

# REQUEST FOR PROPOSALS

## RFP-837

Design and Installation of Public Art  
at Argo Cascades



Date Due: Thursday, October 10th, 2013  
By 11:00 AM

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

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## SECTION I

### GENERAL INFORMATION

#### A. OBJECTIVE

The purpose of this Request for Proposals (RFP) is to select an artist among the Pre-Qualified artists under SOQ 844 to provide professional services for the: "Design and Installation of Public Art at Argo Cascades." Only the pre-qualified artists are eligible to respond to this RFP (see attachment for a list of the pre-qualified artists).

#### B. QUESTIONS OR CLARIFICATIONS ABOUT THE RFP

The RFP is issued by the City of Ann Arbor. All questions regarding this RFP shall be submitted via email. Emailed questions and inquiries will be accepted from any and all prospective Respondents in accordance with the terms and conditions of this RFP.

If a respondent has a question as to the meaning of this RFP or finds any ambiguity, inconsistency, or omission, the respondent shall make a written request for an official interpretation or correction to the appropriate individual listed below.

All questions or requests for clarifications/corrections regarding the RFP are due by August 14th, and must be addressed in writing to:

Scope of Work/Proposal Content questions should be addressed to:  
Aaron Seagraves, Public Art Administrator at: [aseagraves@a2gov.org](mailto:aseagraves@a2gov.org)

All questions regarding the RFP submissions process must be addressed in writing to:  
Karen Lancaster, Finance Director at: [klancaster@a2gov.org](mailto:klancaster@a2gov.org).

#### C. PRE-PROPOSAL MEETING

Prior to submitting the Proposal, pre-qualified artists will attend a site walk-through to visit the artwork's location. The walk-through will be a guided tour conducted by the Public Art Commission and City staff. There will be public engagement meetings coordinated with the walk-through, which includes an open meet-and-greet event, a public display of the artists' past work and presentations of their past works by the artists. The purpose of the public engagement meetings is to give the artists the opportunity to speak to residents and to learn about the area, community, issues, and interests surrounding the project.

The walk-through and public engagement meetings are not intended to answer questions regarding the proposal process or the technical content of the RFP. Such questions shall be directed to the appropriate staff referenced in Section B above.

#### D. PROPOSAL FORMAT

To be considered, each artist or artist team must submit a response ("Proposal") to this RFP using the format provided in Section III. The Proposal must be signed in ink by the respondent or an agent authorized to bind the respondent to its provisions. Each Proposal must remain valid for at least 90 days from the due date.

The information included in the Proposal should be as concise as possible. To be considered, each artist or artist team must submit a response to this RFP using the format provided in Section III.

## **E. PROPOSAL SUBMISSION**

All Proposals must be hand-delivered or mailed to the City of Ann Arbor Procurement Unit and **received** on or before **October 10th, 2013 by 11:00 AM (“Due Date”)**. Late submissions or submissions that are not in a sealed envelope (e.g. oral, emailed, or faxed submissions) will not be accepted or considered.

Each respondent must submit **ONE (1)** original Proposal, **ONE (1)** copy of the Proposal, and **ONE (1)** digital copy of the Proposal (in PDF on a Windows-compatible CD, DVD, or USB flash drive) in a sealed envelope clearly marked: **RFP 873 - Design and Installation of Public Art**. Each respondent must also submit two (2) copies of the Fee Proposal with the proposed project budget in a separate sealed envelope marked “Fee Proposal” and placed within the Proposal sealed envelope.

### **A Proposal will be disqualified:**

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 the Fee Proposal in hard copy only.

### **Proposals must be addressed and delivered to:**

City of Ann Arbor  
Procurement Unit, 5<sup>th</sup> Floor  
301 East Huron Street  
P.O. Box 8647  
Ann Arbor, MI 48107

All Proposals received by the Due Date will be publicly opened and recorded immediately. No immediate decision will be rendered.

Hand delivered Proposals will be date/time stamped/signed at the address above in order to be considered. Proposal drop off 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 to the Due Date will not substitute for receipt of the Proposal. Each respondent is responsible for ensuring timely submission of their Proposal.

Additional time will not be granted to a single respondent; however, additional time may be granted to all respondents if the City determines that circumstances warrant it.

