

SAMPLE CONTRACTOR SERVICES CONTRACT (ARPA)

This agreement (hereinafter “Agreement”) by and between the City of Pontiac, 47450 Woodward Avenue, a Michigan Municipal Corporation, Pontiac, MI 48342, (hereinafter, “City”), and [**Contractor’s Name**], [Contractor’s Address], a Michigan [Insert type of business entity], [insert city, state, and zip code] (hereinafter referred to as “Contractor.”)

1. Applicable Law: This Agreement and all related disputes shall be governed by and interpreted in accordance with the laws of the State of Michigan.

2. Scope of Services: Contractor shall provide all materials, labor, equipment, supplies, machinery, tools, superintendence, insurance and other accessories and services necessary to complete the project in accordance with the Contractor’s Proposal dated [Insert date of contractor’s proposal]., Standard General Conditions and any Special Conditions provided for in this contract. Contractor also warrants to the City that it has all of the necessary professional capabilities and experience, as well as all tools, instruments, facilities, and other resources necessary to provide the City with the services contemplated by this Agreement. **See Exhibit 1.**

3. Contract Documents: The following documents, together with this Agreement, form the entire Agreement, and they are as fully a part of the Agreement as if attached hereto or repeated herein. If any conflicts exist between the terms and conditions of this Agreement and the following numbered list of documents, the terms and conditions of this Agreement are controlling.

- Exhibit 1: City of Pontiac’s Approved Scope of Work
- Exhibit 2: Contractor’s Proposal
- Exhibit 3: RFP
- Exhibit 4: Addendums X-X

4. Compensation: The City shall pay for such services as have been set forth herein within 30 days of submission of proper invoices, releases, affidavits, and the like. Notwithstanding, the contract price shall not exceed the amount of [Insert not-to-exceed \$ amount here]. Contractor recognizes that the City does not guarantee it will require any set amount of services. Contractor’s services will be utilized as needed and as determined solely by the City of Pontiac. Contractor expressly acknowledges that it, without limitation, has no right to payment of an amount exceeding the amount set forth in this Section. Contractor agrees that oral agreements by City officials to pay a greater amount are not binding.

Contractor shall submit invoices for all services provided under this Agreement identifying:

- (i) The City of Pontiac purchase order number
- (ii) The dates of service
- (iii) A general description of the service provided
- (iv) The total amount due

Invoices shall be submitted to:

City of Pontiac Accounts Payable
Via email to AccountsPayable@pontiac.mi.us

It is solely within the discretion of the City as to whether Contractor has provided a proper

invoice. The City may require additional information or waive requirements as it sees fit.

5. Audit: In the event of any audit findings that Contractor failed to meet the deadlines to obligate and expend funds as required by ARPA, or used the funds outside the scope of the Contractor's [Insert Program Description Here] under the Agreement, which result in the disallowance of the funds disbursed under this Agreement, the Contractor, at the sole discretion of the City, shall repay the amount of the disallowed funds to the City, even if the audit occurs after the expiration date or termination date of this Agreement but within the relevant statute of limitations.

6. Unused ARPA Funds: The Contractor agrees to repay any funds that were not utilized for the purpose set-forth in the Contractor's [Insert Program Description Here] pursuant to this Agreement. The Contractor acknowledges that future requests for grant funds, payments or contract awards with the City may be influenced by its failure to make repayment in accordance with this Agreement.

7. Standards of Performance: Contractor agrees to perform pursuant to the Agreement in a timely, professional, safe and efficient manner consistent with standards in the trade, profession or industry. Contractor agrees that all of the obligations required by it under this Agreement shall be performed by it or by others employed by it and working under its direction and control.

8. Claims and Disputes: Contractor agrees that for all claims, disputes, and other matters arising out of or relating to this agreement, Contractor must first request the City's consent to arbitrate. Such request must be made within 30 days from the date the Contractor learns of or should have known the facts giving rise to the claim, dispute, or question.

- (a) Notice of a request for arbitration must be submitted in writing by certified mail or personal service upon the City Attorney.
- (b) Within 60 days from the date a request for arbitration is received by the City, the City shall inform Contractor whether it agrees to arbitrate. If the City does not consent, Contractor may proceed with an action in a court of competent jurisdiction in Genesee County, Michigan. If the City does consent, then within 30 days of the consent each party shall submit to the other the name of one person to serve as an arbitrator. The two arbitrators together shall then select a third person, the three together shall then serve as a panel in all proceedings. Any unanimous decision of the three arbitrators shall be a final binding decision. The City's failure to respond to a timely, conforming request for arbitration is deemed consent to arbitration.
- (c) The costs of the arbitration shall be split and borne equally between the parties and such costs are not subject to shifting by the arbitrator.
- (d) Contractor's failure to comply with any portion (including timeliness) of this provision shall be deemed a permanent waiver and forfeiture of the claim, dispute, or question.
- (e) This provision shall survive the expiration or termination of this Agreement in perpetuity.
- (f) Any and all arbitration shall be conducted in Oakland County, Michigan.

