

## **ANN ARBOR DOWNTOWN DEVELOPMENT SERVICE AGREEMENT**

### **SERVICE AGREEMENT BETWEEN**

### **FUTURE FENCE COMPANY AND ANN ARBOR DOWNTOWN DEVELOPMENT AUTHORITY**

The Ann Arbor Downtown Development Authority, a Michigan municipal corporation, having its offices at 150 S Fifth Avenue, Suite 301, Ann Arbor, Michigan 48104 ("DDA") and Future Fence Company, a Michigan company, having its offices at 23450 Regency Park Drive Warren, Michigan 48089 ("CONTRACTOR"), agree as follows on this eleventh day of July 2024.

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

#### **I. DEFINITIONS**

Ann Arbor Downtown Development Authority, also referred to as the DDA or the Owner.

Contract Administrator means the DDA representative authorized by the Ann Arbor Downtown Development Authority to act on the behalf of the Ann Arbor Downtown Development Authority.

Supervising Professional as defined in the General Conditions shall mean the Contract Administrator.

Design Professional means Fishbeck. Fishbeck is the lead designer, references to "Architect" or "Engineer" within the project specifications will generally refer to Fishbeck or a consultant to Fishbeck.

Project means Ann Arbor DDA Parking Structure Perimeter Barrier Enhancements 2024.

#### **II. DURATION**

This Agreement shall become effective on July 11, 2024, and shall remain in effect until satisfactory performance of all services or January 24, 2025, whichever occurs first, unless terminated for breach or as provided in this agreement.

- A. Successful bidder shall begin the Work on receipt of the Notice to Proceed and shall complete the Work within the Contract Time.
- B. The entire work for this Contract shall be completed within the time period shown below. Shorter completion times for certain portions of the work are specified in the Detailed Specifications.
  - 1. Anticipated Contract Notice to Proceed: July 19, 2024.
  - 2. Fabrication/Construction: July 22, 2024 through January 24, 2025.

- 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 DDA, as liquidated damages and not as a penalty, an amount equal to \$500.00 for each calendar day of delay in the completion of all the work. If any liquidated damages are unpaid by the Contractor, the DDA 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.

Liquidated damages under this section are in addition to any liquidated damages due under Section 19 of the General Conditions.

### 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:

1. Contract and Exhibits
2. Construction Documents, dated June 6, 2024
  - a. Exhibit 1: Drawing Cover Sheet (G001)
  - b. Exhibit 2: Specification Table of Contents
3. Addenda
  - a. Addendum No. 1, dated June 13, 2024
4. Bid Proposal of Contractor, dated June 27, 2024
  - a. Exhibit 3: Proposal Form (P1-P2)
  - b. Exhibit 4: Bid Form (BF1-BF4)
5. Exhibit 5: General Conditions (GC1-GC16)

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 statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. Location: The Contractor shall provide all of these services at the locations specified.
- E. Reports/Surveys: The Contractor may rely upon the accuracy of reports and surveys provided to it by the DDA 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.

#### 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 DDA. Nothing contained in this agreement shall be deemed to constitute any other relationship between the DDA 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 DDA, and is not granted any authority to assume or create any obligation or liability on the DDA's behalf, or to bind the DDA in any way.
- D. Contractor certifies that it is not, and shall not become, overdue or in default to the City of Ann Arbor for any contract, debt, or any other obligation to the City including real or personal property taxes. The DDA shall have the right to set off any such debt against compensation awarded for services under this agreement.

#### V. COMPENSATION OF CONTRACTOR

The Contractor shall be paid on the basis of the bid price in the manner set forth in the Bid. The total fee to be paid the Contractor for the services shall not exceed **One Million One Hundred Twenty-Six Thousand Five Hundred Fifty-Five Dollars (\$1,126,555)**. 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, the DDA, PCI Municipal Services, and the Design Professional 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 insurance coverage afforded by the contractor to the DDA and the Design Professional shall be primary and not excess or contributory to any insurance the DDA or Design Professional may have on its own. 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, the Ann Arbor DDA, PCI Municipal Services, and the Design Professional shall be named as 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:

\$2,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.

\$4,000,000 Per Job General Aggregate

\$2,000,000 Personal and Advertising Injury

\$4,000,000 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, the Ann Arbor DDA, PCI Municipal Services, and the Design Professional shall be named as 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 DDA or the City of Ann Arbor may possess, including any self-insured retentions the DDA or City of Ann Arbor may have; and any other insurance the DDA or the City of Ann Arbor 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 DDA or the City of Ann Arbor.
  - C. In the case of all Contracts involving on-site work, the Contractor shall provide to the DDA 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 DDA. 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 DDA. 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 DDA 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 DDA.
  - E. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City of Ann Arbor, PCI Municipal Services, the Design Professional, and the DDA 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 DDA for losses or damages caused by or resulting from the DDA's sole negligence.

## VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply and to require its subcontractor to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act 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. 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.

## 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 businesses regularly rendering this type of service. The Contractor warrants that the work performed shall be free of defects and guaranteed 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. Further that it has available, or will engage, at its own expense, sufficient trained employees or subcontractors 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 of Ann Arbor for any contract, debt, or any other obligation to the City of Ann Arbor including real and personal property taxes.

