

# REQUEST FOR PROPOSALS

## RFP- 841

Design and Installation of Public Art at  
the Kingsley and First Street Rain Garden



Date Due: January 10, 2013  
By 10:00 AM

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

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**SECTION ONE**  
**GENERAL INFORMATION**

**A. OBJECTIVE**

The City of Ann Arbor and the Ann Arbor Public Art Commission seek an artist, or artist team, to design and install public artwork within a new Rain Garden Project on the southeast corner of Kingsley Street and First Street. The purpose of this Request for Proposals (RFP) is to select an artist to conceptualize and implement the public art and to be a participant in the Rain Garden Project design team.

The public artwork must generate community interest in the site and encourage the common use of the location. The goal of the artwork is integrate an artist's design and public artwork into the features of the rain garden. It must contribute to the purpose of the rain garden, which is to prevent/minimize flooding in the area by increasing the potential for stormwater infiltration. Artists who work with natural materials and have experience creating lasting earthworks art are encouraged to apply.

**B. QUESTIONS ABOUT THE RFP**

The RFP is issued by the City of Ann Arbor. All questions regarding the RFP are due by January 4<sup>th</sup>, 2013 by 4:00 pm, and must be in writing to:

Questions regarding the RFP content must be in writing and directed to:  
Aaron Seagraves, Public Art Administrator at: [aseagraves@a2gov.org](mailto:aseagraves@a2gov.org)

All questions regarding the RFP submissions process must be addressed in writing to:  
Linda Newton, Procurement Officer at: [lnewton@a2gov.org](mailto:lnewton@a2gov.org)

**C. PRE-PROPOSAL MEETING**

A pre-proposal meeting will be held on December 6, 2012 at 2:30 pm. The meeting is not mandatory and for informational purposes. The meeting location will be at Ann Arbor's Larcom City Hall, 301 E. Huron Street, Ann Arbor, MI 48107 in the Basement Conference Room.

**D. BUDGET**

A budget of \$23,380 has been established for the selected public art project. This budget must include all artist fees, materials, design, engineering consultation, insurance, travel, fabrication and installation. Periodic communications and/or Task Force/Project review meetings, presentations and design reviews at various stages are also to be included.

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

## **E. PROPOSAL SUBMISSION**

All RFP submissions are due and must be delivered to the City of Ann Arbor Procurement Unit on or before January 10, 2013 by 10:00 AM. Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile will not be considered or accepted.

Each Artist must submit ONE (1) original RFP, ONE (1) RFP copy, ONE (1) RFP digital (CD, DVD, Flashdrive in PDF format) and two (2) Fee Proposals in a separate sealed envelope (marked Fee Proposal) sealed within an envelope clearly marked: RFP -841 - Design and Installation of Public Art.

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

To be considered, each artist must submit a response to this RFP using the format provided in Section III. No other format will be accepted.

Proposal may be disqualified if Fee Proposals are not sealed within an envelope and/or are provided on the digital copy.

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

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

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

RFPs should be date/time stamped/signed at the address above in order to be considered. Normal business hours are 8:00 a.m. to 3:00 p.m. Monday through Friday. The City will not be liable to any for any unforeseen circumstances, delivery or postal delays. Postmarking to the Due Date will not substitute for receipt of the RFP. Each Artist is responsible for submission of their RFP.

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

## **F. SELECTION CRITERIA**

Responses to this RFP will be evaluated as described in Section III. The evaluation will be completed by a selection panel made up of members of the community, members of the Ann Arbor Public Art Commission and members of City staff.

The initial evaluation is to determine the top five (5) finalists. The City will then determine which, if any, artists will be interviewed. The Selection Process is described in Section III.

#### **G. SELECTION PROCESS**

The Selection Panel will evaluate all the applicants based on the Selection Criteria above. The City may contact references to verify material submitted by the artist.

The Selection Panel will select up to five finalists to interview. The artist finalists that have been selected will be contacted for interviews. The interviews will be held between Tuesday, January 22, and, Thursday, January 24<sup>th</sup>, 2013. The interviews will be performed in person. Applicants will be expected to be available on those dates. The selected artists will be given the opportunity to discuss in more detail their qualifications and past experience. The interviews will include a presentation by the artist, followed by questions and answers. Members of the design team and the landscape architect will be included in the interview. Audiovisuals aids may be used during the interviews. The interviews may be recorded.

