

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CARLISLE/WORTMAN ASSOCIATES, INC.
AND THE CITY OF ANN ARBOR
FOR ON-CALL THIRD PARTY BUILDING, RENTAL, AND PLANNING SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Carlisle/Wortman Associates, Inc. ("Contractor"), a Michigan Corporation with its address at 117 North First Street, Ann Arbor, Michigan 48104, agree as follows:

I. DEFINITIONS

Administering Service Area/Unit means Community Services, Building, Rental, and Planning.

Contract Administrator means Lisha Turner-Tolbert, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means On-Call Building Administration, Front Counter Administration, Building and Rental Inspections, Plan Review and Planning Administration Services

II. DURATION

Contractor shall commence performance on July 3, 2018 ("Commencement Date"). This Agreement shall remain in effect for three years unless terminated as provided for in Article XI. Thereafter, the City may renew this Agreement at its sole option for two additional one-year periods after giving written notice to Contractor of the same. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date or Commencement Date.

III. SERVICES

- A. The Contractor agrees to provide Building Administration, Front Counter Administration, Building and Rental Inspections, Plan Review and Planning Administration ("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. The Contractor understands that: (1) there is no guarantee or implied promise of any nature that the City will request Services pursuant to this Agreement; (2) the City is under no obligation to request Services pursuant to this Agreement; and (3) this Agreement is non-exclusive.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect. This includes ensuring that it and its employees performing pursuant to this Agreement maintain all required certifications, as well as ensuring that they meet mandated state and local guidelines.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) 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.
- E. Contractor shall attend meetings, court hearings, and appeals, as requested by the City in connection with the Services it provides under this Agreement. Contractor shall further assist City Staff with inquiries related to its Services under this Agreement. Contractor's work described in this subsection will be compensated in accordance with Exhibit B.

IV. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent 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.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.

- B. The Contractor will be compensated for Services performed in addition to the Services described in Article III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage that may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the policies and endorsements required by Exhibit C. Contractor shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).
- B. Any insurance provider of Contractor shall be 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-authorized insurance companies are not acceptable unless approved in writing by the City.
- C. 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.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor 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 Contractor 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.
- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the

Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor 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 Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. 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.

XI. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made

available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIII. 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, and addressed to the person listed below. 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.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Carlisle/Wortman Associates, Inc.
ATTN: Richard Carlisle and Craig Strong
117 North First Street
Ann Arbor, Michigan 48104

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
ATTN: Derek Delacourt
301 E. Huron St.
Ann Arbor, Michigan 48104

With a copy to: The City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

XIV. 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.

XV. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. 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 Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XVI. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor 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.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVII. 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.

XVIII. EXTENT OF AGREEMENT

This Agreement, together with Exhibits A, B, and C, 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.

XIX. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

XX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

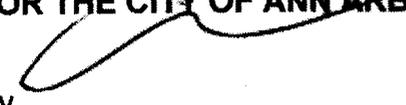
FOR CONTRACTOR

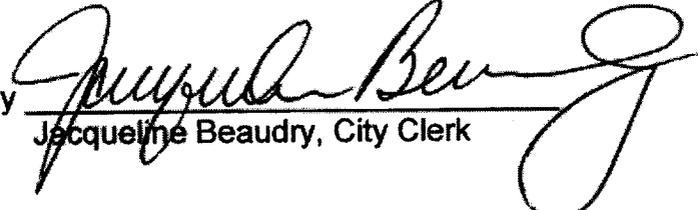
By 

Type Name Richard K Carlisle
Its President

Date: 9/19/18

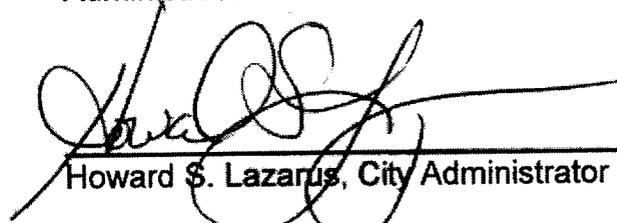
FOR THE CITY OF ANN ARBOR

By 
Christopher Taylor, Mayor

By 
Jacqueline Beaudry, City Clerk

Approved as to substance


Derek Delacourt, Service Area
Administrator


Howard S. Lazarus, City Administrator

Approved as to form and content

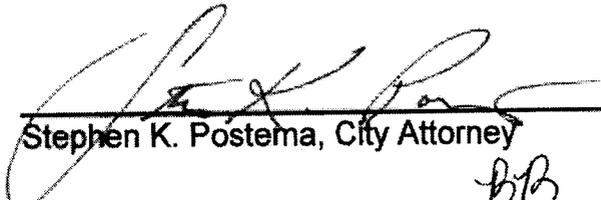

Stephen K. Postema, City Attorney
BB

EXHIBIT A SCOPE OF SERVICES

PLAN REVIEW THIRD PARTY SERVICES

Plan review workload will be determined by the City at the discretion of the Community Services Area. No advanced notice is required of plan review workload.

Plan review will be performed onsite at City Hall 2-3 days a week, depending on volume and based on the request of the Building Official.