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. Breach under this terms of this Agreement shall include but not be limited to the failure to deliver service on time, poor quality materials or workmanship, failure to follow specifications identified in Article III above, or the unauthorized substitution of articles other than those quoted and specified in the bid documents.
- B. The DDA may terminate this Agreement, on at least ten (10) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Contractor except the obligation to pay for services actually performed under the Agreement.
- 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 DDA to effect continued payment under this Agreement are not appropriated or otherwise made available, the DDA 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 DDA

- A. The DDA agrees to give the Contractor access to staff and DDA managed properties as required to perform the necessary services under the agreement.
- B. The DDA shall notify the Contractor of any defects in the services of which the DDA 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 DDA. Notwithstanding any consent by the DDA 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 DDA.
- 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 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:

Future Fence Company  
23450 Regency Park Drive  
Warren, MI 48089  
Attn: Joe Hollowell, President

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

Ann Arbor DDA  
150 S Fifth Avenue,  
Suite 301  
Ann Arbor, MI 48107-8647  
Attn: Jada Hahlbrock, Manager of Parking Services

XIII. 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.

XIV. 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 DDA agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. EXTENT OF AGREEMENT

This agreement represents the entire understanding between the DDA 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 DDA.

**FOR CONTRACTOR**

By \_\_\_\_\_ Joe Hollowell, President

**FOR THE CITY OF ANN ARBOR DDA**

By \_\_\_\_\_ Jada Hahlbrock, DDA Parking Manager

By \_\_\_\_\_ Maura Thomson, DDA Executive Director

# Ann Arbor DDA

## Parking Structure Perimeter Barrier Enhancements 2024 Ann Arbor, Michigan

ISSUED FOR BIDDING & CONSTRUCTION 06/06/2024

Project Number: 211744



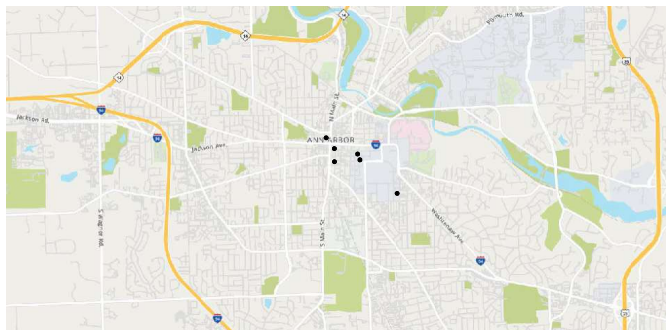
fishbeck.com 4775 Campus Drive,  
800.456.3824 Kalamazoo, Michigan

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| AP505                   | DETAILS                                |



**Ann Arbor DDA**  
 Ann Arbor, Michigan  
 Parking Structure Perimeter Barrier Enhancements 2024

OVERALL MAP



LOCATION PLANS



REVISIONS

06/06/2024 ISSUED FOR BIDDING & CONSTRUCTION  
 Drawn By: RIKULVANEY  
 Designer: JTHOMSON  
 Reviewer: TMEYER  
 Manager: JTHOMSON

Hard copy is intended to be 24"x36" when plotted. Scale(s) indicated and graphic quality may not be accurate for any other size.

PROJECT NO.  
211744  
 SHEET NO.

**G001**

PLOT INFO: 06/06/2024 3:00:49 PM C:\www\fishbeck.com\211744\_2024\Fencing\mmap\map\BIDDING.dwg

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**PROPOSAL**

Ann Arbor DDA  
150 South Fifth Avenue, Suite 301  
Ann Arbor, Michigan 48104

Ladies and Gentlemen:

The undersigned, as Bidder, declares that this Bid is made in good faith, without fraud or collusion with any person or persons bidding on the same Contract; that this Bidder has carefully read and examined the bid documents, including Advertisement, Notice of Pre-Bid Conference, Instructions to Bidders, Proposal, Bid Forms, Contract, Bond Forms, General Conditions, Standard Specifications, Detailed Specifications, all Addenda, and the Plans and understands them. The Bidder declares that it conducted a full investigation at the site and of the work proposed and is fully informed as to the nature of the work and the conditions relating to the work's performance. The Bidder also declares that it has extensive experience in successfully completing projects similar to this one.

The Bidder acknowledges that it has not received or relied upon any representations or warrants of any nature whatsoever from the DDA, its agents or employees, and that this Bid is based solely upon the Bidder's own independent business judgment.

The undersigned proposes to perform all work shown on the plans or described in the bid documents, including any addenda issued, and to furnish all necessary machinery, tools, apparatus, and other means of construction to do all the work, furnish all the materials, and complete the work in strict accordance with all terms of the Contract of which this proposal is one part.

In accordance with these bid documents, and Addenda numbered 1, the undersigned, as Bidder, proposes to perform at the sites in and/or around Ann Arbor, Michigan, all the work included herein for the amounts set forth in the Bid Forms.

