

CONTRACT

THIS AGREEMENT is made on the _____ day of _____, 2015, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 301 East Huron Street, Ann Arbor, Michigan 48104 ("City") and Metro Environmental, Inc. ("Contractor") a Michigan corporation at 22656 15 Mile Road, Clinton Township, MI 48035.

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 "On-Call Mechanical Services" 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:

City Nondiscrimination Ordinance	General Conditions
Living Wage Declaration of	Standard Specifications
Compliance Forms (if applicable)	Detailed Specifications
Vendor Conflict of Interest Form	Plans
Bid Forms	Addenda
Contract and Exhibits	
Bonds	

ARTICLE II - Definitions

Administering Service Area/Unit means Field Operations Services Unit.

Supervising Professional or Owner means persons acting under the authorization of the Administrator/Manager of the Administering Service Area/Unit.

Engineer or Owner's Representative means Consulting Professional acting under the authorization of the Supervising Professional/Owner.

Project means On-Call Mechanical Services, RFP No. 925.

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin immediately on the date specified in the Notice to Proceed issued by the City.
- (B) The entire work for this Contract shall be completed by June 30, 2017. The second fiscal year of the contract from July 1, 2016 to June 30, 2017 shall be subject to the availability of funding.
- (C) Failure to complete all the work within the time 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, an

amount equal to \$0.00 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.

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.

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 a total per fiscal year of:

Two Hundred Thousand and 00/100 Dollars (\$200,000.00)

- (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. Increases or decreases shall be determined only by written agreement between the City and Contractor.

ARTICLE V - Assignment

- (A) The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor 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 Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

ARTICLE VI - Choice of Law and Forum

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

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. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

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 and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, Contractor 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, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

ARTICLE X - Severability

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.

ARTICLE XI - Entire Agreement

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

ARTICLE XII - Term

This is a two fiscal year contract with work to be commenced and completed in accordance with Article III.

Subject to the availability of funding in each of the two years, the term of this contract may be renewed for one additional two-year period upon the mutual agreement of the parties. Should the City wish to renew this contract, it shall provide notice to the Contractor no later than sixty days prior to the expiration of the current contract term. If renewal is acceptable, the Contractor agrees to provide acknowledgement of same no later than fourteen days after receipt of notice by the City. The parties agree to execute a renewal agreement under the same terms and conditions as the current contract, subject to possible rate adjustments as provided below.

If the contract is extended, a onetime cost escalator at the time of contract renewal of no more than 3% may be added to the original submitted rates. A written request from the Contractor accompanying the acknowledgement of contract renewal will be required to consider any rate adjustments. Rate adjustment requests are subject to negotiation by the City prior to contract renewal.

FOR CONTRACTOR

By _____

Its: _____

FOR THE CITY OF ANN ARBOR

By _____

Christopher Taylor, Mayor

By _____

Jacqueline Beaudry, City Clerk

Approved as to substance

By _____

Steven D. Powers, City Administrator

By _____

Craig A. Hupy, P.E., Public
Services Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney