

REQUEST FOR PROPOSAL

RFP # 17-24

SmartZone LDFA Contract Audit

City of Ann Arbor
Ann Arbor/Ypsilanti SmartZone LDFA



Due Date: August 18, 2017 by 2:00 p.m. (local time)

Issued By:

City of Ann Arbor
Procurement Unit
301 E. Huron Street
Ann Arbor, MI 48104

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SECTION 1- GENERAL INFORMATION

A. OBJECTIVE

The SmartZone is seeking the services of an audit firm to conduct an audit of the contract the Ann Arbor/Ypsilanti SmartZone (SmartZone) has with its primary vendor, Ann Arbor SPARK (SPARK), a 501(c)(6) entity. The SmartZone has been in place for fourteen years, but annually contracts with SPARK to provide economic development services. The SmartZone, as a Tax Increment Financing entity, captures a portion of the property taxes from private parcels located within the City's downtown district. The funds are expended for the facilitation of the commercialization of research products being developed at the University of Michigan, Eastern Michigan University, and other community institutions, and the development of high technology enterprises that, but for this Plan, would be deferred or located outside the Cities and this State. The SmartZone typically audits the SPARK contract every two years. The SmartZone is seeking contract audit services for a period of six years or three contracts, whichever comes first. The selected firm will coordinate work with SPARK and the SmartZone. The primary contact from the SmartZone will be the Secretary, Tom Crawford, who will oversee the direction and quality of work of this engagement.

B. QUESTIONS ABOUT AND CLARIFICATIONS OF THE REQUEST FOR PROPOSAL

All questions regarding this Request for Proposal (RFP) shall be submitted via e-mail. Questions will be accepted and answered in accordance with the terms and conditions of this RFP.

All questions shall be submitted on or before August 9, 2017 at 10:00 a.m., and should be addressed as follows:

Scope of Work/Proposal Content questions shall be e-mailed to Tom Crawford, SmartZone Secretary – tcrawford@a2gov.org

RFP Process and Compliance questions shall be e-mailed to Colin Spencer, Purchasing Manager - cspencer@a2gov.org

Should any prospective consultant be in doubt as to the true meaning of any portion of this RFP, or should the consultant find any ambiguity, inconsistency, or omission therein, the consultant shall make a written request for an official interpretation or correction by the due date got questions above.

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 consultant'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.

C. PRE-PROPOSAL MEETING

No pre-proposal meeting will be held for this RFP. Please contact staff indicated above with general questions regarding the RFP.

D. PROPOSAL FORMAT

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

Proposals should be prepared simply and economically providing a straightforward, concise description of the consultant's ability to meet the requirements of the RFP. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the proposal.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system as shown in Section III. A selection committee comprised of SmartZone representatives will complete the evaluation.

The fee proposals will not be reviewed at the initial evaluation. After initial evaluation, the SmartZone will determine top consultants, and open only those fee proposals. The SmartZone will then determine which, if any, firms will be interviewed. During the interviews, the selected firms will be given the opportunity to discuss their proposal, qualifications, past experience, and their fee proposal in more detail. The SmartZone further reserves the right to interview the key personnel assigned by the selected consultant to this project. If the SmartZone chooses to interview any respondents, the interviews will be tentatively held the **week of September 11, 2017**. Consultant must be available on these dates.

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

F. SEALED PROPOSAL SUBMISSION

All proposals are due and must be delivered to the City on or before, August 18, 2017 at 2:00 p.m. (local time). Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile **will not** be considered or accepted.

Each respondent must submit in a sealed envelope

- one (1) original proposal
- three (3) additional proposal copies
- one (1) digital copy of the proposal preferably on a flash drive as one file in PDF format

Each respondent must submit in a single separate sealed envelope marked Fee Proposal

- two (2) copies of the fee proposal

The fee proposal and all costs must be separate from the rest of the proposal.

Proposals submitted must be clearly marked: “RFP# 17-24 – SmartZone LDFA Contract Audit” and list the consultant’s name and address.

Proposals must be addressed and delivered to:
City of Ann Arbor
c/o Customer Service
301 East Huron Street
Ann Arbor, MI 48107

All proposals received on or before the due date will be publicly opened and recorded on the due date. No immediate decisions will be rendered.

Hand delivered proposals must be date/time stamped by the Customer Service Department at the address above in order to be considered. Delivery hours are 9:00 a.m. to 3:00 p.m. Monday through Friday, excluding Holidays.

The City or SmartZone will not be liable to any consultant for any unforeseen circumstances, delivery, or postal delays. Postmarking on the due date will not substitute for receipt of the proposal. Consultants are responsible for submission of their proposal. Additional time will not be granted to a single consultant. However, additional time may be granted to all consultants at the discretion of the City.

A proposal will be disqualified if:

The forms provided as Attachment C - City of Ann Arbor Non-Discrimination Declaration of Compliance, Attachment D - City of Ann Arbor Living Wage Declaration of Compliance, Attachment E - Vendor Conflict of Interest Disclosure Form of the RFP Document must be included in submitted proposals.

Proposals that fail to provide these completed forms listed above upon proposal opening will be deemed non-responsive and will not be considered for award.

G. DISCLOSURES

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

H. TYPE OF CONTRACT

A sample of the Professional Services Agreement is included as Appendix A. Those who wish to submit a proposal to the City are required to review this sample agreement carefully. **The SmartZone will not entertain changes to its Professional Services Agreement. However, the SmartZone reserves the right to approve a letter agreement if deemed appropriate after reviewing all respondents' proposals.**

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

This RFP and the selected consultant's response thereto, shall constitute the basis of the scope of services in the contract by reference.

I. NONDISCRIMINATION

All contractors proposing to do business with the SmartZone shall satisfy the contract compliance administrative policy adopted by the City Administrator in accordance with the Section 9:158 of the Ann Arbor City Code. Breach of the obligation not to discriminate as outlined in Attachment B shall be a material breach of the contract. Contractors are required to post a copy of Ann Arbor's Non-Discrimination Ordinance attached at all work locations where its employees provide services under a contract with the City.

J. WAGE REQUIREMENTS

The Attachments provided herein outline the requirements for payment of prevailing wages or of a "living wage" to employees providing service to the City under this contract. The successful consultant must comply with all applicable requirements and provide documentary proof of compliance when requested.

K. CONFLICT OF INTEREST DISCLOSURE

The City of Ann Arbor Purchasing Policy requires that the consultant complete a Conflict of Interest Disclosure form. A contract may not be awarded to the selected consultant unless and until the Procurement Unit and the City Administrator have reviewed the Disclosure form and determined that no conflict exists under applicable federal, state, or local law or administrative regulation. Not every relationship or

situation disclosed on the Disclosure Form may be a disqualifying conflict. Depending on applicable law and regulations, some contracts may awarded on the recommendation of the City Administrator after full disclosure, where such action is allowed by law, if demonstrated competitive pricing exists and/or it is determined the award is in the best interest of the City. A copy of the Conflict of Interest Disclosure Form is attached.

L. COST LIABILITY

The SmartZone assumes no responsibility or liability for costs incurred by the consultant prior to the execution of a Professional Services Agreement. The liability of the SmartZone is limited to the terms and conditions outlined in the Agreement. By submitting a proposal, consultant agrees to bear all costs incurred or related to the preparation, submission, and selection process for the proposal.

M. DEBARMENT

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

N. PROPOSAL PROTEST

All proposal protests must be in writing and filed with the Purchasing Manager within five (5) business days of the award action. The consultant must clearly state the reasons for the protest. If a consultant contacts a SmartZone and indicates a desire to protest an award, the SmartZone representative shall refer the consultant to the Purchasing Manager. The Purchasing Manager will provide the consultant with the appropriate instructions for filing the protest. The protest shall be reviewed by the SmartZone Board or designee, whose decision shall be final.

O. SCHEDULE

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

The following is the schedule for this RFP process.

Activity/Event	Anticipated Date
Written Question Deadline	August 9, 2017, 10:00 a.m.
Addenda Published (if needed)	On or before August 11, 2017
Proposal Due Date	August 18, 2017, 2:00 p.m.
Tentative Interviews (if needed)	Week of August 28, 2017
Selection/Negotiations	September 2017

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

P. IRS FORM W-9

The selected consultant will be required to provide the SmartZone an IRS form W-9.

Q. RESERVATION OF RIGHTS

1. The SmartZone reserves the right in its sole and absolute discretion to accept or reject any or all proposals, or alternative proposals, in whole or in part, with or without cause.
2. The SmartZone reserves the right to waive, or not waive, informalities or irregularities in terms or conditions of any proposal if determined by the City to be in its best interest.
3. The SmartZone reserves the right to request additional information from any or all consultants.
4. The SmartZone reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested within RFP.
5. The SmartZone 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 be implemented.
6. The SmartZone reserves the right to select one or more consultants to perform services.
7. The SmartZone reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted.
8. The SmartZone reserves the right to disqualify proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within RFP.

SECTION II - SCOPE OF SERVICES

1. Background

The SmartZone annually contracts with SPARK to perform a majority of its economic develop efforts. The contract has specific terms that require compliance with and in some cases establishes limits for activities. The SmartZone typically engages every couple of years an outside audit firm to perform an audit of SPARK's compliance with the contractual terms.

2. Objective

To review SPARK's compliance with their contract with the SmartZone and ensure effective internal controls are in place which result in accurate and timely reporting of required information.

3. Requirements

The required services include the following items commencing with the results for the fiscal year ended June 20, 2017 and repeated in two subsequent years, subject to approval and funding by the SmartZone Board:

1. Meet with SmartZone and SPARK to obtain an understanding of the processes involved as well as input from each party.
2. Review and provide an independent evaluation of SPARK's
 - a. Adequacy of internal control procedures that help insure compliance with the contractual terms.
 - b. Ability to produce, complete, and maintain adequate records and reports related to the contractual obligations.
 - c. Monitoring processes are in place to ensure internal control procedures are effective.
 - d. Maintains processes to check for defects in billings/reporting requirements or instances of contract noncompliance, along with corrective action when necessary.
 - e. Periodic review of internal control procedures to ensure effectiveness.
3. Complete final report for the SmartZone that includes the results of the procedures, the internal controls in place, and any recommendations for improvement.
4. Document the method used to obtain the annually reported jobs created numbers. Independently confirm the job figures from a statistically relevant sample of companies.

Consultant's Proposal

In keeping with the objective, the description, the requirements, and the consultant's tasks as previously indicated in this Request for Proposal, the consultants submitting proposals should outline in detail a minimum of the following:

- A. Information that will assist the SmartZone to determine the consultant's capability of performing the work.
- B. Staffing assigned to this project, estimated hours and hourly billing rate.
- C. Date at which consultant anticipates being able to start engagement.
- D. Any other provisions or matters which the consultant deems relevant to achieving the objective described above.

SECTION III - MINIMUM INFORMATION REQUIRED

PROPOSAL FORMAT

Consultants should organize Proposals into the following Sections:

- A. Professional Qualifications
- B. Past Involvement with Similar Projects
- C. Proposed Work Plan
- D. Fee Proposal (include in a separate sealed envelope clearly marked "Fee Proposal")
- E. Authorized Negotiator
- F. Attachments

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.

A. Professional Qualifications – 20 points

1. State the full name and address of your organization and, if applicable, the branch office or other subsidiary element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include whether it is licensed to operate in the State of Michigan.
2. Include the name of executive and professional personnel by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify only individuals who will do the work on this project by name and title. Resumes and qualifications are required for all proposed project personnel, including all subcontractors. Qualifications and capabilities of any subcontractors must also be included.
3. State history of the firm, in terms of length of existence, types of services provided, etc. Identify the technical details that make the firm uniquely qualified for this work.

B. Past involvement with Similar Projects – 30 points

The written proposal must include a list of specific experience in the project area and indicate proven ability in implementing similar projects for the firm **and** the individuals to be involved in the project. A complete list of client references must be provided for similar projects recently completed. It shall include the firm/agency name, address, telephone number, project title, and contact person.

C. Proposed Work Plan – 30 points

Provide a detailed and comprehensive description of how the Consultant intends to provide the services requested in this RFP. This discussion shall include, but not be limited to: how the project(s) will be managed and scheduled, how and when data will be delivered to the City, communication and coordination, the working relationship between the consultant and City staff, and the company's general philosophy in regards to providing the requested services.

Consultants shall be evaluated on the clarity, thoroughness, and content of their responses to the above items.

D. Fee Proposal - 20 points

Fee schedules shall be submitted in a separate, sealed, envelope as part of the proposal. Fee quotations are to include the names, title, hourly rates, overhead factors, and any other relevant details. The proposal should highlight key staff and positions that would likely be involved with projects. Consultants shall be capable of justifying the details of the fee proposal relative to personnel costs, overhead, how the overhead rate is derived, material and time.

E. Authorized Negotiator

Include the name, phone number, and e-mail address of persons(s) in your organization authorized to negotiate the agreement with the City

F. Attachments

Conflict of Interest Form, Living Wage Compliance Form, and the Non-Discrimination Form must be completed and returned with the proposal. These elements should be included as attachments to the proposal submission.

PROPOSAL EVALUATION

1. The selection committee will evaluate each proposal by the above-described criteria and point system (A through C) to select a short-list of firms for further consideration. The SmartZone reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested for evaluation. A proposal with all the requested information does not guarantee the proposing firm to be a candidate for an interview. The committee may contact references to verify material submitted by the consultants.
2. The committee then will schedule interviews with the selected firms if necessary. The selected firms will be given the opportunity to discuss in more detail their qualifications, past experience, proposed work plan and fee proposal.

3. The interview must include the project team members expected to complete a majority of work on the project, but no more than six members total. The interview shall consist of a presentation of up to thirty minutes (or the length provided by the committee) by the consultant, including the person who will be the project manager on this contract, followed by approximately thirty minutes of questions and answers. Audiovisual aids may be used during the oral interviews. The committee may record the oral interviews.
4. The firms interviewed will then be re-evaluated by the above criteria (A through C), and adjustments to scoring will be made as appropriate. After evaluation of the proposals, further negotiation with the selected firm may be pursued leading to the award of a contract by SmartZone Board, if suitable proposals are received.

The SmartZone reserves the right to waive the interview process and evaluate the consultants based on their proposals and fee schedules alone and open fee schedules before or prior to interviews.

The SmartZone will determine whether the final scope of the project to be negotiated will be entirely as described in this RFP, a portion of the scope, or a revised scope.

Work to be done under this contract is generally described through the detailed specifications and must be completed fully in accordance with the contract documents.

Any proposal that does not conform fully to these instructions may be rejected.

PREPARATION OF PROPOSALS

Proposals should have no plastic bindings but will not be rejected as non-responsive for being bound. Staples or binder clips are acceptable. Proposals should be printed double sided on recycled paper. Proposals should not be more than 30 sheets (60 sides), not including required attachments and resumes.

Each person signing the proposal certifies that he or she is the person in the consultant's firm/organization responsible for the decision as to the fees being offered in the Proposal and has not and will not participate in any action contrary to the terms of this provision.

ADDENDA

If it becomes necessary to revise any part of the RFP, notice of the addendum will be posted to Michigan Inter-governmental Trade Network (MITN) www.mitn.info and/or the City of Ann Arbor web site www.A2gov.org for all parties to download.

