



CONTRACT DOCUMENT  
FOR

CITY OF PONTIAC

[NAME OF SOLICITATION AND NO.]

[NAME OF CONTRACTOR]

**CITY OF PONTIAC – DEPARTMENT OF FINANCE**

**PURCHASING DIVISION**

**Contract Expiration Date: [YEAR CONTRACT EXPIRES]**

**Contract - NOT TO EXCEED AMOUNT – \$[AMOUNT] (MM/DD – MM/DD)**

**[OPTION FOR ADDITIONAL NOT TO EXCEED AMOUNTS IF THEY DIFFER PER FISCAL YEAR]**

This Contract effective as of \_\_\_\_\_, 202\_\_ (“Contract”), between the CITY OF PONTIAC, a Municipal corporation, whose address is 47450 Woodward Ave., Pontiac, Michigan (“City”), and [CONTRACTOR’S NAME], a Michigan [TYPE OF CORP – LARA], whose address is [COMPLETE VENDOR ADDRESS] (“Contractor”). In this Contract, either the City or Contractor may also be referred to individually as a “Party” or jointly as the “Parties”.

This Contract is organized and divided into the following "Section" or "Sections" for the convenience of the Parties.

SECTION 1. CONTRACT DOCUMENTS AND DEFINITIONS

SECTION 2. CONTRACT EFFECTIVE DATE AND TERMINATION

SECTION 3. SCOPE OF CONTRACTOR'S SERVICES

SECTION 4. CITY PAYMENT OBLIGATION FOR CONTRACTOR'S SERVICES

SECTION 5. CONTRACTOR ASSURANCES AND WARRANTIES

SECTION 6. CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION

SECTION 7. GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises, obligations, representations, and assurances in this Contract, the Parties agree to the following:

**1. CONTRACT DOCUMENTS AND DEFINITIONS**

The following words and expressions when printed with the first letter capitalized as shown herein, whether used in the singular or plural, possessive or non-possessive, and/or either within or without quotation marks, shall be defined and interpreted as follows:

- 1.1. "City" means the City of Pontiac, a Michigan Municipal Corporation, its council, elected officials and officers, departments and "City Agent" as defined below.
- 1.2. "City Agent" means all elected and appointed officials, directors, council members, employees working on behalf of the City, volunteers, representatives, and/or any such persons' successors (whether such person act or acted in their personal representative or official capacities), and/or any persons acting by, through, under, or in concert with any of them. "City agent" shall also include any person who was a "City

- agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and serving as an Agent.
- 1.3. "Contract Administrator" or "City Representative" means the individual by the City to act as a liaison between the City and the Contractor. Any questions or problems the Contractor may have concerning the work under this Contract should be directed to this individual.
  - 1.4. "Contract Documents" means the following documents which are included and fully incorporated into this Contract:
    - 1.4.1 **Exhibit A: City's Request for Proposal – Solicitation No**
    - 1.4.2 **Exhibit B: Contractor's Proposal**
    - 1.4.3 **Exhibit C: Addendums**
  - 1.5. "Contractor Employee" means without limitation, any employees, officers, directors, members, managers, trustees, volunteers, attorneys, and representatives of Contractor, and also includes any Contractor licensees, concessionaires, contractors, subcontractors, independent contractors, contractor's suppliers, subsidiaries, joint ventures or partners, and/or any such persons, successors or predecessors, employees, (whether such persons act or acted in their personal, representative or official capacities), and/or any and all persons acting by, through, under, or in concert with any of the above. "Contractor Employee" shall also include any person who was a Contractor Employee at anytime during the term of this contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
  - 1.6. "Subcontractor" includes only those having a direct contact with the Contractor in the way of labor. One who merely furnishes material to the Contractor is not included in this definition.
  - 1.7. "Claims" means any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the City, or for which the City may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
  - 1.8. "Day" means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
  - 1.9. "Working Day" means any calendar day except Saturday, Sunday, and legal holidays as determined by the City.
  - 1.10. "Written Notice" shall be considered properly served if delivered in person to the Contractor, or to a member or office of his/her company; also if delivered at, or sent by registered mail to, the last known business address of the Contractor.
  - 1.11. "Intellectual Property" means any developments, improvements, designs, innovation, and materials that may be the subject of a trademark/servicemark, copyright or patent, trade secrets or Proprietary Information.
  - 1.12. "Proprietary Information" means ideas, concepts, inventions and processes related to the development and operation of computer software and systems such as source code, object code, security procedures and passwords.

