



## NOTICE OF INTENT TO AWARD

Posting Date January 12, 2023

The City of Pontiac's Purchasing Division INTENDS TO AWARD:

SOLICIATION No.: RFQ 08262022

FOR (Description): Legal Services

TO (Proposed Awardee(s):

Clark Hill PLC and The Kelly Law Firm, PC

Any bidder wishing to protest the proposed award must submit a written notice of intent to protest to the purchasing manager via email to [purchasing@pontiac.mi.us](mailto:purchasing@pontiac.mi.us) before the close of business (5 pm) on the last day of the protest period, which is:

Thursday, January 19, 2023

A handwritten signature in blue ink that reads "Alicia S. Martin". The signature is written in a cursive style and is positioned above a horizontal line.

Alicia Martin  
Purchasing Manager



**FINANCE DEPARTMENT, PURCHASING DIVISION**

47450 Woodward Ave., Pontiac, MI 48342 • P: (248) 758-3120 • E: [purchasing@pontiac.mi.us](mailto:purchasing@pontiac.mi.us)

January 31, 2023

Daniel J. Kelly  
The Kelly Firm, PLC  
2825 University Drive  
Auburn Hills, Michigan 48326

Dear Daniel Kelly:

**Re: Bid Award for City of Pontiac's Legal Services**

The City of Pontiac has considered The Kelly Law Firm's proposal submitted on September 19, 2022, interviews, and responses to questions after that, in response to the City's Legal Services Request for Proposal.

**YOU ARE HEREBY NOTIFIED** that your firm's proposal has been accepted as follows:

1. An hourly rate ranging from \$135 to \$165 per hour for all general legal work and advice regarding code enforcement activity.
2. A fixed rate of Two hundred thousand and 00/100 Dollars (\$200,000) for all prosecutions per year.
3. Following the completion of a transition period from the law firm currently handling prosecution work by February 28, 2023, during which transition period, the firm will charge an hourly rate of \$130.

**YOU ARE REQUIRED**, by the Terms and Conditions of the RFP, to execute a contract and furnish a Certificate of Insurance (on an ACORD Form). Please include the City of Pontiac and its employees as additional insured in all relevant insurance policies, as instructed on p. 8 of the RFP. We request that your firm provide this information within ten (10) calendar days of receiving this Notice.

Please return one (1) electronically signed acknowledged original of his Notice of Award via email to [amartin@pontiac.mi.us](mailto:amartin@pontiac.mi.us). The contract document will be forthcoming within the next week.

CITY OF PONTIAC

A handwritten signature in blue ink that reads "Alicia Martin".

Alicia Martin  
Purchasing Manager

ACCEPTANCE OF NOTICE

By A handwritten signature in blue ink that reads "Daniel J. Kelly".  
Title President  
Date 2-1-23



CONTRACT DOCUMENT  
FOR

CITY OF PONTIAC  
**Legal Services**

**CITY OF PONTIAC – DEPARTMENT OF FINANCE**

**PURCHASING DIVISION**

**Contract Expiration Date: February 14, 2025**

**Contract - NOT TO EXCEED AMOUNT \$400,000  
per fiscal year, which is July 1 - June 30**

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This Contract effective as of February 15, 2023 ("Contract"), between the CITY OF PONTIAC, a Municipal corporation, whose address is 47450 Woodward Ave., Pontiac, Michigan ("City"), and **The Kelly Firm, a Michigan Domestic Professional Limited Liability Company**, whose address is **2825 University Drive, Auburn Hills, Michigan 48026** ("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 1: Notice of Intent to Award
  - 1.4.2: Exhibit 2: Bid Award Notice
  - 1.4.3: Exhibit A: Request for Proposal
  - 1.4.4: Exhibit B: Scope Defined in Reques for Proposal
  - 1.4.5: Exhibit C: Addendums
  - 1.4.6: Exhibit D: Contractor's Proposal
- 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.
- 2.5. 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 The Contractor shall provide **Legal Services** to the City of Pontiac. The Contractor shall perform all work identified in **Exhibits A**.

- 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, Directors and Purchasing Manager, who the Mayor may assign as designee, shall have permission to contact Contractor to request Services.
- The Contractor will forward all questions, as they arise, to the Mayor, Deputy Manager, Directors or Purchasing Manager about the subject matter they have communicated to Contractor.

**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.

**4.1.** Method of Payment. Method of Payment as specified in **Exhibit A**. Contractor shall invoice on a monthly basis, in accordance with section 2.6 of the RFP, for services completed, no later than the 5<sup>th</sup> of each month, until the Scope of Services are complete. 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.

- 4.2. 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.
- 4.3. 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.
- 4.4. This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.
- 4.5. 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).
- 4.6. 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. Taxes.** 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.**

**5.9.1** 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.

**5.9.2** 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.

- 5.9.3** (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.
- 5.9.4** 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.
- 5.10.** 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.
- 5.11.** 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.
- 5.12.** 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.

**5.13.** 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.

**6.1.1** 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.

**6.1.2** 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.

**6.1.3** 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.

**6.1.** 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 A, Section 2.10** 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.

- 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.

- 7.8. 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.
- 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.
- 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.

**7.16.** 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.

**7.17. 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.

**7.18. 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.

- 7.19.** 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.
- 7.20.** 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.
- 7.21.** 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 nonpossessive use in this contract shall be deemed the appropriate plurality, gender or possession as the context requires.
- 7.22.** 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, 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

For the Contractor: Daniel J. Kelly, President  
The Kelly Firm, PLC  
2825 University Drive,  
Auburn Hills, MI 48026  
E: [Dan@kellyfirmnpc.com](mailto:Dan@kellyfirmnpc.com)  
C: (248) 217-6740

For the City: Tim Greimel, Mayor  
City of Pontiac  
47450 Woodward Ave.



Pontiac, MI 48342  
E: [TPreimel@pontiac.mi.us](mailto:TPreimel@pontiac.mi.us)  
O: (248) 758-3181

Khalfani Stephens, Deputy Mayor  
City of Pontiac  
47450 Woodward Ave.  
Pontiac, MI 48342  
E: [KStephens@pontiac.mi.us](mailto:KStephens@pontiac.mi.us)  
O: (248) 758-3322

- 7.23.** 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.
- 7.24.** 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.
- 7.25.** 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.
- 7.26.** 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.

**7.27.** 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.

**7.28.** 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 President \_\_\_\_\_

[Remainder of page intentionally left blank]

FOR THE CITY OF PONTIAC:

BY: \_\_\_\_\_  
Khalfani Stephens, Deputy Mayor

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Tim Greimel, Mayor.

DATE: \_\_\_\_\_

APPROVED AS TO SCOPE OF CONTRACTOR SERVICES:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**Exhibit A**  
**Request for Proposal**



**NOTICE –CITY OF PONTIAC**  
**Request for Qualifications and Proposals**  
**LEGAL SERVICES**

Thank you for your inquiry regarding the City of Pontiac project listed below:

**RFQ-Legal Services**

If your firm plans to bid on this project, please send an e-mail response to [Purchasing@pontiac.mi.us](mailto:Purchasing@pontiac.mi.us) with the following information:

Firm Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Firm's Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

The City of Pontiac Purchasing Division will use this information to communicate with you in the event an addendum or change to this project is issued. If you do not send this information to the City of Pontiac, you will not receive any follow-up notification of any changes to the project.



## Financial Services – Purchasing Division

### NOTICE TO BIDDERS

The City of Pontiac will open sealed bids on **Monday, September 19, 2022 at 2:00 p.m.** prevailing local time in the City Hall Lion's Den conference room at 47450 Woodward Ave for:

### RFQ-LEGAL SERVICES

You are invited to submit a bid for this project. Sealed bids may be mailed or delivered to the CITY OF PONTIAC, CITY CLERK. The address is 47450 Woodward Avenue, Pontiac, MI 48342. All sealed bids must be received in the City Clerk's office **by 2:00 p.m., Monday, September 19, 2022.** Envelopes should include the name and mailing address of the vendor on the outside and be plainly marked:

### RFQ-LEGAL SERVICES

No proposal submitted may be withdrawn for at least ninety (90) days after the actual opening of the proposal.

