

SERVICE AGREEMENT BETWEEN
PRECISION CONCRETE, INCORPORATED
AND
CITY OF ANN ARBOR

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 ("CITY") and, Precision Concrete, Incorporated, a Michigan Corporation, having its offices at 1896 Golden Eye Drive, Holland, Michigan 49424, ("CONTRACTOR"), agree as follows:

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

I. DEFINITIONS

Administering Service Area/Unit means Public Services Area.

Contract Administrator means Nicholas Hutchinson, P.E., Interim Project Management Services Unit Manager, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit

Project means 2013 Sidewalk Cutting Project, Bid No. 4260.

II. DURATION

The term of this Contract shall be one year, or until satisfactory performance of all services have been performed, whichever occurs later. Subject to the availability of funding, the Contract may be extended for up to two (2) one-year terms, subject to the same terms and conditions, including unit prices, in the original Contract and subject to agreement by the City and the Contractor. Between September 1 and December 31 of each year, the City will provide a written request for the one year extension to the Contractor, after which the Contractor shall have 30 days to respond in writing that it agrees to the one year extension. Failure to respond may result in the Contract being reissued for bid.

III. SERVICES

A. General Scope: 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 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:

Contract and Exhibits
Bid No. 4260 and Addenda (if applicable)
Bid Proposal of Contractor, dated February 15, 2013.

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed above in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

- B. Quality of Services: The Contractor's standard of service under this agreement shall be of the level of quality performed by businesses regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. Compliance with Applicable Law: The Contractor shall perform its services under this agreement in compliance with all applicable laws, ordinances and regulations.
- D. Location: The Contractor shall provide all of these services in or in the vicinity of the City of Ann Arbor, Michigan.

IV. RELATIONSHIP OF 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 certifies that it has no personal or financial interest in the project other than the fee it is to receive under this agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this agreement.
- C. 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.
- D. 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.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid on the basis of the unit price as contained within Exhibit B. The total fee to be paid the Contractor for the services shall not exceed Two Hundred Seven Thousand Three Hundred Fifty dollars and 00/100 cents (\$207,350.00). Payment shall be made within 30 days of acceptance of the work by the Contract Administrator. It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Contractor may be entitled.

VI. INSURANCE; INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this Contract, including the guarantee period and during any warranty work, 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 Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

1. 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

2. 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 Bodily Injury Liability or Property Damage Liability, or both combined.
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury
\$2,000,000 Products and Completed Operations Aggregate

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, 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.
 4. Umbrella/Excess Liability Insurance shall be provided to apply 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.
- B. Insurance required under VI.A.2 and A.3 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 Contractor 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 Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) 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 to the Administering Service Area/Unit at least ten days prior to the expiration date.
- D. 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, Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this contract, by the Contractor or anyone acting on the Contractor's behalf under this contract. Contractor shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence.

VII. 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, which is attached to this agreement as Exhibit C.
- B. Wages: Under this Contract, the Contractor shall conform to Chapter 14 of Title I of the Code of the City of Ann Arbor as amended; which in part states "...that all craftsmen, mechanics and laborers employed directly on the site in connection with said improvements, including said employees of subcontractors, shall receive the prevailing wage for the corresponding classes of craftsmen, mechanics and laborers, as determined by statistics for the Ann Arbor area compiled by the United States Department of Labor. At the request of the City, any contractor or subcontractor shall provide satisfactory proof of compliance with the contract provisions required by the Section." Where the Contract and the Ann Arbor City Ordinance are silent as to definitions of terms required in determining contract compliance with regard to prevailing wages, the definitions provided in the Davis-Bacon Act as amended (40 U.S.C. 278-a to 276-a-7) for the terms shall be used.

Further, to the extent that any employees of the Contractor providing services under this contract are not part of the class of craftsmen, mechanics and laborers who receive a prevailing wage in conformance with Section 1:319 of Chapter 14 of Title I of the Code of the City of Ann Arbor, the Contractor agrees to conform to Chapter 23, Living Wage, of Title I of the Code of the City of Ann Arbor, as amended. 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; 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. A copy of selected provisions of Chapter 23 of the Ann Arbor City Code is attached as Exhibit D. The current living wage rates under Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3) of the Ann Arbor City Code, is \$12.17 an hour for a covered employer that provides employee health care to its employees and \$13.57 an hour for a covered employer that does not provide health care to its employees.

