

FUNDING AGREEMENT

ALFRED BRUSH FORD PARK SNF PHASE 2 RENOVATIONS & IMPROVEMENTS

THIS FUNDING AGREEMENT (the “Agreement”) made and executed this 22nd day of February, 2024, by and between the CITY OF DETROIT, a Michigan municipal corporation organized and existing under the laws of the State of Michigan acting by and through its GENERAL SERVICES DEPARTMENT (hereinafter the “City”) and the CITY OF DETROIT BUILDING AUTHORITY, a public authority and body corporate of the State of Michigan, organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (hereinafter the “AUTHORITY”), each referred to individually as a “Party” and occasionally referred together as the “Parties”.

RECITALS

WHEREAS, the Authority has been incorporated in accordance with the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (the “Act”), for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining buildings, automobile parking lots or structures, recreational facilities, stadiums and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for the use of any legitimate public purpose of the City; and

WHEREAS, the City desires to engage the assistance of the Authority to assist in renovations to Phase 2 A.B. Ford Park which includes park amenities, and the removal and replacement of 2 feet of clean fill on 30 acres (the “Project”); and

WHEREAS, the City has advised the Commissioners of the Authority that the Project is necessary and advisable to meet the needs of the citizens of the City and others; and

WHEREAS, the Authority desires to assume management responsibility for the Project; and now

IT IS THEREFORE, AGREED BY AND BETWEEN THE PARTIES HERETO, for and in consideration of the mutual covenants hereinafter contained as follows:

SECTION 1
Engagement of Authority

1.01 By this Agreement, the City, acting by and through its General Services Department, engages the Authority, and the Authority agrees to serve as the Construction Owner for renovations and improvements to Phase 2 A.B. Ford Park which includes park amenities and the removal and replacement of 2 feet of clean fill on 30

acres as specified in Exhibit A and provide services in accordance with the Funding Agreement General Terms and Conditions contained in Exhibit B attached hereto.

SECTION II
Funding of the Project

2.01 Funds. The City agrees to reserve funds in an amount not to exceed Nine Million Three Hundred Thousand and 00/100 (\$9,300,000.00) Dollars (the “Funds”), to pay for the cost of the Project. Such cost shall be paid to the Authority in the manner described in Article IX, Section 9.01, of Exhibit B.

2.02 The Funds are currently available for this Project with the City’s General Services Department and have been secured and encumbered through the following funding account number: 4533-20507-358047-644124-470013.

SECTION III
Notices

3.01. All notices, consents, approvals, requests, and other communications (“Notices”) required or permitted under this Agreement shall be given in writing and mailed by registered or certified first-class mail, postage prepaid, and addressed as follows:

If to the City: City of Detroit
General Services Department
115 Erskine Street
Detroit, MI 48201
Attention: Crystal Perkins, Director

With a copy to: City of Detroit
Law Department
2 Woodward Avenue, Suite 500
Detroit, Michigan 48226
Attention: Property Section

If to the Authority: City of Detroit Building Authority
1301 Third Street, Suite 328
Detroit, Michigan 48226
Attention: Tyrone Clifton, Director

With a copy to: The Allen Law Group, PC
3011 W. Grand Blvd., Suite 2500
Detroit, Michigan 48202
Attention: Floyd E. Allen, Esq.

3.02. All Notices shall be deemed given on the day of mailing. Any Notice given by a party to this Agreement must be signed by an authorized representative of such party.

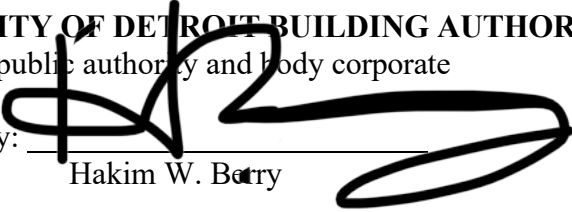
3.03 Either party to this Agreement may change its address for the recipient of Notices at any time by giving notice of the address change to the other party.

3.04 The Authority agrees that service of process at the address, and in the manner specified in this Section III, shall be sufficient to put the Authority on notice of such action, and there Authority hereby waives any claims relative to such notice.

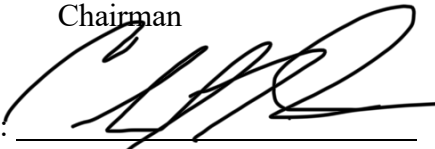
[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the CITY and the AUTHORITY by and through their duly authorized officers and representatives have executed this Agreement on the day and year first above written, to be effective as of the Effective Date.

CITY OF DETROIT BUILDING AUTHORITY,
a public authority and body corporate

By: 
Hakim W. Berry

Its: Chairman

By: 
Christopher T. Jackson

Its: Treasurer

CITY OF DETROIT,
a Michigan municipal corporation,
by and through its General Services Department

By: 
Crystal Perkins

Its: Director

APPROVED AS TO FORM:

Floyd Allen

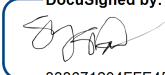
General Counsel, City of
Detroit Building Authority

APPROVED AS TO FORM:

2/28/24

Corporation Counsel for
the City of Detroit

OFFICE OF CONTRACTING AND
PROCUREMENT

DocuSigned by:

4/3/2024

333671204FFE45A...
Chief Procurement Officer

This Agreement was approved by City Council on:

3/26/24

Date

THIS CONTRACT WAS APPROVED BY FRC ON:

2/27/24

EXHIBIT A

PROJECT AND PROJECT SITE

The Authority will assist in renovations to Phase 2 A.B. Ford Park, which includes park amenities, seawall improvements, and the removal and replacement of 2 feet of clean fill on 30 acres Services to be performed under this contract are including but not limited to the following:

- Civil Engineering Services
- Structural Engineering Services
- Architectural/Landscape Design Services
- Environmental Consulting Services
- Property/Land Survey Services
- Community Outreach and Engagement
- Construction Services
- Construction Administration and Support Services

FEE SCHEDULE

DESCRIPTION	SUBTOTAL NOT TO EXCEED
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Contingency	\$507,143.00
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Detroit Building Authority Fee	\$442,857.00
TOTAL NOT TO EXCEED	\$9,300,000.00

EXHIBIT B

FUNDING AGREEMENT

GENERAL TERMS AND CONDITIONS

ARTICLE I

Duties of the City

1.01. The recitals are incorporated into this Agreement as if fully set out word for word.

1.02. The City shall use the Funds to pay the Authority for all vouchers received from the Authority for work performed or work to be performed on the Project as set forth and specified in Article 9.01 hereof. The Authority shall use such the Funds to pay for all work contained in contracts entered into by the Authority for the benefit of the City with respect to the Project.

1.03. The City shall execute such other documents and provide such other information, plans and specifications that may be reasonably required for completion of the Project.