Each consultant must acknowledge in its proposal all addenda it has received. The failure of a consultant to receive or acknowledge receipt of any addenda shall not relieve the consultant of the responsibility for complying with the terms thereof. The City will not be bound by oral responses to inquiries or written responses other than official written addenda.

SECTION IV - ATTACHMENTS

Attachment A – Smartzone/SPARK Contract

Attachment B - Legal Status of Respondent

Attachment C – Non-Discrimination Ordinance Declaration of Compliance Form

Attachment D – Living Wage Declaration of Compliance Form

Attachment E – Vendor Conflict of Interest Disclosure Form

Attachment F – Non-Discrimination Ordinance Poster

Attachment G – Living Wage Ordinance Poster

**ATTACHMENT A
SMARTZONE/SPARK CONTRACT**

AGREEMENT



This Agreement (the "Agreement") is effective as of the 1st day of July, 2016, between the Ann Arbor-Ypsilanti SmartZone Local Development Finance Authority (hereinafter referred to as the "LDFA"), whose address is Municipal Center, City Hall, 301 E. Huron Street, Ann Arbor, MI 48104, and Ann Arbor SPARK (hereinafter referred to as the "Contractor"), whose address is 201 South Division, Ann Arbor, MI 48104. As used herein, the LDFA and the Contractor are sometimes collectively referred to as the "Parties."

Article I - Purpose

1.1 The purpose of this Agreement is to engage the Contractor to perform work in support of the Ann Arbor-Ypsilanti SmartZone, as described in the Scope of Work attached hereto as Attachment A and incorporated herein by this reference (hereinafter referred to as the "Scope of Work"). The Scope of Work may be amended and/or supplemented by mutual agreement of the Parties, with such amendments or supplements to be included as separate Attachments.

Article II - Term and Funding

- 2.1 This Agreement covers the period July 1, 2016 -June 30, 2017 (hereinafter referred to as the "Project Service Term") plus an additional 60 days for provision of the report required by Section 3.3 (collectively hereinafter referred to as the "Contract Term").
- 2.2 The fees to be paid Contractor and the terms of payment are detailed more specifically in Attachment A and subsequent Attachments if any. Payment of any amount scheduled to be made other than at the outset of a work assignment shall be conditioned upon Contractor's prior submission of any report, and successful performance by Contractor of any work, required to be completed prior to the time said payment is scheduled to be made.
- 2.3 Contractor may reallocate fees set forth in Attachment A between categories within the Scope of Work, which allocations cumulatively shall not exceed ten percent (10%) per a line item detailed in the Scope of Work for the Project Service Term, except that Business Accelerator Services may be reallocated upward by as much as twenty-five percent (25%), but fees that are set forth for microloans shall in no event be increased without the prior approval of LDFA. Budget amounts may be decreased without limitations, subject to review by LDFA of the consistency of such decreases with the achievement of contract objectives.
- 2.4 The Contractor shall be responsible for any cost overruns. No funds will be payable by the LDFA in respect of any costs additional to the costs detailed in the Scope of Work (other than in respect of costs reallocated pursuant to the provisions of Section 2.3), unless the written approval of the LDFA has been secured in advance.

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2.5 This Agreement does not obligate or commit the LDFA to approve requests for additional funds during or beyond the Project Service Term.

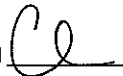

2.6 The Parties acknowledge that this Agreement is subject to applicable local, state and federal laws, rules, and policies.

Article III - Scope of Work and Compliance Activities

3.1 The Contractor shall complete its work in accordance with the Scope of Work.

3.2 The Contractor shall provide to the LDFA written quarterly summaries of progress at the first LDFA board meeting following the end of each calendar quarter, which outline the work accomplished during the applicable quarterly reporting period; problems, real or anticipated, which should be brought to the attention of the LDFA; notification of any significant deviation from the Scope of Work; and other information that may be requested by the LDFA. These summaries shall contain financial information sufficient to assure that LDFA funds are used only in connection with the Scope of Work. The reports shall include, as applicable, and only at such times as required, information required to be reported in connection with an extension of the LDFA's term. These reports shall include but not be limited to the following: 1) the number of companies/entrepreneurs screened in Phase I; 2) the number and description of companies or entrepreneurs in Phase II; 3) the companies that receive Phase III engagements and the number of full time equivalent employees in each company; and 4) amount of follow-on funding received by companies served. Phase I, Phase II, and Phase III engagements are described as Business Accelerator Services in Attachment A. The report should also include microloan information that identifies in the aggregate the number of applicants, total amount invested, number of approved applicants, the amount requested, amount approved, amount of loans repaid and written off, jobs retained and created during the term of the loan. For the applicable reporting quarter Contractor will include approved applicant(s), use of loan proceeds, loan maturity date, and current FTE. In addition, quarterly reports should include information on the talent programs.

3.3 The Contractor shall provide a written Final Program Progress Report to the LDFA no later than sixty (60) days after the end of the Project Service Term. The Final Program Progress Report shall disclose: 1) a census of the annual and cumulative number of jobs created within the Service Area (as defined in Attachment A) as of June 30, 2017 (with 'jobs created' defined as the incremental increase in the number of Full Time Equivalent employees (FTEs) beginning with the date a Business Accelerator proposal is signed, or a loan is provided, or when a SPARK Central Incubator agreement is first executed, or when participation in a Boot Camp session occurs); 2) a census of the annual and cumulative number of jobs the previous five years related to Business Accelerator, SPARK Central Incubator, and Boot Camp attendees that have left the Service Area because of relocation, merger, acquisition, or business failure as of June 30, 2017; 3) a census of the number and identity of current and past clients the Contractor deems no longer eligible for LDFA funded services as of June 30, 2017; and 4) a census of the number and identity of clients for which information regarding job

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creation is no longer being collected as of June 30, 2017. The Contractor shall track companies for a period of five years through an annual survey and make efforts to achieve as high a participation rate as possible. The survey will not only include questions that update standard economic development data but also ask companies who leave the area why.



3.4 The LDFA may require the Contractor to produce receipts for cost(s) incurred and/or itemized accounts of expenditure. If the Contractor is required to produce receipts for cost(s) incurred, then this should take the form of receipted invoices. If the Contractor is required to produce an itemized account of expenditure, this should take the form of a printed list of each item of expenditure and the costs incurred, certified as an accurate record by a duly authorized representative of Contractor. The LDFA may, on a sample basis, seek further verification of individual transactions, in the form of a receipted invoice or equivalent evidence for that transaction. The LDFA may have the records of Contractor, which pertain to the Scope of Work, reviewed or audited by an independent party. The cost of such review or audit shall be borne by the LDFA.

3.5 Contractor shall: maintain insurance adequate and reasonable to support its services under this Agreement, and as may otherwise be required by applicable federal, national, state and local laws and regulations; name LDFA as an additional insured on such policies; and provide LDFA a certificate of insurance, evidencing the foregoing upon execution of this Agreement and from time to time as LDFA may request.

3.6 New Inventions

3.6.a "New Inventions" means all ideas, inventions, discoveries and other intellectual property (including, but not limited to, those that are or may be patentable or subject to copyright, trademark or patent protection), and all improvements thereto and compilations and derivative works thereof, that Contractor creates, authors, makes, originates, conceives or reduces to practice (alone or with others) in connection with the Scope of Work or under the MEDC SmartZone Business Accelerator Grant #0264 (including, without limitation, website/web portal design, development and content), but does not include any rights in ideas, inventions, discoveries and improvements or other intellectual property licensed by Contractor from third parties or work product produced by Contractor or its subcontractors specifically for clients of the Business Accelerator. New Inventions specifically excludes product developed under Sections 1.1.4 and 3.1.4 of the Scope of Work for the benefit of Contractor's clients and relating to their business."