VIII. WARRANTIES BY CONTRACTOR

- A. The Contractor warrants that the quality of its services under this agreement shall conform to the level of quality performed by professionals regularly rendering this type of service. The Contractor warrants that the repairs shall be free of defects for a period of one year.
- B. The Contractor warrants that it has all the skills and experience necessary to perform the services it is to provide pursuant to this agreement. The Contractor 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 contractor or when it has actual notice of any defects in the reports and surveys.

IX. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. This agreement may be terminated by either party 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 termination is given in conformance with the terms of this agreement.
- B. If contracting services are terminated for reasons other than the breach of the agreement by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

X. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to staff and City owned properties as required to perform the necessary services under the agreement.
- B. The City shall notify the Contractor of any defects in the services of which the City has actual notice.

XI. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of the services without prior written consent to such action by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under the agreement to third parties.

XII. NOTICE

All notices and submissions required under the 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 Service Area/Unit, care of the Contract Administrator.

XIII. 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 in entering into this agreement.

This agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

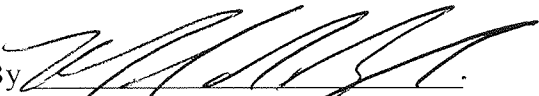
XIV. SEVERABILITY OF PROVISIONS

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 or other circumstances.

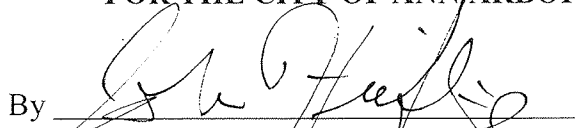
XV. CHOICE OF LAW

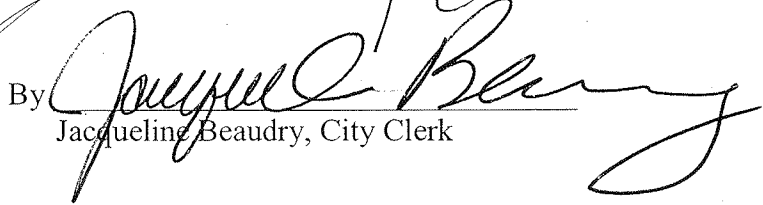
This agreement shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this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

FOR CONSULTANT


By 
Mark Bonkowski
President


FOR THE CITY OF ANN ARBOR

By 
John Hieftje, Mayor

By 
Jacqueline Beaudry, City Clerk

Approved as to substance


Steven D. Powers, City Administrator


Craig Hupy, Public Services Area Administrator

Approved as to Form and Content

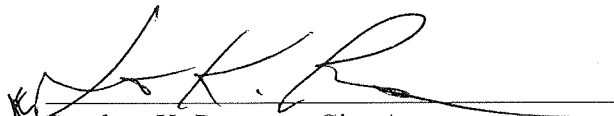

Stephen K. Postema, City Attorney

EXHIBIT A
SCOPE OF SERVICES FOR SIDEWALK CUTTING

DESCRIPTION

This work shall consist of horizontally cutting concrete sidewalk joints, as directed by the Engineer, for the purpose of removing vertical deflections. This work shall also include any required vehicular or pedestrian traffic control; and, any administrative costs to perform the work as described herein.

All work shall be done in accordance with the City Standard Specifications, except as specified herein, and as directed by the Engineer.

Sidewalk joint cutting will be organized and scheduled by the City and the Contractor such that cutting can be done at multiple locations within a relatively large designated area. This item is not intended to be used at single locations outside of these designated areas, unless acceptable to the Contractor.

Once areas have been marked by the Engineer for cutting, the Contractor will have a maximum of 60 days to complete all joint cutting within the area marked.

CONSTRUCTION METHODS

The Contractor shall horizontally cut all sidewalk joint deflections greater than ½ inch of vertical deflection at locations directed by the Engineer. Vertical deflections of over one inch will typically be marked for replacement through a separate contract; however the Contractor may occasionally be directed by the Engineer to cut sidewalk joints in excess of one inch.

Cuts shall be made horizontally with equipment designed for that purpose. Grinding will not be permitted other than for purposes of “touching up” cut surfaces. Cuts shall be made to provide a maximum slope of 1:8 (vertical:horizontal).

Cuts shall not leave ridges or grooves in the sidewalk that could inhibit or prevent drainage. Joint deflections shall be removed completely, from one end of the raised sidewalk to the other, leaving zero vertical deflection between adjacent slabs, in either direction. The work shall not damage, or make any visible markings on, adjacent sidewalk slabs or curbs.

All cuts shall have a uniform appearance and texture. The finished surface shall have a coefficient of friction of at least 0.6.

The Contractor may not use any type of “fill” material that deteriorates or breaks apart over time.