ARTICLE II

Duties of the Authority

2.01. The Authority shall serve as the Project Manager on the Project. The Authority shall be responsible for all progress and final inspections, for all general administrative functions, and for maintaining all documentation and all reports in relation to the Project. The Authority shall require and secure from its contractors, subcontractors, grantees, borrowers, and consultants engaged pursuant to this Agreement (individually, a "Contractor", and collectively, the "Contractors") undertaking work on the Project (i) all necessary and proper bonds to guarantee the performance of said Project, (ii) all necessary affidavits and resolutions required to contract with the City, and (iii) all workers' compensation, employer's liability, commercial general liability (Broad Form Comprehensive), automobile liability, and pollution liability insurance policies (as required) in such amounts, with such features, and in such form as set forth and specified in Article VI hereof, or as may be required by law. To the extent permitted by law and commercially available, the City and the Authority shall be named as additional insured on all such insurance.

2.02 The Authority shall maintain full and complete books, ledgers, journals, accounts, documents, other collected data, and records in auditable form (the "Records"), wherein are kept all entries reflecting all actions taken pursuant to this Agreement. The Authority shall make available all such Records for audits, inspections, and examinations by the City during normal business hours. All such Records shall be maintained and kept in accordance with generally accepted accounting principles by the Authority during the term of this Agreement, plus an additional period of four (4) years following the later of the completion of the Project or the

termination of this Agreement, or for such longer period as may be required. The provisions of this Paragraph shall survive the termination of this Agreement.

ARTICLE III
Access to Site

3.01. In consideration for the management of the Project as herein specified, the City agrees to grant the Authority such access to the site upon which the Project is to be conducted, as more particularly described in Exhibit A to this Agreement (the "Project Site"), for such period of time commencing on the date of City of Detroit City Council ("City Council") approval and ending no later than three (3) years from such date, subject to the provisions of Article VIII and Article IX hereof.

ARTICLE IV
Compliance with Law

4.01. The City and the Authority covenant and agree that they will not permit the use of the Project in any manner inconsistent with local, state, or federal laws, rules, or regulations now or hereafter in force and applicable hereto. The City further covenants and agrees that it will promptly, and at its own expense, make and pay for any and all changes and alterations to the Project which, during the term of this Agreement, may be required at any time by reason of local, state, or federal laws.

ARTICLE V
Insurance

5.01. During the term of this Agreement, the Authority shall require the Contractors to maintain insurance, at a minimum and at their expense, in the amounts outlined below:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Worker's Compensation	Michigan statutory minimum
(b) Employer's Liability	\$500,000.00 minimum, each disease \$500,000.00 minimum, each person \$500,000.00 minimum, each accident
(c) Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(d) Automobile Liability Insurance (covering all owned, hired, and non-owned vehicles with personal and property protection insurance,	\$1,000,000.00 combined single limit for bodily injury and property damage

including residual liability insurance
under Michigan no fault insurance
law)

5.02 Any commercial general liability insurance policy required herein shall include an endorsement naming the "City of Detroit", and the "Detroit Building Authority" as additional insureds. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Agreement. The commercial general liability policy shall state that the Contractor's insurance is primary and not excess over any insurance already carried by the City of Detroit and shall provide blanket contractual liability insurance for all written agreements, contracts.

5.03 Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

5.04 All insurance required by this Agreement shall be written on an occurrence-based policy form, if the same is commercially available.

5.05 All commercial general liability policies shall be endorsed to have the general aggregate apply to the services provided under this Agreement only.

5.06 If during the term of this Agreement changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the Contractor's expense, under valid and enforceable policies, issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.

5.07 All insurance policies shall name the Contractor as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the City. Certificates of insurance evidencing the coverage and endorsements as required by this Article VI shall be in a form acceptable to the City, and shall be submitted to the City prior to the commencement of the services at least fifteen (15) days prior to the expiration dates of expiring policies. In the event that any Contractor receives notice of a policy cancellation, the Contractor shall immediately notify the City in writing.

5.08 If any work is subcontracted in connection with this Agreement, the Contractor shall require each subcontractor to effect and maintain the types and limits of insurance set forth in this Article VI and shall require documentation of same, copies of which documentation shall be promptly furnished the City.

5.09 The Contractors shall be responsible for payment of all deductibles contained in any insurance required under this Agreement. The provisions requiring the

Contractors to carry the insurance required under this Article VI shall not be construed in any manner as waiving or restricting the liability of the Contractors under this Agreement.

ARTICLE VI
Assignment

6.01. The rights, duties and obligations of the City and the Authority, as specified in this Agreement, shall not be assigned, in whole or in part, during the term of this Agreement.

ARTICLE VII
Term of Agreement

7.01. This Agreement shall be effective upon the later of the date of execution of this Agreement or the approval of the City Council (the “Effective Date”) and shall terminate three (3) years from that date (the “Term”), and shall remain in full force and effect until the end of this Term unless otherwise terminated pursuant to Article IX.

7.02 The Authority shall have no authority to start work, no payments shall be authorized by the Finance Department of the City of Detroit, and the City shall not be liable for reimbursement for any material or service purchased, or payment for any cost incurred by the Authority, or any Service rendered by the Authority which are purchased, incurred or rendered prior to the term of this Agreement.

ARTICLE VIII
Default

8.01. In the event that a Party hereto defaults or materially breaches the terms and conditions of this Agreement, the non-defaulting Party may terminate this Agreement upon thirty (30) days prior written notice. The Party claiming the right to terminate hereunder shall specify in its written notice the reason(s) underlying the alleged default, and the defaulting Party shall have thirty (30) days after delivery of said written notice to cure or commence to cure said default. Failure to cure said default within the thirty (30) days shall be considered a material breach of this Agreement.

8.02 Upon the occurrence of a material breach by the Authority, the City may assume and perform on behalf of the Authority all of the Authority’s duties provided for in Article II hereof.

8.03. This Agreement may be terminated at any time prior to completion of the Project by the City for convenience, or by the mutual written consent of the parties hereto.

8.04. If the Agreement is terminated, the City shall pay the Authority for services rendered prior to the effective date of termination, and any Funds held by the Authority for the Project shall be returned to the City.

ARTICLE IX

Project Invoicing, Payment of Work

9.01 Invoices. All invoices submitted against this Agreement shall be in a form acceptable to the City and approved by both Parties (“Invoices”). It is the Authority’s responsibility to ensure the creation of Invoices, items not properly invoiced will be considered invalid and not be paid.

9.02 Payment of Work. Upon execution of the Agreement, the City agrees to authorize vouchers to pay all valid Invoices and requests for payment submitted to it by the Authority for all work performed, and to be performed, pursuant the terms and conditions of this Agreement. Payment shall include a 5% administrative fee to the Authority, which is included in the Funds and is paid to the Authority compensation for the services rendered hereunder. Neither the City’s review, approval, nor payment for any of the services provided by the Authority shall be construed to operate as a waiver of any rights under this agreement.

9.03 City Employees. The Authority shall reimburse the City for the cost and expense of the City personnel, including but not limited to, the wages paid, proper allowance for vacation, sick time and the City's contribution to the pension system, and the City's cost or expense for compensation, insurance or benefits when such costs and expenses for City employees are budgeted for and assigned to the Authority.