General specifications, description and conditions upon which the bid proposal is to be based are available at the City of Pontiac website:

Purchasing: <http://www.pontiac.mi.us/departments/finance/purchasing.php>

Please refer to the website for any addenda that may be issued. Bidders who submit bids before the deadline are advised to continue to monitor the website for any addenda that may be issued. Bid packages will also be mailed upon request.

The City reserves the right to reject any or all bids, to waive any irregularities, and further reserves the right to accept any bid or parts of bids that it deems to best serve the interest of the City.

If you have any questions regarding this RFQ, please contact:  
Khalfani Stephens at (248) 758-3050.

## **1. INSTRUCTIONS TO BIDDERS**

### **1.1 Bids to be Received**

Sealed bids for the **City Building Documents Scanning Project** will be received at the Office of the City Clerk of the City of Pontiac, Michigan **Until 2:00 p.m. Monday, September 19, 2022**, and immediately thereafter will be publicly opened and read.

Each bid must be submitted in a sealed envelope and addressed to the City Clerk of the City of Pontiac. Each sealed envelope containing a bid must be plainly marked on the outside as “**RFQ-Legal Services**”, and the envelope should bear on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail the sealed envelope containing the bid must be enclosed in another envelope addressed to the City Clerk, City of Pontiac at 47450 Woodward Avenue Pontiac, MI. 48342.

Bids will be received during regular business hours at the place and up to the time stated in the advertisement. Any extension in time will be by official notification. Bids may be delivered in person or mailed, but their delivery is the bidder’s entire responsibility. Any bid received after the stated hour, even through the mail, will be returned unopened to the bidder.

### **1.2 Examination of Bid Documents**

Before submitting a proposal, bidders shall carefully examine the specifications and shall fully inform themselves as to all existing conditions and limitations and shall indicate in the proposal the sum to cover the cost of all items included on the bid form.

### **1.3 Withdrawal of Bids**

Any bidder may withdraw his proposal, in writing, at any time prior to the scheduled closing time for receipt of proposals. No bidder may withdraw a bid within ninety (90) days after the actual date of the opening thereof. Should there be a reason why a contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the City of Pontiac, herein after also referred to as the City, and the bidder.

### **1.4 Bid Form**

Each bid shall be made on the form provided, and shall be submitted in a sealed envelope bearing the title of work and the name of the bidder, and shall be signed by an individual authorized to execute the proposal on behalf of the bidder. Alternate written proposals will not be accepted.

### **1.5 Basis of Award**

The intention of the City is to award the contract for this job to a bidder whose skill and financial resources are equal to the task of completing the work in a satisfactory manner in the time period specified by the City. The successful bidder will show proof of at least two (2) years' experience.

Award will be made to a responsive and responsible bidder whose bid is determined to be in the best interest of the City and in conformance with the conditions of this invitation to bid and the Purchasing Ordinance of the City.

A maximum of one award of contract will be made. Bidders shall quote on all requirements of the bid document, leave no blanks, and state "No Charge" where applicable. Any Blank spaces are considered to be no offer. The City of Pontiac reserves the right to delete any item(s) from the award and reject any and all bids.

### **1.6 Bid Bond**

No bid bond required.

### **1.7 Pre-Bid Meeting**

No meeting required.

## **2. TERMS AND CONDITIONS**

### **2.1 Laws and Municipal Ordinances, Permits**

The Bidder shall be fully informed of all laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or equipment and materials used in the work, and all others and any decrees of bodies or tribunals having any jurisdiction or authority over the same. The Bidder shall at all items observe and comply with all such existing laws, codes, ordinances, regulations, orders, and decrees. In particular, all work shall be in compliance with the laws of the State of Michigan, City ordinances, as well as all other bodies having jurisdictional authority.



## **Non-Discrimination**

The Bidder agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans with Disabilities Act of 1990 as amended; the Elliott-Larsen Civil Rights Act, Article 2, Act no. 453, Public Act of 1976 as amended; the Michigan Handicapper's Civil Rights Act, Article 2, Act no. 220, Public Act of 1976, as amended and all other applicable federal, state and local laws and regulations. Specifically, Bidders and subcontractors are required not to discriminate against any employee or applicant for employment with respect to such person's hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of such person's height, weight, race, color, religion, national origin, ancestry, age, marital status, sex or disability, as defined by law. Breach of this covenant may be regarded as a material breach of the contract.

## **2.2 Indemnification**

To the fullest extent permitted by laws and regulations, the Bidder shall indemnify and hold harmless the City and its officers, directors, employees, agents, and consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or resulting from the performance of the work or from the failure to comply with any covenant or term of the contract, provided that any such claim, cost, loss, or damage: (i) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from; or, (ii) is caused in whole or in part by any act or omission of the Bidder, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any act or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws and regulations regardless of the negligence of any such person or entity.

In any and all claims against the City or any consultants, agents, officers, directors, or employees of the City by any employee (or the survivor or personal representative of such employee) of the Bidder, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation above shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Bidder or any such subcontractor, supplier or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Insurance coverage required of the Bidder constitutes the minimum requirements and those requirements shall in no way lessen or limit the liability of the Bidder under the terms of the contract. The Bidder shall procure and maintain at Bidder's own cost and expense any

additional claims or amounts of insurance that, in the judgment of the City, may be necessary for Bidder's proper protection in the prosecution of the work.

### **2.3 Jurisdictional Authority**

This contract shall be governed by and construed according to the laws of the State of Michigan and the successful Bidder consents to the jurisdiction and venue of the courts in Oakland County, Michigan and of the United States District Court for the Eastern District, Southern Division.

### **2.4 Severability**

The successful Bidder will agree that the Contract is the completed and exclusive statement of the Contract between the parties. A judicial or administrative declaration on the invalidity of any one or more of the provisions of the Contract shall not invalidate the remaining provisions of this agreement.

### **2.5 Income Taxes**

Contractor agrees to contact City of Pontiac Income Tax Division, Audit and Compliance Section, 47450 Woodward, Pontiac, Michigan, 48342, telephone (248) 758-3236, to establish reporting and withholding obligations under the City of Pontiac income tax ordinance. Contractor will require the same of all subcontractors employing labor under this contract.

Contractor is required to withhold City of Pontiac income tax from wages paid to:

- a. Pontiac resident employees regardless of where they work for the employer; and
- b. Nonresident employees for work performed in the City.

Contractor is also required to file Pontiac income tax returns and to report and pay income tax on the net profits earned by the contractor 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)

### **2.6 Compensation and Payment**

All invoices submitted against the contract must identify the work performed in detail. Items not properly invoiced will not be paid. It is the vendor's responsibility to ensure delivery of invoice(s) to the City. Invoices must meet the following conditions for payment:

- a. Price on invoice must correspond to the pricing listed on purchase order and/or contract.
- b. Contractor must submit price lists in accordance with bid requirements.
- c. All invoices will be original.
- d. Invoices will prominently display the requisition or purchase order number, if applicable.
- e. Invoices will be signed by the individual responsible for authorizing contract payments for the City of Pontiac.

**Original** invoice **must** be submitted to the City of Pontiac, Attn: Accounts Payable.

Payment Terms – Net 30

## **2.7 General Conditions**

It is the responsibility of the Bidder to review General Conditions as specified.

In the quotation, a distinction between dollars and cents must be made. Also, illegible bids may be grounds for rejection of your bid. White out may be grounds for rejection. All changes made to the bid form altering price, terms, quotes, and/or conditions **MUST** be crossed out and initialed. Failure to initial any changes may be grounds for rejection of your bid.

All funds must be quoted in US dollars

## **2.8 Quotations/Proposals**

Bidders **MUST** submit **an original and one copy**, of the bid quotation/proposal. Additionally, duplicate copies of all descriptive literature and/or samples must be provided as requested.

## **2.9 Minor Deviations**

Specifications referred to herein are used to indicate desired type, and/or construction, and/or operation or services rendered. Other products and/or services may be offered if deviations from specifications are minor and if all deviations are properly outlined and stated in the bid document. Failure to outline all deviations may be grounds for rejection of your bid.