## **E. SELECTION CRITERIA**

The City will evaluate the PRE-QUALIFIED artists from SOQ 844 and the Proposals using the criteria as shown in Section III, PROPOSAL EVALUATION. The evaluation will be completed by a “Selection Panel” of members of the community, some members of the Ann Arbor Public Art Commission, and members of City staff.

Each respondent will be required to give a presentation of their Proposal to the Selection Panel. During the presentations, the selected respondent will be given the opportunity to discuss in more detail their concept, qualifications, and past experience. The presentation of the Proposals will be held the week of October 14, 2013 in Ann Arbor. Respondents will be expected to be available to present the Proposal in person that week. The City will contact respondents to select a precise date and time.

## **F. ADDENDUM**

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 RFP, 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 a 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 written addenda.

## **G. DISCLOSURES**

All information submitted to the City as part of a Proposal 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**

The selected artist will be required to enter into a contract for artist services with the City of Ann Arbor. For your reference a sample Professional Services Agreement for artist services is attached (Attachment A). Respondents should review the terms of this sample agreement carefully prior to submitting a Proposal. . **The City will not entertain changes to the terms and conditions of the standard Professional Services Agreement.**

## **I. COST LIABILITY**

The City of Ann Arbor assumes no responsibility or liability for costs incurred by any respondent prior to the execution of a Professional Services Agreement, except as stated in Section III. By submitting a Proposal, a respondent agrees to bear all costs incurred or related to the preparation, submission and selection process for the Proposal.

## **J. NONDISCRIMINATION AND LIVING WAGE REQUIREMENTS**

To the extent applicable, a selected artist or artist team 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 the living wage provisions of Chapter 23 of the Ann Arbor City Code.

To establish compliance with this requirement, the Respondent should complete and return with its proposal completed copies of the Human Rights Division Contract Compliance Forms attached as Attachment E. In the event Human Rights forms are not submitted with the proposal, the Respondent will have 24 hours to provide once requested by the City.

The Living Wage declaration form (Attachment C) should be submitted with proposal. In event they are not, the Respondent will have 24 hours from the City's request to return completed forms.

## **K. SCHEDULE**

The Proposal should define an appropriate timeline in accordance with the following schedule:

**August 3rd**– Site walk through and public engagement.

**Thursday, October 10th, 2013 at 11am** – *Proposals Due*

**Week of October 14th, 2013**– Proposal presentations and artist interview.

**November 14th, 2013** – Deadline for Selection Panel's final recommendation & notification to artists.

**December 2013**– Public Art Commission meeting. Selection Panel's recommendation of Proposal on meeting agenda.

**January 2014**– Complete the terms for the Professional Services Contract with the artist(s) and for the Proposal recommended by the Public Art Commission for approval.

**February 2014**– Public Art Commission's recommendation of Proposal on Ann Arbor City Council meeting agenda.

**April 2014**– Artist(s) submits final design with updated timeline and implementation plan.

**April to November, 2014** -- Fabrication and installation.

Note: The above schedule is subject to change at the City's discretion.

## **L. RESERVATION OF RIGHTS**

1. The City reserves the right to award any contract arising out of this RFP in any manner deemed in the best interest of the City.
2. The City reserves the right to accept or reject any Proposal, in whole or in part, to waive any defect, irregularity, or informality in any Proposal, and to further negotiate the terms of any Proposal.
3. The City reserves the right to request additional information from any respondent.
4. The City reserves the right to waive the presentation and interview process and evaluate a respondent based solely on the Proposal.
5. The City reserves the right not to consider any Proposal which it determines to be unresponsive or deficient in any of the information requested within RFP.
6. 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.
7. The City reserves the right to select one or more respondents to perform services.
8. The City reserves the right to retain all Proposals submitted and to use any concepts in a Proposal regardless of whether that Proposal is selected. Submission of a Proposal indicates acceptance by the respondent of the conditions contained in this RFP, unless clearly and specifically noted in the Proposal.
9. The City reserves the right to publicly display the artists' Proposals in order to solicit comment.

## **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.

### **SCOPE OF WORK**

The artist will prepare and present a schedule, budget, and design proposal for public art at Argo Cascades. The artist will be expected to participate in community outreach prior to the submission of a design proposal and following the submission of the proposal. (See pages 3 and 15 for more information.) This outreach is intended to engage with the public, the Ann Arbor Public Art Commission, the Project Development Task Force and City staff prior to submission and selection of the Proposals. Visual renderings of the proposed design are expected to be of

high importance to the community, therefore the artist will be expected to provide such visual renderings as part of the Proposal to the extent possible.