9.04 Direct Costs. Except as provided for by this Agreement, the Authority shall not charge under this Agreement direct costs which have been or will be paid from another source, or have been or will be submitted to another source.

9.05 Reimbursement. Any payment by the City for reimbursement to the Authority of the cost and expense of City personnel may be reduced by the reimbursement owed by the Authority to the City.

9.06 Third Parties. The City and the Authority expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Agreement, and that this Agreement shall not be construed to benefit any person other than the City and the Authority.

ARTICLE X

Fair Employment Practices

Compliance with State and Federal Laws. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal opportunity, including but not limited to, Titles VI and VII of the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and United States Department of Justice Regulations issued pursuant to those Titles (28 C.F.R. Part 42), and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 NO. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 NO. 220), the Authority agrees that it will not discriminate against any person, employee, consultant, or applicant for employment with respect to his (or her) hire, tenure, terms, conditions or privileges of employment or hire because of his

(or her) religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Authority recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Contractors. Notwithstanding the foregoing, the Authority shall comply with, and shall require any Contractor to comply with, all federal, state, and local laws and regulations, including but not necessarily limited to (i) all laws governing fair employment practices and equal employment opportunities; and (ii) all applicable property maintenance code provisions.

10.02. Compliance with City Laws. The Authority agrees to comply with all rules and procedures adopted by the City, including but not necessarily limited to the City Human Rights Department, and shall not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the Agreement with respect to his (or her) hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, public benefit status, sex, or sexual orientation. The Authority shall promptly furnish any information required by the City Human Rights Department pursuant to this Section 14.02.

10.03. Compliance of Contractors. The Authority agrees that it shall notify any of its Contractors of their obligations relative to nondiscrimination and legal compliance under this Agreement when soliciting the same, and shall include the provisions of this Article XIV in any contract, as well as provide the City with a copy of any such contract upon request. With respect to any contract for the procurement of goods and services for the Project, the Authority further agrees to take such action as the City may lawfully direct as a means of enforcing such provisions.

10.04 Anti-Kickback Laws. The Authority shall require that each of its Contractors comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874), and shall prohibit such Contractors from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation to which he/she is otherwise entitled. All Contractors shall be required to insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.05 Anti-Bribery. The Authority, and all its Contractors, and each of their subcontractors are prohibited from paying or accepting any bribe in connection with securing a contract entered into pursuant to this Agreement or in connection with performing under the terms of such a contract. Contractors of the Authority shall insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.06. Material Breach. Breach of the covenants in this Article XIV shall be deemed to be a material breach of this Agreement.

ARTICLE XI Amendments

11.01. The City and the Authority may, from time to time, consider it in their best interest to change, modify or extend a term, condition, or covenant of this Agreement or require changes in the scope of the Project as set forth in Exhibit A which result in an increase of the City's

obligation hereunder. Any such change, addition, deletion, extension, or modification, including any increase in the amount of the Authority's compensation, which is mutually agreed upon by and between the City and the Authority shall be incorporated in written amendments to this Agreement ("Amendments"). Such Amendments shall not invalidate this Agreement nor relieve or release the Authority or the City from any of its obligations under this Agreement unless so stated therein.

11.02. No Amendment to this Agreement which increases the financial obligation of the City as stated in Article X hereof shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of both parties, and is approved by the City Council.

ARTICLE XII Force Majeure

12.01 No failure or delay in performance of this Agreement, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by an event or circumstance that is beyond the reasonable control of that party, absent such party's fault or negligence, and which by its nature could not have been foreseen by such party, or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). A Force Majeure Event includes, but is not limited to, any Act of God or the public enemy, strikes, lockouts, wars, acts of terrorism, riots, epidemics, pandemics, explosions, sabotage, the binding order of any governmental authority, or any other cause, whether the kind herein enumerated or otherwise, which is not within the control of a party. Neither the Authority's economic hardship nor changes in market conditions are considered a Force Majeure Event.

12.02 Upon the occurrence of a Force Majeure Event, the Authority shall (i) give prompt written notice to the City that the Force Majeure Event has occurred, the anticipated effect on the Authority's performance, and the expected duration of that anticipated effect; (ii) use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, (iii) keep the City apprised of the Authority's progress in remediating the effects of the Force Majeure Event; and (iii) promptly resume performance under the Agreement.

12.03 If a Force Majeure Event prevents the Authority from performing under the Agreement for a continuous period of at least thirty (30) business days, the City may terminate this Agreement immediately by giving written notice to the Authority as required herein.

ARTICLE XIII Additional Provisions

13.01 Nothing contained herein shall be construed to or be permitted to operate as any restriction upon the power granted to the City Council by the City Charter to audit and allow all accounts chargeable against the City.

13.02. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto and their successors and assigns.

13.03. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations or representations relating to the subject matter of this Agreement which are not expressly set forth herein, are void.

13.04. If any provision or part of this Agreement contravenes or is invalid under the laws of the State of Michigan and/or federal law, such contravention and invalidity shall not invalidate the whole of the Agreement, and this Agreement shall be construed as if it does not contain such provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

13.05. The headings of the sections in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of the Agreement or in any way affect the same.

13.06. This Agreement shall be governed by the laws of the State of Michigan, and the rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity.

13.07 The relationship of the Authority to the City is and shall continue to be that of an independent contractor. It is not intended for this Agreement to create any relationship of principal and agent or establish any partnership, joint venture, association or other entity.

13.08 This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, the City shall provide a copy to the Authority.

FUNDING AGREEMENT

ALFRED BRUSH FORD PARK SNF PHASE 2 RENOVATIONS & IMPROVEMENTS

THIS FUNDING AGREEMENT (the “Agreement”) made and executed this 22nd day of February, 2024, by and between the CITY OF DETROIT, a Michigan municipal corporation organized and existing under the laws of the State of Michigan acting by and through its GENERAL SERVICES DEPARTMENT (hereinafter the “City”) and the CITY OF DETROIT BUILDING AUTHORITY, a public authority and body corporate of the State of Michigan, organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (hereinafter the “AUTHORITY”), each referred to individually as a “Party” and occasionally referred together as the “Parties”.