The Bidder declares that it has become fully familiar with the liquidated damage clauses for completion times and for compliance with City Code Chapter 112, understands and agrees that the liquidated damages are for the non-quantifiable aspects of non-compliance and do not cover actual damages that may be shown and agrees that if awarded the Contract, all liquidated damage clauses form part of the Contract.

The Bidder declares that it has become fully familiar with the provisions of Chapter 14, (Prevailing wages) and Chapter 23 (Living Wage) of the Code of the City of Ann Arbor and that it understands and agrees to comply, to the extent applicable to employees providing services to the City under this Contract, with the wage and reporting requirements stated in the City Code provisions cited. Bidder further agrees that the cited provisions of Chapter 14 and Chapter 23 form a part of this Contract.

The Bidder encloses a certified check or Bid Bond in the amount of 5% of the total of the Bid Price. The Bidder agrees both to contract for the work and to furnish the necessary Bonds and insurance documentation within 10 days after being notified of the acceptance of the Bid.

If this Bid is accepted by the DDA and the Bidder fails to contract and furnish the required Bonds and insurance documentation within 10 days after being notified of the acceptance of this Bid, then the Bidder shall be considered to have abandoned the Contract and the certified check or Bid Bond accompanying this Proposal shall become due and payable to the DDA.

If the Bidder enters into the Contract in accordance with this Proposal, or if this Proposal is rejected, then the accompanying check or Bid Bond shall be returned to the Bidder.

In submitting this Bid, it is understood that the right is reserved by the DDA to accept any Bid, to reject any or all Bids, to waive irregularities and/or informalities in any Bid, and to make the award in any manner the DDA believes to be in its best interest.

SIGNED THIS 27<sup>th</sup> DAY OF June, 2024.

Future Fence Company

Bidder's Name

23450 Regency Park Drive Jason Gantz  
Official Address Warren, MI 48089 Authorized Signature of Bidder

586-755-0900  
Telephone Number

Jason Gantz  
(Print Name of Signer Above)



**BID FORM**

**Section 1 - Schedule of Prices**

1. Bidder will complete the work for the following price as outlined in these documents, complete as specified, using equipment and materials only of the type and manufacturers where specifically named:

|  |                        |
|--|------------------------|
| <b>Subtotal Base Bid – Fourth &amp; Washington</b> | \$ <u>111,642.00</u>   |
| <b>Subtotal Base Bid – Maynard</b>                 | \$ <u>267,171.00</u>   |
| <b>Subtotal Base Bid – Forest Avenue</b>           | \$ <u>165,433.00</u>   |
| <b>Subtotal Base Bid – Fourth &amp; William</b>    | \$ <u>162,003.00</u>   |
| <b>Subtotal Base Bid – Liberty Square</b>          | \$ <u>200,744.00</u>   |
| <b>Subtotal Base Bid – Ann Ashley</b>              | \$ <u>219,562.00</u>   |
| <b>Total Base Bid – All Parking Structures</b>     | \$ <u>1,126,555.00</u> |

2. Contractor shall submit a lump sum Contract price for all work included in the Drawings and Specifications except as modified herein. Lump sum price shall include all costs to provide, install, and/or repair work items including, but not limited to, labor, material, equipment, supervision, overhead, profits, etc. Specific lump sum work is described below:
- Project mobilization shall include General Contractor and Subcontractor mobilization costs. Include permits, temporary offices, etc. Provide itemized breakdown.
  - Project General Requirements and all miscellaneous costs associated with completion of work in accordance with the Construction Documents. This shall include, but not be limited to, shoring, barricades, cleanup, dust and fume control, layout, equipment, waste disposal, documentation, obstruction removal and replacement, etc.
3. If the required quantities of the items listed below are increased or decreased by Change Order, the adjustment unit price set forth below shall apply for each such increased or decreased quantity. The adjustment prices shall include all material and equipment costs, labor, other installation costs, and the Bidder's overhead and profit. The adjustment price below shall be the same figure for quantity increase or quantity decrease:

| <b>Work Item Description</b>    | <b>Reference Detail/Spec</b> | <b>Units</b> | <b>Unit Cost</b> |
|---------------------------------|------------------------------|--------------|------------------|
| Furnish and Install Wing Panel  | 5/AP501                      | Each         | \$ <u>750.00</u> |
| Furnish and Install Wedge Panel | 9/AP505                      | Each         | \$ <u>950.00</u> |

## 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 DDA, 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.

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




## BID FORM

### Section 3 - Time Alternate

If the Bidder takes exception to the time stipulated in Article II of the Contract, Duration, 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

## BID FORM

### Section 4 - Major Subcontractors

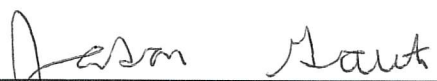
For purposes of this contract, a Subcontractor is anyone (other than the Contractor) who performs work (other than or in addition to the furnishing of materials, plans or equipment) at or about the construction site, directly or indirectly for or on behalf of the Contractor (and whether or not in privity 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 major subcontractors to perform the work identified:

| <u>Subcontractor (Name and Address)</u> | <u>Work</u> | <u>Amount</u> |
|---|-------------|---------------|
|---|-------------|---------------|

If the Bidder does not expect to engage any major 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 major subcontractor to perform work under the contract.