A maximum of \$115,000 may be allocated for this project, including all artist fees, engineering, materials, insurance, travel, fabrication, subcontractor work, shipping, installation, contingencies, and any other anticipated expenses necessary to completion of the project. The Proposal must also include an independent conservator's estimate of the annual cost of maintenance for the artwork for twenty-five years.

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. Functional art elements are encouraged, wherever possible.

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*

Artists should give careful consideration to the development of a feasible artwork composed of long-term durable materials and installation methods that require a minimum of maintenance. All areas of the installed artwork must be easily accessible for maintenance. Artworks are typically expected to last 25 years and must be safe, ADA compliant and meet applicable building codes. Outdoor artwork should be composed of materials that resist graffiti, rust, discoloring, and decay, and do not require frequent cleaning, repainting, or re-coating. Glass artworks, such as glass panels, insulated glass units, and windows, must meet all City glass code requirements and must use high quality graphic and lamination methods that can be warranted against long-term fading if they are in sunlight.

### **SECTION III MINIMUM INFORMATION REQUIRED**

Each respondent will be eligible to receive an honorarium of \$3,000 to defray the costs of producing and presenting their Proposal upon signing a separate agreement to be provided by the City.

#### **PROPOSAL**

The following describes the elements that should be included in each of the Proposal sections and the weighted point system that will be used for evaluation of the Proposals. Please review these items carefully:

##### 1. *ARTWORK DESIGN & DESCRIPTION* (80 points):

This element should describe and provide a visual representation of the proposed artwork sufficient to allow the City to evaluate it in the context of the site. It should include:

- a. Drawings, images, or three-dimensional models showing a visual rendering of the proposed artwork, which shall be submitted on a Windows-compatible CD or DVD. Submission of a maquette is encouraged. Materials submitted will become property of the City of Ann Arbor and may be displayed for educational or fundraising efforts as the City sees fit.
- b. A written description of the artwork, including a statement of how the artwork meets the goals and purposes of the project as described in the RFP.
- c. Where appropriate, Respondent may include samples of materials proposed for the artwork, however this is not required.

This element will be evaluated based upon:

- a. The artistic merit and the creativity exhibited in the proposed artwork.
- b. The extent to which the proposed artwork meets the public art project's goals, purpose and expectations as described in the scope of work.
- c. The extent to which the proposed artwork fits with the context of the site and the selected locations.
- d. The extent to which the proposed artwork does not conflict with recreation at the site and pedestrian safety.

##### 2. *ARTWORK IMPLEMENTATION* (15 points):

This element should list all tasks the respondent deems necessary to accomplish the work of this project. It should define resources and personnel needed for each task. It should include:

- a. A timeline, list of key milestones, and a narrative description of the process for completion of the proposed artwork.
- b. A list of proposed fabricators and installers necessary to complete the artwork, including their qualifications and experience (Note: If an artist proposes to do fabrication or installation and is unable to adequately demonstrate--through images of past work--previous experience with some or all of the techniques and materials proposed, the City may require that the artist subcontract those aspects to professionals. The artist should be prepared to adjust the scope of their project to cover fabrication costs by subcontractors, if necessary.)

- c. A description of necessary maintenance, upkeep, and other operational requirements for the life of the artwork and an estimate of the annual cost of such maintenance, upkeep and operations. These costs should be treated separately and not included as part of the project budget submitted in the Fee Proposal.

This element will be evaluated based upon:

- a. The extent to which artwork materials and the implementation requirements match the technical abilities of the artist(s).
- b. The completeness of the timeline and the extent to which the timeline appears reasonable and achievable based upon the City's schedule laid out in Section I.
- c. Maintenance, upkeep, and operational requirements and cost.

### 3. FEE PROPOSAL (5 points)

This element should include:

- a. Two copies of the project budget in separate, sealed envelopes marked "Fee Proposal," as described in the Proposal submission instructions in Section 1. The project budget should include estimated costs for artist fees, engineering, materials, insurance, travel, fabrication, subcontractor work, shipping, installation, contingencies, and any other anticipated expenses necessary to complete of the project. **The project budget must not exceed \$115,000.** The project budget should not include future maintenance, upkeep, or operational costs.

This element will be evaluated based upon total cost and the likelihood of meeting the projected costs.