RECITALS

WHEREAS, the Authority has been incorporated in accordance with the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (the “Act”), for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining buildings, automobile parking lots or structures, recreational facilities, stadiums and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for the use of any legitimate public purpose of the City; and

WHEREAS, the City desires to engage the assistance of the Authority to assist in renovations to Phase 2 A.B. Ford Park which includes park amenities, and the removal and replacement of 2 feet of clean fill on 30 acres (the “Project”); and

WHEREAS, the City has advised the Commissioners of the Authority that the Project is necessary and advisable to meet the needs of the citizens of the City and others; and

WHEREAS, the Authority desires to assume management responsibility for the Project; and now

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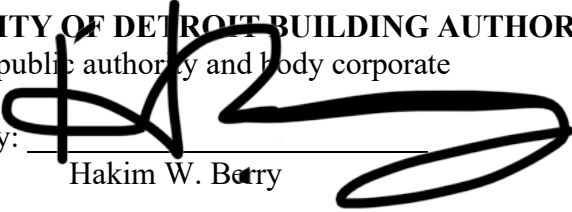
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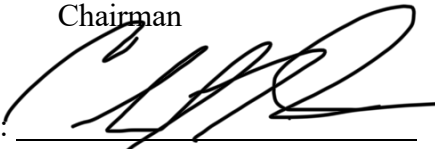
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a public authority and body corporate

By: 
Hakim W. Berry

Its: Chairman

By: 
Christopher T. Jackson

Its: Treasurer

CITY OF DETROIT,
a Michigan municipal corporation,
by and through its General Services Department

By: 
Crystal Perkins

Its: Director

APPROVED AS TO FORM:

Floyd Allen

General Counsel, City of
Detroit Building Authority

APPROVED AS TO FORM:

OFFICE OF CONTRACTING AND
PROCUREMENT

Corporation Counsel for
the City of Detroit

Chief Procurement Officer

This Agreement was approved by City Council on:

Date

EXHIBIT A

PROJECT AND PROJECT SITE

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2.02 The Authority shall maintain full and complete books, ledgers, journals, accounts, documents, other collected data, and records in auditable form (the "Records"), wherein are kept all entries reflecting all actions taken pursuant to this Agreement. The Authority shall make available all such Records for audits, inspections, and examinations by the City during normal business hours. All such Records shall be maintained and kept in accordance with generally accepted accounting principles by the Authority during the term of this Agreement, plus an additional period of four (4) years following the later of the completion of the Project or the

termination of this Agreement, or for such longer period as may be required. The provisions of this Paragraph shall survive the termination of this Agreement.

ARTICLE III
Access to Site

3.01. In consideration for the management of the Project as herein specified, the City agrees to grant the Authority such access to the site upon which the Project is to be conducted, as more particularly described in Exhibit A to this Agreement (the "Project Site"), for such period of time commencing on the date of City of Detroit City Council ("City Council") approval and ending no later than three (3) years from such date, subject to the provisions of Article VIII and Article IX hereof.

ARTICLE IV
Compliance with Law

4.01. The City and the Authority covenant and agree that they will not permit the use of the Project in any manner inconsistent with local, state, or federal laws, rules, or regulations now or hereafter in force and applicable hereto. The City further covenants and agrees that it will promptly, and at its own expense, make and pay for any and all changes and alterations to the Project which, during the term of this Agreement, may be required at any time by reason of local, state, or federal laws.

ARTICLE V
Insurance

5.01. During the term of this Agreement, the Authority shall require the Contractors to maintain insurance, at a minimum and at their expense, in the amounts outlined below:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Worker's Compensation	Michigan statutory minimum
(b) Employer's Liability	\$500,000.00 minimum, each disease \$500,000.00 minimum, each person \$500,000.00 minimum, each accident
(c) Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(d) Automobile Liability Insurance (covering all owned, hired, and non-owned vehicles with personal and property protection insurance,	\$1,000,000.00 combined single limit for bodily injury and property damage

including residual liability insurance
under Michigan no fault insurance
law)

5.02 Any commercial general liability insurance policy required herein shall include an endorsement naming the "City of Detroit", and the "Detroit Building Authority" as additional insureds. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Agreement. The commercial general liability policy shall state that the Contractor's insurance is primary and not excess over any insurance already carried by the City of Detroit and shall provide blanket contractual liability insurance for all written agreements, contracts.

5.03 Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

5.04 All insurance required by this Agreement shall be written on an occurrence-based policy form, if the same is commercially available.

5.05 All commercial general liability policies shall be endorsed to have the general aggregate apply to the services provided under this Agreement only.

5.06 If during the term of this Agreement changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the Contractor's expense, under valid and enforceable policies, issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.

5.07 All insurance policies shall name the Contractor as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the City. Certificates of insurance evidencing the coverage and endorsements as required by this Article VI shall be in a form acceptable to the City, and shall be submitted to the City prior to the commencement of the services at least fifteen (15) days prior to the expiration dates of expiring policies. In the event that any Contractor receives notice of a policy cancellation, the Contractor shall immediately notify the City in writing.

5.08 If any work is subcontracted in connection with this Agreement, the Contractor shall require each subcontractor to effect and maintain the types and limits of insurance set forth in this Article VI and shall require documentation of same, copies of which documentation shall be promptly furnished the City.

5.09 The Contractors shall be responsible for payment of all deductibles contained in any insurance required under this Agreement. The provisions requiring the

Contractors to carry the insurance required under this Article VI shall not be construed in any manner as waiving or restricting the liability of the Contractors under this Agreement.

ARTICLE VI
Assignment

6.01. The rights, duties and obligations of the City and the Authority, as specified in this Agreement, shall not be assigned, in whole or in part, during the term of this Agreement.

ARTICLE VII
Term of Agreement

7.01. This Agreement shall be effective upon the later of the date of execution of this Agreement or the approval of the City Council (the “Effective Date”) and shall terminate three (3) years from that date (the “Term”), and shall remain in full force and effect until the end of this Term unless otherwise terminated pursuant to Article IX.

7.02 The Authority shall have no authority to start work, no payments shall be authorized by the Finance Department of the City of Detroit, and the City shall not be liable for reimbursement for any material or service purchased, or payment for any cost incurred by the Authority, or any Service rendered by the Authority which are purchased, incurred or rendered prior to the term of this Agreement.

ARTICLE VIII
Default

8.01. In the event that a Party hereto defaults or materially breaches the terms and conditions of this Agreement, the non-defaulting Party may terminate this Agreement upon thirty (30) days prior written notice. The Party claiming the right to terminate hereunder shall specify in its written notice the reason(s) underlying the alleged default, and the defaulting Party shall have thirty (30) days after delivery of said written notice to cure or commence to cure said default. Failure to cure said default within the thirty (30) days shall be considered a material breach of this Agreement.

8.02 Upon the occurrence of a material breach by the Authority, the City may assume and perform on behalf of the Authority all of the Authority’s duties provided for in Article II hereof.

8.03. This Agreement may be terminated at any time prior to completion of the Project by the City for convenience, or by the mutual written consent of the parties hereto.

8.04. If the Agreement is terminated, the City shall pay the Authority for services rendered prior to the effective date of termination, and any Funds held by the Authority for the Project shall be returned to the City.

ARTICLE IX

Project Invoicing, Payment of Work

9.01 Invoices. All invoices submitted against this Agreement shall be in a form acceptable to the City and approved by both Parties (“Invoices”). It is the Authority’s responsibility to ensure the creation of Invoices, items not properly invoiced will be considered invalid and not be paid.

9.02 Payment of Work. Upon execution of the Agreement, the City agrees to authorize vouchers to pay all valid Invoices and requests for payment submitted to it by the Authority for all work performed, and to be performed, pursuant the terms and conditions of this Agreement. Payment shall include a 5% administrative fee to the Authority, which is included in the Funds and is paid to the Authority compensation for the services rendered hereunder. Neither the City’s review, approval, nor payment for any of the services provided by the Authority shall be construed to operate as a waiver of any rights under this agreement.