## 2. CONTRACT EFFECTIVE DATE AND TERMINATION

- 2.1 The effective date of this Contract shall be as stated on the first page of this Contract, and unless otherwise terminated or canceled as provided below, it shall end at 11:59:59 p.m. on the "Contract Expiration Date" shown on the first page of this Contract, at which time this Contract expires without any further act or notice of either Party being required. The Parties are under no obligation to renew or extend this Contract after Contract Expiration Date. Notwithstanding the above, under no circumstances shall this Contract be effective and binding and no payments to the Contractor shall be due or owing for any Contractor services until and unless:
- 2.1.1. This Contract is signed by a Contractor Employee, legally authorized to bind the Contractor.
  - 2.1.2. Any and all Contractor Certificates of Insurance and any other conditions precedent to the Contract have been submitted and accepted by the City.
  - 2.1.3. This Contract is signed by the City of Pontiac Mayor or his designee, as provided for on the signature page of this Contract, who shall be the final signatory to this Contract.
- 2.2. The City may terminate and/or cancel this Contract (or any part thereof) at any time during the term, any renewal, or any extension of this Contract, upon Thirty (30) days written notice to the Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. Notwithstanding the above, if the City is being reimbursed for any cost or expenses incurred under this Contract by any third party, including any Federal, State or local governmental agency, and any such third party funding is terminated, the City may terminate, end or cancel this Contract immediately upon written notice to the Contractor. The effective date for termination or cancellation shall be clearly stated in the written notice.
- 2.3. The City's sole obligation in the event of termination is for payment for actual services rendered by the Contractor before the effective date of termination. Under no circumstances shall the City be liable for any future loss of income, profits, any consequential damages or any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination and/or cancellation of this Contract. The City shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein.
- 2.4. Under no circumstances shall the City be obligated to pay the contractor for any Services rendered or Goods delivered which have not been invoiced, as required herein, within sixty (60) days of the date such Goods were actually delivered to the City or Services were actually rendered pursuant to this Contract.

## 3. SCOPE OF CONTRACTOR'S SERVICES

- 3.1 Services. The Contractor shall provide **Independent Audit Services**. The Contractor shall perform all Scope of Service as identified in **Exhibits A, Section 1**.

- Except as otherwise provided herein, the Contractor shall furnish all labor, supervision, and services necessary to execute and complete the work correctly.
- The City's Mayor, Deputy Mayor and Finance Director, who the Mayor may assign as a designee, shall have permission to contact Contractor to request Services.
- The Contractor will forward all questions, as they arise, to the Finance Director regarding the Scope of Service, and to the Purchasing Manager as it relates to contract and purchase order.

3.2 Quality Control. The Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of the Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the City.

3.3 City property. The Contractor will be responsible for the proper custody and care of any City-owned property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse, replace or restore the City for any loss or damage, normal wear and tear excepted.

#### 4. CITY PAYMENT OBLIGATIONS FOR CONTRACTOR'S SERVICES

4.1 Except as otherwise expressly provided for in this Contract, the City's sole financial obligation to the Contractor for any services under this Contract shall be:

4.1.1 In no event, shall the City's amount due and owing the Contractor for any and all services rendered exceed the amount identified as the "NOT TO EXCEED AMOUNT" on the first page of this Contract. In the event the Contractor can reasonably foresee the total billings for its services will exceed this "NOT TO EXCEED AMOUNT", the Contractor shall provide the City with notice of this contingency at least fifteen (15) Days before this event.

4.1.2 The Contractor shall submit an invoice to the City which shall itemize all amounts due and/or owing by the City under this Contract, as the date of the invoice. The City shall have no obligation to make payment until a proper invoice of service is submitted. The City reserves the right to make partial payments on account of the amount due the Contractor as the work progresses.

4.2 Method of Payment. Method of Payment as specified in **Exhibit A**. Contractor shall invoice for the Scope of Services that the Contractor will render. Contractor must email all invoices to [accountspayable@pontiac.mi.us](mailto:accountspayable@pontiac.mi.us) for processing. Final payment for the work performed under this Contract shall not be made until all work is satisfactorily performed and final clean-up has been performed. Contractor will be paid 30 days after completion of work as outlined in the Scope of Services after submission of a valid invoice.