  
\_\_\_\_\_  
Signature of Authorized Representative of Bidder

**GENERAL CONDITIONS****Section 1 - Execution, Correlation and Intent of Documents**

The contract documents shall be signed in 2 copies by the DDA and the Contractor.

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 work. Materials or work described in words which 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 below in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

- (1) Addenda in reverse chronological order;
- (2) Detailed Specifications;
- (3) Standard Specifications;
- (4) Plans;
- (5) General Conditions;
- (6) Contract;
- (7) Bid Forms;
- (8) Bond Forms;
- (9) Proposal.

**Section 2 - Order of Completion**

The Contractor shall submit with each invoice, and at other times reasonably requested by the Supervising Professional, schedules showing the order in which the Contractor proposes to carry on the work. They shall include the dates at which the Contractor will start the several parts of the work, the estimated dates of completion of the several parts, and important milestones within the several parts.

**Section 3 - Familiarity with Work**

The Bidder or its representative shall make personal investigations of the site of the work and of existing structures and shall determine to its own satisfaction the conditions to be encountered, the nature of the ground, the difficulties involved, and all other factors affecting the work proposed under this Contract. The Bidder to whom this Contract is awarded will not be entitled to any additional compensation unless conditions are clearly different from those which could reasonably have been anticipated by a person making diligent and thorough investigation of the site.

The Bidder shall immediately notify the DDA upon discovery, and in every case prior to submitting its Bid, of every error or omission in the bidding documents that would be identified by a reasonably competent, diligent Bidder. In no case will a Bidder be allowed the benefit of extra compensation or time to complete the work under this Contract for extra expenses or time spent as a result of the error or omission.

**Section 4 - Wage Requirements**

Refer to Section VII of the Contract.

## Section 5- Non-Discrimination

Refer to Section VII of the Contract.

## Section 6 - Materials, Appliances, Employees

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary or used for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new, and both workmanship and materials shall be of the highest quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among its employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned.

Adequate sanitary facilities shall be provided by the Contractor.

## Section 7 - Qualifications for Employment

The Contractor shall employ competent laborers and mechanics for the work under this Contract. For work performed under this Contract, employment preference shall be given to qualified local residents.

## Section 8 - Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringements of any patent rights and shall hold the DDA harmless from loss on account of infringement except that the DDA shall be responsible for all infringement loss when a particular process or the product of a particular manufacturer or manufacturers is specified, unless the DDA has notified the Contractor prior to the signing of the Contract that the particular process or product is patented or is believed to be patented.

## Section 9 - Permits and Regulations

The Contractor must secure and pay for all permits, permit or plan review fees and licenses necessary for the prosecution of the work. These include but are not limited to City building permits, right-of-way permits, lane closure permits, right-of-way occupancy permits, and the like. The DDA shall secure and pay for easements shown on the plans unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance with those requirements, it shall promptly notify the Supervising Professional in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

## Section 10 - Protection of the Public and of Work and Property

The Contractor is responsible for the means, methods, sequences, techniques and procedures of construction and safety programs associated with the work contemplated by this contract. The Contractor, its agents or sub-contractors, shall comply with the "General Rules and Regulations for the Construction Industry" as published by the Construction Safety Commission of the State of Michigan and to all other local, State and National laws, ordinances, rules and regulations pertaining to safety of persons and property.

The Contractor shall take all necessary and reasonable precautions to protect the safety of the public. It shall continuously maintain adequate protection of all work from damage, and shall take all necessary and reasonable precautions to adequately protect all public and private property from injury or loss arising in connection with this Contract. It shall make good any damage, injury or loss to its work and to public and private property resulting from lack of reasonable protective precautions, except as may be due to errors in the contract documents, or caused by agents or employees of the DDA. The Contractor shall obtain and maintain sufficient insurance to cover damage to any City property at the site by any cause.

In an emergency affecting the safety of life, or the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Supervising Professional, permitted to act at its discretion to prevent the threatened loss or injury. It shall also so act, without appeal, if authorized or instructed by the Supervising Professional.

Any compensation claimed by the Contractor for emergency work shall be determined by agreement or in accordance with the terms of Claims for Extra Cost - Section 15.

## Section 11 - Inspection of Work

The DDA shall provide sufficient competent personnel for the inspection of the work.

The Supervising Professional shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for access and for inspection.

If the specifications, the Supervising Professional's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Supervising Professional timely notice of its readiness for inspection, and if the inspection is by an authority other than the Supervising Professional, of the date fixed for the inspection. Inspections by the Supervising Professional shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Supervising Professional, it must, if required by the Supervising Professional, be uncovered for examination and properly restored at the Contractor's expense.

Re-examination of any work may be ordered by the Supervising Professional, and, if so ordered, the work must be uncovered by the Contractor. If the work is found to be in accordance with the contract documents, the DDA shall pay the cost of re-examination and replacement. If the work is not in accordance with the contract documents, the Contractor shall pay the cost.