The decision of the City of Pontiac, acting through the Purchasing Agent, shall be final as to what constitutes acceptable deviations from specifications.

## **2.10 Bonds and Insurance**

Receipt of bonds and/or insurance is part of the process of determining which bidder may be recommended for award to the City Administrator. If cause is found to change the recommendation that your company be awarded the contract, or if the City Administration or Council does not approve the recommendation, the City shall not be liable for any costs incurred by you in the bid process, including the cost of acquiring bonds and/or insurance.

The contractor, and any and all of their subcontractors, shall not commence work under this contract until they have obtained the insurance required under this paragraph. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to City of Pontiac. The limits required below do not limit the liability of the Contractor. All deductibles and SIRs are the responsibility of the Contractor.

**Workers' Compensation Insurance:** The Contractor shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

**Commercial General Liability Insurance:** The Contractor shall procure and maintain said insurance during the life of this contract, for: Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$ 1,000,000 per occurrence and aggregate. Coverage shall include the following extensions:

- a. Contractual Liability;
- b. Products and Completed Operations;
- c. Independent Contractors Coverage;
- d. Broad Form General Liability Extensions or equivalent, if not already included.

**Motor Vehicle Liability:** The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000 per occurrence combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

**Additional Insured:** Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be ***Additional Insureds:*** The City of Pontiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Pontiac as additional insured, coverage afforded is considered to be primary and any other insurance the City of Pontiac may have in effect shall be considered secondary and/or excess.

**Cancellation Notice:** Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as described above, shall be endorsed to state the following: "It is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: Risk Manager, City of Pontiac, 47450 Woodward Avenue, Pontiac, MI 48342."

**Proof of Insurance Coverage:** The Contractor shall provide the City of Pontiac, at the time the contracts are returned by him/her for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.

### **2.11 Performance Bond**

A one-hundred thousand dollar (\$100,00.00) performance bond will be required upon execution of an agreement.

### **2.12 Payment Bond**

No payment bond shall be required unless the City agrees to subcontract.

### **2.13 Maintenance and Guarantee Bond**

No maintenance and guarantee bond shall be required.

### **2.14 Subcontracting**

The City of Pontiac will not allow subcontracting for this agreement. All persons working on this project shall be employees of the of the Bidder as defined by law.

## **3. DESCRIPTION OF SERVICES**

### **3.1. GENERAL**

The City of Pontiac will receive sealed proposals for **Legal Services** according to the specifications of the City of Pontiac.

Sealed proposals, with fee proposal in a separate sealed envelope, will be received until **2:00 PM** prevailing Eastern Time, **Monday, September 19,2022**. Proposals shall be addressed as follows:

**CITY OF PONTIAC  
Purchasing Department  
47450 Woodward Avenue  
Pontiac, MI 48342**

All proposals must be signed by a legally authorized agent of the proposing firm.

ENVELOPES/SHIPPING CONTAINERS MUST BE PLAINLY MARKED **“RFQ – LEGAL SERVICES”** AND MUST BEAR THE NAME OF THE PROPOSER.

The City reserves the right to accept any or all alternative proposals and award the contract to other than the lowest bidder, to waive any irregularities or informalities or both; to reject any or all proposals; and in general to make the award of the contract in any manner deemed by the City, in its sole discretion, to be in the best interest of the City of Pontiac.

Purchasing Manager

Notice dated: August 24, 2022

**CITY OF PONTIAC  
REQUEST FOR QUALIFICATIONS  
RFQ-LEGAL SERVICES**

**IMPORTANT DATES**

RFQ Issue Date	August 25, 2022
Last Date for Questions	Friday, September 9, year 2022 Please Submit questions to: Khalfani Stephens, Deputy Mayor <a href="mailto:Purchasing@pontiac.mi.us">Purchasing@pontiac.mi.us</a> 248758-3050

<b>Response Due Date</b>	<b>Monday, September 19, 2022 at 2:00 P.M.</b>
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Tentative Interview Date	TBD
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**PART 1 GENERAL INSTRUCTIONS**

Qualified legal firms are invited to submit qualifications to the City of Pontiac for consideration regarding City legal services.

To be considered by the City, **one unbound original and six (6) copies** of the proposal with **fee proposals in a separate sealed envelope** must be received by the date and time specified. Late submittals will not be considered.

Submitted copies become the property of the City and shall not be returned.

The City of Pontiac shall not be responsible for any cost associated with the

preparation of a response to this RFQ. Firms are encouraged to provide the minimum amount of information necessary to address the RFQ.

The City of Pontiac will consider proposals for some or all of the legal services described in Exhibit B and for a legal services agreement of any duration and/or of no fixed duration at all.

## **PART 2      SPECIFICATIONS**

**1. Format** – The following outline shall be followed for all Qualification Packages:

- a) Identify whether you are proposing to provide all or some of the legal services listed in Exhibit B. If you are proposing to provide only some of the services, please identify which ones.
- b) Name of Firm and Firm Principals, Business Address, Telephone, Fax and email addresses. The name and title of the Principal authorized to negotiate on behalf of the firm shall be identified.
- c) Name and Qualifications of Staff Proposed to be assigned to the City of Pontiac, including the number of years of experience in municipal law, the specific areas of municipal law with which they have experience, and the name and address of each municipal client they have worked for and a description of the services provided to each municipal client. In addition, please state whether or not your firm and/or any of the staff to be assigned to the City of Pontiac have ever provided legal services to the City of Pontiac in the past and, if so, the specific services provided and the years in which they were provided. Names and qualifications of all supporting staff should also be provided. The relationship between the Principal and support staff as it relates to providing service to the City shall be described.

### **2. Experience and Qualifications**

- a) Each attorney who will be providing services to the City must be a; member in good standing of the State of Michigan Bar Association and must be admitted to practice in the Eastern District of Michigan federal court.
- b) Past experience and qualifications of the firm should be described. Included should be the level of your experience related to the following



areas, among others:

- Municipal Codes and Ordinances
- Blight tickets
- Agreements (including, but not limited to, contractual intergovernmental, land sale/purchase, lease, procurement, service, and sale agreements)
- Planning issues and zoning matters
- Tax tribunal and other tax issues
- Litigation
- Pension and retiree healthcare matters
- City of Pontiac prosecutions of civil infractions and/or misdemeanor offenses as defined in municipal codes and ordinances (including, but not limited to, preparing and presenting criminal cases for bench and/or jury trials; appearance on behalf of The City of Pontiac in 50<sup>th</sup> District Court at formal hearings, pre-formal hearings, and pre-trial hearings; communicating charging decisions and proceedings outcomes to victims, complainants, relevant municipal employees, and/or relevant law enforcement personnel; leading civil infraction cases and misdemeanor criminal cases through the court process, coordinating subpoenas of victims, witnesses, relevant municipal employees, and/or relevant law enforcement personnel; coordinating the discovery process with defendants and/or their legal counsel; working with relevant municipal employees and/or law enforcement personnel to improve the effectiveness and efficiency of cases presented for prosecution by municipalities, providing legal research as it relates to municipal codes and ordinances, and informing relevant municipal employees and relevant law enforcement personnel of changes in statute and municipal code that could impact the work they do).
- City of Pontiac employment and labor matters (including, but not limited to, municipal employment discrimination charges and lawsuits, as well as investigation of allegations of discrimination and harassment; defense against allegations of wrongful discharge and breach of employment contract; as may be necessary in the future, representing the City before labor relations boards, including defending the City against unfair labor practice complaints; as may be necessary in the future, representing the City in collective bargaining negotiations and arbitration including Michigan Public Act 312 Binding Arbitration procedures and processes; public employer

proceedings before state regulatory agencies; worker's compensation and unemployment compensation matters; ERISA, retirement, and employee benefits and compensation matters and litigation associated with such matters; Occupational Safety and Health (OSHA) matters; preparation and enforcement of employment agreements, including employee confidentiality agreements and related litigation; wage and salary administration, including counsel on federal and state wage and hour laws; Americans with Disabilities Act (ADA) issues and development of compliance plans; Family and Medical Leave Act compliance (federal and state); immigration law and related matters; updates and advice concerning current issues facing employers, such as workplace violence, leased and temporary employees, and AIDS, drug, alcohol and genetic testing; counsel on affirmative action, including preparation and review of federal, state and municipal affirmative action plans; assistance in dealing with the Office of Federal Contract Compliance Programs (OFCCP) and state and local contracting agencies during compliance audits and in litigation; labor law audits, including legal analyses of hiring and termination practices, employment applications, employee handbooks, and policy and procedure manuals; in-service training programs for employers and their supervisory personnel on such topics as preventing and investigating claims of harassment, employee evaluation and discipline, and the proper handling of discrimination claims before state and federal agencies; and frequent seminars addressing timely labor topics and quarterly newsletters)