9.03 City Employees. The Authority shall reimburse the City for the cost and expense of the City personnel, including but not limited to, the wages paid, proper allowance for vacation, sick time and the City's contribution to the pension system, and the City's cost or expense for compensation, insurance or benefits when such costs and expenses for City employees are budgeted for and assigned to the Authority.

9.04 Direct Costs. Except as provided for by this Agreement, the Authority shall not charge under this Agreement direct costs which have been or will be paid from another source, or have been or will be submitted to another source.

9.05 Reimbursement. Any payment by the City for reimbursement to the Authority of the cost and expense of City personnel may be reduced by the reimbursement owed by the Authority to the City.

9.06 Third Parties. The City and the Authority expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Agreement, and that this Agreement shall not be construed to benefit any person other than the City and the Authority.

ARTICLE X

Fair Employment Practices

Compliance with State and Federal Laws. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal opportunity, including but not limited to, Titles VI and VII of the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and United States Department of Justice Regulations issued pursuant to those Titles (28 C.F.R. Part 42), and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 NO. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 NO. 220), the Authority agrees that it will not discriminate against any person, employee, consultant, or applicant for employment with respect to his (or her) hire, tenure, terms, conditions or privileges of employment or hire because of his

(or her) religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Authority recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Contractors. Notwithstanding the foregoing, the Authority shall comply with, and shall require any Contractor to comply with, all federal, state, and local laws and regulations, including but not necessarily limited to (i) all laws governing fair employment practices and equal employment opportunities; and (ii) all applicable property maintenance code provisions.

10.02. Compliance with City Laws. The Authority agrees to comply with all rules and procedures adopted by the City, including but not necessarily limited to the City Human Rights Department, and shall not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the Agreement with respect to his (or her) hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, public benefit status, sex, or sexual orientation. The Authority shall promptly furnish any information required by the City Human Rights Department pursuant to this Section 14.02.

10.03. Compliance of Contractors. The Authority agrees that it shall notify any of its Contractors of their obligations relative to nondiscrimination and legal compliance under this Agreement when soliciting the same, and shall include the provisions of this Article XIV in any contract, as well as provide the City with a copy of any such contract upon request. With respect to any contract for the procurement of goods and services for the Project, the Authority further agrees to take such action as the City may lawfully direct as a means of enforcing such provisions.

10.04 Anti-Kickback Laws. The Authority shall require that each of its Contractors comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874), and shall prohibit such Contractors from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation to which he/she is otherwise entitled. All Contractors shall be required to insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.05 Anti-Bribery. The Authority, and all its Contractors, and each of their subcontractors are prohibited from paying or accepting any bribe in connection with securing a contract entered into pursuant to this Agreement or in connection with performing under the terms of such a contract. Contractors of the Authority shall insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.06. Material Breach. Breach of the covenants in this Article XIV shall be deemed to be a material breach of this Agreement.

ARTICLE XI Amendments

11.01. The City and the Authority may, from time to time, consider it in their best interest to change, modify or extend a term, condition, or covenant of this Agreement or require changes in the scope of the Project as set forth in Exhibit A which result in an increase of the City's

obligation hereunder. Any such change, addition, deletion, extension, or modification, including any increase in the amount of the Authority's compensation, which is mutually agreed upon by and between the City and the Authority shall be incorporated in written amendments to this Agreement ("Amendments"). Such Amendments shall not invalidate this Agreement nor relieve or release the Authority or the City from any of its obligations under this Agreement unless so stated therein.

11.02. No Amendment to this Agreement which increases the financial obligation of the City as stated in Article X hereof shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of both parties, and is approved by the City Council.

ARTICLE XII Force Majeure

12.01 No failure or delay in performance of this Agreement, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by an event or circumstance that is beyond the reasonable control of that party, absent such party's fault or negligence, and which by its nature could not have been foreseen by such party, or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). A Force Majeure Event includes, but is not limited to, any Act of God or the public enemy, strikes, lockouts, wars, acts of terrorism, riots, epidemics, pandemics, explosions, sabotage, the binding order of any governmental authority, or any other cause, whether the kind herein enumerated or otherwise, which is not within the control of a party. Neither the Authority's economic hardship nor changes in market conditions are considered a Force Majeure Event.

12.02 Upon the occurrence of a Force Majeure Event, the Authority shall (i) give prompt written notice to the City that the Force Majeure Event has occurred, the anticipated effect on the Authority's performance, and the expected duration of that anticipated effect; (ii) use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, (iii) keep the City apprised of the Authority's progress in remediating the effects of the Force Majeure Event; and (iii) promptly resume performance under the Agreement.

12.03 If a Force Majeure Event prevents the Authority from performing under the Agreement for a continuous period of at least thirty (30) business days, the City may terminate this Agreement immediately by giving written notice to the Authority as required herein.

ARTICLE XIII Additional Provisions

13.01 Nothing contained herein shall be construed to or be permitted to operate as any restriction upon the power granted to the City Council by the City Charter to audit and allow all accounts chargeable against the City.

13.02. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto and their successors and assigns.

13.03. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations or representations relating to the subject matter of this Agreement which are not expressly set forth herein, are void.

13.04. If any provision or part of this Agreement contravenes or is invalid under the laws of the State of Michigan and/or federal law, such contravention and invalidity shall not invalidate the whole of the Agreement, and this Agreement shall be construed as if it does not contain such provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

13.05. The headings of the sections in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of the Agreement or in any way affect the same.

13.06. This Agreement shall be governed by the laws of the State of Michigan, and the rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity.

13.07 The relationship of the Authority to the City is and shall continue to be that of an independent contractor. It is not intended for this Agreement to create any relationship of principal and agent or establish any partnership, joint venture, association or other entity.

13.08 This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, the City shall provide a copy to the Authority.

Contract Purchase Agreement : 6006111

Date : 02/22/2024



To :

Company DETROIT BUILDING AUTHORITY
Contact CARMEN EDGEWORTH-BURGAN

Address 642 ACCOUNTS PAYABLE
DETROIT, MI 48226

From :

Company City of Detroit
Contact LATRECE YELDER
Address 2 WOODWARD AVENUE
STE 1100
DETROIT, MI 48226
UNITED STATES

Phone

Fax

E-mail

This document has important legal consequences. The information contained in this document is proprietary of the City of Detroit. It shall not be used, reproduced, or disclosed to others without the express and written consent of the City of Detroit.

This agreement between the City of Detroit and DETROIT BUILDING AUTHORITY is authorized for binding commitment. This agreement will be effective from **03/21/2024** to **03/20/2027**.