All joint cutting shall be performed under dry conditions with the use of a dust abatement system such that airborne dust is eliminated. Upon completion of a cut, the area shall be thoroughly cleaned to the satisfaction of the Engineer. All debris must be removed immediately and properly disposed of off-site. Under no circumstances shall any debris be placed in, or be allowed to run into, adjacent landscaping or any storm drains.

allowed to run into, adjacent landscaping or any storm drains.

The Contractor shall take care not to disturb adjacent vegetation, landscaping, retaining walls, curbs, sprinklers, utility covers, or other objects adjacent to the sidewalk. Anything disturbed by the joint cutting operations shall be restored or repaired to the satisfaction of the Engineer, at the Contractor's sole expense.

The Contractor shall schedule their operations so as to cause a minimum of interruption, interference, or disturbance to the operations of the adjacent properties, and shall allow access by pedestrians, emergency vehicles, and delivery/service vehicles at all times.

Sidewalk repair equipment and all other items incidental to the work shall not be stored on the sidewalk or on private property while not in use. Equipment may not be stored on lawn extension areas, unless permission is given by the Engineer in writing.

MEASUREMENT AND PAYMENT

This item of work shall be paid for at the Contract Unit Price by the unit "Each". For purposes of this pay item, the unit "Each" shall be defined as the cutting of a full sidewalk joint, up to a maximum of 6 feet in width, in both directions of travel. For locations at which the sidewalk is greater than 6 feet wide, the quantity paid shall be adjusted by the corresponding percentage.

PAY ITEM

Sidewalk Joint Cutting

PAY UNIT

Each

The unit prices for this item of work shall include all labor, material, and equipment costs to perform all the work specified in the Standard Specifications and as modified by this Detailed Specification, and shall also include all administrative costs to perform the work.

EXHIBIT B

BID FORM

Section 1

Project: 2013 Sidewalk Cutting Project

File Number: 2013-021

Bid Number: 4260

<u>Item</u>	<u>Description*</u>	<u>Units</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
200	Sidewalk Cutting	EACH	6,500	\$ <u>31.90</u>	\$ <u>207,350.</u>

* For work to be performed as described in Exhibit A, pages C-9 & C-10 of this document.

BID FORM

Section 2 - Material and Equipment Alternates

The Base Bid proposal price shall include materials and equipment selected from the designated items and manufacturers listed in the bidding documents. This is done to establish uniformity in bidding and to establish standards of quality for the items named.

If the Contractor wishes to quote alternate items for consideration by the City, it may do so under this Section. A complete description of the item and the proposed price differential must be provided. Unless approved at the time of award, substitutions where items are specifically named will be considered only as a negotiated change in Contract Sum.

<u>Item Number</u>	<u>Description</u>	<u>Add/Deduct Amount</u>
--------------------	--------------------	--------------------------

If the Bidder does not suggest any material or equipment alternate, the Bidder **MUST** complete the following statement:

For the work outlined in this request for bid, the bidder does NOT propose any material or equipment alternate under the contract.



Signature of Authorized Representative of Bidder

BF-2

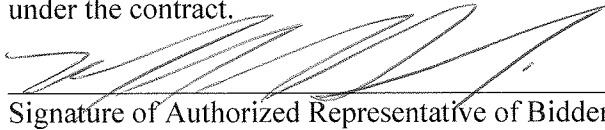
BID FORM

Section 3 - Time Alternate

If the Bidder takes exception to the time stipulated in Article III of the Contract, Time of Completion, page C-1, it is requested to stipulate below its proposed time for performance of the work. Consideration will be given to time in evaluating bids.

If the Bidder does not suggest any time alternate, the Bidder **MUST** complete the following statement:

For the work outlined in this request for bid, the bidder does NOT propose any time alternate under the contract.



Signature of Authorized Representative of Bidder

BF-3

BID FORM

Section 4 - Subcontractors

For purposes of this contract, a Subcontractor is anyone (other than the Contractor) who performs work (other than or in addition to the furnishing of materials, plans or equipment) at or about the construction site, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any individual who furnishes merely the individual's own personal labor or services.

For the work outlined in these documents the Bidder expects to engage the following **subcontractors** to perform the work identified:

<u>Type of Work</u>	<u>Name and Address</u>	<u>Value of Subcontract</u>
---------------------	-------------------------	-----------------------------

If the Bidder does not expect to engage any **subcontractor**, the Bidder **MUST** complete the following statement:

For the work outlined in this request for bid, the bidder does NOT expect to engage any **subcontractor** to perform work under the contract.



Signature of Authorized Representative of Bidder

BF-4