

REQUEST FOR PROPOSAL RFP 853

Barton and Superior Hydroelectric Dams FERC Part 12 Inspection and Report



Proposal Due Date: Wednesday, May 8, 2013 10:00 AM

Issued By:
City of Ann Arbor
Procurement Unit
301 East Huron Street
Ann Arbor, Michigan 48107-8647

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**SECTION I
GENERAL INFORMATION**

A. OBJECTIVE

The purpose of this Request for Proposal (RFP) is to select a FERC approved Independent Dam Consultant to provide professional services to complete a FERC Part 12 Inspection and Report for the Superior Dam Hydroelectric Project (FERC Project No. 3152) and Barton Dam Hydroelectric Project (FERC Project No. 3142).

. Both the inspection and report must be complete by December 1, 2013.

B. QUESTIONS OR CLARIFICATIONS OF RFP REQUIREMENTS

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

All questions shall be submitted on, or before, Wednesday, May 1, 2013 by 5:00 P.M. and should be addresses as follows:

Scope of Work/Proposal Content questions emailed to Molly Robinson, Water Treatment Services Manager at mrobinson@a2gov.org

RFP Process and HR Compliance questions to Karen Lancaster, Finance Director at klancaster@a2gov.org

Should any prospective Respondent be in doubt as to the true meaning of any portion of this Request for Proposal, or should a prospective Respondent find any ambiguity, inconsistency or omission therein. The Respondent shall make a written request for an official interpretation or correction. Such requests must be submitted via email to klancaster@a2gov.org.

All requests for Clarification are due on or before Wednesday, May 1, 2013.

C. PRE-PROPOSAL MEETING

A pre-proposal meeting for this project will not be held. All questions regarding the proposal process or the technical content of the RFP shall be directed to the above referenced individuals referenced above.

D. PROPOSAL REQUIREMENTS

To be considered, each respondent 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 respondent. The proposal must be signed in ink by an official authorized to bind the respondent to its provisions. Each proposal must remain valid for at least ninety (90) days from the due date of this RFP.

Proposals should be prepared simply and economically providing a straightforward, concise description of the Respondent'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.

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

Respondents must submit three (3) copies of the Proposal including the fee proposal in the manner specified in Section G below.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system, as shown in Section III. The evaluation will be completed by a selection committee of staff from the City of Ann Arbor.

At the initial evaluation, the fee proposals will not be reviewed. After initial evaluation the City will determine top applicants, and open only those fee proposals.

The City does not anticipate holding interviews for this project. However, the City has the right to request interviews with selected Respondents when necessary. If the City elects to interview Respondents, 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 City further reserves the right to interview the key personnel assigned by the selected consultant to this project. Respondents are expected to be available for interviews if requested.

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 Respondent's response shall be documented and included as part of the final contract.

F. ADDENDUM

All interpretation or correction, as well as any additional RFP provisions that the City may decide to include, will be made only as an official addendum that will be posted to a2gov.org and MITN.info and it shall be the Respondent's responsibility to ensure they have received all addendums before submitting a proposal. Any addendum issued by the City shall become part of the RFP and will be incorporated in the proposal.

Each Respondent must in its proposal, to avoid any miscommunications, acknowledge all addenda which it has received, but the failure of a Respondent to receive, or acknowledge receipt of any addenda shall not relieve the Respondent of the responsibility for complying with the terms thereof.

The City will not be bound by oral responses to inquiries or written responses other than written addenda.

G. PROPOSAL SUBMISSION

All Proposals are due and must be delivered to the City Procurement Unit on or before Wednesday, May 8, 2013 **by 10:00 am (local time)**. Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile **will not** be considered or accepted.

Each Respondent must submit one (1) original Proposal, and (2) two additional Proposal copies in a sealed envelope and two (2) copies of the Fee Proposal in a separate sealed envelope marked fee proposal contained within the Respondent's sealed proposal.

Proposal submitted must be clearly marked: **RFP 853 Barton and Superior Hydroelectric Dams FERC Part 12 Inspection and then list Respondents name and address. Proposals must be addressed and delivered to:**

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

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

Hand delivered Proposals will be date/time stamped/signed by the Procurement Unit at the address above in order to be considered. Normal business hours are 9:00 a.m. to 3:00 p.m. Monday through Friday, excluding Holidays.

The City will not be liable to any Respondent for any unforeseen circumstances, delivery or postal delays. Postmarking on the Due Date will not substitute for receipt of the Proposal. Each Respondent is responsible for submission of their Proposal.