- 4.3 Under no circumstances shall the City be responsible for any cost, fee, fine, penalty, or direct, indirect, special, incidental or consequential damages incurred or suffered by Contractor in connection with or resulting from the Contractor's providing any services under this Contract.
- 4.4 The City has the right to offset any amounts due and owing to the Contractor should the City incur any cost associated with this Contract that is the obligations of Contractor under this Contract. This includes withholding payment in the amount of any City provided equipment, or supplies (if applicable) that are not returned by Contractor upon completion of the services provided under this Contract.
- 4.5 This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.
- 4.6 Change Order Process. Changes in the Contract, Contract price or Scope of Work shall only occur in writing via a "Contract Change Order". Contract Change Orders shall be used to reflect additions to, reductions in, or changes to the Scope of Work (Exhibit A), or the Scope of Work that will be later defined for each home.
- 4.7 Ownership of documents and work papers. The City shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the City upon termination or completion of the contract.

## 5. CONTRACTOR'S ASSURANCES, WARRANTIES AND DEFAULT

- 5.1 The Contractor certifies that all statements, assurances, records, and materials submitted to City in connection with securing this Contract have been truthful, complete and accurate in all respects. The Contractor agrees and understands that any material false statement, representation or omission made in connection with its seeking or obtaining this Contract may be grounds for canceling or terminating this Contract and/or debaring the Contractor from future City contracts. The City's right to cancel this Contract as provided herein shall be in addition to any other rights the City has to terminate or cancel this Contract.
- 5.2 Service Warranty. Contractor warrants that all services performed hereunder will be performed in a manner that complies with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 5.3 Business and Professional Licenses. The Contractor will obtain and maintain at all times during the term of this Contract all applicable business and professional licenses necessary to provide the contracted services.

5.4 Equipment and Supplies. The Contractor is responsible for providing equipment and supplies required to complete the specified services under the Contract unless otherwise expressly set forth in the Contract.

5.5 Taxes. The Contractor shall pay, its own local, state and federal taxes, including without limitation, social security taxes, and unemployment compensation taxes. The City shall not be liable to or be required to reimburse the Contractor for any federal, state and local taxes or fees of any kind.

5.6 Contractor's Incidental Expenses. Except as otherwise expressly provided in this Contract, the Contractor shall be solely responsible and liable for all costs and expenses incident to the performance of all services for the City including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.

5.7 Tax Compliance. Contractor agrees to contact the City of Pontiac Income Tax Division, Audit and Compliance Section, 47450 Woodward, Pontiac, Michigan 48342, to establish reporting and withholding obligations under the City of Pontiac Income Tax Ordinance. Contractors will require the same of all subcontractors employed to perform any work in the City of Pontiac.

Web page URL: [http://www.pontiac.mi.us/departments/income\\_tax/index.php](http://www.pontiac.mi.us/departments/income_tax/index.php)

Tax forms URL: [http://www.pontiac.mi.us/departments/income\\_tax/tax\\_forms.php](http://www.pontiac.mi.us/departments/income_tax/tax_forms.php)

- All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, the Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed or engaged in the work to be performed and furnished under this contract.

#### 5.8 Contractor Employees.

5.8.1 The Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to provide the services under this Contract. Contractor shall ensure all Contractor Employees have all the necessary knowledge, skill, and qualifications necessary to perform the required services and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.

5.8.2 The Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. The Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employee.

5.8.3 (If Applicable) All Contractor Employees shall wear and display appropriate City provided identification at all times while working on City premises. The Contractor shall return all City provided identification when any of the following

situations occur: (1) Upon completion of the last day of work provided under this Contract; (2) when a Contractor Employee has completed the work under this Contract; or (3) when a Contractor Employee no longer works for Contractor.

5.8.4 All Contractor Employees assigned to work under this Contract may, at the City's discretion, be subject to a security check and clearance by the City.

5.9 Contractor Employee-Related Expenses. All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance) and the Contractor warrants that all Contractor Employees shall fully comply with and adheres to all of the terms of this Contract. The Contractor shall be solely and completely liable for any and all applicable Contractor Employee's federal, state, or local payment withholdings or contributions and/or any and all Contractor Employee related pension or welfare benefits plan contribution under federal or state law. The Contractor shall indemnify and hold the City harmless for all Claims against the City by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between the Contractor and any Contractor Employee, including, but not limited to, Worker's Compensation, disability pay or other insurance of any kind.