#### Section 12 - Superintendence

The Contractor shall keep on the work site, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Supervising Professional. The superintendent will be responsible to perform all on-site project management for the Contractor. The superintendent shall be experienced in the work required for this Contract. The superintendent shall represent the Contractor and all direction given to the superintendent shall be binding as if given to the Contractor. Important directions shall immediately be confirmed in writing to the Contractor. Other directions will be confirmed on written request. The Contractor shall give efficient superintendence to the work, using its best skill and attention.

#### Section 13 - Changes in the Work

The DDA may make changes to the quantities of work within the general scope of the Contract at any time by a written order and without notice to the sureties. If the changes add to or deduct from the extent of the work, the Contract Sum shall be adjusted accordingly. All the changes shall be executed under the conditions of the original Contract except that any claim for extension of time caused by the change shall be adjusted at the time of ordering the change.

In giving instructions, the Supervising Professional shall have authority to make minor changes in the work not involving extra cost and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Supervising Professional, and no claim for an addition to the Contract Sum shall be valid unless the additional work was ordered in writing.

The Contractor shall proceed with the work as changed and the value of the work shall be determined as provided in Claims for Extra Cost - Section 15.

#### Section 14 - Extension of Time

Extension of time stipulated in the Contract for completion of the work will be made if and as the Supervising Professional may deem proper under any of the following circumstances:

- (1) When work under an extra work order is added to the work under this Contract;
- (2) When the work is suspended as provided in Section 20;
- (3) When the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, and which were not the result of its fault or negligence;

- (4) Delays in the progress of the work caused by any act or neglect of the DDA or of its employees or by other Contractors employed by the DDA;
- (5) Delay due to an act of Government;
- (6) Delay by the Supervising Professional in the furnishing of plans and necessary information;
- (7) Other cause which in the opinion of the Supervising Professional entitles the Contractor to an extension of time.

The Contractor shall notify the Supervising Professional within 7 days of an occurrence or conditions which, in the Contractor's opinion, entitle it to an extension of time. The notice shall be in writing and submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Supervising Professional shall acknowledge receipt of the Contractor's notice within 7 days of its receipt. Failure to timely provide the written notice shall constitute a waiver by the Contractor of any claim.

In situations where an extension of time in contract completion is appropriate under this or any other section of the contract, the Contractor understands and agrees that the only available adjustment for events that cause any delays in contract completion shall be extension of the required time for contract completion and that there shall be no adjustments in the money due the Contractor on account of the delay.

#### Section 15 - Claims for Extra Cost

If the Contractor claims that any instructions by drawings or other media issued after the date of the Contract involved extra cost under this Contract, it shall give the Supervising Professional written notice within 7 days after the receipt of the instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property. The procedure shall then be as provided for Changes in the Work-Section 13. No claim shall be valid unless so made.

If the Supervising Professional orders, in writing, the performance of any work not covered by the contract documents, and for which no item of work is provided in the Contract, and for which no unit price or lump sum basis can be agreed upon, then the extra work shall be done on a Cost-Plus-Percentage basis of payment as follows:

- (1) The Contractor shall be reimbursed for all reasonable costs incurred in doing the work, and shall receive an additional payment of 15% of all the reasonable costs to cover both its indirect overhead costs and profit;

- (2) The term "Cost" shall cover all payroll charges for employees and supervision required under the specific order, together with all worker's compensation, Social Security, pension and retirement allowances and social insurance, or other regular payroll charges on same; the cost of all material and supplies required of either temporary or permanent character; rental of all power-driven equipment at agreed upon rates, together with cost of fuel and supply charges for the equipment; and any costs incurred by the Contractor as a direct result of executing the order, if approved by the Supervising Professional;
- (3) If the extra is performed under subcontract, the subcontractor shall be allowed to compute its charges as described above. The Contractor shall be permitted to add an additional charge of 5% percent to that of the subcontractor for the Contractor's supervision and contractual responsibility;
- (4) The quantities and items of work done each day shall be submitted to the Supervising Professional in a satisfactory form on the succeeding day, and shall be approved by the Supervising Professional and the Contractor or adjusted at once;
- (5) Payments of all charges for work under this Section in any one month, shall be made along with normal progress payments. Retainage shall be in accordance with Progress Payments-Section 16.

No additional compensation will be provided for additional equipment, materials, personnel, overtime or special charges required to perform the work within the time requirements of the Contract.

When extra work is required and no suitable price for machinery and equipment can be determined in accordance with this Section, the hourly rate paid shall be 1/40 of the basic weekly rate listed in the Rental Rate Blue Book published by Dataquest Incorporated and applicable to the time period the equipment was first used for the extra work. The hourly rate will be deemed to include all costs of operation such as bucket or blade, fuel, maintenance, "regional factors", insurance, taxes, and the like, but not the costs of the operator.

#### Section 16 - Progress Payments

The Contractor shall submit each month, or at longer intervals, if it so desires, an invoice covering work performed for which it believes payment, under the Contract terms, is due. Submission shall be to the Owner Representative and Supervising Professional. The Supervising Professional will, within 10 days following submission of the invoice, prepare a certificate for payment for the work in an amount to be determined by the Supervising Professional as fairly representing the acceptable work performed during the period covered by the Contractor's invoice. To insure the proper performance of this Contract, the DDA will retain a percentage of the estimate in accordance with Act 524, Public Acts of 1980. The DDA will then, following the receipt of the Supervising Professional's Certificate, make payment to the Contractor as soon as feasible, which is anticipated will be within 15 days.