Chief Procurement Officer

Sandra Yu Stahl

Contract Purchase Agreement : 6006111

Date : 02/22/2024



Contract Agreement	6006111
Contract Agreement Date	02/22/2024
Change Order	0
Revision	0
Agreement Amount	9,300,000.00 USD

Procurement BU **City of Detroit**
2 WOODWARD AVENUE
STE 1100
DETROIT, MI 48226
UNITED STATES

Supplier **DETROIT BUILDING AUTHORITY**
CARMEN EDGEWORTH-BURGAN
642 ACCOUNTS PAYABLE
DETROIT, MI 48226
+1 (313) 224-4529

Notes USD = US Dollar
 Funding Agreement to assist in Phase 2 renovations of A.B. Ford Park.

Procurement Specialist	Supplier Number	Payment Terms	Freight Terms	FOB	Shipping Method
LATRECE YELDER	9266	Net 30	Account of Seller	Delivered	Lowest Cost Carrier

Start Date	End Date
03/21/2024	03/20/2027

Terms and Conditions :

Please see below for general conditions.

Special Terms :

Contract Purchase Agreement : 6006111

Date : 02/22/2024

TERMS AND CONDITIONS

Last Updated August 26, 2022

Acceptance of this Purchase Order constitutes acceptance of the City of Detroit's Non-Technology General Terms and Conditions or Technology General Terms and Conditions, as applicable. The applicable general terms and conditions are located on the City's website at the URL below:

<https://detroitmi.gov/departments/office-chief-financial-officer/ocfo-divisions/office-contracting-and-procurement/city-general-terms-and-conditions>

Contract Purchase Agreement 6006111

Contract Terms and Conditions

PROCUREMENT POLICY

Procurement for the City of Detroit shall be carried out in a manner which provides a transparent, open, and fair opportunity for all eligible Suppliers to participate. This bid shall be made without collusion with any other person, firm or corporation making any bid or proposal, or who otherwise makes a bid or proposal. Suppliers must have a valid contract or Purchase Order with the signature of the Chief Procurement Officer to receive payment for goods or services rendered. Suppliers who perform work without a valid contract or purchase order will not be paid.

QUOTATIONS/PROPOSALS

Suppliers MUST electronically submit the bid quotation/proposal. Failure to submit will be grounds for rejection. In your quotation, a distinction between dollars and cents must be made. Illegible bids may be grounds for rejection of your bid.

RESPONSIBILITIES

The responsibilities under this (proposed) contract are that the City of Detroit is obligated during the period stipulated to purchase all its NORMAL REQUIREMENTS of the above referenced products and/or services from the Supplier, and the Supplier is obligated to supply the quantities and/or services which the City of Detroit requires for its operations. Requirements stated herein are approximate but are for entire normal requirements, whether more or less. Requirements stated are not guaranteed.

COMPLIANCE WITH LAWS AND SECURITY REGULATIONS

The Supplier shall fully comply with and shall require its associates to comply with: (1) federal, state and local laws, ordinances, code(s), regulations and policies applicable to this contract, including, but not limited to, all security regulations in effect from time to time on the City's premises; (2) codes and regulations for materials, belonging to the City or developed in relationship to this project; and (3) with the terms and conditions of the grant, and the requirements of the grantor agencies when grant funds that are specifically related to this Contract are expended.

The Supplier shall indemnify, defend, and hold the City harmless with respect to any damages arising from any violations of applicable laws and regulations by it or its associates. The Supplier shall commit no trespass on any public or private property in performing any of the Services encompassed by this Contract. The Supplier shall require, as part of any subcontract that sub-Contractors comply with all applicable laws and regulations. The Supplier shall secure, at no extra cost to the City of Detroit, all Permits and Licenses necessary for the performance of the work and shall fully comply with all their terms and conditions.

EQUAL OPPORTUNITY

It is the policy of the City that women-owned businesses (WBE), minority-owned businesses (MBE), and certified Detroit businesses (DB) have a fair and equal opportunity to participate in the City's purchasing process. Therefore, the City of Detroit strongly encourages D/M/WBEs to compete for contracts, as well as encourage suppliers to hire D/M/WBEs as subcontractors to supply goods and/or services. The City of Detroit supports a robust free market system that seeks to include viable business and provides opportunity for business growth and development.

INSURANCE

The Supplier shall maintain, at a minimum and at its expense during the term of this contract, the following insurance:

- i. Worker's Compensation insurance with Michigan statutory limits and Employer's Liability insurance with limits of \$500,000.00 each accident, \$500,000.00 each disease, \$500,000.00 each employee. For Federal and State Funded Training Programs, the Supplier is required to secure worker's compensation insurance for all of its participants.

Contract Purchase Agreement 6006111

ii. Commercial General Liability insurance with limits of \$1,000,000.00 per occurrence, subject to a minimum aggregate limit of \$2,000,000.00.

iii. Automobile Liability insurance covering all owned, hired and non-owned vehicles with personal protection insurance and property protection insurance to comply with the provisions of the Michigan No-Fault Insurance Act, including residual liability insurance with a minimum combined single limit of \$1,000,000.00. Include MCS90 endorsement (if hazardous waste will be transported by vendor's auto) with minimum property damage limits of \$1,000,000.00 each occurrence.

If during the term of this contract, changed conditions or other pertinent factors, should in the reasonable judgment of the City, render inadequate the insurance limits, the Supplier will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the Supplier's expense, under valid and enforceable policies issued by insurers licensed to conduct business in Michigan.

All policies shall name the Supplier 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 to the City. The Commercial General Liability insurance policy shall name the "City of Detroit" as an additional insured. Certificates of insurance evidencing such coverage shall be submitted to the Office of Contracting and Procurement prior to the commencement of performance under this contract and at least fifteen (15) days prior to the expiration dates of expiring policies.

SUBMISSION OF ANY REQUIRED BONDS OR INSURANCE

Receipt of bonds and/or insurance is part of the process of determining which Supplier may be recommended for award to the City Council. If cause is found to change the recommendation that a Supplier be awarded the contract, or if the City 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.

INVOICING

All suppliers must register in the Supplier Portal for invoicing for payment. Invoice submission instructions for Supplier Portal usage can be found on the City of Detroit's website at <http://www.detroitmi.gov/Supplier>. Suppliers are required to be set up for Automatic Clearing House (wireless payments) in order to receive payment.

Invoices Must Meet The Following Conditions For Payment:

All invoices submitted against the contract must include part or item numbers and/or description. The quantity (for goods) and/or the amount (for services) must correlate to the price listed on the contract or purchase order.

Invoicing for goods and/or services should only be entered in the Supplier Portal after they have been shipped. Invoicing before is prohibited and will result in the delay in payment. Failure to comply is considered non-compliant to the terms of your contract or purchase order.

Timely submission of invoices will result in timely payments.

Questions should be directed to procurementinthecloud@detroitmi.gov.

PROTECTION OF WORK, PERSONS, AND PROPERTY

Contract Purchase Agreement 6006111

During performance and up to the date of final acceptance, the Supplier shall be under absolute obligation to protect the finished and unfinished work against any damage, loss or injury. The Supplier shall take all reasonable precautions to protect the persons and property of the City from damage, loss or injury during performance under this contract.

