

CITY OF ANN ARBOR
PARKS AND RECREATION DEPARTMENT
REQUEST FOR PROPOSALS
FOR
SNACK AND HOT BEVERAGE VENDING
FOR VARIOUS CITY OF ANN ARBOR RECREATION FACILITIES
RFP-751
OCTOBER 2009

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SECTION 1

GENERAL INFORMATION

A. Snack and Hot Beverage Vending Objective

The City is soliciting proposals based on the criteria stated in the Request for Proposal for the provision of snack and hot beverage sales through vending services with the following components:

1. The installation and maintenance of Contractor-owned and operated snack vending and hot beverage machines in City-selected City of Ann Arbor Parks and Recreation facilities.

B. Proposal requirements

Proposers must be prepared to provide all sales and vending service components specified in this RFP if awarded the contract.

C. Equipment History and proposed needs at City Parks and Recreation facilities

Listed below are the existing, snack and hot beverage vending machines for all designated City Parks and Recreation facilities and the City's proposed increases/decreases/continuation of equipment/services at each of the sites.

Recreation Facility	Existing	Proposed
Mack Indoor Pool	1 snack	1 snack vending machine
Buhr Pool & Ice Rink	1 snack vending machine 1 ice cream vending machine 1 hot beverage machine 1 change machine	1 snack vending machine 1 ice cream vending machine 1 hot beverage machine 1 change machine
Fuller Pool	2 snack vending machines 2 ice cream vending machines 1 change machine	1 snack vending machine 3 ice cream vending machine 1 change machine
Veterans Pool/Ice Arena	1 snack vending machine 1 hot drink vending machine 1 change machine	1 snack vending machine 1 ice cream vending machine 1 change machine
Ann Arbor Senior Center	none	1 hot beverage machine

* Vending products for Mack Indoor Pool must meet Ann Arbor Public Schools requirements. If they do not meet requirements then machine can not be in service during school hours (Monday-Friday 7am-3pm).

** No Sales data is available for listed vending machines

E. Issuing Office

The RFP is issued by Parks and Recreation Services of the City of Ann Arbor, Michigan. All correspondence regarding submission of the RFP must be addressed to:

Purchasing Unit
P.O. Box 8647
100 North Fifth Avenue
Ann Arbor, MI 48107
734-994-2717

All correspondence regarding the equipment, product and service criteria must be addressed to:

Jason Nealis
Parks and Recreation Services
Veteran's Memorial Park
2150 Jackson Ave
Ann Arbor, MI 48103
734-794-6235
jnealis@a2gov.org

F. Contract Administration

Following the signing of a contract, the contract will be administered by and all communication concerning the contract must be directed to: Jeff Straw, Parks & Recreation, (734)-794-6230 x42501.

G. Pre-Proposal Meeting

A pre-proposal meeting will be held on Wednesday November 18, 2009 at 1:00 p.m. at Veteran's Memorial Park, 2150 Jackson Ave. Ann Arbor. The purpose of this meeting is to discuss the project with prospective proposers, to answer any questions concerning the RFP, to walk through the facilities and/or otherwise discuss the City-selected park locations. Any questions and answers furnished will not be official until verified in writing by the Purchasing Division. Answers that change or substantially clarify the proposal will be affirmed in writing. Copies will be provided to all in attendance. It is strongly suggested that each interested party attend this meeting.

H. Proposals

Six (6) copies of the proposal shall be submitted. The information included therein should be as concise as possible. To be considered, each Contractor must submit a complete response to this RFP using the Format found in Section 3 of this RFP. No other distribution of proposals is to be made by the Proposer. **Proposals must be submitted in a sealed envelope and identified on the outside as RFP-751 Snack and Hot Beverage Vending. Cost proposals must be submitted in a separate sealed envelope and identified such.**

Appendix A of this RFP, Legal Status of Proposer and the Contract Compliance Forms must be completed and returned with the proposal. An official, authorized to bind the Proposer to its proposal provisions, must sign each proposal copy in ink.

Each proposal must remain valid at least ninety (90) days from the due date of this RFP.

I. Selection Criteria

Responses to this RFP will be evaluated using a point system described in Section 3. The evaluation will be completed by a selection committee composed of staff members from City of Ann Arbor Parks and Recreation Services.

The Selection Committee will initially evaluate responses to the RFP to decide which Proposer(s), if any, they will interview. For the initial evaluation, they will not consider the fee proposals. The fee proposal(s) of the Proposer(s) selected will be opened and reviewed before the interview(s). The selected Proposer(s) will have the opportunity to discuss in more detail their qualifications, their experience and fee proposal during the interview process. To decide the most qualified, capable and cost-effective Proposer, the Selection Committee will evaluate the proposal(s) and interview(s) using the point system described in Section 3 of this RFP.