- Representing and advising the City of Pontiac in all matters as may be necessary from time to time

Note: A Principal, Director, or equivalent is expected to be available to provide regular legal services to the City; Attendance may be required as needed at two up to 4 City Council meetings per month, attendance at two one Planning Commission meetings per month, attendance at committee meetings and attendance at one ZBA meetings per month, one Historic District Commission meeting per month, and up to 7 city council subcommittee meetings per month. (minimum twelve (12) annually

**3. References** – Provide the names, numbers and addresses of three recent client references.

**4. Other** – Provide any other information necessary to fully describe services and qualifications (not to exceed 10 pages). The total number of pages in the submittal shall not exceed forty (40). Economy of preparation and

brevity are encouraged.

**5. Review Process** – The City of Pontiac reserves the right to reject any or all submittals. The City may request one or more firms to provide a detailed proposal. This is not a bidding process.

6. Please identify the accessibility of the proposed designated city attorney(s) and the response times that the individual(s) will provide to the City. Specifically, identify the lead-time required for attending scheduled or ad-hoc meetings, and identify how quickly the city attorney(s) can arrive in person to attend an unscheduled, urgent meeting. Identify the attorney(s) availability for unscheduled, urgent phone calls.

7. Describe in detail your proposed pricing structure for legal services. Specifically, if you are proposing a flat fee for some or all services, please quantify that flat fee or those flat fees. Similarly, if you are proposing an hourly fee for some or all services, please quantify that hourly rate or those hourly rates by attorney and service(s) and identify what the minimum billing increment is.

**8. Evaluation Criteria** – The following will be considered in the selection of a consultant:

- Relevant Experience
- Qualifications
- Understanding of City-related issues and familiarity with the City of Pontiac
- Team Compatibility, included ability of Firm/Attorney to work with City staff and officials based on references and other supporting information.
- Unique Resources the Firm/Attorneys may bring regarding innovative techniques.

The evaluation of proposals will be done by a three-member committee of City Council, who will then forward a recommendation to the full Council for consideration. The evaluation process will be based on qualifications. Fee proposals, which are to be submitted in a separate envelope, will only be reviewed after the most qualified firms have been established.

## CITY CHARTER

### **4.202 Duties of City Attorney**

The director of the law department must be an attorney licensed to practice in Michigan and shall be called the “City Attorney”. The City Attorney is responsible for:

- a) supervising the conduct of all the legal business of the City and its departments;
- b) drafting all ordinance proposals or approving them as to form;
- c) preparing such leases, deeds, contracts or other papers as may be required by the Mayor, Council or any department;
- d) furnishing written legal opinions when requested by the Mayor, the Council or any department;
- e) instituting and conducting, on behalf of the People, all cases arising from the provisions of this charter or ordinances and, when authorized by law, cases arising under the state law
- f) defending all actions or proceedings against the City
- g) prosecuting all civil actions to which the City is a party or in which the City has an interest, when directed to do so by the Mayor; notice of any such action shall immediately be given to the City Council;
- h) representing any elective officer or appointee of the City in any action or proceeding involving official duties; and
- i) performing other duties assigned by resolution.

### **4.203 Settlements**

No civil litigations of the City may be settled without the consent of the Council.

### **4.204 Option of City Council**

Notwithstanding the above, the Council may engage independent legal counsel on a temporary basis where the Council is seeking enforcement of a Council subpoena or order, suing or being sued by any City agency or officer, or defending against any action or proceedings involving the Council’s official duties. Further, the Council may obtain the opinion or advice of independent legal counsel in any matter pending before it.

**4. NON-ASSIGNMENT OR TRANSFER**

The service provided for under the Contract shall not be sub-contracted, assigned or transferred by the Contractor without prior written consent of the City.

**5. CITY RULES**

Employees of Contractor shall comply with all instructions, and building regulations issued by representative of the City of Pontiac.

**6. TERM OF CONTRACT**

Three (3) years with the option for two 3-year renewals. The City shall be able to exit the contract with sixty days written notice.

**7. PROGRESS PAYMENTS/RETAINAGE**

This contract is not subject to progress payments or retainage.

**THIS ENDS THE ABOVE SECTION**

**FOLLOWING PAGES ARE BID PROPOSAL FORMS AND SAMPLE CONTRACT**

## FORM OF PROPOSAL

To: City of Pontiac, Michigan \_\_\_\_\_, 2022

To All Here Present:

Having carefully examined the specifications of the proposed project, and being fully informed in regard to the conditions to be met in the prosecution and completion of the work, and having read and examined the Instructions to Bidders, Agreement, Bonds, General Conditions, Plans and Specifications pertaining to this work and agreeing to be bound accordingly, the undersigned proposes to furnish all the materials, labor, and other equipment as necessary in full accordance with and conformity to the plans and specifications for this work now on file in the office of the City's at and for the following named prices, to wit:

**NOTE:** This proposal is solicited on a unit price and lump sum basis for equipment.

**THIS BID PROPOSAL MUST BE SUBMITTED BACK TO THE CITY OF PONTIAC IN ITS ENTIRETY AS PART OF THE CONTRACTORS BID SUBMISSION. MAKE SURE THAT ALL PAGES ARE COMPLETELY FILLED OUT AND THAT ALL INFORMATION REQUESTED IS COMPLETE. FAILURE TO DO SO MAY BE CAUSE TO REJECT YOUR BID PROPOSAL. IF A BID IS NOT BEING SUBMITTED FOR A PARTICULAR AREA OF WORK, PLEASE MARK "NO BID" IN THE APPROPRIATE SPACE.**

**BIDDER ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUM: (if issued)**

**Addendum # \_\_\_\_\_ Dated \_\_\_\_\_**

**Addendum # \_\_\_\_\_ Dated \_\_\_\_\_**

**CITY OF PONTIAC - BID PROPOSAL**

I, the undersigned, propose to provide services proposed in this contract as per specifications supplied by the City of Pontiac. No contract is active until a purchase order is issued to the successful bidder.

I further propose to deliver the above-described services for the City of Pontiac in first class operating manner in accordance with all specifications contained herein subject to purchaser's inspection of services performed.

I attest that the bid includes all information necessary for the City of Pontiac to accept bid.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Representative Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office # \_\_\_\_\_ Cell # \_\_\_\_\_

FAX# \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

**The City of Pontiac is a tax-exempt Michigan municipal corporation and is exempt from sales tax. Exemption certificate can be provided upon request.**

**Related Project Experience:**

Provide descriptions of current and completed projects your firm has performed that are similar to this project in size, scope and complexity. Information for these projects, limited to the last two (2) years:

1) Project Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

Client's name: \_\_\_\_\_

Contact name, title, and telephone number: \_\_\_\_\_

\_\_\_\_\_

2) Project Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

Client's name: \_\_\_\_\_

Contact name, title, and telephone number: \_\_\_\_\_

\_\_\_\_\_

3) Project Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

Client's name: \_\_\_\_\_

Contact name, title, and telephone number: \_\_\_\_\_

\_\_\_\_\_

If you require more room, please submit information on another sheet.



## **CONTRACT FOR [TYPE OF SERVICE]**

1) Parties. The parties to this contract are the City of Pontiac, Michigan hereinafter referred to as the "City", and [NAME OF CONTRACTOR] hereinafter called the "Contractor".

