

AGREEMENT BETWEEN
HURON RIVER WATERSHED COUNCIL
AND
CITY OF ANN ARBOR
FOR
PROFESSIONAL SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, Michigan 48104 ("City"), and the Huron River Watershed Council, ("Consultant"), a Michigan a Public Non-Profit Organization with its address at 1100 N. Main Street, Suite 210, Ann Arbor, Michigan 48104, agree as follows:

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

- A. Administering Department means Public Services Area, Systems Planning Unit.
- B. Contract Administrator means Jennifer Lawson, Systems Planning Unit, or whomever the Contract Administrator may from time to time designate.
- C. Deliverables means all Plans, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement.
- D. Project means MS4 Permit Support Services – including Middle Huron Partnership and Stormwater Advisory Group Work Plan

II. DURATION

This Agreement shall become effective upon signature, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

III. SERVICES

- A. The Consultant agrees to provide permit support services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original agreement.
- B. Quality of Services under this agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all applicable laws, ordinances and regulations.
- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid on the basis of reasonable time spent and materials used at the rates and prices specified in Exhibit B for acceptable work performed and acceptable Deliverables

received. The total fee to be paid to the Consultant for the Services shall not exceed \$64,975.00. Payment shall be made monthly following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.

- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this Contract, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - 1. Professional liability insurance protecting the Consultant and its employees in an amount not less than \$1,000,000.
 - 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:
 - Bodily Injury by Accident - \$500,000 each accident
 - Bodily Injury by Disease - \$500,000 each employee
 - Bodily Injury by Disease - \$500,000 each policy limit
 - 3. Commercial General Liability Insurance" equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect to Bodily Injury Liability or Property Damage Liability, or both combined.
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury
 - 4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
- B. Insurance required under V.A.3 and V.A.4 of this Contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. In the case of all Contracts involving on-site work, the Consultant shall provide to the City before the commencement of any work under this Contract documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverage expires by their terms during the term of this Contract, the Consultant shall deliver proof of renewal and/or new policies to the Administering Department at least ten days prior to the expiration date.
- D. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortuous acts or omissions by the Consultant or its employees and agents occurring in the performance of this agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Consultant agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code, Exhibit C
- B. Living Wage. The Consultant agrees to comply with living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a "covered employer" as defined therein to pay those employees providing Services to the City under this agreement a "living wage," as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance. The Consultant agrees to comply with the provisions of Section 1:815 of Chapter 23 of the Ann Arbor City Code, Exhibit D.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services it is to provide pursuant to this agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this agreement.

- D. The Consultant warrants 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 and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. This agreement may be terminated by either party without further notice in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of the breach.
- B. The City may terminate this agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant access to the Project area and other City owned properties as required to perform the necessary Services under this agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of the services without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

XI. NOTICE

All notices and submissions required under this agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Department, care of the Contract Administrator.

XII. CHOICE OF LAW

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

XIII. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this agreement.

XIV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties and circumstances.

XV. EXTENT OF AGREEMENT

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

XVI. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the Consultant, including tracings, drawings, estimates, specifications, field notes, investigations, studies and reports shall become the property of, and, at the option of the City, be delivered to, the City. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

For Consultant

By _____
Laura Rubin, Executive Director, Huron River
Watershed Council

For City of Ann Arbor

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Steven Powers, City Administrator

By _____
Craig Hupy, Interim Public Services Area
Administrator

Approved as to form and content

By _____
Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

See Attached



Protecting the river since 1965

1100 N. Main Street Suite 210
Ann Arbor, MI 48104
(734) 769-5123
www.hrwc.org

TO: Middle Huron Initiative Partners and
Stormwater Advisory Group
FROM: Ric Lawson, Watershed Planner
RE: 2011-12 Work Plan and Budget
DATE: January 31, 2011