Plans review performed off site at a Contractor location will be logged out by the City and both picked up from and returned to City Hall by Contractor approximately 2-3 times per week, depending on volume and based upon the request of the Building Official.

Contractor will perform the requested reviews in any or all categories including building, mechanical, electrical, plumbing, fire protection, accessibility, or energy code compliance.

Plans will be reviewed by registered plan reviewers using quality-control documents developed by both International Code Council and Contractor internally.

Any areas of correction, non-compliance, or deficiency will be noted, and the design professional in charge will be notified of the areas of concern or of a rejection/denial recommendation, on City-approved templates. Specific code sections will be cited and communicated for clarity with each item.

Contractor will utilize the City-developed historically adopted codes matrix as a guide to existing buildings, and the Contractor library legacy codes including the BOCA Code series.

Contractor will work with the City Building Official at the beginning of the contract period to determine the best form of feedback and communication to the public. A standard method of communication for corrective actions, denial letters, and approvals will be determined by City Staff. City Staff and Contractor will also clarify the plan submission process directly to Contractor, to the City, or to both.

Plan review turnaround time will be 2-3 days, unless corrections are needed, or for such holds as the State of Michigan or Washtenaw County Health Department.

All completed/returned plans will be stamped as "reviewed and in compliance" and will not be returned unless approval is recommended (or upon request from the Building Official). Documents will be returned referencing the same logging/tracking information used to submit them to Contractor.

INSPECTION THIRD PARTY SERVICES

Inspection workload will be determined by the City of Ann Arbor at the discretion of the Community Services Area. Inspectors will be made available upon a 24 hour notice.

Inspectors will report directly to the City Building Department for inspection assignments at an agreed-upon day/time.

Contractor will perform inspections in categories requested including building, mechanical, electrical, plumbing, and rental housing. Contractor performed inspections shall be completed by the end of the business day that they were assigned.

The City will provide the rental housing inspector the required paperwork or documentation method for recording of the inspection results and issuance of notice of violations.

Construction inspections will be made by properly registered inspection personnel and any areas of correction, non-compliance, or deficiency noted using established City of Ann Arbor procedures.

Contractor will provide inspectors with transportation and safety gear.

ADMINISTRATION/PLANNING THIRD PARTY SERVICES

Administrative and planning needs will be determined by the City at the discretion of the Community Services Area. City will attempt to give Contractor a 48-hour notice of needed services, but the parties agree that a request may be made at any time.

Contractor will provide administrative, building official, or planning personnel as appropriate to the role/function of the position to be filled, subject to the request and agreement of the City.

Such personnel will be physically present at City Hall to perform their duties unless the situation requires otherwise. The City will provide adequate workspace and communicate the role/function of the personnel to appropriate City Staff.

Such personnel will handle assigned duties with discretion and due diligence, will utilize the office of the City Attorney as needed, and endeavor to make all decisions and actions conform to all law, regulations, and City of Ann Arbor policies, as applicable.

Contractor represents that it can provide administration services at any level to the Community Service Area. Contractor further represents that it has worked within the City's Planning Department and can provide staffing with full knowledge of the City's policies and procedures.

EXHIBIT B COMPENSATION

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses, in accordance with the terms and conditions herein. The Compensation Schedule below states nature and amount of compensation the Contractor may charge the City:

CITY OF ANN ARBOR FEE PROPOSAL

RFP#18-16

BUILDING AND RENTAL THIRD PARTY SERVICES

CONSTRUCTION PLAN REVIEW PER HOUR

	2018	2019	2020
Residential Code	\$75	\$77	\$80
Building Code	\$110	\$112	\$115
MEP/Fire suppression & Alarms	\$110	\$112	\$115

BUILDING AND TRADE INSPECTIONS PER INSPECTION

	2018	2019	2020
All building and trade inspections	\$75	\$77	\$80

(Note: For multiple inspections on the same site, inspections will be billed per the City's 20 minute blocks of time)

RENTAL HOUSING INSPECTIONS PER UNIT

	2018	2019	2020
Rental Housing Inspections	\$75	\$77	\$80

(same unit price for re-inspections)

Optional Proposal: Reduce the per unit inspection cost by negotiating a minimum number/percentage of inspections per year (To be negotiated).

ADMINISTRATIVE/PLANNING SERVICES PER HOUR

As needed upon request from the City:

	2018	2019	2020
Building Official Services	\$115	\$117	\$120
Planning Services (Principal)	\$115	\$117	\$120
Planning Services (Associate)	\$95	\$97	\$100
Misc Admin Services	\$60	\$62	\$65

**EXHIBIT C
INSURANCE REQUIREMENTS**

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor 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 04 13 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or
Property Damage Liability, or both combined
\$2,000,000 Per Project General Aggregate
\$1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. 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.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
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- B. Insurance required under A.3 and A.4 above 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 for any insurance listed herein.
 - C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 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(s); name of insurance company; name(s), email address(es), and address(es) 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 may be approved by the City in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days, a copy of the policy(ies) and all required endorsements to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.