

CONTRACT FOR REPLACEMENT OF GENERATOR AT FIRE STATION NO. 1

THIS AGREEMENT ("Contract") is made on the _____ day of _____, 2017, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, whose address is 301 East Huron Street, Ann Arbor, Michigan 48104 ("City"), and Allied Building Service Inc. a Michigan Corporation, whose address is 1801 Howard Street, Detroit, MI 48216 ("Contractor"),

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

Contractor shall furnish all materials, equipment and labor necessary and shall abide by and discharge all the duties and responsibilities applicable to it for the project titled Fire Station No. 1 Emergency Generator Replacement Project ITB #4516, as described in Exhibit A, 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
- Addendum to Contract
- General Conditions
- Standard Specifications
- Detailed Specifications
- Plans
- Any Addenda to ITB #4516
- Bid Forms
- Bonds
- Non-discrimination and Living Wage Declaration of Compliance Forms
- Prevailing Wage Declaration of Compliance Form
- Vendor Conflict of Interest Form

ARTICLE II - Definitions

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

Contract Administrator means **Public Services Area Administrator or designee**. As used in the General Conditions, "Supervising Professional" means Contract Administrator.

Project means **RFP #4516 – Fire Station No. 1 Emergency Generator Replacement Project**

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 the Project shall be completed within 135 days of the City's issuance of the Notice to Proceed.
- (C) Failure to timely complete the work shall constitute a material breach of contract, and shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, an amount equal to \$300.00 for each calendar day of delay.

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 as a setoff.

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) Provided it complies with, and is not in material breach of, this Contract, 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) Any amount paid shall be equitably adjusted to cover changes in the work ordered by the Contract Administrator 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

Contractor shall not assign or delegate any right or obligation arising under this Contract without the express, written consent of the City. Any assignment or delegate made or attempted by Contractor without the City's express and written consent shall be void. The City's express, written consent to any assignment or delegation of any right or obligation arising under this Contract shall neither waive any right of the City, nor release any obligation of Contractor, arising under this Contract.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Contract, 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 Contract. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience.

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision shall not invalidate the remainder of the Contract.

ARTICLE VII - Relationship of the Parties

The parties to the Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor shall be and is an independent contractor performing services for the City. Nothing in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor represents, warrants and certifies that it has no personal or financial interest in the Project other than the compensation it may receive under the Contract. Contractor represents, warrants and 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 Contract.

ARTICLE VIII - Notice

All notices given under this Contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the Contract Documents or other address the Contractor may specify in writing. Notice shall be deemed given on the date when one of the following first occur: (1) the date of actual receipt; or (2) three days after mailing certified U.S. mail.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, 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. The provisions of this Article shall survive the expiration or earlier termination of this contract for any reason.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations, negotiations, agreements, or understandings whether written or oral. Neither party has relied on any prior representations in entering into this Contract. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Contract, regardless of the other party's failure to object to such form. This Contract shall be binding on and shall inure to the benefit of the parties to this Contract and their permitted successors and permitted assigns and nothing in this Contract, 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 Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

FOR CONTRACTOR

By _____

Its: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus, City Administrator

Craig Hupy, Public Services Area
Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

EXHIBIT A
SCOPE OF WORK

(Insert/Attach Scope of Work & Deliverables Schedule)

**EXHIBIT B
COMPENSATION**

General

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

See attached price proposal from Contractor.

Contractor will provide the City with a Schedule of Values for use when Contractor submits invoices for payment. The cost for the Fire Station #1 Emergency Generator Replacement shall not exceed \$268,800.00.

(insert/Attach Negotiated Fee
Arrangement)