3.6.b All New Inventions shall be the sole and exclusive property of the LDFA, and Contractor hereby assigns to the LDFA all rights therein, except as may otherwise be expressly agreed to by LDFA in writing. During the Project Service Term only, LDFA grants Contractor an irrevocable, non-exclusive, royalty-free (except as otherwise provided in this Agreement and any Attachment), worldwide license to make, use, import, copy, distribute, modify, perform and display the New Inventions for purposes consistent with the Tax Increment Financing and Development Plan for



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the Ann Arbor/Ypsilanti SmartZone (the "TIF Plan"). The foregoing license shall not include the right to sublicense except as otherwise provided in this Agreement and any Attachment. The foregoing license shall be co-terminus with the Project Service Term.

- 3.6.c In order that the LDFA may protect its rights in the New Inventions, Contractor agrees to promptly disclose to the LDFA all New Inventions. Contractor will make adequate written records of all New Inventions, which records shall be LDFA's property; and, both during and after termination of Contractor's engagement with LDFA, Contractor will, without charge to LDFA but at LDFA's request and expense, sign all papers, including forms of assignment, and render any other proper assistance necessary or desirable to transfer or record the transfer to LDFA of Contractor's entire right, title and interest in and to the New Inventions, and for LDFA to obtain, maintain, defend and enforce patents, copyrights, trademarks, trade secrets and other protections thereon or with respect thereto (as the case may be) throughout the world.
- 3.6.d Contractor grants LDFA an irrevocable, perpetual, non-exclusive, paid-up, royalty-free, worldwide, transferable license to make, use, sell, offer for sale, import, copy, distribute, modify, perform and display any ideas, inventions, discoveries or other intellectual property, and all improvements thereto and compilations and derivative works thereof, owned by Contractor to the extent required by the LDFA to exploit the deliverables or other work product provided as part of the Scope of Work or to fulfill the requirements of the Scope of Work or otherwise for purposes consistent with the TIF Plan.
- 3.6.e Contractor hereby represents and warrants to LDFA that any employees performing services under the Scope of Work are obligated under the terms of their employment to transfer all right, title and interest in New Inventions to Contractor and that such employees will have no title, right or interest whether legal or beneficial in any New Inventions. Additionally, if Contractor hires subcontractors to provide services within the Scope of Work and such subcontractors receive a monetary fee for such services (other than non-material stipends), Contractor will ensure that under the terms of engagement of such subcontractors, all intellectual property rights in "Educational Materials" (as hereafter defined) arising out of or relating to the work done by such subcontractors will vest or will be caused to vest in the Contractor, and in turn in LDFA, as a New Invention, and that such subcontractors will have no right, title or interest, whether legal or beneficial, in any such intellectual property. "Educational Materials" means training, presentation, educational and/or informational materials, programs, methodologies, formulas, techniques, forms, templates and similar information developed or used for general or broad-based training, education or consulting under the Scope of Work.

Article IV - Investments

- 4.1 Neither Contractor nor its subcontractors shall invest LDFA funds, directly or indirectly, in client firms during the Contract Term or otherwise, including but not limited to equity interest, options, warrants or recourse or non-recourse debt; provided however that the foregoing shall not limit

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Contractors' ability to make micro loans per Attachment A Section 1.2 and provided further that the Parties acknowledge that Business Accelerator clients may have repayment obligations per Attachment A Section 1.1.3(iv).

4.2 Contractor may not condition the services it provides to clients under this Agreement on the opportunity for Contractor to make direct or indirect investments in said clients.

Article V - Administration

5.1 Notices. The Contractor shall communicate with all of the following designees at the address of record for the LDFA in connection with this Agreement:

Chairman

Treasurer

Secretary

The LDFA shall communicate with all of the following authorized agents at the address of record for the Contractor in connection with this Agreement:

President and CEO

Senior Vice President, Entrepreneurial Services



VP, Entrepreneurial Services

Director, Administration and Finance

Article VI - Breach and Termination

6.1 If the Contractor fails to comply with any provision of this Agreement it shall be considered in default and given 30 days from notice by the LDFA to cure the default so that it would be in compliance; provided that if the default is not cured within 15 days of such notice, the LDFA may suspend or restrict payments under this Agreement for the provisions of this Agreement that are the subject of the default and shall notify Contractor of the same. If the default is not cured within 30 days of such notice, the LDFA can suspend or restrict any or all payments under this Agreement and shall notify Contractor of the same. Once notice has been sent to Contractor, Contractor agrees that it will not incur any further costs within the Scope of Work until notified in writing by the LDFA that the suspension or restriction has been terminated; provided however, that LDFA will allow funding under this Agreement for all necessary and proper costs within the Scope of Work which could not reasonably be avoided during the period of any suspension or restriction.

6.2 The LDFA may terminate this Agreement in whole or in part, at any time, if LDFA determines that Contractor has failed to comply with any provision of this Agreement or has engaged in fraudulent

Initial  LDFA Initial  Contractor

or reckless behavior, or willful misconduct. In such an event, the LDFA shall notify the Contractor of the termination. Should the LDFA terminate this Agreement because of the Contractor's fraud, recklessness, or willful misconduct, the Contractor shall return to the LDFA all funds received for such fraud, recklessness or willful misconduct related to the activity in the Scope of Work involved under this Agreement.

6.3 The LDFA and the Contractor may terminate this Agreement in whole or in part, by mutual agreement. In such event, the Parties shall agree upon the conditions of termination. In no event shall the Contractor incur further costs under the Scope of Work after the effective date of such termination. The LDFA shall not be obligated to pay any further fees or costs under the Scope of Work for the terminated portion of this Agreement that are incurred by the Contractor after the effective date of such termination. The Contractor shall use commercially reasonable efforts to cancel as many outstanding obligations as possible in the event of termination.

6.4 LDFA may terminate this Agreement at any time effective upon 90 days prior written notice to Contractor.

Article VII - Effective Date and Miscellaneous Provisions

7.1 This Agreement shall be effective as of July 1, 2016.



7.2 Should any portion of this Agreement or the attached exhibits be declared void or unenforceable, the remaining portions shall remain in full force and effect.

7.3 The relationship between the LDFA and the Contractor is that of independent contractors. Neither of the Parties nor their respective agents or employees shall under any circumstances be deemed to be agents, representatives, or partners of the other party and neither of the Parties shall enter into any contract or commitment in the nature or on behalf of the other party.

7.4 This Agreement shall be governed and construed in accordance with the laws of the State of Michigan, and the Contractor consents to the exclusive jurisdiction of the state courts and federal courts located in Washtenaw County, Michigan for any controversy or cause arising out of or relating to this Agreement or the breach thereof, whether involving remedies at law or in equity.



7.5 The LDFA and the Contractor agree to perform any further acts to execute and deliver any further documents, which may be reasonably necessary to carry out the provisions of this Agreement.

7.6 The Contractor shall not assign, transfer, convey or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the LDFA; provided, however, that this sentence shall not be construed to prevent Contractor from engaging subcontractors to perform its obligations under this Contract as contemplated hereby. Any future successors of the Contractor will be bound by the provisions of this Agreement unless the LDFA otherwise agrees in writing. The LDFA reserves the right to require the Contractor to replace subcontractors who are found to be unacceptable.