9. City Income Tax Withholding: Contractor and any subcontractor engaged in this contract shall withhold from each payment to his employees the City income tax on all of their

compensation subject to City tax, after giving effect to exemptions. Such withholding shall be at a rate equal to 1% of all compensation paid to the employee who is a resident of the City of Pontiac, and ½% of the compensation paid to the employee who is a non-resident of the City of Pontiac.

These taxes shall be held in trust and paid to the City of Pontiac in accordance with City ordinances and State law. Any failure to do so shall constitute a material breach of this contract.

10. Disclaimer of Contractual Relationship With Subcontractors: Nothing contained in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or Sub-subcontractor.

11. Certification, Licensing, Debarment, Suspension and Other Responsibilities: Contractor warrants and certifies that Contractor and/or any of its principals are properly certified and licensed to perform the duties required by this contract in accord with laws, rules, and regulations, and is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of any Federal contracts by any Federal agency. Contractor may not continue to or be compensated for any work performed during any time period where the debarment, suspension or ineligibility described above exists or may arise in the course of Contractor contractual relationship with the City. Failure to comply with this section constitutes a material breach of this Contract. Should it be determined that contractor performed work under this contract while in non-compliance with this provision, Contractor agrees to reimburse the City for any costs that the City must repay to any and all entities.

12. Compliance: The Contractor shall obtain and maintain, at its sole expense, all required licenses, registrations, accreditations, permits and approvals as may be required by law for its operation and the performance of the [Insert Program Description Here] under this Agreement, including, but not limited to, its corporate existence and status. The Contractor shall ensure that its employees and contractors (if any) shall also maintain all required licenses, registrations, accreditations, permits and approvals as may be required by law for the performance of the Agreement hereunder.

13. Force Majeure: Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party, and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics or pandemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, and acts of God. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the services may continue within seven days of the discovery of the event.

14. Good Standing: Contractor must remain current and not be in default of any obligations due the City of Pontiac pursuant to MCL 117.5(1)(f) including the payment of income and property taxes, water & sewer costs, fines, penalties, licenses, or other monies. Violations of this clause shall constitute a substantial and material breach of this contract, which shall constitute good cause for the termination of this contract.

15. Indemnification: To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers against any and all claims, demands, suits, or losses, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, arising out of or related to Contractor's performance of the Agreement. Should the Contractor fail to indemnify the City in the above-mentioned circumstances, the City may exercise its option to

deduct the cost that it incurs from any payments due under this Agreement or may file an action in a court of competent jurisdiction, the costs of which shall be paid by Contractor. This provision shall survive the termination and/or expiration of this agreement, in perpetuity.

16. Independent Contractor: No provision of this contract shall be construed as creating an employer-employee relationship. It is hereby expressly understood and agreed that Contractor is an “independent contractor” as that phrase has been defined and interpreted by the courts of the State of Michigan and, as such, Contractor is not entitled to any benefits not otherwise specified herein.

17. Insurance/Worker’s Compensation: Contractor shall not commence work under this contract until he has procured and provided evidence of the insurance required under this section. All coverage shall be obtained from insurance companies licensed and authorized to do business in the State of Michigan unless otherwise approved by the City’s Finance Department. Policies shall be reviewed by the City’s Finance Department for completeness and limits of coverage. All coverage shall be with insurance carriers acceptable to the City of Pontiac. Contractor shall maintain the following insurance coverage for the duration of the contract.

- (a) Commercial General Liability coverage of not less than one million dollars (\$1,000,000) combined single limit with the City of Pontiac, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers, named as “Additional Insureds.” This coverage shall be written on an ISO occurrence basis form and shall include: Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products and Completed Operations, Independent Contractors; Broad Form Commercial General Liability Endorsement, (XCU) Exclusions deleted and a per contract aggregate coverage. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing, or excess.
- (b) Workers Compensation Insurance in accordance with Michigan statutory requirements, including Employers Liability coverage.
- (c) Commercial Automobile Insurance in the amount of not less than \$1,000,000 combined single limit per accident with the City of Pontiac, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers, named as “Additional Insureds.” This coverage shall be written on ISO business auto forms covering Automobile Liability, code “any auto.”

Contractor shall furnish the City with two certificates of insurance for all coverage requested with original endorsements for those policies requiring the Additional Insureds. All certificates of insurance must provide the City of Pontiac with not less than 30 days advance written notice in the event of cancellation, non-payment of premium, non-renewal, or any material change in policy coverage. In addition, the wording “Endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” must be removed from the standard ACORD cancellation statement. These certificates must identify the City of Pontiac, Finance Department, as the “Certificate Holder.” Contractor must provide, upon request, certified copies of all insurance policies. If any of the above policies are due to expire during the term of this contract, Contractor shall deliver renewal certificates and copies of the new

policies to the City of Pontiac at least ten days prior to the expiration date. Contractor shall ensure that all subcontractors utilized obtain and maintain all insurance coverage required by this provision.