2) Purpose. The purpose of this contract is for the City to engage the Contractor to provide [TYPE OF SERVICE] to the City (see Scope of Services below).

3) Scope of Services. The Contractor will provide all labor, materials, supplies, equipment and supervision to perform [TYPE OF SERVICE] in the City. The Contractor is to perform all work in accordance with generally accepted standards and practices.

4) General Terms and Conditions. This contract is hereby made subject to the terms and conditions included in the Scope of Services (see Exhibit "A" below) and Additional Terms and Conditions (see Exhibit "B" below).

5) Consideration. As consideration for the performance of the services referenced in the Scope of Services (see Exhibits "A" & "B" below), the City agrees to compensate the Contractor as follows:

[INSERT PAYMENT TERMS PER CONTRACT]

6) Period of Performance. This contract will become effective for the period beginning [TIME PERIOD], with [ANY RENEWAL OPTIONS] upon the approval and signature of the parties hereto.

7) Method of Payment. Contractor will be paid 30 days after completion of work as outlined in the Scope of Services after submission of a valid invoice.

8) Applicable Law. This contract shall be governed by and construed in accordance with the laws of the City of Pontiac, State of Michigan and applicable federal laws.

9) Compliance with Laws. The Contractor understands that the City is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Michigan, and City of Pontiac laws and regulations, as now existing and as may be amended or modified.

The Contractor is responsible for instructing and training their employees in appropriate safety measures. Employees will be responsible for maintaining a safe work environment while completing their tasks.

- a) The Contractor shall comply with the Michigan Right to Know Law (Amendments to Act 154), which requires that all employers within the State comply with federal Hazard Communications Standards (C.F.R. 1910.1200) and certain additional guidelines as of February 25, 1987. These Standards specify that employers develop a written hazard communication program, which is to be made available for workers or their designated representatives.
- b) The Contractor will comply with all federal, state and local regulations, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act
- c) The Contractor is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the City against such liability.

10) Requirements contract. During the period of the contract, the Contractor shall provide all the services described in the contract. The Contractor understands and agrees that this is a requirements contract and that the City shall have no obligation to the Contractor if no services are required.

## SCOPE OF SERVICES

### INSURANCE REQUIREMENTS SAMPLE CONTRACT

#### Exhibit A

1. The Attorneys shall maintain at its expense during the term of this Agreement, the following insurance:
  - a. **Worker's Compensation** insurance with the Michigan statutory limits and Employer's Liability insurance with minimum limits of **\$100,000** (One Hundred Thousand Dollars) each accident.
  - b. **Commercial General Liability Insurance** - The Attorneys shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance, Personal Injury, Bodily Injury and Property Damage on an "Occurrence Basis" with limits of liability not less than **\$3,000,000** (Three Million Dollars) per occurrence combined single limit.
  - c. **Automobile Liability** insurance covering all owned, hired and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law including Residual Liability insurance with minimum bodily injury limits of **\$3,000,000** (Three Million Dollars) each person and **\$3,000,000** (Three Million Dollars) each occurrence and/or aggregate minimum property damage limits of **\$3,000,000** (Three Million Dollars) each occurrence and/or aggregate.
  - d. The Attorneys shall provide proof of **Professional Liability** coverage in the amount of not less than **\$3,000,000** (Three Million Dollars) per occurrence and/or aggregate.
2. The Attorneys shall be responsible for payment of all deductibles contained in any insurance required hereunder.
3. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the city render inadequate insurance limits, the Attorneys will furnish on demand such additional coverage as may reasonably

be required under the circumstances. All such insurance shall be effected at the Attorneys' expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.

4. All policies shall name the Attorneys as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice date to the City.
5. All policies except Professional Liability insurance shall name the City of Pontiac, its officers, agents and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Khalfani Stephens, Deputy Mayor, City of Pontiac, 47450 Woodward Avenue, Pontiac, Michigan 48342, prior to commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.
6. If any work is sublet in connection with this Agreement, the Attorneys shall require each Attorney to effect and maintain at least the same types and limits of insurance as fixed for the Attorneys.
7. The provisions requiring the Attorneys to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Attorneys under this Agreement.
8. The City has the authority to vary from the specified limits as deemed necessary.

**SCOPE OF SERVICES  
SAMPLE CONTRACT**

**Exhibit B**

1. Acts as legal advisor to, and attorney and counsel for the Council and all of its members in matters relating to their official duties, Boards and Commissions, all levels of the City government, on a wide variety of civil assignments, including but not limited to land use planning, laws against discrimination, construction of public works, condemnation, purchasing and procurement, leasing, purchase and sale of property, workers compensation, public disclosure issues, library law, tort law and risk management. Extensive personnel items are handled by a separate firm.
2. Furnishes legal representation at all City Council meetings, and at other meetings when requested.
3. Appears before all state and federal courts and administrative agencies representing the City's interests.
4. Prosecutes ordinance violations, including municipal civil infractions, appearance citations, and complaint and warrant requests.
5. Prepares and reviews ordinances and resolutions. Prepares or officially passes upon all contracts, bonds, and other instruments for legality, correctness and acceptability as to form.
6. Works cooperatively with and supervises where necessary special legal counsel retained by the City Council to assure proper management of legal issues, and proper coordination and transition of legal issues.
7. Assists City officials and employees to maintain awareness of ethical standards and appearance of fairness standards, and to avoid potential conflicts of interest, prohibited transactions and the appearance of prohibited transactions.
8. Assists officials and employees to understand the legal roles and duties of their respective offices and interrelationships with others.
9. Provides the Mayor and Council with guidance as to Robert's Rules of Order and related procedural matters.
10. Prepares legal opinions at the request of the Council or City Manager.
11. Provides the Council, and Administration a legal perspective and advice on various governmental issues.
12. Performs other legal services and tasks as assigned by the Mayor or City Council.
13. Performs any other duties, direct or implied, set forth in the City Charter as responsibilities of the City Attorney but not mentioned above.

14. The City Attorney must be available by phone, cell phone, fax and e-mail during business hours, evenings and weekends
15. Timeliness of response and accessibility to the City Attorney is an important aspect of the service. Accessibility and responsiveness for the proposed designated City Attorney is of greatest importance, although these elements will also be considered in relation to Assistant City Attorneys as well.
16. Accessibility includes the ability to be generally available to attend meetings in person on short notice and the ability to be reached promptly by telephone. The City does not provide space on City property for City Attorney legal staff. A successful applicant must demonstrate an ability to provide services promptly.
  - Municipal City Codes and Ordinances,
  - Blight tickets
  - Agreements (including, but not limited to, contractual, intergovernmental, land sale/purchase, lease, procurement, service, and sale agreements etc.),
  - Planning issues and zoning matters,
  - Zoning issues, matters before the Tax tribunal and other tax issues, I
  - Litigation not covered by insurance and other similar experience.
  - Pension and retiree healthcare matters
  - City of Pontiac prosecutions of civil infractions and/or misdemeanor offenses as defined in City of Pontiac codes and ordinances (including, but not limited to, preparing and presenting criminal cases for bench and/or jury trials; appearance on behalf of the City of Pontiac in 50th District Court at formal hearings, pre-formal hearings, and pre-trial hearings; communicating charging decisions and proceedings outcomes to victims, complainants, relevant municipal employees, and/or relevant law enforcement personnel; leading civil infraction cases and misdemeanor criminal cases through the court process, coordinating subpoenas of victims, witnesses, relevant municipal employees, and/or relevant law enforcement personnel; coordinating the discovery process with defendants and/or their legal counsel; working with relevant municipal employees and/or law enforcement personnel to improve the effectiveness and efficiency of cases presented for prosecution by municipalities, providing legal research as it relates to municipal codes and ordinances, and informing relevant municipal employees and relevant law enforcement personnel of changes in statute and municipal code that could impact the work they do).
  - City of Pontiac employment and labor matters (including, but not limited to, municipal employment discrimination charges and lawsuits, as well as investigation of allegations of discrimination and harassment; defense against allegations of wrongful discharge and breach of employment contract; as may be necessary in the future, representing the City before labor

