

AGREEMENT BETWEEN
NOVA ENVIRONMENTAL, INC.
AND
CITY OF ANN ARBOR
FOR
CONTRACTED SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, Michigan 48104 ("City"), and Nova Environmental, a Michigan Corporation with an address at 5300 Plymouth Road, Ann Arbor, MI 48105 (State where organized) (Partnership, LLC, Corporation)

("Contractor"), agree as follows:

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

I. DEFINITIONS

Administering Service Area/Unit means Public Services Area, Fleet & Facilities Unit.

Contract Administrator means Matthew J. Kulhanek, Fleet & Facilities Manager, acting personally or through any assistants authorized by the Administrator of the Administering Service Area/Unit.

Project means "RFP #878"

II. DURATION

This Agreement shall become effective on _____, 2013, 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 Contractor agrees to provide consulting services as described in RFP #878 and its response proposal dated November 4, 2013, which are incorporated here by reference.
- B. The Contractor's standard of service under this agreement shall be of the level of quality performed by professionals 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 laws, ordinances and regulations and contractual requirements now hereafter in effect as may be applicable to the rights and obligations under the Agreement.

IV. 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 Contractor and approved by the Contract Administrator. It is understood and agreed between the parties that the compensation stated in Exhibit B is inclusive of any and all remuneration to which the Contractor may be entitled. Total compensation to be paid to Contractor during the term of this Agreement shall not exceed Thirty Nine Thousand One Hundred Sixty dollars (\$ 39,160.00).
- B. The Contractor shall keep complete records of time spent in providing contract services so that the Administering Service Area/Unit may verify invoices submitted by the Contractor. Records shall be made available to the City upon request.

V. 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 which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City Attorney demonstrating it has obtained the insurance coverage required by Exhibit C.
- B. Any insurance provider of Contractor 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 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, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its employees and agents occurring in the performance of this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require it subcontractor(s) to comply with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions 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. The Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and 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.

VII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this agreement shall conform to the level of professional quality performed by professionals regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience necessary to perform the Services it is to provide pursuant to this agreement.
- B. 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
- C. 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.

VIII. RELATIONSHIP OF THE PARTIES

- A. The parties to this Agreement 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 Agreement shall be deemed to constitute any other relationship between the City and the Contractor.
- B. The Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

IX. 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, on at least sixty (60) days advance notice, for any reasons, including convenience, without incurring any penalty, expense or liability to

the 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 the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

X. 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.

XI. ASSIGNMENT

- A. The Contractor 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, 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.

XII. 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:

Nova Environmental, Inc.
5300 Plymouth Road
Ann Arbor, MI 48105

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

City of Ann Arbor
c/o Matthew J Kulhanek
301 E. Huron Street, PO Box 8647
Ann Arbor, MI 48107-8647

XIII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. 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.

XIV. 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. 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.
- C. The following provision(s) shall survive the termination of this Agreement: Article V.

XV. CONFLICT OF INTEREST

The 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. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

Further, the Contractor covenants that no officer, member or employee of the Contractor or its subcontractors who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

XVI. 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.

XVII. CONFIDENTIALITY

The Services to be performed by Contractor shall be at the direction of Contract Administrator or authorized designee and the Contractor shall report to the Contract Administrator, or authorized designee, regarding the Services performed. In order that the Contractor may effectively fulfill its obligations to the City under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information pertaining to the City's past, present, and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Firm and all employees shall regard all information gained as a result of the Services to be performed hereunder as information which is proprietary to the City and not to be disclosed to any organization or individual without the prior written consent of the City.

The Contractor shall take appropriate action to insure that all employees and subcontractors comply with this policy of nondisclosure. Further, the Contractor shall take appropriate action to ensure that all employees and subcontractors protect from improper disclosure all information obtained or produced, all communications made or received, and all work under this Agreement that are covered by this provision. This duty shall be continuing and shall survive the termination or expiration of this Agreement.

"Confidential Information" means information (in tangible or intangible form) belonging to or in the possession or control of City or its agents that is of a confidential or proprietary nature that is furnished or disclosed to the Contractor in the performance of the services under this Agreement.

"Confidential Information" will be deemed to exclude any particular information that, as evidenced by written documentation: (i) is already known to the receiving party without restrictions at the time of its disclosure to the furnishing party; (ii) after its disclosure by the furnishing party, is made known to the receiving party without restrictions by a third party having the right to do so; (iii) is or becomes publicly known without violation of this Agreement; or (iv) is independently developed by the receiving party without reference to the furnishing party's "Confidential Information." If the receiving party receives a subpoena or other validly issued administrative or judicial notice requesting the disclosure of the furnishing party's Confidential Information, the receiving party will promptly notify the furnishing party. The receiving party will be entitled to comply with any binding subpoena or other process to the extent required by law.

At the expiration or termination of the agreement, the receiving party at the furnishing party's sole option, will return the Confidential Information provided by the furnishing party.

XVIII. EXTENT OF AGREEMENT

This agreement 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, 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 Contractor and the City.

FOR CONTRACTOR

By _____

Its:

FOR THE CITY OF ANN ARBOR

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Steven D. Powers, City Administrator

By _____
Craig Hupy, Public Service Administrator

Approval as to form and content

By _____
Stephen K. Postema, City Attorney