CLEARANCES

The successful Supplier will be required to obtain approved clearances from the Income Tax Division, Revenue Collections Division and Human Rights Department prior to City Council approval of the contract. Clearance forms for these agencies can be found in the Oracle Fusion system. It is the Supplier's responsibility to obtain and maintain clearances. Approved clearances are not required to submit the bid, but will be required of the successful Supplier prior to City Council approval.

NON-DISCRIMINATION CLAUSE

In accordance with all Federal and State Legislation and Regulations governing Fair Employment, including, but not limited to, Title VII of the Civil Rights Act of 1964 the Michigan Civil Rights Act and the Michigan Handicappers Civil Rights Act, the Supplier agrees that it will not discriminate against employees or applicants for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the ability of the individual to perform the duties of a particular assignment or position. The Supplier recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against the Supplier or its sub-Contractors, or both, in order to provide for efficient cooperation and coordination in the handling of Contract compliance programs as provided in the Elliott-Larsen Civil Rights Act, as amended, and the Michigan Handicappers Civil Rights Act, as amended. The Detroit Human Rights Department, The Detroit Human Rights Commission, the Michigan Department of Civil Rights and the Michigan Civil Rights Commission by mutual agreement, have authorized the Detroit Human Rights Department in a contract compliance program to monitor all Suppliers doing business with the City and to review the employment practices of Suppliers seeking to do business with the City prior to entering into a contract so that the mandates of Section 209 of the Michigan Civil Rights Act are carried out. The Supplier agrees to include this paragraph number 3 in any subcontract. Breach of this covenant may be regarded as a material breach of the contract.

UNIT PRICES, NOTATIONS, AND WORKMANSHIP

Prices and notations must be typed or in ink. Prices shall be for new items only unless specified otherwise in this Bid Response Document. No erasures or "white-outs" are permitted. Mistakes may be crossed out and corrections entered and initialed in ink by the persons signing the bid document. Unit prices shall be stated based on units specified. The Supplier may quote on all or a portion of a quantity as specified. Quote on each item separately and indicate brand name or make. All materials furnished must be new, of latest model and standard first-grade quality, of best workmanship and design, unless expressly specified.

PRICES QUOTED

Prices quoted must be net of discounts. Discounts will be considered in the determination of best value Supplier, provided discounts correspond for the duration of the contract. Where net is equal to bid with discount deducted, award will be made to the net bid. The Supplier shall extend and total the bids.

SALES TAX EXEMPTION

The City is exempt from sales tax on those articles which the City buys for its own use. Articles bought by the Supplier and incorporated into other products are taxable to the Supplier. Such tax should be included in the price and will not be paid as an extra by the City. Sales tax is excluded from incorporated products when the final product is sold to non-profit housing projects.

SPECIFICATIONS, CHANGE OF SPECIFICATION, AND ERRORS OR OMISSION

Specifications which refer to brand names are given for reference. Suppliers may quote on equivalent articles, provided that brand name and catalog number(s) and any deviations are noted on the bid form and complete descriptive literature is furnished. Exceptions will state "Do Not Substitute." The decision of the City shall be final. If any of the terms and conditions prevent you from bidding, or if you wish to request revisions of specifications, or a change in quantity which will result in lower unit cost to the City, or get an interpretation, your request will receive consideration if presented to the City as much in advance of bid submission deadline as possible. If any change is found desirable while the bid is current, the City will notify the Suppliers of the bid revision electronically and if required extend bid submission date. Suppliers are

Contract Purchase Agreement 6006111

not permitted to take advantage of any errors or omissions in specifications since full instructions will be given should they be discovered before bid submission date.

Specifications referred to herein are used to indicate desired type, and/or construction, and/or operation. 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 will be grounds for rejection of your bid.

The decision of the City of Detroit, acting through the Chief Procurement Officer, shall be final as to what constitutes acceptable deviations from specifications.

RECEIPT OF BIDS

Bids must be received by the Office of Contracting and Procurement through the electronic bid system (e.g. Oracle Fusion) prior to the date and time specified on the face of this bid package unless otherwise authorized. Late bids cannot be accepted except in extenuating circumstance such as Oracle Fusion system failure. The responsibility of getting bids to the Office of Contracting and Procurement on time rests entirely with the Supplier.

WITHDRAWAL

No bid shall be withdrawn for (90) ninety days from submission deadline unless otherwise stated in this bid form. Suppliers may reduce this period if stated on bid, but such bids may be rejected on the basis of the reduced time period.

AWARD CONDITIONS

The City reserves the unqualified right to award by item(s) unless otherwise stipulated, to waive any irregularity in any bid or to reject any and all bids when, in the judgment of the City, the best interest of the City will be served.

The award of a Contract will not be made to any Supplier who is in arrears in City taxes. Article V, Chapter 18 of the Detroit City Code, forbids the award of any contract to person(s) who are in arrears of City real estate, personal property and/or income taxes. To ensure compliance with the above ordinance, Suppliers may check the City of Detroit website, www.detroitmi.gov. All awards will be made in accordance with the provisions of Article V, Chapter 18 of the Detroit City Code which provides for purchasing and disposition of property consistent with the City Charter.

CONTRACT ACCEPTANCE

The successful Supplier shall be notified of the award of a contract by the City of Detroit upon issuance of a "Contract Award Notice" or a Purchase Order from the Office of Contracting and Procurement. The "Contract Award Notice" shall contain the date the contract award was approved.

START OF WORK

No Contract shall become effective until the Contract has been approved by the required City Departments, signed by the City of Detroit Chief Procurement Officer, and approved by resolution of the Detroit City Council. Prior to the completion of this approval process, the Supplier will have no authority to begin work on this Contract. The Chief Procurement Officer shall not authorize any payments to the Supplier prior to such approvals, nor shall the City incur any liability to reimburse the Supplier regarding any expenditure for the purchase of materials or the payment of services

INSPECTION

All articles are subject to inspection and testing. In case any articles are defective in material and/or workmanship, or otherwise fail to meet requirements of this bid, the City shall have the right to reject or retain and correct such articles. The Supplier shall pay the City for expenses incurred in correcting defects. Rejected articles will be returned to Suppliers at their expense for handling, packing and transportation.

SUBCONTRACTING

None of the services covered by this Contract shall be subcontracted without the prior, written approval of the City and any grantor agency, if required.

ASSIGNMENT

A Supplier shall not assign any purchase order or Contract or any monies due therefrom without prior approval of the City. Contact the Contracting and Procurement Specialist for proper procedure.

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DEFAULT

Default is defined as the failure of the Supplier to fulfill the obligations of their Contract. An event of default shall be construed as a material breach of this Contract.

DAMAGES FOR BREACH OF CONTRACT

The Supplier shall be liable to the City for any damages it sustains by virtue of the Supplier's breach, or any reasonable costs the City might incur enforcing or attempting to enforce this Contract, including, but not limited to, reasonable attorney's fees. The City may withhold any payment(s) to the Supplier for the purpose of set-off until such time as the exact amount of damages due to the City from the Supplier is determined. It is expressly understood that the Supplier will remain liable for any damages the City sustains in excess of set-off. If the Contract is terminated for breach of Contract, the City may take over the services, and pursue the same to completion by Contract with another party or otherwise, and the Supplier shall be liable to the City for any and all costs occasioned to the City thereby. The City may assess upon the Supplier, for failure to meet any provision or condition of the Contract, liquidated damages up to the amount of 15% of the total contract price, or the amount of the cost incurred for the breach. Other remedies shall also be available to the City. The previous provisions outlined herein shall be in addition to any and all other legal or equitable remedies permissible.