The Selection Panel will review the artist interviews to make a determination as to which artist will they will recommend to the Ann Arbor Public Art Commission. The Ann Arbor Public Art Commission must approve the artist selection.

#### **H. ADDENDUMS TO THIS DOCUMENT**

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

#### **I. DISCLOSURES**

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

#### **J. PROFESSIONAL SERVICES AGREEMENT**

A sample of the standard Professional Services Agreement (PSA) is included in Appendix A. Those who wish to submit a proposal to the City are required to carefully review the Professional Services Agreement. **The City will not entertain changes to the standard Professional Services Agreement.**

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

**K. COST LIABILITY**

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

**L. NONDISCRIMINATION AND LIVING WAGE REQUIREMENTS**

Selected artist must comply with the nondiscrimination provisions of MCL 37.2209, with the City of Ann Arbor’s nondiscrimination requirements (Chapter 112, Section 9:161 of the City Code) and with living wage provisions of Chapter 23 of the Ann Arbor City Code.

For reference, the following are attached:

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

**M. RESERVATION OF RIGHTS**

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

The City also reserves the right to waive the interview process and evaluate an artist based on the artist’s RFP alone.

**N. HUMAN RIGHTS**

When the City spends \$10,000 or more annually with a vendor they must comply with human rights City ordinances. To establish compliance with these Ordinances, the Bidder should complete and return with its bid completed copies of the Human Rights Division Living Wage form in Attachment C and Contract Compliance Forms in Attachment D (or EEO Report). In the event forms are not submitted with bids they must be provided within 24 hours of notice.

**O.TIMELINE**

December 6th, 2012	Pre-Proposal meeting
January 10 <sup>th</sup> , 2013	Deadline for responses to this RFP
	Selection Panel meets
January 22 to January 24 <sup>th</sup> 2013	Artist Interviews
	Selection Panel meets
February 2013	Selected artist recommended to AAPAC for approval
spring 2013	Implementation

**SECTION 2**  
**PROJECT DESCRIPTION**

**A. BACKGROUND**

The City of Ann Arbor was awarded a Federal Emergency Management Agency (FEMA) grant to purchase properties at 215 & 219 W. Kingsley St., Ann Arbor (one vacant and the other with a structure), demolish the structure, and stabilize the site. Separate from the FEMA Grant, a rain garden will be installed at the site to prevent/minimize flooding in the area by increasing the potential for stormwater infiltration. The site is located within a floodplain. This location will be maintained as open space in perpetuity. The City of Ann Arbor released RFP (#796) to select a firm for the design, installation, and management of the Rain Garden Project. As a result, Conservation Design Forum (CDF), of Ann Arbor, was selected in May and has been contracted for the project. CDF will be the lead designer for the Rain Garden Project and the artist must work collaboratively with the lead designer to plan, implement, and complete the public art for the site. The Rain Garden Project will feature designed landscaping and plantings. Other components of the rain garden are signage, a walking path and a bench.

**B. GENERAL EXPECTATIONS**

The public art will be integrated into the rain garden design. The artist will work with the lead designer of the Rain Garden Project and the two shall work together as a design team. The conceptual design of the public art will be reviewed by the Project Development Task Force and the Ann Arbor Public Art Commission. A technical review may be completed by the appropriate city staff. After acceptance of the concept, the artist will continue to develop the final design. The final design for the Rain Garden Project will incorporate the artwork. The artist will be expected to install the artwork in coordination with the installation of the rain garden. There may be overlapping project expenses that could be shared between the public art project and the rain garden project.

The public artwork is expected to:

- Integrate with the rain garden design, and
- Complement and enhance the rain garden’s design
- Use natural materials or earthworks art as the primary artistic medium is encouraged, though the materials, and the arrangement of them, must be lasting and durable

The public artwork shall:

- Contribute to the purpose of the rain garden

Other expectations:

- The public artwork cannot impede the infiltration of water or the flow of floodwater at the rain garden.
- The artwork should be visible from vehicle traffic; this location is adjacent to, and visible from, a ninety-degree turn on a two-lane one-way street.
- Art piece should complement the natural materials to be used in the rain garden.