Full Knowledge of Service Expectations and Attendant Circumstances. The Contractor warrants that before submitting its bid and entering into this Contract, it had a full opportunity to review the proposed services, examine all measurements, dimensions, and existing conditions of the work area for this Contract and to review all City requirements and expectations under this Contract. The Contractor is responsible for being adequately and properly prepared to execute and perform this Contract. The Contractor has satisfied itself in all material respects that it will be able to perform all obligations under the Contract as specified herein.

5.10 Independent Contractor. The Contractor's Relationship to the City Is that of an Independent Contractor. Nothing in this Contract is intended to establish an employer-employee relationship between the City and either the Contractor or any Contractor Employee. All Contractor Employees assigned to provide services under this Contract by the Contractor shall, in all cases, be deemed employees of the Contractor and not employees, agents or sub-contractors of the City.

5.11 Default. In addition, to a breach of the terms of any condition or warranty set forth in this Contract, the following events shall constitute a default of Contractor:

- Fails to supply complete labor and supervision in sufficient time and quantity to meet the City's progress schedule, as it may be modified.
- Causes stoppage or delay of, or interference with, the project.
- Fails to promptly pay its employees for work on the project.
- Fails to pay worker's compensation or other employee benefits, withholding or any other taxes.



- Fails to comply with the safety provisions of the Contract or with any safety order, regulation or requirement of any governing authority having jurisdiction over this project.
- Makes unauthorized changes in supervisory personnel without Notice to Contract Administrator.
- Fails in performance or observance of any of the provisions of the contract.
- Files a voluntary petition in bankruptcy or is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code; files any petition or fails to contest any petition filed seeking any reorganization or similar relief under any laws relating to bankruptcy, insolvency or other relief of debtors; seeks or consents to or is acquiescent in the appointment of a trustee, receiver or liquidator of any of its assets or property; makes an assignment for the benefit of creditors; or Makes an admission, in writing, of its inability to pay its debts as they became due.

5.12 Then City, after giving Contractor written or oral (subsequently confirmed in writing) Notice of such default and forty-eight (48) hours within which to cure such default, shall have the right to exercise any one or more of the following remedies:

- Require that Contractor utilize, at its own expense, additional labor, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Contractor's default.
- Remedy the default by whatever means City may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing or otherwise completing the work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Contractor) and deducting the cost thereof from any monies due or to become due to Contractor hereunder;
- After giving Contractor an additional forty-eight (48) hours written (or oral, subsequently confirmed in writing) notice, terminate this Contract, without thereby waiving or releasing any rights or remedies against Contractor or its sureties, and, by itself or through others, take possession of the work, and all materials, equipment facilities, tools, scaffolds and appliances of Contractor relating to the work, for the purposes of costs and other damages under the contract and for the breach thereof; and
- Recover all reasonable attorneys' fees suffered or incurred by City by reason of, or as a result of, Contractor's default.

## 6. CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION

6.1 Indemnification. The Contractor shall indemnify and hold the City harmless from any and all Claims which are incurred by or asserted against the City by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of the Contractor or Contractor's Employees, including, without limitation, all Claims relating to injury or death of any person or damage to any property.

- 6.2 The indemnification rights contained in this Contract are in excess and over and above any valid and collectible insurance rights/policies. During the term of this Contract, if the validity or collectability of the Contractor's insurance is disputed by the insurance company, the Contractor shall indemnify the City for all claims asserted against the City and if the insurance company prevails, the Contractor shall indemnify the City for uncollectible accounts.
- 6.3 The Contractor shall have no rights against the City for any indemnification (e.g., contractual, equitable, or by implication), contribution, subrogation, and/or any other right to be reimbursed by the City except as expressly provided herein.
- 6.4 The Contractor waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the City based upon any Claim brought against the City suffered by a Contractor Employee.
- 6.5 Contractor Provided Insurance. At all times during this Contract, including renewals or extensions, Contractor shall obtain and maintain insurance according to the specifications and requirements set forth in **Exhibit \_\_\_\_\_, Section \_\_\_\_\_** Bonds and Insurance.