An allowance may be made in progress payments if substantial quantities of permanent material have been delivered to the site but not incorporated in the completed work if the Contractor, in the opinion of the Supervising Professional, is diligently pursuing the work under this Contract. Such materials shall be properly stored and adequately protected. Allowance in the estimate shall be at the invoice price value of the items. Notwithstanding any payment of any allowance, all risk of loss due to vandalism or any damages to the stored materials remains with the Contractor.

In the case of Contracts which include only the Furnishing and Delivering of Equipment, the payments shall be; 60% of the Contract Sum upon the delivery of all equipment to be furnished, or in the case of delivery of a usable portion of the equipment in advance of the total equipment delivery, 60% of the estimated value of the portion of the equipment may be paid upon its delivery in advance of the time of the remainder of the equipment to be furnished; 30% of the Contract Sum upon completion of erection of all equipment furnished, but not later than 60 days after the date of delivery of all of the equipment to be furnished; and payment of the final 10% on final completion of erection, testing and acceptance of all the equipment to be furnished; but not later than 180 days after the date of delivery of all of the equipment to be furnished, unless testing has been completed and shows the equipment to be unacceptable.

With each invoice for periodic payment, the Contractor shall enclose a Contractor's Declaration - Section 43, and an updated project schedule per Order of Completion - Section 2. Contractor's Declaration is included as specification section CD-1

#### Section 17 - Deductions for Uncorrected Work

If the Supervising Professional decides it is inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

#### Section 18 - Correction of Work Before Final Payment

The Contractor shall promptly remove from the premises all materials condemned by the Supervising Professional as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the DDA and shall bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement.

If the Contractor does not remove the condemned work and materials within 10 days after written notice, the DDA may remove them and, if the removed material has value, may store the material at the expense of the Contractor. If the Contractor does not pay the expense of the removal within 10 days thereafter, the DDA may, upon 10 days written notice, sell the removed materials at auction or private sale and shall pay to the Contractor the net proceeds, after deducting all costs and expenses that should have been borne by the Contractor. If the removed material has no value, the Contractor must pay the DDA the expenses for disposal within 10 days of invoice for the disposal costs.

The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract and defective work shall be made good. Unsuitable materials may be rejected by the Supervising Professional notwithstanding that the work and materials have been previously overlooked by the Supervising Professional and accepted or estimated for payment or paid for. If the work or any part shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good the defect in a manner satisfactory to the Supervising Professional. The judgment and the decision of the Supervising Professional as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.

### Section 19 - Acceptance and Final Payment

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Supervising Professional will promptly make the inspection. When the Supervising Professional finds the work acceptable under the Contract and the Contract fully performed, the Supervising Professional will promptly sign and issue a final certificate stating that the work required by this Contract has been completed and is accepted by the DDA under the terms and conditions of the Contract. The entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the DDA within 30 days after the date of the final certificate.

Before issuance of final certificates, the Contractor shall file with the DDA:

- (1) The consent of the surety to payment of the final estimate;
- (2) The Contractor's Affidavit in the form required by Section 44. Contractor's Affidavit is included as specification section CA-1

In case the Affidavit or consent is not furnished, the DDA may retain out of any amount due the Contractor, sums sufficient to cover all lienable claims.

The making and acceptance of the final payment shall constitute a waiver of all claims by the DDA except those arising from:

- (1) unsettled liens;
- (2) faulty work appearing within 12 months after final payment;
- (3) hidden defects in meeting the requirements of the plans and specifications;
- (4) manufacturer's guarantees.

It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

### Section 20 - Suspension of Work

The DDA may at any time suspend the work, or any part by giving 5 days notice to the Contractor in writing. The work shall be resumed by the Contractor within 10 days after the date fixed in the written notice from the DDA to the Contractor to do so. The DDA shall reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of the suspension.

If the work, or any part, shall be stopped by the notice in writing, and if the DDA does not give notice in writing to the Contractor to resume work at a date within 90 days of the date fixed in the written notice to suspend, then the Contractor may abandon that portion of the work suspended and will be entitled to the estimates and payments for all work done on the portions abandoned, if any, plus 10% of the value of the work abandoned, to compensate for loss of overhead, plant expense, and anticipated profit.

#### Section 21 - Delays and The DDA's Right to Terminate Contract

If the Contractor refuses or fails to prosecute the work, or any separate part of it, with the diligence required to insure completion, ready for operation, within the allowable number of consecutive calendar days specified plus extensions, or fails to complete the work within the required time, the DDA may, by written notice to the Contractor, terminate its right to proceed with the work or any part of the work as to which there has been delay. After providing the notice the DDA may take over the work and prosecute it to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the DDA for any excess cost to the DDA. If the Contractor's right to proceed is terminated, the DDA may take possession of and utilize in completing the work, any materials, appliances and plant as may be on the site of the work and useful for completing the work. The right of the Contractor to proceed shall not be terminated or the Contractor charged with liquidated damages where an extension of time is granted under Extension of Time - Section 14.