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- 7.7 This Agreement, including its Attachments, sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein.
- 7.8 The rights and remedies of the LDFA specified in this Agreement shall be in addition to all other rights and remedies available to the LDFA. Nothing contained in this Agreement shall be construed as a waiver of the LDFA's rights unless specifically and expressly agreed to in writing by the LDFA.
- 7.9 The Contractor shall maintain reasonable records in connection with the work performed pursuant to this Agreement, and shall allow access to those records by the LDFA or its authorized representatives.
- 7.10 This Agreement may be amended only upon written agreement by LDFA and Contractor.
- 7.11 This Agreement may be signed in counterpart. The counterparts taken together shall constitute a single agreement.

[Signatures on following page]

Initial  LDFA Initial  Contractor

Each party hereto represents that it is duly authorized to enter into this Agreement and that its signatory below is duly authorized to sign this Agreement on its behalf,

Agreed to and accepted this ___ day of _____, 2016.

Authorized Agent for the LDFA:

By: Carrie Leahy

Carrie Leahy, Ann Arbor-Ypsilanti SmartZone Local Development Finance Authority

Vice - Chair

Authorized Agent(s) for Contractor:

By: Paul Krutko

Paul Krutko, President & CEO

Ann Arbor SPARK

Initial _____ Initial PK
LDFA Contractor

ATTACHMENT A

To Agreement between the Ann Arbor-Ypsilanti SmartZone Local Development Finance Authority and Ann Arbor SPARK effective as of the 1st day of July, 2016 (the "Agreement"). Capitalized terms used but not defined in this Attachment A have the meaning given such terms in the Agreement.

Scope of Work

Contractor acknowledges the dual purpose and objective of the Business Accelerator and all related services, programs, and events is to promote local job creation among technology-based entrepreneurial and newly formed companies, and to expand the tax base within the geographic boundaries served by the LDFA. The "Service Area" is defined as the city limits of Ann Arbor, Michigan and Ypsilanti, Michigan, except where permitted per particular use identified in some activities in this Scope of Work. Client firms having their principal place of business outside the Service Area are not eligible recipients of LDFA funded services or loans. For very early stage companies where the principal place of business has not been established or is undeterminable, the requirement to locate the principal place of business within the Service Area can temporarily be satisfied by the client becoming a member of the SPARK Central or SPARK East Business Incubator.



For the period July 1, 2016 through June 30, 2017, Contractor shall provide the following services on the following terms:

BUDGET

Direct Staffing (1)	\$674,868
Business Accelerator Services	\$625,000
Micro Loan Program	\$100,000
Business Networking Events and Educational	\$105,000
Bootcamp	\$50,000
Internship Support and Talent Recruitment	\$300,000
Business Software	\$20,000
SPARK Central Incubator	\$228,000
Accounting	\$104,000
Marketing	\$150,000
Ypsilanti and SPARK East (2)	\$330,000

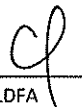
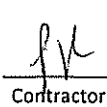
1. Direct services – 61%
Management – 21.4%
Overhead – 17.6%
2. SPARK East Incubator – 50%
Accelerator Services and other programs – 50%

1 Direct Services

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1.1 Business Accelerator Services.

- 1.1.1 Business Accelerator Direct Staffing. Contractor shall provide staffing or retain consultants sufficient to conduct directly the Scope of Work outlined herein. The annual fee shall be \$674,868, paid in 12 equal monthly payments.
- 1.1.2 Phase I. Phase I is defined as Contractor's initial contact and screening phase to understand and assess the business and technology proposition and determine in Contractor's sole discretion if advancement to a Phase II engagement is warranted. This includes but is not limited to: (a) review/screen for general programmatic fit, (b) solicit reviews from advisors/consultants for high level reaction, (c) referral to Phase II or other programs or outside resources.
- 1.1.3 Phase II. Phase II is defined as more in-depth evaluation of prospective client firms to determine if the business is capable and/or ready for substantial Contractor consulting assistance in Phase III. This includes but is not limited to: (a) Contractor review for qualification of opportunity attractiveness, (b) opportunity and issue assessment, (c) scope of engagement for Phase III, (d) feedback to client from assessment, and (e) identification of criteria required for reconsideration. This Phase II is expected to take less than 20 hours of consulting time per client, and it is expected that Contractor will outsource some of Phase II activities to qualified subcontractors and make best efforts to work with other service providers, i. e. SBDC, BBC, New Enterprise Forum, etc.. Contractor and client for whom Phase II services are performed shall sign a statement of understanding acknowledging:
- (i) That the engagement is non-exclusive, and Contractor is free to provide similar services to other clients, and client is free to obtain similar services from another provider at client's own expense;
 - (ii) LDFA may audit the services provided to client, any agreement regarding confidentiality notwithstanding;
 - (iii) Client has been informed of Contractor's conflict of interest policies; and
 - (iv) If client moves out of the Service Area within one year of receiving Phase III services and support, client shall repay immediately the cost of those services.
- 1.1.4 Phase III. Phase III is defined as substantial Contractor involvement for business development to advance client firms beyond the startup phase to the seed and growth stages. This includes but is not limited to: (a) development or refinement of a plan, schedule, and budget for achievement of high value milestone(s), (b) addressing a strategic issue, (c) implementation of a milestone plan, (d) advancing the client on 1-3 strategic fronts, (e) development of an extended plan at the end of the engagement. Contractor will outsource 100% of all Phase III activities to qualified subcontractors and vendors. Phase III services eligible for reimbursement by the LDFA may include:

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- Business planning, strategic and operational consulting, and marketing and business development assistance;
- Patent, licensing, and intellectual property rights consulting and legal review;
- Talent relocation and recruitment assistance;
- Limited product enhancement and scaling manufacturing
- Identification and development of bank, angel, venture capital, seed, pre-seed, customer, governmental, or private grant funding sources.

1.1.5 Approval of engagements with accumulated expenditures exceeding ten thousand dollars (\$10,000) will be made by a committee established by Contractor and acceptable to the LDFA and comprised of experienced entrepreneurs, technology business leaders, and investors, at least one of which will be a current LDFA Board member.

1.1.6 The budget for Phases I, II and III subcontractor activity shall be \$625,000.

1.1.7 Contractor shall maintain accurate, complete, and contemporaneous records of services performed, identification of the service recipient or business purpose, location of the service recipient's principal place of business, date and duration of services, and the individual performing services on behalf of the Contractor. This detail need not be included on monthly invoices, provided each invoice bears a legend certifying the invoice conforms to the terms of the Agreement and all Attachments, is subject to audit and verification, and is signed and dated by Contractor's President and CEO, Senior Vice President Entrepreneurial Services, or VP, Entrepreneurial Services. Invoices for work performed shall be submitted no sooner than five (5) and no more than fifteen (15) business days following the end of the monthly billing cycle. Upon receipt of an invoice, LDFA shall determine within three (3) business days if the submission is sufficient to authorize payment, or if the submission needs further detail consistent with this Agreement.

1.2 Micro Loan Fund - Contractor will administer a micro loan fund approved by the LDFA from time to time. This fund will be used solely to make interest-bearing, non-recourse, subordinated loans to start-up and early stage growth companies to use for operations and other activities not provided under a Business Accelerator Phase III engagement. Loan approval will be made by a committee established by Contractor and acceptable to the LDFA and comprised of experienced entrepreneurs, technology business leaders, and investors, one of whom is a current LDFA Board member. Loans will not be provided to companies capable of receiving commercial bank loans for the proposed use of funds. Loan amounts will range between \$5,000 and \$50,000. Contractor will provide the LDFA on a quarterly basis at the first LDFA board meeting following the end of each calendar quarter a report that identifies for the quarter all approved applicants, the amount requested, amount

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approved, jobs retained and created during the term of the loan, use of loan proceeds, loan maturity date, and aggregate amount of loans repaid and written off.