J. Changes in the RFP

Should any prospective proposer be in doubt as to the true meaning of any portion of this RFP, 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 submitted to the issuing office not less than seven (7) days prior to the final date of submittal of the proposals. The person making the request shall be held responsible for its prompt delivery.

The City's staff will make such interpretation or correction, as well as any additional RFP provisions that the City may decide to include, only as an RFP addendum. Staff will mail or deliver addendums to each recorded as having received a copy of the RFP. Any addendum issued by the City shall become a part of the RFP. Proposers should consider issued addendums in preparing his or her proposal.

K. Proposal Receipt

Proposals must be received by the City of Ann Arbor, Purchasing Unit, 5th Floor, City Hall, 100 N. Fifth Ave., P.O. Box 8647 Ann Arbor Michigan 48107 on or before 3:00 PM, Wednesday December 16, 2009. Prospective submitters' are responsible for the timely receipt of their proposal. All proposals become the property of the City of Ann Arbor once reviewed, whether awarded or rejected. Late proposals will not be considered or accepted.

L. Disclosures

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

M. Services Agreement

Proposer selected to do business with the City of Ann Arbor will be required to execute the standard Agreement with the City (a specimen copy is included with this RFP as Appendix B). The City will not entertain requests to revise, amend, or change the language of the standard Agreement except where necessary to incorporate the scope of services and compensation for same as awarded. Proposal submitters must base their proposal on the assumption that, if selected, they will execute the City's standard Agreement.

The Proposer selected to provide the system and services requested under this RFP will be required to execute the contract shown in Attachment "B" within fifteen (15) days of the award of the contract

N. Cost Liability

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

O. Compliance Requirements

Non-Discrimination by City Contractors

All contractors 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, shall receive approval from the Human Resources Director prior to entering into a professional services agreement with the City. Said firms 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.

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 Human Resources 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 firm can reasonably be expected to recruit, the prospective contractor shall be accepted by the Human Resources Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Human Resources Director will conduct another review. Other firms shall develop an affirmative action program in conjunction with the Human Resources Director. The 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 firms labor recruitment area.

Living Wage

All contractors proposing to do business with the City of Ann Arbor, except those specifically exempted by City Code, 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.

P. Independent Fee Determination

1. By submission of a proposal, the submitter certifies, and in the case of joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a. They have arrived at the fees in the proposal independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such fees with any other proposal submitter or with any competitor.
 - b. Unless otherwise required by law, the fees which have been quoted in the proposal have not been knowingly disclosed by the submitter and will not knowingly be disclosed by the submitter prior to award directly or indirectly to any other prospective submitter or to any competitor.
 - c. No attempt has been made or shall be made by the proposal submitter to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she or he is the person in the proposal submitter's organization responsible within that organization for the decision as to the fees being offered in the proposal and has not participated (and will not participate) in any action contrary to 1.a., b., or c. above.
3. A proposal will not be considered for award if the sense of the statement required in the Fee Analysis portion of the proposal has been altered so as to delete or modify 1.a., c., or 2 above. If 1.b. has been modified or deleted, the proposal will not be considered for award unless the submitter furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the Issuing Office determines that such disclosure was not made for the purpose of restricting competition.

Q. Reservation of Rights

The City of Ann Arbor reserves the right to accept any proposal in whole or part, to reject any or all 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.

SECTION 2

SCOPE OF WORK

Background

The City of Ann Arbor currently utilizes a variety of Contractors and product lines for snack and hot beverage vending. It is the City's intent to streamline the purchasing process, promote continuity of product line across the varying facilities and in turn increase profit potential and reduce staff time dealing with multiple Contractors. It is the City of Ann Arbor's intention to award a sales and vending service contract to one Contractor who will provide all of the following services:

1. Snack and hot beverage vending machines at active Parks and Recreation locations.

Snack and Hot Beverage Vending Machines

The City has identified the following locations as appropriate sites for placement of snack and hot beverage vending machine(s) unless another location(s) is otherwise specified by the City:

Mack Indoor Pool	1 snack machine
Buhr Park Pool & Ice Rink	1 snack vending machine 1 ice cream vending machine 1 hot beverage machine 1 change machine
Fuller Pool	1 snack vending machine 3 ice cream vending machine 1 change machine
Veterans Pool & Ice Arena	1 snack vending machine 1 ice cream vending machine 1 change machine
Ann Arbor Senior Center	1 hot beverage machine

*Vending products for Mack Indoor Pool must meet Ann Arbor Public Schools requirements. If they do not meet requirements then machine can not be in service during school hours (Monday-Friday 7am-3pm)

Final location selection shall be at the sole discretion of the City of Ann Arbor. Contractors should not submit proposals relying on any particular location identified above.