If the Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if it fails to make prompt payments to subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the Supervising Professional, or otherwise is guilty of a substantial violation of any provision of the Contract, then the DDA, upon the certificate of the Supervising Professional that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor 3 days written notice, terminate this Contract. The DDA may then take possession of the premises and of all materials, tools and appliances thereon and without prejudice to any other remedy it may have, make good the deficiencies or finish the work by whatever method it may deem expedient, and deduct the cost from the payment due the Contractor. The Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of finishing the work, including compensation for additional managerial and administrative services exceeds the unpaid balance of the Contract Sum, the Contractor and its surety are liable to the DDA for any excess cost incurred. The expense incurred by the DDA, and the damage incurred through the Contractor's default, shall be certified by the Supervising Professional.

#### Section 22 - Contractor's Right to Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period of 3 months, through no act or fault of the Contractor or of anyone employed by it, then the Contractor may, upon 7 days written notice to the DDA, terminate this Contract and recover from the DDA payment for all acceptable work executed plus reasonable profit.

### Section 23 – DDA’s Right To Do Work

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the DDA, 3 days after giving written notice to the Contractor and its surety may, without prejudice to any other remedy the DDA may have, make good the deficiencies and may deduct the cost from the payment due to the Contractor.

### Section 24 - Removal of Equipment and Supplies

In case of termination of this Contract before completion, from any or no cause, the Contractor, if notified to do so by the DDA, shall promptly remove any part or all of its equipment and supplies from the property of the DDA, failing which the DDA shall have the right to remove the equipment and supplies at the expense of the Contractor.

The removed equipment and supplies may be stored by the DDA and, if all costs of removal and storage are not paid by the Contractor within 10 days of invoicing, the DDA upon 10 days written notice may sell the equipment and supplies at auction or private sale, and shall pay the Contractor the net proceeds after deducting all costs and expenses that should have been borne by the Contractor and after deducting all amounts claimed due by any lien holder of the equipment or supplies.

### Section 25 - Responsibility for Work and Warranties

The Contractor assumes full responsibility for any and all materials and equipment used in the construction of the work and may not make claims against the DDA for damages to materials and equipment from any cause except negligence or willful act of the DDA. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the project (except for any part covered by Partial Completion and Acceptance - Section 26). The Contractor shall make good all work damaged or destroyed before acceptance. All risk of loss remains with the Contractor until final acceptance of the work (Section 19) or partial acceptance (Section 26). The Contractor is advised to investigate obtaining its own builders risk insurance.

The Contractor shall guarantee the quality of the work for a period of one year. The Contractor shall also unconditionally guarantee the quality of all equipment and materials that are furnished and installed under the contract for a period of one year. At the end of one year after the Contractor's receipt of final payment, the complete work, including equipment and materials furnished and installed under the contract, shall be inspected by the Contractor and the Supervising Professional. Any defects shall be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days. Any defects that are identified prior to the end of one year shall also be inspected by the Contractor and the Supervising Professional and shall be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days.

The Contractor shall assign all manufacturer or material supplier warranties to the DDA prior to final payment. The assignment shall not relieve the Contractor of its obligations under this paragraph to correct defects.

### Section 26 - Partial Completion and Acceptance

If at any time prior to the issuance of the final certificate referred to in Acceptance and Final Payment - Section 19, any portion of the permanent construction has been satisfactorily completed, and if the Supervising Professional determines that portion of the permanent construction is not required for the operations of the Contractor but is needed by the DDA, the Supervising Professional shall issue to the Contractor a certificate of partial completion, and immediately the DDA may take over and use the portion of the permanent construction described in the certificate, and exclude the Contractor from that portion.

The issuance of a certificate of partial completion shall not constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if the Contractor has failed to complete it in accordance with the terms of this Contract. The issuance of the certificate shall not release the Contractor or its sureties from any obligations under this Contract including bonds.

If prior use increases the cost of, or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Supervising Professional may determine.

### Section 27 - Payments Withheld Prior to Final Acceptance of Work

The DDA may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to the extent reasonably appropriate to protect the DDA from loss on account of:

- (1) Defective work not remedied;
- (2) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor;
- (3) Failure of the Contractor to make payments properly to subcontractors or for material or labor;
- (4) Damage to another Contractor.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the DDA, which will protect the DDA in the amount withheld, payment shall be made for amounts withheld under this section.

## Section 28 - Contractor's Insurance

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, the DDA, PCI Municipal Services, and the Design Professional 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, the Ann Arbor Downtown Development Authority, PCI Municipal Services, and the Design Professional shall be named as an additional insured. shall be named as additional insured parties. 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:

\$2,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.

\$4,000,000 Per Job General Aggregate

\$2,000,000 Personal and Advertising Injury

\$4,000,000 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, the Ann Arbor Downtown Development Authority, PCI Municipal Services, and the Design Professional shall be named as an additional insured. shall be named as additional insured parties. 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 Section A.2 and A.3 of this Contract shall be considered primary as respects any other valid or collectible insurance that the DDA may possess, including any self-insured retentions the DDA may have; and any other insurance the DDA 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 DDA.

