

CONTRACT

THIS AGREEMENT is made on the 19th day of April, 2010, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48104 ("City") and ABC Paving Company ("Contractor"), a Michigan Corporation located at 2650 Van Horn Road, Trenton, Michigan, 48183.

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the project titled "**Sylvan Avenue Permeable Pavement Project**" in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

Human Rights Division Contract
Compliance Forms
Living Wage Declaration of
Compliance Forms
(if applicable)
CUB Agreement (if applicable)
Bid Forms
Proposal
Contract and Exhibits
Bonds

General Conditions
Standard Specifications
Detailed Specifications
Plans
Addenda

ARTICLE II - Definitions

Administering Department means **Public Services Area**.

Supervising Professional means **Homayoon Pirooz, P.E., Project Management Manager** or other persons acting under the authorization of the Director of the Administering Department.

Project means **Sylvan Avenue Permeable Pavement Project** Bid No. 4076.

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin **in accordance with the "Detailed Specification for Project Schedule" contained elsewhere herein, and only** after the Contractor's receipt of a fully executed Contract.

- (B) The entire work for this Contract shall be completed within 53 consecutive calendar days.
- (C) Failure to complete all the work within the time(s) specified above, including any extension granted in writing by the Supervising Professional, shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, \$500.00 for each calendar day of delay in the completion of all the work. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to deduct these unpaid liquidated damages from the monies due the Contractor.

As an independent requirement, where the Detailed Specifications identify certain portions of the work to be completed within a shorter period of time and the Contractor fails to complete each portion within the shorter period specified for each portion, including any extension granted in writing by the Project Supervisor, the City is entitled to deduct from the monies due the Contractor, as liquidated damages and not as a penalty, the amount identified in the Detailed Specifications for each portion of the work not timely completed for each calendar day of delay in completion of each portion of the work.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

Liquidated damages under this section are in addition to any liquidated damages due under Section 5 of the General Conditions.

ARTICLE IV - The Contract Sum

- (A) The City shall pay to the Contractor for the performance of the Contract, the unit prices as given in the Bid Forms for the estimated total of:

Three hundred forty three thousand eight hundred seventy five and 25/100 Dollars (\$343,875.25)

- (B) The amount paid shall be equitably adjusted to cover changes in the work ordered by the Supervising Professional but not required by the contract documents.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted without the written consent of the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract.

Whenever possible, each provision of the contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

ARTICLE VIII - Notice

All notices given under this contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the contract documents or other address the Contractor may specify in writing..

ARTICLE IX - Indemnification

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

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

FOR CONTRACTOR

ABC PAVING COMPANY

By *[Signature]*

Its: *VICE PRESIDENT*

By _____

Its:

FOR THE CITY OF ANN ARBOR

By *[Signature]*
John Hieftje, Mayor

By *[Signature]*
Jacqueline Beaudry, City Clerk

Approved as to substance

By *[Signature]*
Roger W. Fraser, City Administrator

By *[Signature]*
Sue F. McCormick
Public Services Area Administrator

Approved as to form and content

By *[Signature]*
Stephen K. Postema, City Attorney