## 7. GENERAL TERMS AND CONDITIONS

- 7.1 Cumulative Remedies. A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 7.2 Survival of Terms and Conditions. The following terms and conditions shall survive and continue in full force beyond the termination and/or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature:
- "CONTRACTOR'S ASSURANCES AND WARRANTIES";
  - "CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION";
  - "Audit";
  - "Severability";
  - "Governing Law/Consent To Jurisdiction And Venue"; and
  - "Survival of Terms And Conditions".
- 7.3 City Right to Suspend Services. Upon written notice, the City may suspend performance of this Contract if Contractor has failed to comply with federal, state, or local laws, or any requirements contained in this Contract. The right to suspend services is in addition to the City's right to terminate and/or cancel this Contract. The

City shall incur no penalty, expense, or liability to Contractor if the City suspends services under this Section.

- 7.4 No Third-Party Beneficiaries. Except as provided for the benefit of the Parties or except as specifically set forth in the Contract, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' rights in this Contract, and/or any other right, in favor of any other person or entity.
- 7.5 Compliance with Laws. Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract, including zoning and building codes and MIOSHA guidelines.
- 7.6 Permits and Licenses. Contractor shall be responsible for obtaining and maintaining throughout the term of this Contract all licenses, permits, certificates, and governmental authorizations necessary to perform all of its obligations under this Contract and to conduct business under this Contract. Upon request by the City, Contractor shall furnish copies of any permit, license, certificate or governmental authorizations necessary to provide services under this Contract. The Contractor shall deliver all certificates of inspection to the City, if applicable.
- The Contract Administrator or designee shall act as inspector for this project.
  - The inspector shall have access to the Work under this Contract.
- 7.7 Discrimination. Contractor shall not discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin, or handicap in violation of State and Federal law.
- 7.8 Reservation of Rights. This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the City.
- Contractor shall promptly notify the City of any complaint or charge filed and/or determination by any Court or administrative agency of illegal discrimination by Contractor.
  - The City, in its discretion, may consider any illegal discrimination described above as a breach of this Contract and may terminate or cancel this Contract immediately with notice.
- 7.9 Force Majeure. Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other

government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event. The Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its obligations under this contract in the event of a reasonably anticipated, insurable business risk such as business interruption and/or any insurable casualty or loss.

- 7.10 Conflict of Interest. Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.321, et seq.), no contracts shall be entered into between the City, including all agencies and departments thereof, and any City Agent. To avoid any real or perceived conflict of interest, Contractor shall identify any Contractor Employee or relative of Contractor's Employees who are presently employed by the City. Contractor shall give the City notice if there are any City Agents or relatives of City Agents who are presently employed by Contractor.
- 7.11 Grant Compliance. If any part of this Contract is supported or paid for with any state or federal funds granted to the City, the Contractor shall comply with all applicable grant requirements.
- 7.12 Contract Administrator. Each Party may designate an employee or agent to act as Contract Administrator. The City's Contract Administrator shall be responsible for such activities as monitoring deliverables and funding, addressing the quality of services provided by the Contractor, reviewing invoices and submitting requests to the City's procurement authority for any contract modification in accordance with terms of this Contract.
- 7.13 Access and Records. Contractor will maintain accurate books and records in connection with the services provided under this Contract for thirty-six (36) months after end of this Contract, and provide the City with reasonable access to such book and records.
- 7.14 Audit. Contractor shall allow the City's Finance Director Division, or an independent auditor hired by the City, to perform finance compliance audits with the authority to access all pertinent records and interview any Contractor Employee throughout the term of this Contract, and for a period of three years after final payment.
- Contractor shall explain any audit finding, questionable costs, or other Contract compliance deficiencies to the City within thirty (30) business days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report, and an action plan to resolve the audit findings. A copy of the Contractor's response will be included in the final report. Failure by the Contractor to respond in writing within thirty (30) business days shall be deemed acceptance of the draft audit report, and will be noted in the final report.
- 7.15 Delegation /Subcontract/Assignment.

