGHTS CONTRACT COMPLIANCE FORM**
Local Office (Only those employees that will do local or on-site work, if applicable)

Form #2

Name of Company/Organization _____ Date Form Completed _____

Name and Title of Person Completing this Form _____ Name of President _____

Address _____ County _____ Phone # _____
(Street address) (City) (State) (Zip) (Area Code)

Fax# _____ Email Address _____
(Area Code)

EMPLOYMENT DATA

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