relations boards, including defending the City against unfair labor practice complaints; as may be necessary in the future, representing the City in collective bargaining negotiations and arbitration including Michigan Public Act 312 binding arbitration procedures and processes; public employer proceedings before state regulatory agencies; worker's compensation and unemployment compensation matters; ERISA, retirement, and employee benefits and compensation matters and litigation associated with such matters; Occupational Safety and Health (OSHA) matters; preparation and enforcement of employment agreements, including employee confidentiality agreements and related litigation; wage and salary administration, including counsel on federal and state wage and hour laws; Americans with Disabilities Act (ADA) issues and development of compliance plans; Family and Medical Leave Act compliance (federal and state); immigration law and related matters; providing updates and advice concerning current issues facing employers, such as workplace violence, leased and temporary employees, and AIDS, drug, alcohol and genetic testing; counsel on affirmative action, including preparation and review of federal, state and municipal affirmative action plans; assistance in dealing with the Office of Federal Contract Compliance Programs (OFCCP) and state and local contracting agencies during compliance audits and in litigation; labor law audits, including legal analyses of hiring and termination practices, employment applications, employee handbooks, and policy and procedure manuals; in-service training programs for employers and their supervisory personnel on such topics as preventing and investigating claims of harassment, employee evaluation and discipline, and the proper handling of discrimination claims before state and federal agencies; and frequent seminars addressing timely labor topics and quarterly newsletters)

- Representing and advising the City of Pontiac in all matters as may be necessary from time to time

Note: A Principal, Director, or equivalent is expected to be available to provide regular legal services to the City; Attendance may be required as needed at two up to 4 City Council meetings per month, attendance at two Planning Commission meetings per month, attendance at committee meetings and attendance at one ZBA meetings per month, one Historic District Commission meeting per month, and up to 7 city council subcommittee meetings per month. (minimum twelve (12) annually).

## ADDITIONAL TERMS AND CONDITIONS

- 1) Attorneys' fees and expenses. Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligation under this contract, the Contractor shall pay to the City all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the City in enforcing this contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the City be obligated to pay any attorneys' fees or costs of legal action to the Contractor.
- 2) Authority to contract. The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this contract; (b) that it is qualified to do business and in good standing in the State of Michigan; (c) that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.
- 3) Confidential information. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the City shall result in the immediate termination of this contract.
- 4) Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that the City of Pontiac is a public City of the State of Michigan and is subject to the laws regarding confidentiality. If a public records request is made for any information provided to the City pursuant to the contract, the City shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the contract shall be liable to the other party for disclosures of information required by court order or required by law.
- 5) Contractor personnel. The City shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor shall provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor. Contractor personnel are subject to background checks by the Oakland County Sheriff Department and shall comply with all requirements as outlined in the Request forQuote.



- 6) Insurance. The Contractor shall not commence work under this contract until it has obtained the required insurance under this paragraph. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverage shall be with carriers acceptable to the City of Pontiac:
- a) Workers' Compensation Insurance. The Contractor shall procure and maintain during the life of this contract, Workers' Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan with a minimum limit of \$100,000 each accident for any employee.
  - b) Commercial General Liability Insurance. The Contractor shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and aggregate for Personal Injury, Bodily Injury and Property Damage, coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable; (F) Per project aggregate.
  - c) Motor Vehicle Liability. The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
  - d) Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be **Additionally Insured: The City of Pontiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers.** Coverage maintained by contractor shall be primary over any other insurance carried by the City of Pontiac
  - e) Cancellation Notice: All policies described above shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City Administrator for the City of Pontiac.
  - f) Proof of Insurance Coverage: The Contractor shall provide the City of Pontiac, at the time the contracts are returned for execution, certificates for all coverage listed above.

- g) Expiration of Policies: If any of the above coverage lapses during term of this contract, the Contractor shall deliver renewal certificates and/or policies to the City of Pontiac at least ten (10) days prior to the expiration date.
  - h) Indemnification: To the extent permitted by law, the towing Contractor shall indemnify and hold the City harmless of and from all claims, losses, liability, demands, costs, loss of service, expense, and compensation on account of or in any way growing out of any damage, including, but not limited to, bodily injury or property damage which may result from the towing Contractor's towing services, In addition, the towing Contractor shall cover all costs incurred by the City in defense of any litigation covered under this letter of contract, including attorney fees and court costs.
  - i) Insurance companies, named insureds and policy forms shall be subject to the approval of the Pontiac Department of Public Works. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions, which reduce coverage provided to the City of Pontiac. Contractor shall be responsible to the City of Pontiac or insurance companies insuring the City of Pontiac for all costs resulting from both financially unsound insurance companies selected by Contractor and their inadequate insurance coverage. Contractor shall furnish the Pontiac Finance Department with satisfactory certificates of insurance or a certified copy of the policy, if requested by the Finance Department.
  - j) No payments will be made to the Contractor until the current certificates of insurance have been received and approved by the Finance Department. If the insurance as evidenced by the certificates furnished by the Contractor expires or is canceled during the term of the contract, services and related payments will be suspended. Contractor shall furnish the Finance Department with certification of insurance evidencing such coverage and endorsements at least ten (10) working days prior to commencement of services under this contract. Certificates shall be addressed to the Pontiac Finance Department, and shall provide for 30-day written notice to the Certificate holder of cancellation of coverage.
- 7) Ineligibility and suspension. The Contractor certifies to the best of its knowledge and belief, that it: (a) is not presently ineligible, suspended, proposed for ineligibility, declared ineligible, or voluntarily excluded from covered transaction by any federal department or the City or any political subdivision of the City or the State of Michigan; (b) has not, within a three year period preceding this proposal, been convicted of or had civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; (c) has not, within a three year period preceding this proposal, been convicted of or had civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making

false statements, or receiving stolen property; (d) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs (b) and (c) of this certification; and, (e) has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

8) Disclosure of confidential information. In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this contract.

9) Exceptions to confidential information. The Contractor and the City shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which: (a) is rightfully known to the recipient prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer; (c) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on confidential information; (e) is or later becomes part of the public domain or may be lawfully obtained by the City or the Contractor from any nonparty; or, (f) is disclosed with the disclosing party's prior written consent.

10) Default. If the Contractor:

- a) Fails to supply complete labor and supervision in sufficient time and quantity to meet the City's progress schedule, as it may be modified;
- b) Causes stoppage or delay of, or interference with, the project;
- c) Fails to promptly pay its employees for work on the project;
- d) Fails to pay worker's compensation or other employee benefits, withholding or any other taxes;
- e) 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;
- f) Makes unauthorized changes in supervisory personnel;

- g) Fails in performance or observance of any of the provisions of the contract;
- h) Files a voluntary petition in bankruptcy or is adjudicated insolvent;
- i) Obtains an order for relief under Section 301 of the Bankruptcy Code;
- j) 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;
- k) Or seeks or consents to or is acquiescent in the appointment of a trustee, receiver or liquidator of any of its assets or property;
- l) Makes an assignment for the benefit of creditors; or
- m) Makes an admission, in writing, of its inability to pay its debts as they became due;

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:

- a) 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.
- b) 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;
  - i) 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
  - ii) Recover all reasonable attorneys' fees suffered or incurred by City by reason of, or as a result of, Contractor's default.

- 11) Failure to enforce. Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.
- 12) Final payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, the Contractor shall execute and deliver to the City a release of all claims against the City arising under, or by virtue of, the contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the City's claims against the Contractor under this contract.
- 13) Force majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, and acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "force majeure events"). When such a cause arises, the Contractor shall notify the City immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the City determines it to be in its best interest to terminate the contract.
- 14) Indemnification. To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the City, its commissioners, board members, officers, employees, agents, representatives, and the State of Michigan from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this contract. In the City's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the City. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the City shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the City's concurrence, which the City shall not unreasonably withhold.

15) Independent contractor status. The Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the City. Nothing contained herein shall be deemed or construed by the City, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the City and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the City or the Contractor hereunder creates, or shall be deemed to create, a relationship other than the independent relationship of the City and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the City or the State of Michigan. Neither the Contractor nor its employees shall, under any circumstances be considered servants, agents, or employees of the City and the City shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The City shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including worker's compensation, normally provided by the City for its employees.

