

REQUEST FOR PROPOSAL

For

Geotechnical Services

for:

2009 Construction Projects

Ann Arbor, Michigan

RFP #713

August 4, 2009



City of Ann Arbor
Public Services Area
Project Management Unit
City Hall, 100 North Fifth Avenue
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 firm or firms to perform soil borings and pavement cores at various locations throughout the City for projects that are planned for construction in 2009.

B. ISSUING OFFICE

The RFP is issued by the City of Ann Arbor, Public Services Area, Project Management Services Unit. All correspondence regarding this RFP must be addressed to:

Nicholas S. Hutchinson, P.E.
Project Engineer
Project Management Services Unit
100 North Fifth Avenue
Ann Arbor, Michigan 48104-8647
PHONE: (734) 997-1572 FAX: (734) 994-1744

C. QUESTIONS AND ADDITIONAL INFORMATION

No pre-proposal meeting will be held. Please contact Nicholas Hutchinson at (734) 997-1572 with questions regarding the RFP.

D. PROPOSALS

Four (4) copies of the proposal must be submitted. The information included therein should be as concise as possible. The total submittal should not be more than 20 pages, with material on two sides.

To be considered, each firm must submit a response to this RFP using the format provided in Section III. No other distribution of proposals is to be made by the submitter. The proposal must be signed in ink by an official authorized to bind the submitter to its provisions. Each proposal must remain valid for at least 120 days from the due date of this RFP.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using the point system shown below. The evaluation will be completed by the Project Engineer or a selection committee composed of City staff.

Professional Qualifications & Experience	50 points
Fee Schedule	50 points

The proposing firm(s) will be evaluated based on the rating system described above and in Section III of this RFP. The City of Ann Arbor reserves the right to interview selected firms and the key personnel to be assigned to the project prior to awarding the contracts.

F. CHANGES IN THE RFP

Should any prospective proposer be in doubt as to the true meaning of any portion of this Request for Proposal, or should the Proposer find any ambiguity, inconsistency, or omission therein, the Proposer shall make a written request for an official interpretation or correction. Such requests must be received by Project Management not less than seven days prior to the final date of submittal of the proposals.

Such 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, and will be sent to each firm recorded as having received a copy of the RFP. Any addendum issued by the City shall become part of the RFP and will be incorporated in the proposal.

G. SEALED PROPOSAL RECEIPT

Proposals shall be received (four copies) by the **City of Ann Arbor, Procurement Unit (5th Floor City Hall), Attn: Dee Lumpkin, 100 North Fifth Avenue, Ann Arbor, MI 48104 on or before 2:00 p.m., August 18, 2008. Include the RFP Number on the envelope or box in which the proposals are delivered.** Late submittals will not be accepted. All proposals received will become the property of the City of Ann Arbor.

H. DISCLOSURES

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

I. POST-SUBMITTAL PROCEDURES

After reviewing and evaluating the proposals that are received, the City will select one or more firms with whom it will negotiate Professional Services Agreements (PSA). A sample of the standard Professional Services Agreement (PSA) is included in Section IV, Attachment 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 negotiated PSA will include a Scope of Services and Fee Schedule (not-to-exceed amount), both of which may be modified by mutual consent during the negotiation phase. The Insurance Requirements outlined in the PSA may not be revised or changed. Prior to its final execution by the selected firm and the City, the PSA must be submitted to, and approved by, City Council and/or the City Administrator.

Enclosed in Section IV, Attachment B is a sample copy of the Human Resources Division's Contract Compliance Forms, Living Wage Declaration of Compliance, and other information regarding the Living Wage Ordinance. **These forms must be completed and returned to the City with the proposal.** The Consultant must receive Human Resources Departmental approval prior to execution of the PSA.

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.

J. 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.

SECTION II

BACKGROUND AND SCOPE OF WORK

The City is currently accepting proposals to perform soil borings and pavement cores at various locations throughout the City for the 2009 Road Construction projects. The work will consist of two Phases: Major Streets and Local (residential) Streets.

The Consultant will be expected to begin work upon execution of the contract. Work on the Major Streets may be delayed until a final list of streets is selected. If the list of Major Streets is finalized prior to execution of the contract, the Consultant may be directed to begin work on that phase first.

Please refer to Attachment A for a description of the locations and approximate number of borings to be performed on the Local Streets phase of the work. For purposes of this RFP, the number of borings and number of streets has also been estimated for the Major Streets phase on Attachment A. In general, the Major Streets to be selected will all consists of a similar type of work: pavement cores and soil borings, requiring full traffic control and flagging where necessary.