1.2.1 All amounts received by Contractor in repayment of micro loans shall be deposited into the micro loan fund bank account to be reused to make additional micro loans on substantially the same terms and conditions set forth in Section 1.2 above. Such loan repayments will be additive to the fund size. \$100,000 shall be paid by LDFA to Contractor in advance in two tranches of \$50,000 each if necessary. The first payment shall be made when funds in the micro loan fund bank account described below is less than \$50,000. The second payment of \$50,000 will be made when funds in the micro loan fund bank account described below again fall below \$50,000. All micro loan funds shall be maintained in a segregated bank account and shall not be commingled with other funds.



1.2.2 Termination or Cancellation – In furtherance and not in limitation of the provisions of Section 6.2 of the Agreement, LDFA may terminate Contractor’s administration of the micro loan fund program at any time upon written notice to Contractor. In the event of any such termination by LDFA, Contractor shall promptly return to LDFA any funds on deposit in the micro loan fund bank account and subsequently deposited into such account upon repayment of a micro loan, and upon LDFA’s request shall cooperate with LDFA to transition the micro loan fund program to LDFA or its designee.

1.3 Entrepreneurs Boot Camp

1.3.1 Contractor shall develop curriculum and organize a professional panel of qualified experts sufficient to conduct two intensive multi-day workshops for early stage entrepreneurs (“Boot Camp sessions”). Attendance at each of these Boot Camp sessions shall be limited to representatives of no more than 15 firms and no fewer than 8 firms. Contractor shall be reimbursed for up to two (2) Boot Camp sessions in the Project Service Term, with \$12,500 per Boot Camp session to be paid not more than 30 days prior to the date of the scheduled Boot Camp session.

1.3.2 Contractor shall maintain, and provide to LDFA upon request, records identifying attendees, the location of their principal offices, and the nature of their businesses. For two Boot Camp sessions in the Project Service Term, LDFA shall provide to Contractor an additional \$1,250 for each Boot Camp session company having their principal place of business within the Service Area, provided that the amount paid pursuant to this Section 1.3.2 shall not exceed \$12,500 per Boot Camp session. Contractor agrees that Boot Camp session attendees having their principal place of business within the Service Area shall be provided with a tuition discount of not less than 10% of the tuition rate charged to those attendees having a principal place of business outside of the Service Area.



1.3.3 The gross amount paid during the Project Service Term for Boot Camp sessions under this Section 1.3 shall not exceed \$50,000.

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1.4 Business Networking Events and Educational Programs.

- 1.4.1 Hosted Events. Contractor shall conduct educational, networking and job fair events for startups, early and growth stage companies along with vendors, service providers, consultants, investors and advisors to be held within the Service Area throughout the Project Service Term.
- 1.4.2 Sponsorships/Partnered Events. Contractor shall support educational and networking events in partnership or as a sponsor with other entrepreneurial support organizations (e.g., BioArbor, New Enterprise Forum, student organizations and programs) that serve current and potential Business Accelerator clients and the overall startup eco-system. Key criteria for determining if sponsorship is provided are:
- Relationship promotes and adds value to local entrepreneurs and/or the Ann Arbor/Ypsilanti SmartZone eco-system;
 - The sponsorship enhances activities of organizations whose goals are consistent with the mission of the LDFA;
 - It is an efficient and valuable use of sponsorship dollars.
- 1.4.3 Contractor will be reimbursed for actual expenses on a monthly basis for Hosted Events and Partnerships/Sponsored Events as described in Sections 1.4.1 and 1.4.2, upon delivery by Contractor to LDFA of a certified invoice with supporting detail that provides the date and place of the event, the purpose of the event, and the approximate number of attendees.
- 1.4.4 On a "best efforts" basis, Contractor shall maintain records for Hosted Events identifying attendees, the location of their principal offices, company name, or if an entrepreneur their zip code.
- 1.4.5 Contractor shall conduct classes in support of entrepreneurial executives on a regular basis. These include classroom style classes covering a variety of topics such as sales training, transitioning industries, human resource development and team building, and strategic planning, plus 'office hour' sessions allowing for one-on-one mentoring on individual topics of entrepreneurial interest. Contractor shall submit for reimbursement on a monthly basis an invoice for development and delivery of entrepreneurial classes. For development of classes, Contractor shall maintain records of expenses incurred and supporting documentation, including completed course materials. For delivery of classes, Contractor shall maintain records of attendees, including location of principal office, and the nature of the firm's business.
- 1.4.6 Contractor shall submit invoices to the LDFA on a monthly basis with the annual expense not to exceed a gross amount of \$105,000.

1.5 Talent



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- 1.5.1 Contractor shall create programs that are designed to attract talent, including and especially university graduates, and encourage them to stay and build a career in Ann Arbor. These program(s) will include an internship program utilizing Spark part-time employees and entrepreneur-in-residence type program that exposes people to the benefits, resources and quality of place that exist for entrepreneurs in Ann Arbor.
- 1.5.2 Contractor shall have a program to develop and retain C-level talent. The program or programs should engage experienced talent from other geographic locations looking to relocate in Ann Arbor, and contract with C-Level individuals transitioning out of a company willing to work with SPARK client companies in Ann Arbor until they find a new company to be involved with full time.
- 1.5.3 Contractor shall be reimbursed for actual expenses including administrative activity on a monthly basis with the annual expense not to exceed a gross amount of \$300,000. The Contractor shall provide in the written quarterly summary a description of the program(s), companies participating, number of employees engaged in the program, and type of work or experience the talent received.

1.6 SPARK Central Business Incubator

Qualifications for SPARK Central Business Incubator clients, including objective criteria for admission, the scope of services to be provided, and termination or exit criteria has been established in a written plan of operations that has been formally adopted and approved by the Contractor's board or governing body. The maximum annual fee shall be \$228,000. The monthly invoices should include a line item accounting for each of the elements described in Sections 1.7.1 through 1.7.7. In no event shall the amount invoiced to the LDFA for any single line item exceed the amount actually expended. The Contractor shall provide information related to SPARK Central Incubator clients in the same manner as that required for Phase III Business Accelerator clients as described in Article 3.2 of the Agreement. SPARK will maintain guidelines for client participation satisfactory to the LDFA.

- 1.6.1 Lease Subsidy. Contractor shall keep current with lease or sub-lease payments obligations on terms consistent with the original base lease agreement with First Martin Corp. for the purpose of providing a facility and staff parking to house the SPARK Central Business Incubator at 330 East Liberty Street, Ann Arbor, MI 48104. Contractor shall be entitled to charge incubator clients reduced rents, access or membership privileges, on substantially identical terms for similar levels of service or membership. Fees for the lease subsidy charged by Contractor to the LDFA will be reduced to reflect revenues collected from Incubator clients.
- 1.6.2 Administrative Support. Contractor shall provide or cause to be provided, administrative services that include personnel and all related expenses, management of all leases and sub-leases, membership or access privileges, accounts payable, accounts receivable, legal, building security, negotiation of facility lease extensions (including leasehold improvements), and all business functions necessary to maintain day to day operations of the SPARK Central Business


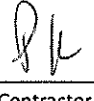
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Incubator. Contractor may also provide or cause to be provided, scheduling of facility resources along with routine telephone answering and reception services for incubator clients, and to include these services as part of the standard agreement with SPARK Central Business Incubator clients without additional charge.