16) No limitation of liability. Nothing in this contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

17) Notices. All notices required or permitted to be given under this contract shall be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the Pontiac City Clerk's Office to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: [INSERT ADDRESS]

For the City: 47450 Woodward Avenue  
Pontiac, MI 48342

18) Oral statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract shall be made in writing by the City and agreed to by the Contractor.

19) 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. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the City and subject to any copyright protections.

- 20) Priority. The contract consists of this contract with exhibits. Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this contract with exhibits and, if still unresolved, by reference to the bid. Omission of any term or obligation from this contract shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
- 21) 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.
- 22) Record retention and access to records. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the City or any duly authorized representatives shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three years after final payment is made under this contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three year period, the records shall be retained for one year after all issues arising out of the action are finally resolved or until the end of the three year period, whichever is later.
- 23) Recovery of money. Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the City, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Contractor.
- 24) Right to audit. The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and

regulations. The Contractor shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Michigan Office of the State Auditor, its designees, or other authorized bodies.

25) Right to inspect facility. The City may, at reasonable times, inspect the place of business of the Contractor or any subcontractor, which is related to the performance of any contract awarded by the City.

26) Severability. If any part of this contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

27) 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 the City for any loss or damage, normal wear and tear excepted.

28) Termination for convenience clause.

a) The City reserves the absolute right to terminate the contract in whole or in part, for the convenience of the City at its sole discretion on thirty (30) days written notice to the Contractor. The City has the right, upon its sole discretion only, to terminate the contract with cause by giving notice to the Contractor of such termination, specifying the effective date thereof, at least fourteen (14) days before the effective date of such termination, and the Contract shall terminate in all respects as if such date were the date originally given for the expiration of the Contract.

b) The Contractor shall be liable to the City for damages sustained by the City by virtue of any breach of the Contract by the Contractor, and any costs the City might incur enforcing or attempting to enforce the Contract, and the City may pursue legal remedies in the collection of fees to compensate for the damages sustained by the City.

c) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The City may direct



the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State of Michigan. The Contractor shall still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

29) Termination for default clause.

- a) Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the City may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the City, the City may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the City may procure similar supplies or services in a manner and upon terms deemed appropriate by the City. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the City, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the City has an interest.
- c) Compensation. Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold from amounts due the Contractor such sums as the City deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.
- d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the City within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State of Michigan and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably

obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the City shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled "Termination for Convenience." (As used in this paragraph, the term "subcontractor" means subcontractor at any tier).

e) **Erroneous Termination for Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience by the City, be the same as if the notice of termination had been issued pursuant to such clause.

f) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

30) **Termination upon bankruptcy.** This contract may be terminated in whole or in part by the City upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

31) **Third party action notification.** The Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this contract.

32) **Unsatisfactory work.** If, at any time during the contract term, the service performed or work done by the Contractor is considered by the City to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the City of Pontiac, the Contractor shall, on being notified by the City, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the City shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

33) **Waiver.** No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall

constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults.

34) Taxes and Contributions. The Contractor hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless the City from and against the payment of:

a) 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)

b) 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.

c) All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Contractor or any of its vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of this work or the acquisition, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the work.

d) All pension, welfare, vacation, annuity and other union benefit contributions payable, under or in connection with respect, to all persons; by whomsoever employed or engaged in the work to be performed and furnished under this Contract.

35) Bonds. The Contractor is required to execute bonds, with sureties acceptable to the City, as identified in the specifications, all of which are incorporated into this agreement.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

**[CONTRACTOR]**

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
(Title)

City of Pontiac

\_\_\_\_\_  
DATE

By: \_\_\_\_\_

**Exhibit B**  
**[Scope of Work - Refer to Request for Proposals]**

**Exhibit C**  
**[Addendums]**



September 19, 2022

**Legal Services RFQ**

**Addendum No. 1**

Instructions to Bidders:

- The bid opening will occur at the City of Pontiac City Hall, Lions Den, located on the first floor at 47450 Woodward Avenue, Pontiac, MI 48342.
- The bid opening date and time is Tuesday, September 20, 2022, at 3 pm.

Sign this Addendum below to acknowledge receipt and understanding of its content. **Return this Addendum with your bid document.**

Kindest regards,

A handwritten signature in cursive script, appearing to read "Alicia Martin".

Alicia Martin  
Purchasing Manager

---

The undersigned bidder acknowledges receipt and understanding of Addendum No. 1.

---

Signature

---

Date

**Exhibit D**  
**[Contractor's Proposal]**





Daniel J. Kelly  
Ralph (Skip) Maccarone  
Brittney K. Ellis  
Wallace G. Long  
Nancy L. Olind  
Jake Mertes  
2825 University Drive  
Auburn Hills, Michigan 48326  
Office: (248) 655-7025  
Cell: (248) 217-6740

September 19, 2022

City of Pontiac  
Purchasing Department  
47450 Woodward Avenue  
Pontiac, Michigan 48342

**Re: The Kelly Firm Letter of Transmittal in Response to  
City of Pontiac's Request for Qualifications and Proposals for Legal Services**

**COMPENSATION PROPOSAL:**

Consistent with the City of Pontiac's RFQ and the related Terms and Conditions of the proposed Contract for Legal Services, which The Kelly Firm acknowledges and agrees, the firm submits this compensation response which is agreeable for the proposed 3-year term without change:

For **General City Attorney Legal Services**, the Firm proposes an hourly rate of \$165.00 per chargeable hour for partners of the firm; \$150.00 per chargeable hour for senior members of the firm (5 or more years of municipal experience); and \$135 per chargeable hour for firm associates. All rates per attorney (partner, senior and associate rates) shall be identified and pre-approved by the City based upon agreed upon levels of experience and knowledge.

For **Prosecution and Code Enforcement Services**, the firm is willing to negotiate a fixed annual retainer based on a mutual agreement with the City upon review of prior monthly billing averages. The Firm is confident the city will realize a significant savings in prosecution service expenses. Otherwise, the firm proposes an hourly rate of \$130.00 per chargeable hour for prosecution and code enforcement services; including all court proceedings related thereto.

Upon receiving additional information, the Firm is willing to discuss alternate pricing, including a flat fee, monthly retainer or a hybrid of same. The Kelly Firm is confident a savings in legal expenses for the City will be obtained

Very truly yours,

**THE KELLY FIRM, PLC**



Daniel J. Kelly



September 19, 2022

Legal Services RFQ

Addendum No. 1

Instructions to Bidders:

- The bid opening will occur at the City of Pontiac City Hall, Lions Den, located on the first floor at 47450 Woodward Avenue, Pontiac, MI 48342.
- The bid opening date and time is Tuesday, September 20, 2022, at 3 pm.

Sign this Addendum below to acknowledge receipt and understanding of its content. **Return this Addendum with your bid document.**

Kindest regards,

A handwritten signature in cursive script, appearing to read "Alicia Martin".

Alicia Martin  
Purchasing Manager

---

The undersigned bidder acknowledges receipt and understanding of Addendum No. 1.

A handwritten signature in cursive script, appearing to read "Dennis J. Kelly".  
Signature

9-19-22  
Date

## FORM OF PROPOSAL

To: City of Pontiac, Michigan

September 19, 2022

To All Here Present:

Having carefully examined the specifications of the proposed project, and being fully informed in regard to the conditions to be met in the prosecution and completion of the work, and having read and examined the Instructions to Bidders, Agreement, Bonds, General Conditions, Plans and Specifications pertaining to this work and agreeing to be bound accordingly, the undersigned proposes to furnish all the materials, labor, and other equipment as necessary in full accordance with and conformity to the plans and specifications for this work now on file in the office of the City's at and for the following named prices, to wit:

**NOTE:** This proposal is solicited on a unit price and lump sum basis for equipment.

**THIS BID PROPOSAL MUST BE SUBMITTED BACK TO THE CITY OF PONTIAC IN ITS ENTIRETY AS PART OF THE CONTRACTORS BID SUBMISSION. MAKE SURE THAT ALL PAGES ARE COMPLETELY FILLED OUT AND THAT ALL INFORMATION REQUESTED IS COMPLETE. FAILURE TO DO SO MAY BE CAUSE TO REJECT YOUR BID PROPOSAL. IF A BID IS NOT BEING SUBMITTED FOR A PARTICULAR AREA OF WORK, PLEASE MARK "NO BID" IN THE APPROPRIATE SPACE.**

BIDDER ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUM: (if issued)

Addendum #1 AJA Dated 9/19/22

Addendum # AJA Dated 9-19-22

**CITY OF PONTIAC - BID PROPOSAL**

I, the undersigned, propose to provide services proposed in this contract as per specifications supplied by the City of Pontiac. No contract is active until a purchase order is issued to the successful bidder.