- The Contractor shall not assign, delegate, or subcontract any part of this Contract without the prior written consent of the City.
  - The rights and obligations under this Contract shall not be diminished in any manner by assignment, delegation or subcontract.
  - Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the rights and obligations contained in this Contract.
  - The Contractor shall remain primarily liable for all work performed by any subcontractors. The Contractor shall remain liable to the City for any obligations under the Contract not completely performed or incorrectly performed by any Contractor delegee or subcontractor.
  - The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors.
  - Should a subcontractor fail to provide the work as required by the Contract, the Contractor shall contract with another entity to perform the work in a timely manner. Any additional costs associated with securing a competent subcontractor and performing the required work shall be the sole responsibility of the Contractor.
- 7.16 If any part of the Contractor's services depends upon the work of any other contractor or subcontractor, the Contractor shall inspect and promptly report to the City any defects in such work that shall render it unsuitable. The failure to inspect and report shall constitute an acceptance of the other contractor's or subcontractor's services.
- 7.17 This Contract cannot be sold. The City reserves the right to let other contracts in connection with this Work even if of like character to the Work under this Contract. The Contractor shall coordinate his work with theirs.
- 7.18 Contractor Bankruptcy. In the event that a Petition in Bankruptcy is filed and there is an assignment of this Contract by a Court, the City may declare this Contract null and void.
- 7.19 Non-Exclusive Contract. No provision in this Contract limits, or is intended to limit, in any way the Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, this Contract is a non-exclusive agreement and the City may freely engage other persons to perform the same work that the Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee the Contractor or any Contractor Employee any number of fixed or certain number or quantity of hours or services to be rendered to the City.
- 7.20 No Implied Waiver. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any right or remedy under this Contract shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

7.21 Severability. If a court of competent jurisdiction finds a term, condition, or provision of this Contract to be illegal or invalid, then the term, condition, or provision shall be deemed severed from this Contract. All other terms, conditions, and provisions of this Contract shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the City harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the City.

7.22 Captions. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this contract. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or non-possessive use in this contract shall be deemed the appropriate plurality, gender or possession as the context requires.

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

For the Contractor: [CONTRACTOR INFORMATION]

For the City: [ADMINISTRATION]  
CITY HALL

7.24 Contract Modifications or Amendments. Any modifications, amendments, waivers, or releases to this Contract must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, waiver, or release shall be signed by an expressly authorized Contractor Employee and by the same person who signed the Contract for the City or other City Agent as authorized by the City.

7.25 Precedence of Documents. In the event of a conflict between the terms and conditions in any of the documents comprising this Contract, the conflict shall be resolved as follows:

- The terms and conditions contained in this main Contract document shall prevail and take precedence over any allegedly conflicting provisions in all other Exhibits and documents.

7.26 Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.

7.27 Contractor Use of Confidential Information. The Contractor and/or Contractor Employees shall not reproduce, provide, disclose, or give access to Confidential Information to any third party, or to any Contractor Employee not having a legitimate need to know any such information and data, and shall not use the Confidential Information for any purpose other than performing its services under this Contract. Notwithstanding the foregoing, Contractor may disclose the Confidential Information if required by law, statute or other legal process; provided that Contractor (i) gives City prompt written notice of an impending disclosure, (ii) provides reasonable assistance to City in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required.

- This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (i) was in the possession of, or was known by Contractor, prior to its receipt from the City, without an obligation to maintain its confidentiality; or (ii) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.
- As used in this Contract, Confidential Information means all information that the City is required or permitted by law to keep confidential.

7.28 Contractor Use of City Licensed Software. Except as otherwise set forth in the Exhibits A and C. i order for the Contractor to perform its services under this Contract, the City may permit Contractor or Contractor Employees to access certain copyrighted Software licensed to the City. Contractor or Contractor Employees shall not: transfer, remove, use, copy, or otherwise provide or make available any such copyrighted Software or Documentation to any other person or entity, for any purpose, without the prior written consent of the City and/or the licensor. Furthermore, neither the Contractor nor Contractor Employee shall produce a source

listing, decompile, disassemble, or otherwise reverse engineer any copyrighted Software. Neither the Contractor nor Contractor Employee shall use any copyrighted software contrary to the provisions of any applicable Software license agreement or state or federal law.

7.29 Entire Contract. This Contract represents the entire Contract and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements or Contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

The undersigned executes this Contract on behalf of Contractor and the City, and by doing so legally obligates and binds Contractor and the City to the terms and conditions of this Contract.

FOR THE CONTRACTOR:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

FOR THE CITY OF PONTIAC:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
  
\_\_\_\_\_  
Mayor's Office

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Timothy Sadowski, Finance Director

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Alicia Martin, Purchasing Manager

APPROVED AS TO SCOPE OF CONTRACTOR SERVICES:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Timothy Sadowski, Finance Director