C. In the case of all Contracts involving on-site work, the Contractor shall provide to the DDA 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 Ann Arbor Downtown Development Authority. 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 DDA, 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 DDA. 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 Department 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 DDA.

#### Section 29 - Surety Bonds

Bonds will be required from the successful bidder as follows:

- (1) A Performance Bond to the Ann Arbor Downtown Development Authority for the amount of the bid(s) accepted.
- (2) A Labor and Material Bond to the Ann Arbor Downtown Development Authority for the amount of the bid(s) accepted.

Bonds shall be executed on forms supplied by the DDA in a manner and by a Surety Company satisfactory to the DDA's Attorney.

### Section 30 - Damage Claims

The Contractor shall be held responsible for all damages to property of the DDA or others, caused by or resulting from the negligence of the Contractor, its employees, or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property injured including sidewalks, curbing, sodding, pipes, conduit, sewers or other public or private property to not less than its original condition with new work.

### Section 31 - Refusal to Obey Instructions

If the Contractor refuses to obey the instructions of the Supervising Professional, the Supervising Professional shall withdraw inspection from the work, and no payments will be made for work performed thereafter nor may work be performed thereafter until the Supervising Professional shall have again authorized the work to proceed.

### Section 32 - Assignment

Neither party to the Contract shall assign the Contract without the written consent of the other. The Contractor may assign any monies due to it to a third party acceptable to the DDA.

### Section 33 - Rights of Various Interests

Whenever work being done by the DDA/City forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Supervising Professional, to secure the completion of the various portions of the work in general harmony.

The Contractor is responsible to coordinate all aspects of the work, including coordination of, and with, utility companies and other contractors whose work impacts this project.

### Section 34 - Subcontracts

The Contractor shall not award any work to any subcontractor without prior written approval of the DDA. The approval will not be given until the Contractor submits to the DDA a written statement concerning the proposed award to the subcontractor. The statement shall contain all information the DDA may require.

The Contractor shall be as fully responsible to the DDA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and all other contract documents applicable to the work of the subcontractors and to give the Contractor the same power to terminate any subcontract that the DDA may exercise over the Contractor under any provision of the contract documents.



Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the DDA.

#### Section 35 - Supervising Professional's Status

The Supervising Professional has the right to inspect any or all work. The Supervising Professional has authority to stop the work whenever stoppage may be appropriate to insure the proper execution of the Contract. The Supervising Professional has the authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

The Supervising Professional shall make all measurements and determinations of quantities. Those measurements and determinations are final and conclusive between the parties.

#### Section 36 - Supervising Professional's Decisions

The Supervising Professional shall, within a reasonable time after their presentation to the Supervising Professional, make decisions in writing on all claims of the DDA or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents.

#### Section 37 - Storing Materials and Supplies

Materials and supplies may be stored at the site of the work at locations agreeable to the DDA unless specific exception is listed elsewhere in these documents. Ample way for foot traffic and drainage must be provided, and gutters must, at all times, be kept free from obstruction. Traffic on streets shall be interfered with as little as possible. The Contractor may not enter or occupy with agents, employees, tools, or material any private property without first obtaining written permission from its owner. A copy of the permission shall be furnished to the Supervising Professional.

#### Section 38 - Lands for Work

The Contractor shall provide, at its own expense and without liability to the DDA, any additional land and access that may be required for temporary construction facilities or for storage of materials.

#### Section 39 - Cleaning Up

The Contractor shall, as directed by the Supervising Professional, remove at its own expense from the DDA's property and from all public and private property all temporary structures, rubbish and waste materials resulting from its operations unless otherwise specifically approved, in writing, by the Supervising Professional.

#### Section 40 - Salvage

The Supervising Professional may designate for salvage any materials from existing structures or underground services. Materials so designated remain DDA property and shall be transported or stored at a location as the Supervising Professional may direct.

#### Section 41 - Night, Saturday or Sunday Work

No night or Sunday work (without prior written DDA approval) will be permitted except in the case of an emergency and then only to the extent absolutely necessary. The DDA may allow night work which, in the opinion of the Supervising Professional, can be satisfactorily performed at night. Night work is any work between 8:00 p.m. and 7:00 a.m. No Saturday work will be permitted unless the Contractor gives the Supervising Professional at least 48 hours but not more than 5 days notice of the Contractor's intention to work the upcoming Saturday.

#### Section 42 - Sales Taxes

Under State law the DDA is exempt from the assessment of State Sales Tax on its direct purchases. Contractors who acquire materials, equipment, supplies, etc. for incorporation in DDA projects are not likewise exempt. State Law shall prevail. The Bidder shall familiarize itself with the State Law and prepare its Bid accordingly. No extra payment will be allowed under this Contract for failure of the Contractor to make proper allowance in this bid for taxes it must pay.

Note: Section 43 Contractor's Declaration is included as section CD-1, and Section 44 Contractor's Affidavit is included as section CA-1