TERMINATION OF CONTRACT FOR CONVENIENCE

The City reserves the absolute right to terminate this contract in whole or in part, for the convenience of the City at its sole discretion on thirty (30) days written notice to the Supplier.

TERMINATION OF CONTRACT FOR CAUSE

The Supplier agrees that the City shall have the right to terminate the City's Contract with the Supplier for cause, as determined by the Chief Procurement Officer, without any liability whatsoever, upon the giving of ten (10) days' notice. Cause is an event of default due to the Supplier's failure to fulfill its obligations under the Contract.

At any time during the term of the contract the City may terminate the agreement for reason of poor or deficient work performance, inability of the Supplier to cure poor or deficient work performance, inability of the Supplier to supply trained competent technicians, or lack of service as described in this agreement by giving a 10-calendar day notice in writing. EITHER party may terminate the agreement by giving a 90-calendar day written notice to terminate.

AUDIT, INSPECTION OF RECORDS AND COST VERIFICATION

The City reserves the right to audit the Supplier's payroll records to verify labor charges for work performed under this Contract upon 72 hours' notice. The Supplier shall permit the authorized representative of the City to inspect and audit all data and records of the Supplier relating to its performance under this Contract during the term of the Contract and for three (3) years after final payment. All records relating to this Contract shall be retained by the Supplier during the term of the Contract and for three (3) years after final payment for the purpose of such audit and inspection.

INDEMNITY

The Supplier agrees to indemnify, defend, and hold the City harmless against and from any and all liabilities, obligations, damages, penalties, claims costs, charges, losses and expenses (including without limitation, fees and expenses for attorneys, expert witnesses and other consultants), which may be imposed upon, incurred by or asserted against the City by reason of any negligent or tortious acts, errors, or omissions attributable to the Supplier, or any failure by the Supplier to perform its contractual obligations during the term of this Contract. This provision shall apply to all matters whether litigated or not, and shall include disputes between the Supplier, the City of Detroit, and any negligent or tortious acts, errors, or omissions attributable to the Supplier, its sub-Contractors or Agents.

CONFLICT OF INTEREST

The Supplier covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the services under this Contract. The Supplier further covenants that in the performance of this Contract no person having any such interest shall be employed. The Supplier further covenants that no officer, agent, or employee of the City and no other public official who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract has any personal or financial

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interest, direct or indirect, in this Contract or in the proceeds thereof via corporate entity, partnership, or otherwise. The Supplier also hereby warrants that it will not and has not employed any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage, contingent fee, other than bona fide employees working solely for the Supplier either directly or indirectly, and that if this Warranty is breached, the City may, at its option, terminate this Contract without penalty, liability or obligation, or may, at its election, deduct from any amounts owed to the Supplier hereunder, any amounts of any such commission, percentage, brokerage, or contingent fee.

In accordance with Section 4-122 of the Detroit City Charter, the contractor shall provide a statement listing all political contributions and expenditures ("Statement of Political Contributions and Expenditures"), as defined by the Michigan Campaign Finance Act, MCL 169.201, et seq., made by the contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents or assigns, to elective City officials within the previous four (4) years. Individuals shall also list any contributions or expenditures from their spouses. The Contract is not valid unless and until the Statement of Political Contributions and Expenditures is provided. The Statement of Political Contributions and Expenditures shall be filed by the contractor on an annual basis for the duration of the Contract, shall be current up to and including the date of its filing, and shall also be filed with all contract renewals and change orders, if any.

CHANGE IN SUPPLIER INFORMATION

Supplier shall notify the Office of Contracting and Procurement upon any change of address, telephone number, facsimile number and electronic mail address, where applicable, within five (5) business days of such change. The notice shall be submitted in writing to procurementinthecloud@detroitmi.gov identified on the Purchase Order and shall include all of Supplier's changed information and the effective date of such change.

TAXPAYER IDENTIFICATION NUMBER

Supplier shall notify the Chief Procurement Officer and the Income Tax Administrator of the City upon the change of Supplier's taxpayer identification number. Such notification shall be in writing; shall include at a minimum, the Supplier's taxpayer identification number in use by the City, Supplier's new taxpayer identification number and all contract and purchase order numbers under which the Supplier is currently providing goods and services to the City; and, shall be electronically submitted to the City within five (5) business days of Supplier's receipt of confirmation of the registration of the new taxpayer identification number by the Internal Revenue Service. Failure of the Supplier to supply the information required, may be deemed an event of default at the sole discretion of the City.

SETOFF

In addition to Supplier's obligation to not become in arrears to the City for any obligation owed to the City, City shall have the right to recover from payment owed to Supplier by City, delinquent withholding, corporate and property tax liabilities owed to the City by Supplier. The City's right of recovery shall be a setoff against those payments owing to Supplier by virtue of this, or any current City Contract. The City will provide written notice to Supplier of any intention to invoke its right to setoff payments due to Supplier under this Contract against delinquent withholding, corporate and property tax liabilities owed. Such written notice shall be delivered to Supplier at the address provided in the Contract/Purchase Order.

SUPPLIER COMMITMENT

By submitting this bid or proposal, the Supplier commits and legally binds itself to provide to the City of Detroit the goods/services in this bid at the time, place, manner and pricing set forth in the bid as accepted by the City.

OFFICE OF THE INSPECTOR GENERAL

In accordance with Section 2-106.6 of the City Charter, any Contract resulting from this bid shall be voidable or rescindable at the discretion of the Mayor or Inspector General at any time if a Public Servant who is a party to any Contract resulting from this bid has an interest in the Contract and fails to disclose such interest.

This Contract shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to any Contract resulting from this bid. A fine shall be assessed to the Contractor in the event of a violation of Section 2-106.6 of the City Charter. If applicable, the actions of the Contractor, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

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Pursuant to Section 7.5-306 of the City Charter, the Inspector General shall investigate any Public Servant, City agency, program or official act, contractor and subcontractor providing goods and services to the City, business entity seeking contracts or certification of eligibility for City contracts and person seeking certification of eligibility for participation in any City program, either in response to a complaint or on the Inspector General's own initiative in order to detect and prevent waste, abuse, fraud and corruption.

Any Public Servant who willfully and without justification or excuse obstructs an investigation of the Inspector General by withholding documents or testimony, is subject to forfeiture of office, discipline, debarment or any other applicable penalty.

In accordance with Section 7.5-310 of the City Charter, it shall be the duty of every Public Servant, contractor, subcontractor, and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General in any investigation pursuant to Article 7.5, Chapter 3 of the City Charter.

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Contract Signatures