- 1.6.3 Utilities and Taxes. Contractor shall provide or cause to be provided, electrical, water and sewer, and telephone utilities to the SPARK Central Business Incubator facility and its tenants. Contractor shall assume all liability for personal property taxes on equipment and leasehold improvements, special assessments, cause same to be paid to the appropriate taxing authorities on the date first due, and to include these services as part of the standard agreement with SPARK Central Business Incubator clients without additional charge.
- 1.6.4 Operating Expenses. Contractor shall provide or cause to be provided, routine janitorial and maintenance of the facility comprising the SPARK Central Business Incubator and to include these services as part of the standard agreement with SPARK Central Business Incubator clients without additional charge. Additional items may include maintenance, office supplies, meeting refreshments, educational materials, copying and printing, postage and express mail, dues and subscriptions, and other incubator operating expenses.
- 1.6.5 Information Technology. Contractor shall provide or cause to be provided, high-speed internet connections and shared wireless internet access throughout the facility for all SPARK Central Business Incubator tenants and to include these services as part of the standard agreement with SPARK Central Business Incubator clients without additional charge. Additional items billed to this category may include telephone, fax or other information technology related items.
- 1.6.6 Insurance. Contractor shall provide or cause to be provided, sufficient property, casualty, and liability insurance coverage necessary for operation of the SPARK Central Business Incubator and to include these coverages as part of the standard agreement with SPARK Central Business Incubator clients without additional charge.
- 1.6.7 Shared Equipment Purchase. Contractor shall purchase or provide, the shared or non-shared standard business equipment needed to operate a SPARK Central Business Incubator including but not limited to telephone equipment and systems, scanners, fax machines, copiers, furniture and fixtures, cubicles, task and area lighting, teleconference equipment and to include exclusive and/or shared access to these resources as part of the standard agreement with SPARK Central Business Incubator clients without additional charge.

2 Indirect Services

- 2.1 Accounting Services. Contractor shall provide accounting and contract management services to support this Agreement, in an amount not to exceed \$104,000, to be paid in equal monthly payments.

Initial  LDFA Initial  Contractor

2.2 Marketing Services. Contractor shall execute its integrated Marketing Services Plan, approved by LDFA from time to time, which addresses Public Relations, Collateral Materials, and Internet initiatives that support, compliment or advance LDFA funded programs or objectives. Contractor shall submit invoices to the LDFA on a monthly basis with the annual expense not to exceed a gross amount of \$150,000.

2.3 Licensed Software. Contractor may obtain licensed software products or services that allow for improved data collection or metric reporting, and/or offer clients improved productivity tools. Contractor shall submit invoices for actual cost to the LDFA on a monthly basis with the annual expense not to exceed a gross amount of \$20,000. Contractor shall report the program or service acquired in the next following quarterly report including the type and purpose. A summary of usage shall be included in the Final Program Progress Report consistent with Article 3.3 of the Agreement.



3 Ypsilanti

3.1 Subject to approval by the Ann Arbor and Ypsilanti City Councils of an amendment to the current TIF Plan, Contractor shall extend Business Accelerator Services to Entrepreneurs and startups within the City of Ypsilanti.

3.1.1 Business Accelerator Direct Staffing. Contractor shall provide staffing or retain consultants sufficient to conduct directly the Scope of Work outlined herein.

3.1.2 Phase I. Phase I is defined as Contractor's initial contact and screening phase to understand and assess the business and technology proposition and determine in Contractor's sole discretion if advancement to a Phase II engagement is warranted. This includes but is not limited to: (a) review/screen for general programmatic fit, (b) solicit reviews from advisors/consultants for high level reaction, (c) referral to Phase II or other programs or outside resources. Phase I activities shall be conducted by Contractor staff as indicated in Section 1.1.1.

3.1.3 Phase II. Phase II is defined as more in-depth evaluation of prospective client firms to determine if the business is capable and/or ready for substantial Contractor consulting assistance in Phase III. This includes but is not limited to: (a) Contractor review for qualification of opportunity attractiveness, (b) opportunity and issue assessment, (c) scope of engagement for Phase III, (d) feedback to client from assessment, and (e) identification of criteria required for reconsideration. This Phase II is expected to take less than 20 hours of consulting time per client, and it is expected that Contractor will outsource approximately 75% of all Phase II activities to qualified subcontractors. The maximum fee for subcontractor activity shall be \$25,000. These monies shall not be utilized for any other purpose within or outside of the Contract. Contractor and client for whom Phase II services are performed shall sign a statement of understanding acknowledging:

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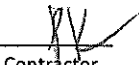
- (v) That the engagement is non-exclusive, and Contractor is free to provide similar services to other clients, and client is free to obtain similar services from another provider at client's own expense;
- (vi) LDFA may audit the services provided to client, any agreement regarding confidentiality notwithstanding;
- (vii) Client has been informed of Contractor's conflict of interest policies; and
- (viii) If client moves out of the Service Area within one year of receiving Phase III services and support, client shall repay immediately the cost of those services.

3.1.4 Phase III. Phase III is defined as substantial Contractor involvement for business development to advance client firms beyond the startup phase to the seed and growth stages. This includes but is not limited to: (a) development or refinement of a plan, schedule, and budget for achievement of high value milestone(s), (b) addressing a strategic issue, (c) implementation of a milestone plan, (d) advancing the client on 1-3 strategic fronts, (e) development of an extended plan at the end of the engagement. Contractor will outsource 100% of all Phase III activities to qualified subcontractors and vendors. Phase III services eligible for reimbursement by the LDFA and within legislative guidelines may include:

- Business planning, strategic and operational consulting, and marketing and business development assistance;
- Patent, licensing, and intellectual property rights consulting and legal review;
- Talent and recruitment assistance;
- Limited product enhancement and scaling manufacturing;
- Identification and development of bank, angel, venture capital, seed, pre-seed, customer, governmental, or private grant funding sources.

3.1.5 Approval of engagements with accumulated expenditures exceeding ten thousand dollars (\$10,000) will be made by a committee established by Contractor and acceptable to the LDFA and comprised of experienced entrepreneurs, technology business leaders, and investors, at least one of which will be a current LDFA Board member.

3.1.6 SPARK East Business Incubator. Contractor shall keep current with lease or sub-lease payment obligations on terms consistent with the original base lease agreement with Maurer Management and Properties Inc. for the purpose of providing a facility and staff parking to house the SPARK East Business Incubator at 215 W Michigan Avenue, Ypsilanti, MI 48197. Contractor shall be entitled to charge incubator clients reduced rents, access or membership privileges, on substantially identical terms for similar levels of service or membership. Fees for

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 LDFA Contractor

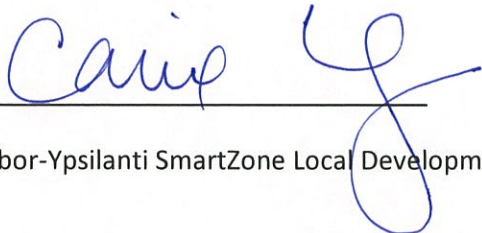
the lease subsidy charged by Contractor to the LDFA will be reduced to reflect revenues collected from Incubator clients.

3.1.7 Contractor shall also provide other services described in Sections 1.4 and 1.5 as resources permit.

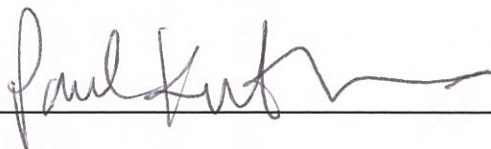
The maximum fee for subcontractor activity for Ypsilanti shall be \$330,000.

Agreed to and accepted this ____ day of _____, 2016.