### 4. *AUTHORIZED NEGOTIATOR*

- a. Include the name, phone number, and e-mail address of persons(s) in your organization authorized to negotiate the scope of work in any final contract with the City.

### 5. *ATTACHMENTS*

- a. Living Wage Compliance Form (Attachment C), Legal Status of Respondent (Attachment D), and Contract Compliance Forms (Attachment E) must be completed and returned with the Proposal. These elements should be included as attachments to the Proposal submission.

## **PRESENTATION AND INTERVIEW**

After submitting a Proposal, the artist must present the above information to the Selection Panel and respond to questions. If the artist would like to bring additional materials to the presentation and interview, the artist shall coordinate this with the Public Art Administrator. The artist will be expected to participate in a televised town hall meeting as a part of the presentation process.

The artists will be contacted by the City to coordinate their Proposal presentations. The Proposal presentations will be held during the **week of October 14th**. The presentations will be conducted **in person** and the artists are expected to be available on these dates. Audiovisuals aids and digital presentations may be used during the presentation.

The Proposals will be presented by the artist to the Selection Panel and the public at an open meeting. The selected artists will be given the opportunity to discuss in more detail their Proposal and plan for implementation. Following the presentation, questions will be asked of the artist to clarify the information in the Proposal and the information in the presentation.

The Proposal presentations will be available to the public. This includes an open meeting during the presentation, an opportunity for the public to view the presentations using live or recorded video and an opportunity for the public to ask questions of the artist following the presentation of the proposal. Prior to making their recommendation, the Selection Panel will receive public feedback collected at public engagement events and meetings in connection to the project. This includes public feedback on the Proposals.

## **PROPOSAL EVALUATION**

After the completion of the Proposal presentation and interview, the Selection Panel will evaluate the finalists' Proposals based on the evaluation criteria and make a final recommendation to the Ann Arbor Public Art Commission, who will then make a recommendation to Ann Arbor City Council. The final decision on award of any contract will be at the sole discretion of City Council and subject to the reservation of rights in Section I.

The Selection Panel will evaluate each proposal by the above described criteria and point system (evaluating elements 1, 2, and 3, based on 100 points) to select a respondent to recommend to the Public Art Commission, who will in turn make a recommendation to City Council for award of a contract.

**SECTION IV**  
**ATTACHMENT A – PRE-QUALIFIED ARTISTS**

Below is the list of artists who submitted to SOQ 844 and are the pre-qualified artists who will receive this RFP.

- 1) Jann Rosen-Queralt
- 2) Mags Harries and Lajos Heder
- 3) Andy Dufford, Chevo Studios



**ATTACHMENT B – SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**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 301 E. Huron St. 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. This shall at a minimum include insurance amounts set forth in Exhibit B.
- 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**

\_\_\_\_\_  
Steven D. Powers, City Administrator

\_\_\_\_\_  
Craig Hupy, Interim Public  
Services Area Administrator

**Approved as to form and content**

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

# **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

## EXHIBIT A

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

## EXHIBIT B

### **INSURANCE REQUIREMENTS**

**[may change depending on nature of design and installation]**

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.

1. 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

2. 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 including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or  
Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury

3. 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. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. 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 V.A 2 and V.A.3 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 may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. 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.

**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 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 \$12.52/hour when health care is provided, or no less than \$13.96/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 2013.

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: 734/794-6500

# CITY OF ANN ARBOR LIVING WAGE ORDINANCE

**RATE EFFECTIVE APRIL 30, 2013 - ENDING APRIL 29, 2014**

**\$12.52** per hour

If the employer provides health care benefits\*

**\$13.96** 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  
Karen Lancaster at 734/794-6500 or [Klancaster@a2gov.org](mailto:Klancaster@a2gov.org)**

## ATTACHMENT D – Legal Status of Respondent

(The Respondent shall fill out the appropriate form and strike out the other two.)

By signing below the authorized representative of the Respondent hereby certifies that:

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.

\_\_\_\_\_, Date: \_\_\_\_\_,  
Signature

(Print) Name \_\_\_\_\_ Title \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**ATTACHMENT E – Contract Compliance Forms**

**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													
<b>TOTAL</b>													
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 \_\_\_\_\_ (Street address) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_ County \_\_\_\_\_ Phone # \_\_\_\_\_ (Area Code)

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

**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													