### C. SCOPE OF WORK

The purpose of this Request for Proposals is to contract an artist services to design and install public art at the Kingsley Street and First Street rain garden. Throughout this process the artist will work closely with the Project Development Task Force, the design team, the Ann Arbor Public Art Commission, and City staff to finalize the plans and to install the art.

The public art design must meet the General Expectations outlined above. The work can be a new feature that is not already planned for the Rain Garden Project, but it must be integrated into the rain garden's design.

The artist will be responsible all work related to the design, construction, implementation, and installation of the public art. The public art must be lasting and durable enough for public spaces. Responsibilities include the items below, but not necessarily limited to them:

- Develop the conceptual design with the Lead Designer of the rain garden
- Achieve final approval of the design from the Project Development Task Force and the Ann Arbor Public Art Commission, incorporating revisions if necessary
- Develop a project work plan and schedule after a kickoff meeting between the artist and the lead designer
- Consultation with engineers and city approval of the structure may be required
- Address design issues with city staff, the Project Development Task Force and the Ann Arbor Public Art Commission
- Obtain all applicable permits for artwork installation and meet all necessary local and state codes
- Develop maintenance guidelines for use by city staff and an estimate of cost for regular and future maintenance



*photo of the future location of the rain garden*



## **SECTION THREE EVALUATION CRITERIA**

### **A. SELECTION CRITERIA**

A Selection Panel will evaluate each RFP submission using a scoring system, by the following criteria to determine the five (5) finalists:

- Quality of past work and aesthetic merit of past work (45points)
- Experience and success in past public art projects, or facility to achieve future success (20 points)
- Demonstrated understanding of the project's goals (30 points)
- Fee Proposal (5 points)

The Selection Panel will review each RFP submission and evaluate the artist interviews, by the above criteria and the following criteria, to determine which artist they will recommend to the Ann Arbor Public Art Commission:

- Demonstrated understanding of the project, and the expectations for the project
- Knowledge and understanding of the design goals
- Ability to deliver the project as outlined
- Capability to work with a project team and to collaborate on a final design
- Preference will be given to artist's who have demonstrated successful use of natural materials, or to artists who typically use earthworks art, but other artists who work with other media will be considered if they fit the other expectations for the project and can best deliver on the goals and theme of the project

The City reserves the right to not consider any proposal determined to be unresponsive and deficient in any of the information requested for evaluation. The City also reserves the right to waive the interview process and evaluate the artist based on their proposal alone. The City will determine whether the final scope of the project to be negotiated will be entirely as described in this Request for Proposals, a portion of the scope, or a revised scope. The art will need to relate to the purpose of the public art funding source and artists are required to respond to city requests for modifications to the art work design to address that relationship.

## SECTION FOUR MINIMUM INFORMATION REQUIRED

Artists should demonstrate their capabilities and competence in their field. The proposal submission must contain the following information, as outlined below. Please review these items carefully.

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

### A. Personal Information

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

### B. Qualifications and Experience with Similar Projects

State in a written **letter of interest** why you are interested in this public art project and how you assess its relevance to the community. Indicate how your qualifications fit this specific project. Describe your ability to create and design artwork that will relate to the criteria described in the General Expectations. Provide **details of similar art projects** you have accomplished. Indicate if you have worked on public art projects in the past, if you have worked collaboratively with a project development team, demonstrate your ability to work within a budget and timeline, and give a general statement of approach to similar art projects. List **three work references** (letters of recommendation not required).

### C. Past Work

1. Send up to **15 digital images** of past applicable artwork; JPEGs, 1MB maximum size per image
2. Submit a **list of the digital images** and provide the following information for these images: title, medium, dimensions, location, year of completion and artwork budget amount.

### D. Fee Proposal

Provide a **Fee Proposal**, not to exceed the budget of \$23,380. Please include the Fee Proposal on a separate sheet of paper (see Exhibit A).