The work to be performed by the selected firm shall include:

- Performing soil borings in locations as directed by the City. Soil borings shall include augering through existing bituminous pavement and coring through any concrete pavement encountered. Soil borings will extend to a depth of 5 feet from the top of the existing pavement, unless otherwise noted.
- Pavement cores to accurately determine existing pavement thickness shall be performed where indicated, prior to commencing with the soil borings. Areas where pavement cores are required shall also include a soil boring to a depth of 5 feet unless otherwise noted, **and shall include continuous sampling for the first 2½ feet** (as measured from the top of the existing pavement).
- Careful measurement and recording on the boring logs of all pavement and aggregate base thicknesses. The composition and description of the aggregate base shall also be reported on the boring logs (i.e. natural aggregate or crushed limestone). Sufficient samples of aggregate base and sand subbase materials shall be obtained in order to perform sieve analysis testing if necessary.
- Continuous sampling on all soil borings for the first 2½ feet below the existing pavement surface.
- Preparing boring logs and a geotechnical report describing the results of the soils investigation and locations of the soil borings and cores. The geotechnical report will also provide a summary table of the soil boring results, which shall include, at a minimum, the street name and limits, range of asphalt thicknesses encountered, thickness and description of base course encountered, a brief description of subgrade soils, and estimated Resilient Modulus. A separate report shall be issued for each Phase of the work as described above.
- Sampling locations will be marked in the field by a representative of the City of Ann Arbor. However, due to the fact that boring locations often need to be offset in the field, each boring log shall include the measured distance of the actual boring location from the nearest curb line and from another permanent feature (such as a drainage structure, driveway opening, etc). Boring locations shall not be offset for reasons other than avoiding conflicts with existing utilities, parked cars, trees, or other unavoidable obstacles.
- Any laboratory testing required to provide a comprehensive geotechnical report. This shall include, at a minimum, visual engineering classification of all samples (in accordance with the USCS), and moisture content and soil strength tests on cohesive samples. Laboratory testing shall be included in the cost of the geotechnical report.

- Obtaining the proper permits from the City of Ann Arbor and supplying the necessary traffic control during drilling operations. The selected firm will need to obtain a Right Of Way Permit and Lane Closure Permits (when necessary) from the City of Ann Arbor. The fees for these permits shall be waived. If necessary, the Consultant shall rent parking meter bags (at the Consultant's cost) to assure access to soil borings in areas where parking meters are present.
- All work for each Phase shall be completed within 30 calendar days from the date of commencement of that Phase.
- All services shall be performed in compliance with all applicable ASTM, MDOT, and City Standards and Specifications, and shall be performed under the direction of a Michigan-registered professional engineer, employed by the selected firm.

The City does not guarantee either a minimum volume of work or a specific volume of work if a contract is awarded.

SECTION III

MINIMUM INFORMATION REQUIRED

A. PROFESSIONAL QUALIFICATIONS & EXPERIENCE - 50 points

1. State the full name and address of the organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include the state in which it is incorporated. If appropriate, indicate whether it is licensed to operate in the State of Michigan.
2. Include the number of executive and professional personnel by skill and qualification that will be assigned to the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify individuals who will do the majority of the work on each project by name and title. Résumés including qualifications and related project experience are required for all proposed project personnel who will be assigned to the project (maximum one page per individual). Qualifications and capabilities of any subconsultants, **including any drilling subcontractors separate from the proposing firm**, shall also be included.
3. State history of firm, in terms of length of existence, types of services provided, etc. Identify the technical details that make the firm qualified for this work.

This section of the proposal will be scored based on the qualifications of the firm, its subcontractors and personnel as described in the proposal, as well as previous experience the City has had with the proposing firm.

B. FEE SCHEDULE - 50 points

Proposals must include quotes of unit prices for the service items described in the following table. It is understood that the quantities of service items may vary and/or be changed by the City to any other quantity, including zero. Fee Schedules must be submitted with the proposal; it may be entered in the table below or presented on the firm's letterhead. The proposer may also propose and quote unit prices for additional service items in your proposal as deemed necessary, or suggest alternative tests to the ones presented below. If additional or alternative items are presented, the Consultant shall describe in detail their justifications for such alternatives.