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

A Proposal will be disqualified if the Fee Proposal is not contained within a separate sealed envelope.

H. TYPE OF CONTRACT

A sample of the standard Professional Services Agreement (PSA) is included in Section IV. 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 terms of the standard Professional Services Agreement.**

Respondents should specifically note that the Insurance requirements under a City contract are listed in Exhibit C of the sample Professional Services Agreement.

I. COST LIABILITY

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

J. SCHEDULE

The City has defined the following schedule in regards to this procurement.

Activity/Event	Anticipated Date
Proposal Due Date and Bid Opening	May 8, 2013
Tentative Award	May 31, 2013
City Council Authorization	July1, 2013

Note: The above schedule is for information purposes only, and is subject to change at the City’s discretion.

K. DISCLOSURES

All information in a submitter’s Proposal is subjected to disclosure under the provisions of Public Act No. 442 of 1976 know as the “Freedom of Information Act”. This act also provides for the complete disclosure of contracts and attachments thereto except where specifically exempted under the Freedom of Information Act.

L. 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 City will be notified of any changes in this status.

M. SUBCONTRACTORS

No contract may be sublet without the written consent of the City of Ann Arbor. Any subcontractor, so approved, shall be bound by the terms and conditions of this contract. The Respondent shall be fully liable for all acts and omissions of its subcontractor(s) and shall indemnify the City of Ann Arbor for such acts or omissions.

N. HUMAN RIGHTS INFORMATION

The City's standard Services Agreement, outlines the requirements for fair employment practices under City of Ann Arbor contracts. To establish compliance with this requirement, the Respondent should complete and return with its proposal completed copies of the Human Rights Division

Contract compliance forms should be submitted with proposal. In event they are not, the Respondent will have 24 hours from the City's request to return completed forms.

O. LIVING WAGE

All Respondents proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations promulgated by the Administrator and approved by City Council, agree to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a "covered employer" as defined therein to pay those employees providing services to the City under this agreement a "living wage" as defined in Chapter 23 of the Ann Arbor City code; and, if requested by the City, provide documentation to verify compliance. The Respondent agrees to comply with the provisions of Section 1:1815 of Chapter 23 of the Ann Arbor City Code, Appendix C.

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

P. QUALIFICATIONS OF RESPONDENT'S EMPLOYEES

The Respondent shall supply fully trained, competent staff. Any inability by the Respondent to maintain a regular and consistent work force may result in default of contract. All employees shall be bonded under the Respondent's company name.

Q. COLLUSIVE BIDDING

The Respondent certifies that their Proposal is made without any previous understanding, agreement or connection with any person, firm or corporation making a Proposal for the same services and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

R. IRS FORM W9

The selected Respondent will be required to provide the City of Ann Arbor an IRS form W-9.

S. RESERVATION OF RIGHTS

The City of Ann Arbor reserves the right to accept any Proposal or alternative Proposal proposed in whole or in part, to reject any or all Proposals or alternatives Proposals 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 reserves the right not to consider any Proposal which it determines to be unresponsive and deficient in any of the information requested within the RFP.

The City reserves the right to determine whether the scope of the project will be entirely as described in the RFP, a portion of the scope, or that a revised scope be implemented.

**SECTION II
BACKGROUND AND SCOPE OF WORK**

A. BACKGROUND

The City of Ann Arbor is soliciting proposals for the FERC Part 12 inspections and safety report for the Barton Dam Hydroelectric Project (FERC Project No. 3142) and Superior Dam Hydroelectric Project (FERC Project No. 3152). Part 12 inspections are required to be inspected every 5 years by an FERC approved Independent Dam Consultant. The last Part 12 inspection and Safety report was completed in 2008. A copy of that report can be made available for viewing at the Water Treatment Plant, 919 Sunset Rd., Ann Arbor, 48013 by appointment between the date of this notice and the proposal due date.

B. SCOPE OF WORK

The site inspection and preparation of the report must follow the requirements set forth by the FERC (18 CFR Part 12, Subpart D).