The City of Ann Arbor will provide the selected contractor the exclusive right to supply all snack and hot beverage vending machine products at these locations. During the term of the Contract the contractor shall keep snack and hot beverage vending machines fully operational. During the term of the Contract the contractor shall fully supply all products in a timely manner to keep all snack and hot beverage vending machines operating fully supplied with respect to snacks, beverages, cups, change

and all other necessary supplies to allow the City of Ann Arbor and the contractor to maximize sales.

Vending machines located within Park and Recreation Facilities will be Contractor-owned. Contractors will be responsible for installation, stocking, maintenance and repair of the machines. Contractors will be responsible for all licenses required to market the stock within the machines.

As part of their proposal, contractors are to:

- a. Supply snack and hot beverage vending machines at specified locations.
- b. Supply a variety of options with regard to vending machines and snack and hot beverage items to sell in the vending machines. The variety and brand name of items to be sold shall be spelled out within the proposal. All contractors must identify as part of their proposal whether such brands are available as a result of related marketing, sale or concession agreements with distributors and/or producers.
- c. Supply options with regard to how machines will be stocked with items for sale, how machines will be stocked with change, and how cash will be collected from the machines.
- d. Supply information on how vandalism issues will be handled.
- e. Provide information on how equipment problems will be handled, including a repair/replace procedure and contact number(s).
- f. Supply compensation rate to the City of Ann Arbor for vending machine sales. Compensation to the City of Ann Arbor for placement of the vending machines at the sites identified shall be based on a percent of gross sales as a part of the Contractor's agreement. During the contract, the contractor shall provide a monthly gross receipt report of daily revenues at each location.
- g. Provide state of the art equipment. This shall be interpreted as the latest model(s) available at the execution of the signed contract. Replacement equipment shall be made available to each facility every 2 years for the duration of said contract if deemed necessary by the City of Ann Arbor.
- h. Provide written policy regarding the handling of reimbursement to facility for lost money in vending machines.

Note: For any renewal period authorized by the City based on Contractor's Proposal compensation is subject to renegotiation and a mutual agreement of the parties. If a mutual agreement of the parties is not reached within a reasonable period of time as determined by the City, the contract will not renew.

Duration of Contract

Contractors will supply two separate proposals.

1. The first proposal will be based on a (3) five-year agreement.
2. The second proposal will be based on a (5) ten-year agreement.

All benefits to the City of Ann Arbor by entering into a long-term contract must be clearly articulated in Section 3-B: PROPOSED WORK PLAN.

It will be at the City's sole discretion to pick and choose which options best suite the need of the various facilities.

The City may elect to renew the selected option for one additional period of the same length as the original contract. For any renewal period authorized by the City product and supply cost will be subject to renegotiation and a mutual agreement of the parties. If a mutual agreement of the parties is

not reached within a reasonable period of time as determined by the City, the contract will not renew.

Contract Incentive Program

For each proposal contractors need to offer and articulate incentives they will offer for entering into an exclusivity partnership with the City of Ann Arbor. At a minimum, the contractor should be prepared to offer the incentives identified below.

3-year Contract

1. Sponsorship:

- a. Contractor shall pay the City of Ann Arbor a sponsorship in the amount of _____ dollars per year for a three-year contract. This sponsorship amount shall be paid at the time of signing the contract for the first year, and on this same date each subsequent year of the contract.

2. Additional incentives offered by the Bidder.

5-year Contract

1. Sponsorship:

- a. Contractor shall pay the City of Ann Arbor a sponsorship in the amount of _____ dollars per year for a five-year contract. This sponsorship amount shall be paid at the time of signing the contract for the first year, and on this same date each subsequent year of the contract.

2. Additional incentives offered by the Bidders.

SECTION 3

INFORMATION REQUIRED FROM ALL PROPOSAL SUBMITTERS

Submitters should organize Proposals into the following Sections:

1. Professional Qualifications
2. Proposed Work plan
3. Authorized Negotiator
4. Appendices
5. References

The following Section describes the elements that should be included in each of these proposal sections and the weighted point system that will be used for evaluation of the proposals.