The amount of the Fee Proposal is to include all artist fees, materials, design, engineering consultation, insurance, travel, fabrication and installation. Periodic communications and/or Task Force/Project review meetings, presentations and design reviews at various stages are also to be included.

**Exhibit A**

**Fee Proposal**

**Fees: Total Project budget: \$\_\_\_\_\_**

**Appendix A  
Sample Contract**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
\_\_\_\_\_  
AND THE CITY OF ANN ARBOR FOR  
DESIGN, FABRICATION, AND INSTALLATION  
OF PUBLIC ART AT  
\_\_\_\_\_**

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

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

**I. DEFINITIONS**

Administering Service Area/Unit means Public Services Area.

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

**II. DURATION**

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

**III. SERVICES**

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

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

**IV. COMPENSATION OF ARTIST**

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

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

**V. WARRANTY OF SKILL BY ARTIST**

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

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

## **VI. RELATIONSHIP OF PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **IX. RISK OF LOSS; INSURANCE; INDEMNIFICATION**

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



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

**X. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION**

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

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

**XI. OBLIGATIONS OF THE CITY**

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

**XII. ASSIGNMENT**

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

**XIII. NOTICES**

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

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

If to the City, to:

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

If to the Artist, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**XIV. EXTENT OF AGREEMENT**

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

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

**XV. SEVERABILITY OF PROVISIONS**

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

**XVI. CHOICE OF LAW**

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

**XVII. SIGNATURES**

**FOR ARTIST**

By: \_\_\_\_\_  
\_\_\_\_\_

**FOR THE CITY OF ANN ARBOR**

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

\_\_\_\_\_  
Steve Powers, City Administrator

\_\_\_\_\_  
Craig F. Hupy, Public Services Area  
Administrator

**Approved as to form and content**

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

## **ATTACHMENT B FAIR EMPLOYMENT PRACTICE**

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

### 9:161 NONDISCRIMINATION BY CITY CONTRACTORS

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

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

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

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

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

The Ann Arbor Living Wage Ordinance (Section 1:811-1:821 of Chapter 23 of Title I of the Code) requires that employers providing services to the City or recipients of grants for financial assistance (in amounts greater than \$10,000 in a twelve-month period of time) pay their employees who are working on the City project or grant, a minimum level of compensation known as the **Living Wage**. This wage must be paid to the employees for the length of the contract/project.

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

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

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

- a) To pay each of its employees performing work on any covered contract or grant with the City, no less than the living wage, which is defined as \$12.17/hour when health care is provided, or no less than \$13.57/hour for those employers that do *not* provide health care. It is understood that the Living Wage will be adjusted each year on April 30, and covered employers will be required to pay the adjusted amount thereafter. The rates stated above include any adjustment for 2012.
- b) Please check the boxes below which apply to your workforce:
  - Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage without health benefits Yes\_\_\_\_\_ No\_\_\_\_\_

**OR**

  - Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage with health benefits Yes\_\_\_\_\_ No\_\_\_\_\_
- c) To post a notice approved by the City regarding the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- d) To provide the City payroll records or other documentation as requested; and,
- e) To permit access to work sites to City representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address, City, State, Zip

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Phone (area code)

\_\_\_\_\_  
Type or Print Name and Title

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Date signed

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

**ATTACHMENT D**  
**City of Ann Arbor Procurement Office**

**INSTRUCTIONS FOR CONTRACTORS**

**For Completing CONTRACT COMPLIANCE FORM**

City Policy

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

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

**To complete the form:**

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

**For assistance in completing the form, contact:**

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

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

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

**Form #1**

Name of Company/Organization \_\_\_\_\_ Date Form Completed \_\_\_\_\_

Name and Title of Person Completing this Form \_\_\_\_\_ Name of President \_\_\_\_\_

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

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

**EMPLOYMENT DATA**

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



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

Form #2

Name of Company/Organization \_\_\_\_\_ Date Form Completed \_\_\_\_\_

Name and Title of Person Completing this Form \_\_\_\_\_ Name of President \_\_\_\_\_

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

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

**EMPLOYMENT DATA**

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