In addition to the FERC required components, the inspection and report must include the following items:

1. Review recommendations from the 2008 Part 12 Inspection Reports and confirm that they have been addressed. If there are outstanding recommendations, determine if those recommendations are still valid. If they remain valid, include in recommendation for 2013 report.
2. The City has been experiencing fines migration through a few of the weep drains through the right embankment at Barton Dam. Consultant shall investigate cause and propose remedies, if appropriate
3. Consultant shall investigate how the City controls flow through both Projects and provide any recommendations on how the City may reduce flow fluctuations that occur downstream. The City currently maintains flow through the Projects by maintaining tight control of pond level using a pressure transducer in a still well in the dam headwaters and a PID loop for control and feedback from each of the gates. A mechanical float system to a chart recorder is used to record pond water level and is equipped with limit switches to provide back-up control in the event the PID control were to fail.
4. ultrasonic level sensor in a still well in the dam headwaters and a PID loop for control and feedback to the gates
5. Consultant shall perform soundings up and downstream of the spillway and powerhouse structures and compare with previous river sounding results.
6. Consultant shall perform a detailed inspection of the gates at Barton and Superior dams. This inspection should comply with FERC guidance for this inspection.
7. Consultant shall survey the monuments at each site and compare to previous results.

**SECTION III
EVALUATION CRITERIA**

Proposal Evaluation

The Selection Committee will evaluate each proposal by the criteria described below based on the point system of 100 points.

Professional Qualifications	Points 40
Respondent Information Form	
References	
Experience	
 Work Plan	 Points 40
 Fee Proposal	 Points 20
Package pricing	

After the initial evaluation if the City is undecided on a selected Respondent, the City may select the top applicants for interviews.

Respondent proposals could be further negotiated with the selected Respondent before leading to the award of a contract, if suitable proposals are received.

SECTION IV

MINIMUM INFORMATION REQUIRED

Exhibit A – Fee Proposal Form (include in a separate sealed envelope clearly marked “Fee Proposal”)

Exhibit B – Required Information to be Included in Proposal

Attachment C - Living Wage Forms

Attachment D - Contract Compliance Forms

**EXHIBIT A
FEE PROPOSAL**

(to be completed and submitted in separate sealed envelope as specified in Section G)

Fee Proposal:

Additional Services and Pricing – list any additional background services or packages offered that are not included in scope of work. Pricing must accompany any additional services.

Negotiator - Name and phone number of person(s) in the organization authorized to negotiate on behalf of your organization _____ .
Name Phone Number

Exceptions - Respondent exceptions must be listed below to be considered. It is at the City's discretion to approve any or all exceptions listed below.

Certification - As an awarded contract, the above Respondent agrees to provide the scope of work in this Request for Proposal, including all terms and conditions, instruction to Respondents, special provisions, specifications, addenda, questions and corresponding answers, and the RFP as set forth in these Contract Documents. The parties intend for this to constitute the final and complete agreement between City of Ann Arbor and the Respondent.

Authorized Signature

Title of Authorized Signature

Date

Printed Signature

Email Address for Award Notice

Exhibit B
Required Information to be included in Proposal

Professional Qualifications

- List of three references for which you have completed FERC Part 12 inspections and safety reports within the last 5 years, including contact name and phone number.
- List of staff members proposed to work on this project and description of relevant experience.
- Resume of the proposed independent consultant. This information will be submitted to FERC for approval prior to making any determination to select and award the contract. It is expected that FERC approval will take a minimum of 90 days.

Proposed Work Plan and Schedule

- Description of scope of work that complies with FERC Part 12 requirements and includes additional items listed in Section II of this RFP.
- Schedule for completing inspection and report by established deadline.
- Identification of resources to be provided by the City of Ann Arbor to assist in completion of the Part 12 Inspection and generation of the final report to FERC.

Fee Proposal

- Fee schedule for performing identified work.
- Completed Fee Proposal Form

Appendices

- Completed Human Resources Contract Compliance Forms
- Completed Declaration of Compliance with Living Wage Ordinance

ATTACHMENT A – SAMPLE CONTRACT

**AGREEMENT BETWEEN

AND THE CITY OF ANN ARBOR
FOR PROFESSIONAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, Michigan 48107 ("City"), and _____

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

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

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

I. DEFINITIONS

Administering Service Area/Unit means _____.

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

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

Project means _____.
(Project name; File and Subfile No.)

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 this Agreement.

III. SERVICES

- A. The Consultant agrees to provide professional _____ (type of service) services ("Services") in connection with the Project as described in Exhibit A. The City 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 professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant 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 Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant 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 Consultant, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed _____.
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant 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 City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Consultant shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.

- B. Any insurance provider of Consultant 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, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Consultant or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply, and to require its subcontractor(s) to comply with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209). The Consultant further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. The Consultant is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional

licenses necessary to perform the Services specified in this Agreement.