HRWC is currently providing services to Middle Huron communities for two projects with similar missions: the Middle Huron Initiative Partnership (Partnership) to reduce phosphorus contributions to meet the Total Maximum Daily Load (TMDL) for Ford and Belleville Lakes, and the Stormwater Advisory Group (SAG) to address watershed-wide compliance with state stormwater regulations. At previous meetings, the groups agreed to combine meetings and work towards a merger, since the 2008 stormwater permit included provisions to address TMDLs. While the 2008 permit has been removed by the Michigan Department of Natural Resources and Environment (DNRE), the communities have all submitted Storm Water Pollution Prevention Initiatives (SWPPIs), which remain in effect. The current contracts and budgets for both initiatives expired at the end of calendar year 2010, thus a new work plan is needed for 2011-2012.

The proposed work plan below includes tasks to address both initiatives for two years. Since a few organizations are members in only one group, I have identified the project associated with each task. The proposed work plan includes activities that are essential to fulfilling the expectations set forth in the Cooperative Agreement for the MHI Partnership and Phase I or II. This proposed work plan begins January 1, 2011 and ends December 31, 2012.

Tasks for both groups:

Task 1: Coordinate and facilitate meetings of the SAG and Partnership

Description: The groups generally meet on a quarterly basis. HRWC will prepare communications for quarterly meetings including agenda, agenda item materials, and follow-up items; facilitate meetings; and coordinate with guest speakers.

Hours: 160

Cost: \$9,600

Rationale: Meetings are required for SAG and necessary for planning overall.

Task 2: Prepare program reports

Description: Several reports are needed between the two programs. HRWC will compile information, write and design two Annual Summary Reports (2010 and 2011) for the Partnership, and summaries of watershed progress for SAG member SWPPI reports (2011 and 2012). All reports will be published and distributed through the HRWC website.

Hours: 180

Cost: \$10,800

Rationale: Annual reports are a commitment in the Cooperative Agreement for the Partnership and required for the stormwater permit. They also provide the basis for measuring and reporting progress.

Task 3: Conduct monitoring of Middle Huron tributaries

Description: Continue monitoring and stormwater investigation for the 2011 and 2012 field seasons (April to Sept) following the program's Quality Assurance Project Plan, including the following steps: measure stream discharge (Q) at 10 long-term monitoring sites during dry and wet weather conditions; monitor key water quality indicators at long-term sites and additional stormwater investigative sites during dry and wet weather conditions; obtain and maintain equipment; train field crew; deliver water samples to lab; obtain lab results and enter into database; analyze and synthesize data; communicate monitoring results in report form for a general audience; present results to Partners at semi-annual meetings; and disseminate monitoring reports to members and post on HRWC website.

Grab samples will be taken at each of the study sites twice monthly. Additional samples will be taken during extreme wet weather events, when feasible. Parameters to be measured are Total Phosphorus, Total Suspended Solids, Nitrate, Nitrite, E. coli, Dissolved Oxygen, conductivity, pH, and temperature. Water samples will be collected and analyzed in a lab according to US EPA accepted procedures (City of Ann Arbor WTP).

Hours: 600

Cost: \$36,000

Equip. Cost: \$2,000 maintenance of existing monitoring equipment and purchase of new equipment, as needed.

Rationale: The TMDL Implementation grant covers time and effort for coordination and collection of monitoring data through 2011. Only hours required for 2012 and to match the grant in 2011 are included. Monitoring is required by both programs to help determine hot spots and assess progress.

Task 4: Update and revise the Watershed Management Plan (WMP)

Description: The Middle Huron WMP is due to be revised to comply with SWPPI commitments. TMDL Implementation Plans are being developed under grant (hours not included in this work plan) that will be integrated into the WMP. Included in these are the point and non-point source Reduction Implementation Plans (RIP), which are Partnership commitments. HRWC will work with all stakeholders and the DNRE to engage a public process to revise the WMP to meet requirements, and will finalize and submit to MDNRE all necessary documentation.

Hours: 150

Cost: \$9,000

Rationale: An updated WMP is needed to meet SWPPI commitments. The RIP documents are commitments under the Cooperative Agreement.