A. Professional Qualifications - up to 20 points

1. State the full name and address of your 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 whether it is licensed to operate in the State of Michigan.
2. Include the name of executive and professional personnel by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify individuals who will do the work on this project by name and title.
3. State history of the firm, in terms of length of existence, types of services provided, etc. Identify the technical details which make the firm qualified for this work.
4. Identify brand names and quality of goods to be sold.

B. Proposed Work Plan - up to 50 points

1. Present two separate proposals as spelled out in the Duration of Contract portion of the Scope of Services. Each proposal must include a detailed work plan that lists all tasks determined to be necessary to deliver the materials and equipment and/or to accomplish the supplies and services under the Scope of Services. The work plan shall define specific requirements of each section such as resources, supplies, equipment and labor needed for each facility.
2. Identify and articulate incentives being offered as spelled out in the Incentive Program portion of the Scope of Services for both proposals spelled out in B1 above.

Include any other information that you believe to be pertinent but not specifically asked for elsewhere.

C. Appendices up to 5 pts

1. Appendix A (Legal Status of Proposer), and the Contract Compliance Forms must be completed and returned with the proposal. These elements should be included as attachments to the proposal submission.

D. **References - up to 25 pts**

Provide references for past related work. Include contact person, agency, address, phone and dates of work for each reference. Be specific as to the nature of goods and/or services provided to each reference.

SECTION 4 - APPENDICES

APPENDIX A – Legal Status of Proposer PROPOSAL SUBMITTAL FORM AND SIGNATURE PAGE FOR REQUEST FOR PROPOSAL NO. RFP-751

RESPONSE: Are these items included in your proposal? Respond Yes, No, or NA – Explain No or NA in Proposer Comments

____ ANY EXCEPTION TO THE TERMS AND CONDITIONS AND SPECIFICATIONS HAVE BEEN NOTED and IT IS UNDERSTOOD THAT SUCH EXCEPTIONS MAY RESULT IN BY BID BEING DEEMED NONCONFORMING.

____ All requested documents requested have been included (for example, the Bid Bond or certified check.)

____ Reference list is attached.

____ Required performance, labor and material bonds and proof of insurance will be provided, if my firm receives the award.

____ The undersigned, PROPOSER having examined the proposal terms and conditions and specifications, hereby proposes and agrees to perform, the services required within the time stipulated, all work required to be performed, and to provide labor materials, tools, expendable equipment and insurance necessary to complete, in a workmanlike manner, all of the work required for the City to make use of its services in strict conformity with the specifications and addenda.

Signature below certifies that I have carefully reviewed the City's terms, conditions, and specifications on this Request For Proposal and have clearly indicated in writing any exceptions my company is making to these terms, conditions, and specifications and am authorized to offer such services. **Proposer agree to honor its proposal for a period of 120 days from the proposal due date.**

Therefore, I/we, the undersigned, hereby agree to provide the services and/or materials as specified if an award is made to my firm without any additional charges, terms, and/or conditions.

COMPANY NAME: *

STREET/P. O. BOX:

CITY, STATE, AND ZIP CODE:

DATE: _____ TELEPHONE: _____ FAX: _____

AUTHORIZED SIGNATURE:

PRINTED NAME OF SIGNER

TITLE OF SIGNER:

NOTE: If the PROPOSER is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officer or agents. If PROPOSER is a partnership, the true name of the firm shall be set forth with the signature of the partners authorized to sign contracts on behalf of the partnership. If PROPOSER is an individual, his signature shall be placed above.

APPENDIX B
EXHIBIT - SPECIMEN CONTRACT

The following exhibit is a specimen contract agreement for the Snack and Hot Beverage Vending identified in this Proposal. The Successful Proposer will be required to execute a contract containing the terms and conditions of the specimen contract except where noted in the Request for Proposal. No changes, modifications, alteration or deletions to the terms and conditions of the specimen contract will be accepted.

AGREEMENT BETWEEN

AND
CITY OF ANN ARBOR
FOR
SNACK AND HOT BEVERAGE VENDING
FOR VARIOUS CITY OF ANN ARBOR PARKS AND RECREATION FACILITIES

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

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

I. DEFINITIONS

Administering Department means the City of Ann Arbor Parks and Recreation Services

Contract Administrator means the Deputy Manager of Parks and Recreation, acting personally or through any assistants authorized by the Deputy Manager of the Administering Department

II. DURATION

This agreement shall become effective on _____, and shall remain in effect until satisfactory performance of all services or _____, whichever occurs first, unless terminated for breach or as provided in this agreement.