18. Laws and Ordinances: Contractor shall obey and abide by all of the laws, rules and regulations of the United States, State of Michigan, Oakland County, and the City of Pontiac during the performance of this agreement.

19. Regulatory Requirements: Contractor acknowledges that the City has assessed the proposed use of ARPA funds for the [Insert Program Description Here] pursuant to this Agreement as compliant with all required laws and regulations and the Contractor will not perform any actions or use any ARPA funds for purposes other than in furtherance of the Agreement without the City's prior approval.

20. Modifications: Any modifications to this Agreement must be in writing and signed by the parties or the authorized employee, officer, board, or council representative of the parties authorized to make such contractual modifications under State law and local ordinances.

21. No Third-Party Beneficiary: This Agreement is for the sole benefit of the parties and their respective successors, and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

22. Non-Assignability: Contractor shall not assign or transfer any interest in this contract without the prior written consent of the City.

23. Non-Disclosure/Confidentiality: Contractor agrees that Contractor will not disclose any such information provided to Contractor in furtherance of this Agreement, or in any other way make such documents public, without the express written approval of the City or the order of a court of competent jurisdiction.

24. Non-Discrimination: The Contractor shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants. Contractor shall not discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, association with the federal government, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position or status with respect to public assistance. A breach of this covenant is a material breach of this Agreement.

25. Anti-Lobbying: The Contractor shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2) or for the purpose of litigation against the State or City.

26. Ethics: Pursuant to the Pontiac City Charter training and be provided with a copy of the ethical standards set forth in the Charter. Therefore, Contractor acknowledges receipt of Pontiac City Charter § and agrees that Contractor and its staff shall abide by the terms therein and participate in any training provided by the City as may be necessary from time to time.

27. Notices: Notices to the City of Pontiac shall be deemed sufficient if in writing and mailed,

postage prepaid, addressed to **City of Pontiac Purchasing Manager and City Clerk, City of Pontiac, 47450 Woodward, Pontiac, Michigan 48432**, or to such other address as may be designated in writing by the City from time to time. Notices to Contractor shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to:

_____ or to such other address as may be designated in writing by Contractor from time to time.

28. Records Property of City: All documents, information, reports and the like prepared or generated by Contractor as a result of this contract shall become the sole property of the City and shall be disclosed to the City upon request.

29. Severability: If any terms of this Agreement or the application of them to any person or circumstance are determined to be null and void, ineffectual, invalid, or unenforceable by any competent tribunal, the remaining terms or the application of the terms to persons or circumstances other than to those which were determined to be invalid or unenforceable shall not be affected and shall continue in full force and effect.

30. Subcontracting: No subcontract work, if permitted by the City, shall be started prior to the written approval of the subcontractor by the City. The City reserves the right to accept or reject any subcontractor.

31. Termination: This contract may be terminated by either party hereto by submitting a notice of termination to the other party. The City, through its Purchasing Manager, may terminate this agreement upon actual notice to Contractor. Contractor may terminate this agreement by providing written notice that shall be effective 14 days from the date it is submitted unless otherwise agreed to by the parties hereto. Contractor, upon receiving such notice and prorated payment upon termination of this contract shall give to the City all pertinent records, data, and information created up to the date of termination to which the City, under the terms of this contract, is entitled.

32. Time of Performance: Contractor's services shall commence immediately upon receipt of the notice to proceed and shall be carried out forthwith and without unreasonable delay. Contractor and City hereby agree that this Agreement will be fully performed by [Insert Date Here].

33. Union Compliance: Contractor agrees to comply with all regulations and requirements of any national or local union(s) that may have jurisdiction over any of the materials, facilities, services, or personnel to be furnished by the City. However, this provision does not apply if its application would violate Public Act 98 of 2011.

34. Waiver: Failure of the City to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any term, covenant, or condition. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

35. Electronic Signatures: This Agreement may be signed by the parties hereto by means of electronic signature, utilizing Adobe Acrobat or a like program with similar security features.

36. Effective Date: This contract shall be effective when executed by all parties.

37. Governing Law: This contract shall be governed by and enforced in accordance with the laws of the State of Michigan.

38. Venue: The Parties consent to venue in Oakland County courts should any action be brought to enforce the terms of this Agreement.

39. Whole Agreement: This Agreement and the documents cited herein contain the entire understanding between and among the parties concerning these matters and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

CONTRACTOR

Its _____ **Date** _____

CITY OF PONTIAC, a Michigan Municipal Corp.:

Its: Khalfani Stephens [Deputy Mayor] **Date** _____

Its: [] [] **Date** _____

Its: [] [] **Date** _____

Its: Alicia Martin [Purchasing Manager] **Date** _____

APPROVED AS TO FORM:

Its: JoAnne Gurley [City Attorney] **Date** _____