Authorized Agent for the LDFA:

By: 
Carrie Leahy, Ann Arbor-Ypsilanti SmartZone Local Development Finance Authority
Vice - Chair

Authorized Agent(s) for Contractor:

By: 
Paul Krutko, President & CEO
Ann Arbor SPARK

Initial  LDFA Initial  Contractor

Initial CL
LDFA

Initial PK
Contractor

**ATTACHMENT B
LEGAL STATUS OF RESPONDENT**

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

The Respondent is:

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

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

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

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

_____, Date: _____,
Signature

(Print) Name _____ Title _____

Firm: _____

Address: _____

Contact Phone _____ Fax _____

Email _____

ATTACHMENT C
CITY OF ANN ARBOR DECLARATION OF COMPLIANCE

Non-Discrimination Ordinance

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

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

The Contractor agrees:

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

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

Company Name

Signature of Authorized Representative

Date

Print Name and Title

Address, City, State, Zip

Phone/Email address

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

Procurement Office of the City of Ann Arbor
(734) 794-6500

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

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

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

The Contractor or Grantee agrees:

- (a) To pay each of its employees whose wage level is not required to comply with federal, state or local prevailing wage law, for work covered or funded by a contract with or grant from the City, no less than the Living Wage. The current Living Wage is defined as \$13.13/hour for those employers that provide employee health care (as defined in the Ordinance at Section 1:815 Sec. 1 (a)), or no less than \$14.65/hour for those employers that do not provide health care. The Contractor or Grantor understands that the Living Wage is adjusted and established annually on April 30 in accordance with the Ordinance and covered employers shall be required to pay the adjusted amount thereafter to be in compliance (Section 1:815(3)).

Check the applicable box below which applies to your workforce

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

Employees who are assigned to any covered City contract/grant will be paid at or above the applicable living wage with health benefits

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

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

Company Name

Street Address

Signature of Authorized Representative

Date

City, State, Zip

Print Name and Title

Phone/Email address



ATTACHMENT E

VENDOR CONFLICT OF INTEREST DISCLOSURE FORM
--

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

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

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

Conflict of Interest Disclosure*	
Name of City of Ann Arbor employees, elected officials or immediate family members with whom there may be a potential conflict of interest.	<input type="checkbox"/> Relationship to employee <hr style="border: 0; border-top: 1px solid black;"/> <input type="checkbox"/> Interest in vendor's company <input type="checkbox"/> Other (please describe in box below)

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

I certify that this Conflict of Interest Disclosure has been examined by me and that its contents are true and correct to my knowledge and belief and I have the authority to so certify on behalf of the Vendor by my signature below:		
Vendor Name	Vendor Phone Number	
Signature of Vendor Authorized Representative	Date	Printed Name of Vendor Authorized Representative

**ATTACHMENT F
CITY OF ANN ARBOR NON-DISCRIMINATION ORDINANCE**

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

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

Discriminatory Employment Practices: No person shall discriminate in the hire, employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any individual. No person shall discriminate in limiting membership, conditions of membership or termination of membership in any labor union or apprenticeship program.

Discriminatory Effects: No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight for an individual to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a necessity does not arise due to a mere inconvenience or because of suspected objection to such a person by neighbors, customers or other persons.

Nondiscrimination by City Contractors: All contractors proposing to do business with the City of Ann Arbor shall satisfy the contract compliance administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All city contractors shall ensure 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 any classification protected by this chapter. All contractors shall agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of any applicable protected classification. All contractors shall be required to post a copy of Ann Arbor's Non-Discrimination Ordinance at all work locations where its employees provide services under a contract with the city.

Complaint Procedure: If any individual has a grievance alleging a violation of this chapter, he/she has 180 calendar days from the date of the individual's knowledge of the allegedly discriminatory action or 180 calendar days from the date when the individual should have known of the alleged discriminatory action to file a complaint with the city's Human Rights Commission. If an individual fails to file a complaint alleging a violation of this chapter within the specified time frame, the complaint will not be considered by the Human Rights Commission. The complaint should be made in writing to the Human Rights Commission. The complaint may be filed in person with the City Clerk, by e-mail (hrc@a2gov.org), by phone (734-794-6141) or by mail (Ann Arbor Human Rights Commission, PO Box 8647, Ann Arbor, MI 48107). The complaint must contain information about the alleged discrimination, such as name, address, phone number of the complainant and location, date and description of the alleged violation of this chapter.

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

ATTACHMENT G

CITY OF ANN ARBOR LIVING WAGE ORDINANCE

RATE EFFECTIVE APRIL 30, 2017 - ENDING APRIL 29, 2018

\$13.13 per hour

If the employer provides health care benefits*

\$14.65 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
Colin Spencer at 734/794-6500 or cspencer@a2gov.org**

APPENDIX A: SAMPLE PROFESSIONAL SERVICES AGREEMENT

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

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
AND THE ANN ARBOR/YPSILANTI SMARTZONE LDFA
FOR _____**

The Ann Arbor/Ypsilanti SmartZone LDFA, a Tax Increment Financing entity of the City of Ann Arbor which is a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and _____

_____ ("Contractor") a(n) _____
(State where organized) (Partnership, Sole Proprietorship, or Corporation)

with its address at _____
agree as follows on this _____ day of _____, 20____.

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

I. DEFINITIONS

Administering Service Area/Unit means _____.

Contract Administrator means _____, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means _____.
Project name

II. DURATION

This Agreement shall become effective on _____, 20____, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article XI.

III. SERVICES

A. The Contractor agrees to provide _____
type of service

("Services") in connection with the Project as described in Exhibit A. The

SmartZone retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the SmartZone may verify invoices submitted by the Contractor. Such records shall be made available to the SmartZone upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such

insurance policies, including those set forth in Exhibit C, as will protect itself and the SmartZone from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the SmartZone, before the commencement of any work under this contract, documentation satisfactory to the SmartZone demonstrating it has obtained the policies and endorsements required by Exhibit C.

- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the SmartZone, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the SmartZone's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.
- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

IX. OBLIGATIONS OF THE SMARTZONE

- A. The SmartZone agrees to give the Contractor access to the Project area and other SmartZone -owned properties as required to perform the necessary Services under this Agreement.
- B. The SmartZone shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the SmartZone. Notwithstanding any consent by the SmartZone to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the SmartZone.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The SmartZone may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the SmartZone to effect continued payment under this Agreement are not appropriated or otherwise made available, the SmartZone shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

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

by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIII. NOTICE

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

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

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

City of Ann Arbor / SmartZone LDFA

(insert name of Administering Representative)

301 E. Huron St.
Ann Arbor, Michigan 48104

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the SmartZone. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the SmartZone without restriction or limitation on their use. The SmartZone acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the SmartZone shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XVI. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

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

XVII. SEVERABILITY OF PROVISIONS

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

XVIII. EXTENT OF AGREEMENT

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

FOR CONTRACTOR

By _____
Type Name

Its

FOR THE SMARTZONE

By _____
, Chairperson of SmartZone

EXHIBIT A SCOPE OF SERVICES

The scope of services shall include the following items commencing with the results for the fiscal year ended June 20, 2017 and repeated in two subsequent years subject to approval and funding by the SmartZone Board:

5. Meet with SmartZone and SPARK to obtain an understanding of the processes involved as well as input from each party.
6. Review and provide an independent evaluation of SPARK's
 - a. Adequacy of internal control procedures which help insure compliance with the contractual terms.
 - b. Ability to produce, complete, and maintain adequate records and reports related to the contractual obligations.
 - c. Monitoring processes are in place to ensure internal control procedures are effective.
 - d. Maintains processes to check for defects in billings/reporting requirements or instances of contract noncompliance, along with corrective action when necessary.
 - e. Periodic review of internal control procedures to ensure effectiveness.
7. Complete final report for the SmartZone that includes the results of the procedures, the internal controls in place, and any recommendations for improvement.
8. Document the method used to obtain the annually reported jobs created numbers. Independently confirm the job figures from a statistically relevant sample of companies.

EXHIBIT B COMPENSATION

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

**EXHIBIT C
INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

- A. The Contractor shall have insurance that meets the following minimum requirements:
1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit
 3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury
 4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
 5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A.3 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the SmartZone. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the SmartZone with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the SmartZone. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.