I further propose to deliver the above-described services for the City of Pontiac in first class operating manner in accordance with all specifications contained herein subject to purchaser's inspection of services performed.

I attest that the bid includes all information necessary for the City of Pontiac to accept bid.

Company Name: The Kelly Firm, PLC

Address: 2825 University Drive; Auburn Hills, MI 48026

Representative Signature: 

Print Name: Daniel J. Kelly

Title: President

Office # 248-655-7025

Cell #248-217-6740

EMAIL# DAN@KELLYFIRMPC.COM

Federal Tax Identification Number: 83-1194612

**The City of Pontiac is a tax-exempt Michigan municipal corporation and is exempt from sales tax. Exemption certificate can be provided upon request.**

**Related Project Experience:**

Provide descriptions of current and completed projects your firm has performed that are similar to this project in size, scope and complexity. Information for these projects, limited to the last two (2) years:

- 1) Project Title: Negotiated Collective Bargaining Agreements on behalf of the City of Auburn Hills, Orion Township, Oakland Township, Macomb Township and Independence Township with various unions; including but not limited to the IAFF, Teamsters, AFSME, IWA and MAPE

Project Location City of Auburn Hills, Township of Oakland, Township of Independence, Orion Township, Macomb Township

Client's name: City of Auburn Hills, Township of Oakland, Township of Independence, Orion Township, Macomb Township

Contact name, title, and telephone number:

**City of Auburn Hills**

Address: 1827 N. Squirrel Road, Auburn Hills, MI 48326  
Contact: Tom Tanghe, City Manager  
Telephone: (248) 370-9440  
Email: ttanghe@auburnhills.org

**Charter Township of Orion**

Address: 2323 Joslyn Road, Lake Orion, MI 48360  
Contact: Chris Barnett, Township Supervisor  
Telephone: (248) 309-6901  
Email: cbarnett@oriontownship.org

**Charter Township of Oakland**

Address: 4393 Collins Road, Rochester, MI 48306  
Contact: Adam Kline, Township Manager  
Telephone: (248) 218-6959  
Email: akline@oaklandtownship.org;

**Charter Township of Independence**

Address: 6483 Waldon Center Drive, Clarkston, MI 48346  
Contact: Cari Neubeck, Township Clerk  
Telephone: (248) 625-5111, Ext. 203  
Email: cneubeck@indtpw.com

**Charter Township of Macomb**

Address: 54111 Broughton, Macomb Township, MI 48042  
Contact: Frank Viviano, Township Supervisor

Telephone: (586) 586-992-0710, Ext. 2294  
Email: VivianoF@macomb-mi.gov

2) Project Title: General Counsel Legal Services

Project Location: Oakland County Water Resource Commissioner, Pontiac, Michigan, Orion Township, Oakland Township, Independence Township and Oxford Township

Client's name: O.C.W.R.C., Charter Township of Oakland, Charter Township of Independence and Oxford Township

Contact name, title, and telephone number:

**Oakland County Water Resources Commissioner**

Address: One Public Works Drive, Bldg. 95W, Waterford, MI 48328  
Contact: Kelsey Cooke, Attorney, Special Projects Manager  
Phone: (248) 296-1406  
Email: [cookek@oakgov.com](mailto:cookek@oakgov.com)

**Charter Township of Orion**

Address: 2323 Joslyn Road, Lake Orion, MI 48360  
Contact: Chris Barnett, Township Supervisor  
Telephone: (248) 309-6901  
Email: [cbarnett@oriontownship.org](mailto:cbarnett@oriontownship.org)

**Charter Township of Oakland**

Address: 4393 Collins Road, Rochester, MI 48306  
Contact: Adam Kline, Township Manager  
Telephone: (248) 218-6959  
Email: [akline@oaklandtownship.org](mailto:akline@oaklandtownship.org)

**Charter Township of Independence**

Address: 6483 Waldon Center Drive, Clarkston, MI 48346  
Contact: Cari Neubeck, Township Clerk  
Telephone: (248) 625-5111, Ext. 203  
Email: [cneubeck@indtwp.com](mailto:cneubeck@indtwp.com)

**Charter Township of Oxford**

Contact: Township Supervisor  
Name: Jack Curtis, Supervisor  
Address: 300 Dunlap Road, Oxford, MI 48371  
Telephone: (248) 628-9787, Ext. 109  
Email: [jcurtis@oxfordtownship.org](mailto:jcurtis@oxfordtownship.org)

3) Project Title: Prosecution and Code Enforcement (Condemnation and Eminent Domain)

Project Location: Orion Township, Oakland Township, Independence and Oxford Township

Client's name: Charter Township of Orion, charter Township of Oakland, Charter Township of Independence and Oxford Township

Contact name, title, and telephone number:

**Charter Township of Orion**

Address: 2323 Joslyn Road, Lake Orion, MI 48360  
Contact: Chris Barnett, Township Supervisor  
Telephone: (248) 309-6901  
Email: [cbarnett@oriontownship.org](mailto:cbarnett@oriontownship.org)

**Charter Township of Oakland**

Address: 4393 Collins Road, Rochester, MI 48306  
Contact: Adam Kline, Township Manager  
Telephone: (248) 218-6959  
Email: [akline@oaklandtownship.org](mailto:akline@oaklandtownship.org);

**Charter Township of Independence**

Address: 6483 Waldon Center Drive, Clarkston, MI 48346  
Contact: Cari Neubeck, Township Clerk  
Telephone: (248) 625-5111, Ext. 203  
Email: [cneubeck@indtwp.com](mailto:cneubeck@indtwp.com)

**Charter Township of Oxford**

Contact: Township Supervisor  
Name: Jack Curtis, Supervisor  
Address: 300 Dunlap Road, Oxford, MI 48371  
Telephone: (248) 628-9787, Ext. 109  
Email: [jcurtis@oxfordtownship.org](mailto:jcurtis@oxfordtownship.org)

4) Project Title: Incremental Tax Financing Authorities (i.e., DDA, CIA, SADs etc.) and Tax Tribunal Appeals Orion, Oakland, Independence and Oxford Townships

Project Location: Orion Township, Oakland Township, Independence and Oxford Township

Client's name: Charter Township of Orion, charter Township of Oakland, Charter Township of Independence and Oxford Township

Contact name, title, and telephone number:

**Charter Township of Orion**



Address: 2323 Joslyn Road, Lake Orion, MI 48360  
Contact: Chris Barnett, Township Supervisor  
Telephone: (248) 309-6901  
Email: [cbarnett@oriontownship.org](mailto:cbarnett@oriontownship.org)

**Charter Township of Oakland**

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Telephone: (248) 218-6959  
Email: [akline@oaklandtownship.org](mailto:akline@oaklandtownship.org);

**Charter Township of Independence**

Address: 6483 Waldon Center Drive, Clarkston, MI 48346  
Contact: Cari Neubeck, Township Clerk  
Telephone: (248) 625-5111, Ext. 203  
Email: [cneubeck@indtwp.com](mailto:cneubeck@indtwp.com)

**Charter Township of Oxford**

Contact: Township Supervisor  
Name: Jack Curtis, Supervisor  
Address: 300 Dunlap Road, Oxford, MI 48371  
Telephone: (248) 628-9787, Ext. 109  
Email: [jcurtis@oxfordtownship.org](mailto:jcurtis@oxfordtownship.org)

If you require more room, please submit information on another sheet.