- C. The Consultant 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 Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Consultant except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

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

X. ASSIGNMENT

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

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

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

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

City of Ann Arbor
301 E. Huron
Ann Arbor, Michigan 48107
Attn:

XII. CHOICE OF LAW

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

XIII. OWNERSHIP OF DOCUMENTS

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

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Consultant 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.

XIV. CONFLICT OF INTEREST

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

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 and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

FOR CONSULTANT

FOR THE CITY OF ANN ARBOR

By _____
Its

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Craig Hupy, Public Services Administrator

Approved as to Form and Content

Stephen K. Postema, City Attorney

SAMPLE AGREEMENT EXHIBITS

EXHIBIT A

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

EXHIBIT B

(negotiated compensation based on accepted terms of Proposal)

EXHIBIT C

INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance shall meet the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$500,000 each employee

Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or
Property Damage Liability, or both combined

\$2,000,000 Per Job General Aggregate

\$1,000,000 Personal and Advertising Injury

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the

Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under V.A 2 and V.A.3 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

**ATTACHMENT 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 therefrom:

9:161 NONDISCRIMINATION BY CITY VENDORS

- (1) All vendors 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 vendors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City vendors 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 vendor 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 vendor's labor recruitment area, i.e., the area from which the vendor can reasonably be expected to recruit, said vendor 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 vendors 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 vendor's labor recruitment area. In the case of construction vendors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction vendors 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, vendors 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 vendor 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 vendor 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 vendor 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 vendors 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 vendor 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:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 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 vendor 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.

ATTACHEMENT C

CITY OF ANN ARBOR
LIVING WAGE ORDINANCE
DECLARATION OF COMPLIANCE

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

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

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

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

- a) To pay each of its employees performing work on any covered contract or grant with the City, no less than the living wage, which is defined as \$12.52/hour when health care is provided, or no less than \$13.96/hour for those employers that do not provide health care.
b) Please check the boxes below which apply to your workforce:
Employees who are assigned to any covered City project or grant will be paid at or above the applicable living wage without health benefits Yes/No
OR
Employees who are assigned to any covered City project or grant will be paid at or above the applicable living wage with health benefits Yes/No
c) To post a notice approved by the City regarding the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
d) To provide the City payroll records or other documentation as requested; and,
e) To permit access to work sites to City representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

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

Company Name

Address, City, State, Zip

Signature of Authorized Representative

Phone (area code)

Type or Print Name and Title

Email address

Date signed

Questions about this form? Please contact:
Procurement Office City of Ann Arbor
Phone: 734/794-6500

**CITY OF ANN ARBOR
LIVING WAGE ORDINANCE**

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

\$12.52 per hour

If the employer provides health care benefits*

\$13.96 per hour

If the employer does **NOT** provide health care benefits*

Employers providing services to or for the City of Ann Arbor or recipients of grants or financial assistance from the City of Ann Arbor for a value of more than \$10,000 in a twelve-month period of time must pay those employees performing work on a City of Ann Arbor contract or grant, the above living wage.

ENFORCEMENT

The City of Ann Arbor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Persons denied payment of the living wage have the right to bring a civil action for damages in addition to any action taken by the City.

Violation of this Ordinance is punishable by fines of not more than \$500/violation plus costs, with each day being considered a separate violation. Additionally, the City of Ann Arbor has the right to modify, terminate, cancel or suspend a contract in the event of a violation of the Ordinance.

* Health Care benefits include those paid for by the employer or making an employer contribution toward the purchase of health care. The employee contribution must not exceed \$.50 an hour for an average work week; and the employer cost or contribution must equal no less than \$1/hr for the average work week.

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

**For Additional Information or to File a Complaint Contact
Karen Lancaster at 734/794-6500 or Klancaster@a2gov.org**

**ATTACHEMENT D
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:

Procurement Office of the City of Ann Arbor

734/794-6500

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

Form #1

Name of Company/Organization _____ Date Form Completed _____

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

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

Fax# _____ Email Address _____
(Area Code)

EMPLOYMENT DATA

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

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

Form #2

Name of Company/Organization _____ Date Form Completed _____

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

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

Fax# _____ (Area Code) _____ Email Address _____

EMPLOYMENT DATA

Job Categories	Number of Employees (Report employees in only one category)													
	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 Alaskan Native		
A	B	C	D	E	F	G	H	I	J	K	L			
Exec/Sr. Level Officials														
Supervisors														
Professionals														
Technicians														
Sales														
Admin. Support														
Craftspeople														
Operatives														
Service Workers														
Laborers/Helper														
Apprentices														
Other														
TOTAL														
PREVIOUS YEAR TOTAL														