Quantity	Unit Price	Service Price	Service Description
1 L.S.			Drill Rig Mobilization – includes mobilization costs for entire project.
1 L.S.			Project Supervision – includes all project management time, secretarial time, MISSDIG coordination, and any other miscellaneous costs.
200 L.F.			Soil Boring – includes backfilling and cold-patching the borehole.
410 L.F.			Pavement Cores – includes soil boring, backfilling and cold-patching the borehole.
20 L.F.			Concrete Cores – includes additional fee for coring through concrete pavement (where encountered in unexpected areas).
1 L.S. ⁽¹⁾			Traffic Control – includes all necessary traffic control devices, flaggers, acquisition of appropriate permits from the City of Ann Arbor, and parking meter bags (if necessary)
1 L.S.			Geotechnical Reports – includes preparation of boring logs, laboratory testing, and engineering time. Separate Reports for local and major streets
8 each			Sieve Analysis – as directed by the City
Total Price:			

Notes:

⁽¹⁾ Traffic control for all Major Streets shall be in conformance with the most current edition of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). This item shall also include any traffic control devices for either Phase of the project that are deemed necessary by the City to safely perform the required work.

C. AUTHORIZED NEGOTIATOR

Include the name and phone number of person(s) in the organization authorized to negotiate the Professional Services Agreement with the City.

SECTION IV

ATTACHMENT “A” – STREET LISTS

Local Streets Phase

Street	From	To	Concrete Base?	No. Borings	No. Cores
Cherokee Rd	Baldwin Ave	Ferdon Rd	no	3	
David Ct	Traver Rd	Dead End	no	3	
Fair Oaks Parkway	Washtenaw	Norway	no	1	
Fernwood	Packard	Lorraine	no	6	
Harbal & Leaird Dr	Broadway	Dead End	no	4	
Hill St	Oxford	Onondaga	possible Oxford to Oswego		4
Lockridge Dr & Ct	King George Blvd	E Eisenhower	no	4	
Nordman	Packard	Sharon	no	6	
Soule Blvd	Liberty	end	no		4
St Francis Dr	E Stadium Blvd	Nature Cove Ct	no	4	
Summit St(E)	N Main St	N Fourth	no	2	
Tappan/Oakland	Tappan/Oakland	E University	yes		2
Virginia Ave	Jackson Rd	Fair	no	4	
Wildwood Ave	Linwood Ave	Dexter Ave	no	3	
TOTAL				40	10

Major Streets Phase

Street	From	To	Concrete Base?	No. Borings	No. Cores
Fourth Ave. (S)	Liberty	Huron			4
Madison St. (W)	S. Seventh St.	S. Main St.			10
Packard St.	Fifth	Hill			7
Packard St.	Eisenhower	Platt			16
Plymouth Road	Nixon	City Limit			20
State Street (S)	Stimson	5-lane section			15
TOTAL				0	72

SECTION IV

ATTACHMENT "B" – STANDARD PROFESSIONAL SERVICES AGREEMENT

AGREEMENT BETWEEN

AND

CITY OF ANN ARBOR

FOR

PROFESSIONAL SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("City"), and _____,

a _____ with its address at _____,
(State where organized) (Partnership, Sole Proprietorship, or Corporation)

_____ ("Consultant"), agree as follows:

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

DEFINITIONS

- A. Administering Service Area/Unit means Project Management Services Unit.
- B. Contract Administrator means Homayoon Pirooz, P.E., Manager of Project Management or whomever the Contract Administrator may from time to time designate.
- C. Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement.
- D. Project means the _____, File Number _____.

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.

SERVICES

- A. The Consultant agrees to provide professional engineering 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 applicable laws, ordinances and regulations. Unless otherwise noted, the Consultant shall perform its Services in accordance with the City's Public Services Department Standard Specifications.

- 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.

COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid on the basis of reasonable time spent and materials used at the rates and prices specified in Exhibit B for acceptable work performed and acceptable Deliverables received. The total fee to be paid the Consultant for the Services shall not exceed \$_____. Payment shall be made monthly following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.
- 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 on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates 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.

INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this Contract, such insurance policies, including those set forth below, as will protect itself 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. The following insurance policies are required:
1. Professional liability insurance protecting the Consultant and its employees in an amount not less than \$1,000,000.
 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit
 3. Commercial General Liability Insurance" equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. 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

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. 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.
 5. Umbrella/Excess Liability Insurance shall be provided to apply 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.3 and V.A.4 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. 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 above-mentioned policies. 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 Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant 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 Consultant shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

- D. 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.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, 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, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Consultant or its employees and agents occurring in the performance of this agreement.

COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Consultant agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code, Exhibit C.
- 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; 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. A copy of selected provisions of Chapter 23 of the Ann Arbor City Code is attached as Exhibit D. The current living wage rates under Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3) of the Ann Arbor City Code, is \$9.42 an hour for a covered employer that provides employee health care to its employees and \$10.91 an hour for a covered employer that does not provide health care to its employees.

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 it is to provide pursuant to 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.

TERMINATION OF AGREEMENT

- A. This agreement may be terminated by either party without further notice 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 the breach.
- B. The City may terminate this agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

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.

ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of the services 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.

NOTICE

All notices and submissions required under this agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

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 Consultant 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.

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.

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.

EXTENT OF AGREEMENT

This agreement represents the entire understanding between the City and the Consultant and it supersedes all prior representations or agreements 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.

OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the Consultant, including tracings, drawings, estimates, specifications, field notes, investigations, studies and reports shall become the property of, and, at the option of the City, be delivered to, the City. 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.

For Consultant

By _____

Its _____

Approved as to form and content

By _____
Stephen K. Postema, City Attorney

For City of Ann Arbor

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Roger W. Fraser, City Administrator

By _____
Sue F. McCormick, Public Services Area
Administrator

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
FEE SCHEDULE

EXHIBIT C
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 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:

<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 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.

EXHIBIT D
LIVING WAGE REQUIREMENTS

If a "covered employer," Contractor will comply with all the requirements of Chapter 23 of the Ann Arbor City Code (Sections 1:811 B 1:821), in particular but not limited to the following sections thereof:

1:813. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
 - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
 - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.

- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other nonpersonnel costs.
- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

1:814. Applicability.

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a nonprofit contractor/vendor or nonprofit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

1:815. Living Wages Required.

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).

- (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefore to the City Administrator or his/her designee.
- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

1:816. Employees Covered.

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

1:817. Exemptions.

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.
- (2) For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:
 - (a) To avoid any application of this Chapter that would violate federal, state or local law(s); or

- (b) The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a nonprofit organization, and the City Council finds that said harm outweighs the benefits of this Chapter; provided further that the otherwise covered nonprofit employer shall provide a written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the nonprofit organization sufficient time to reach full compliance with this Chapter.
- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

1:818. Monitoring and Enforcement.

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the Human Rights Office and approved by the City Administrator.
- (2) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall provide satisfactory proof of compliance with the living wage provisions of this Chapter.

- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

1:819. Penalties and Enforcement.

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter

* * * * *

1:821. Other Provisions.

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.
- (3) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.
- (4) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (5) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for high school and/or college students:
 - (a) A bona fide training program;
 - (b) A summer or youth employment program;
 - (c) A work study, volunteer/public service, or internship program.

* * * * *

INSTRUCTIONS FOR COMPLETING THE CONTRACT COMPLIANCE FORMS

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, which 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, which 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 Office 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) with **your completed bid proposal.**

For assistance in completing the form, contact:
Human Resources Office of the City of Ann Arbor
(734) 994-2803

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

Instructions for contractors 9/03

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) _____	

Number of Employees

[illegible]

CITY OF ANN ARBOR HUMAN RIGHTS OFFICE
CONTRACT COMPLIANCE FORM

Local Office (Only those employees that will do local or on-site work, if applicable)

Name of Company/Organization _____ Date Form Completed _____

Name and Title of Person Completing this Form _____

Fax# _____ (Area Code) _____ Email Address _____

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

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 \$10.85/hour when health care is provided, or no less than \$12.56/hour for those employers that do *not* provide health care. It is understood that the Living Wage will be adjusted upward each year on April 30, and covered employers will be required to pay the adjusted amount thereafter. The rates stated above include the adjustment for 2008.
- 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: 734/994-2719 Fax: 734/994-1795

→ **NEW RATE EFFECTIVE APRIL 30, 2008** ←

LIVING WAGE ORDINANCE – CITY OF ANN ARBOR

\$10.85 per hour **\$12.56** per hour
if the employer provides health if the employer does **NOT**
care benefits* 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 includes 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:***

**Dee Lumpkin, Procurement Assistant
734/994-2719 or dlumpkin@a2gov.org LW-1**