Task 5: Develop project proposals for implementation projects

Description: HRWC will seek out funding opportunities and draft and submit 2-3 project proposals that are consistent with WMP and other priorities on behalf of member municipalities. If fewer proposals are submitted, funds will be held over for the following work plan.

Hours: 120

Cost: \$7,200

Rationale: Successful proposals will leverage the group budget, keep overall costs down and provide on-the-ground projects to achieve group goals.

Partnership Only Tasks:

Task 6: Assist Partners with preparing an updated Cooperative Agreement

Description: Update current Cooperative Agreement and revise based on Partner feedback; collect signatures. The current agreement expired on October 1, 2009; distribute agreement to Partners.

Hours 80

Cost: \$4,800

Rationale: An updated draft of the Cooperative Agreement has been developed. It is on hold to wait for details from MDNRE on the TMDL revision.

Task 7: Participate in the MDNRE’s revision of the Middle Huron TMDL

Description: Communicate with and represent the Middle Huron Partners in DEQ’s revision of the TMDL; provide data and analysis as requested; review materials and provide comments.

Hours 40

Cost: \$2,400

Rationale: HRWC has led the effort to revise the TMDL with DNRE with assistance from a Technical Committee. The TMDL revision process may be complete by the time this work plan goes into effect. If so, this task will be dropped and any funds will be carried over to the following work plan.

SAG Only Tasks:

Task 8: Provide technical assistance on permit compliance

Description: Consult with SAG members on an as-needed basis to provide advice, information and assistance with all aspects of the stormwater permit. If audited, HRWC will make staff available to meet with state auditors regarding permit-related watershed activities.

Hours 60

Cost: \$3,600

Rationale: HRWC is periodically asked to provide individual permittee support.

Task 9: Continue to implement the Public Education Plan

Description: Develop and execute tasks to meet public education requirements. See details in the PEP proposal. Included is a proposal for an evaluation survey to take place during this work plan period.

Hours NA

Cost: \$134,000

Rationale: PEP implementation is required by the stormwater permit and was submitted to MDNRE by all watershed permittees.

Partnership Subtotal: \$44,500
SAG Subtotal: \$174,900
Total Proposed Cost to Partners: \$219,400

2010 Budget Carryover, Partners: \$4,529
 SAG: \$4,994
Allocation Budget, Partners: \$39,970
 SAG: \$169,906
Total 2011-12 Allocation Budget: \$209,876