III. SERVICES

- A. General Scope: The Contractor agrees to provide fixed vending services as described in Exhibit A incorporated herein.
- B. Quality of Services: The Contractor's standard of service under this agreement shall be of the level of quality performed by professionals regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. Compliance with Applicable Law: The Contractor shall perform its services under this agreement in compliance with all applicable laws, ordinances and regulations.
- D. Location: The Contractor shall provide all of these services at City-selected Parks and

Recreation locations as described in Exhibit A incorporated herein.

IV. RELATIONSHIP OF PARTIES

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

V. INSURANCE; INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this Contract, including the guarantee period and during any warranty work, 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 Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - 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. 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
\$2,000,000	Products and Completed Operations Aggregate

3. 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.
 4. 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 VI.A.2 and 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. In the case of all Contracts involving on-site work, the Contractor 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; © 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 Department at least ten days prior to the expiration date.
- E. Any insurance provider of Contractor shall be admitted and authorized to do business in

the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

5. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this contract, by the Contractor or anyone acting on the Contractor's behalf under this contract. Contractor shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence.

7. 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 Contractor agrees to comply with 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 Contractor agrees to comply with the provisions of Section 1:815 of Chapter 23 of the Ann Arbor City Code, Exhibit C.

VI. WARRANTIES BY CONTRACTOR

- A. The Contractor warrants that it has all the skills and experience necessary to perform the services it is to provide pursuant to this agreement. The Contractor 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 contractor or when it has actual notice of any defects in the reports and surveys.
- B. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the services specified in this agreement.
- C. The Contractor warrants that all goods and services shall not infringe on any third party patent, copyright, trade secret, trade name, trademark or service mark or other proprietary right. Contractor shall at its own expense defend, indemnify and hold City, its officers, employees and agents harmless from any and all claims, liabilities, damages, and expenses, including actual attorney fees, by virtue of any claimed infringement of patent, copyright, trade secrets, trade name, trademark or service mark or other proprietary right

in connection with the goods and/or services provided for under the terms of this contract.

- D. The Contract warrants that it has, or shall have, title to all equipment and/or stock used in connection with or marketed to the general public in connection with the goods and/or services provided for under the terms of this contract.

VII. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. This agreement may be terminated by either party in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 30 days after notice of termination is given in conformance with the terms of this agreement.
- B. If contracting services are terminated for reasons other than the breach of the agreement by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

VIII. OBLIGATIONS OF THE CITY

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

IX. ASSIGNMENT

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

X. NOTICE

All notices and submissions required under the 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 Department, care of the Contract Administrator.

XI. EXTENT OF AGREEMENT

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

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

XII. SEVERABILITY OF PROVISIONS

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

XIII. 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 Contractor 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.

FOR CONTRACTOR

By
Its

THE CITY OF ANN ARBOR

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to form and content:

By
Stephen Postema, City Attorney

Approved as to substance:

By
Roger W. Fraser, City Administrator

By
Jayne Miller, Community Services Area
Service Administrator

EXHIBIT A SCOPE OF SERVICES

To be completed at the conclusion of the selection process based on the terms and conditions of the RFP, selected Contractor's Proposal and Fee Statement.

EXHIBIT B

FAIR EMPLOYMENT PRACTICE

The contractor, 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 C
Living Wage Ordinance Excerpts

The Consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 23 of Title I of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

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 12-month 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 non-personnel 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 12-month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12-month 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 non-profit contractor/vendor or non-profit 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 therefor 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.

The City of Ann Arbor officially posts bids on the Michigan Intergovernmental Trade Network (MITN) www.govbids.com. Copies of bid documents obtained from any other private source are not considered official copies. Only those vendors who obtain bid documents from the MITN System are guaranteed access to receive addendum information, if such information is issued. Bid documents and amendments may also be obtained on the City of Ann Arbor Purchasing webpage at www.a2gov.org. Final bid results will be posted on the Purchasing website and on the MITN website.

The City of Ann Arbor is a member of the MITN Purchasing Cooperative. If your company is awarded item(s) referenced in the RFP, the MITN cooperative governmental entities, may wish to use this contract and will issue a purchase order for the item(s) awarded in the quotation. Each entity is responsible for its own payments and is to be considered individually for billing and collection purposes. Each entity will provide their own purchase order and delivery location(s) and must be invoiced separately to the address indicated on their purchase order. If an award is made by the City of Ann Arbor, it is agreed that the contract will be extended to the MITN Purchasing Cooperative and other agreed upon Government Entities and Non-Profit Agencies under the same prices, terms and conditions.

_____ Our Company agrees to extend the contract.

_____ Our Company is NOT interested in extending the contract.