EXHIBIT B

FEE SCHEDULE

**Middle Huron Partnership and SAG
Proposed Cost Allocation
HRWC 2011-12 Work Plan**

Total Budget \$ 209,877
Partnership \$ 39,971
SAG \$ 169,906

Community Name	Total Area (acres)	Total Population	% Total Watershed Population	% Total Watershed Area	Partnership Point Source Assessment	Partnership NPS Assessment	Total Partnership Assessment	SAG Assessment	Total 2-year Assessment
Ann Arbor	17,490	109,346	52.8	16.9	\$ 3,997	\$ 6,331	\$ 10,328	\$ 54,647	\$ 64,975
Ann Arbor Twp	11,398	4,882	2.4	11.0	\$ -	\$ 1,187	\$ 1,187	\$ -	\$ 1,187
Barton Hills		323	0.2	0.0	\$ -	\$ 300	\$ 300	\$ -	\$ 300
Belleville	746	4,400	0.9	0.3	\$ -	\$ 300	\$ 300	\$ -	\$ 300
Chelsea	1,487	5,002	2.4	1.4	\$ 1,599	\$ 320	\$ 1,919	\$ -	\$ 1,919
Dexter	931	3,525	1.7	0.9	\$ 1,599	\$ 206	\$ 1,805	\$ 2,048	\$ 3,853
Dexter Twp	21,174	6,633	1.0	6.2	\$ -	\$ 621	\$ 621	\$ -	\$ 621
Loch Alpine			0.0	0.0	\$ 799	\$ -	\$ 799	\$ -	\$ 799
Lodi Twp	22,070	5,872	0.6	4.8	\$ -	\$ 468	\$ 468	\$ -	\$ 468
Northfield Twp	23,470	9,351	0.4	2.0	\$ -	\$ 300	\$ 300	\$ -	\$ 300
Pittsfield Twp	17,870	37,224	2.8	2.7	\$ -	\$ 473	\$ 473	\$ 4,342	\$ 4,815
Scio Twp	21,187	16,261	7.9	20.5	\$ -	\$ 2,562	\$ 2,562	\$ -	\$ 2,562
Superior Twp	22,734	13,548	3.6	12.1	\$ -	\$ 1,398	\$ 1,398	\$ -	\$ 1,398
Van Buren Twp	23,084	27,377	4.3	7.3	\$ -	\$ 1,033	\$ 1,033	\$ -	\$ 1,033
Webster Twp	22,941	6,672	0.5	3.6	\$ -	\$ 341	\$ 341	\$ -	\$ 341
Ypsilanti	3,027	19,419	8.6	2.7	\$ -	\$ 995	\$ 995	\$ 8,825	\$ 9,820
Ypsilanti Twp	20,187	53,037	9.9	7.6	\$ -	\$ 1,568	\$ 1,568	\$ 13,745	\$ 15,313
Community Subtotal	229,796	322,872	100	100	\$ 7,994	\$ 18,404	\$ 26,397	\$ 83,607	\$ 110,004
WCWRC					\$ -	\$ 4,535	\$ 4,535	\$ 39,227	\$ 43,762
WCRC					\$ -	\$ 4,535	\$ 4,535	\$ 39,227	\$ 43,762
Ann Arbor Schools					\$ -	\$ 881	\$ 881	\$ 7,845	\$ 8,726
University of Michigan					\$ -	\$ 3,622	\$ 3,622	\$ -	\$ 3,622
Totals					\$ 7,994	\$ 31,977	\$ 39,970	\$ 169,906	\$ 209,876

Data sources:

Population estimates were provided by SEMCOG in July 2010 and are based on the 2000 US Census

Areas are based on a GIS analysis of municipality and Middle Huron Watershed boundaries by the Huron River Watershed Council

EXHIBIT C
FAIR EMPLOYMENT PRACTICE

The consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

9:161 NONDISCRIMINATION BY CITY CONTRACTORS

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.
- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable Federal or State labor laws:
 - (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;
 - (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
 - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.

(6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:

- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
- (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
- (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
- (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 10,000 - 24,999	\$ 25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00
1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00

- (e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

EXHIBIT D

LIVING WAGE REQUIREMENTS

If a "covered employer," Contractor will comply with all the requirements of Chapter 23 of the Ann Arbor City Code (Sections 1:811 B 1:821), in particular but not limited to the following sections thereof:

1:813. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
 - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
 - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.
- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include

financial assistance used for the purchase or lease of property or other nonpersonnel costs.

- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

1:814. Applicability.

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a nonprofit contractor/vendor or nonprofit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

1:815. Living Wages Required.

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).
 - (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered

employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.

- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

1:816. Employees Covered.

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

1:817. Exemptions.

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.
- (2) For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:
 - (a) To avoid any application of this Chapter that would violate federal, state or local law(s); or
 - (b) The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a nonprofit organization, and the City Council finds that said harm outweighs the benefits of this Chapter; provided further that the otherwise covered nonprofit employer shall provide a written plan to fully comply with this Chapter within a reasonable period

of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the nonprofit organization sufficient time to reach full compliance with this Chapter.

- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

1:818. Monitoring and Enforcement.

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the Human Rights Office and approved by the City Administrator.
- (2) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall provide satisfactory proof of compliance with the living wage provisions of this Chapter.
- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

1:819. Penalties and Enforcement.

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order

necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.

- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter

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1:821. Other Provisions.

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.

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- (3) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.
- (4) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (5) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for high school and/or college students:
 - (a) A bona fide training program;
 - (b) A summer or youth employment program;
 - (c) A work study, volunteer/public service, or internship program.

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