

**AGREEMENT BETWEEN  
CDM Smith  
AND THE CITY OF ANN ARBOR  
FOR PROFESSIONAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("City"), and CDM Smith Michigan Inc. ("Consultant"), a(n) Michigan Corporation with its address at One Woodward Avenue, Suite 1500, Detroit, MI 48226, agree as follows on this 1<sup>st</sup> day of June, 2013.

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

**I. DEFINITIONS**

Administering Service Area/Unit means Public Services Area.

Contract Administrator means Sr. Utilities Engineer, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

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

Project means Wind Generation Project, RFP-814.

**II. DURATION**

This Agreement shall become effective on June 1, 2013, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

**III. SERVICES**

- A. The Consultant agrees to provide professional engineering services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project 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. The Consultant 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 professional or when it has actual notice of any defects in the reports and surveys.
- E. The Consultant shall perform its Services for the Project in compliance with the Terms and Conditions of the Department of Energy Grant associated with Award No. DE-EE0000447. These Terms and Conditions are included as Exhibit D to this agreement.

#### **IV. COMPENSATION OF CONSULTANT**

- A. The Consultant 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 Consultant, and approved by the Contract Administrator.
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

## **V. INSURANCE/INDEMNIFICATION**

A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth below, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

1. Professional Liability Insurance protecting the Consultant and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 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

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. 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.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under V.A.3 and V.A.4 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 Consultant 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 Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant 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 Consultant 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 Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Consultant or its employees and agents occurring in the performance of this Agreement.

## **VI. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Consultant 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 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, Exhibit C.
- B. Living Wage. The Consultant is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3) and specified in Exhibit D; 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.

## **VII. WARRANTIES BY THE CONSULTANT**

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

## **VIII. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach,

the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.

- B. The City may terminate this Agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant 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.

## **IX. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Consultant access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

## **X. ASSIGNMENT**

- A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## **XI. NOTICE**

All notices and submissions required under this 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.

## **XII. CHOICE OF LAW**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

## **XIII. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

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

## **XIV. CONFLICT OF INTEREST**

Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

## **XV. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XVI. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

### **FOR CONSULTANT**

By \_\_\_\_\_  
Mark TenBroek, 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 Admin.

**Approved as to Form and Content**

\_\_\_\_\_  
Stephen K. Postema, City Attorney



## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **APPROACH**

Following is the proposed work process:

- Step 1: Conduct Permit and NEPA Analysis (Task A) – In support of Subtask 2.4, address the NEPA requirements for the proposed site for issues related to the first step is to review the proposed site and identify regulatory, site, environmental and neighboring landowner constraints for installation of the turbines.
- Step 2: Assist with Public Participation (Task B) – Once the review of different constraints, siting options, and equipment options has begun, the public participation process can start. Public participation support is related to the permitting aspects of the work.
- Step 3: Provide Construction Oversight (Task C) – This is the final action of reviewing and inspecting the construction work, and reviewing the commissioning of the installed system.

We have presented our scope in the stepwise fashion shown above:

#### **SCOPE OF SERVICES**

##### **Task A – Conduct Permit and NEPA Analysis**

*Objective: With the project developer recommended location and equipment characteristics, conduct siting and NEPA analysis.*

We will analyze the proposed site information to address the NEPA requirements as follows:

##### **Permit Investigations**

Review the site and permitting needs based on the specification of the selected units by the project developer. The areas that will be investigated for permit needs will include:

- Ann Arbor Zoning – Review the site zoning to determine height limitations or restrictions. The Pioneer parcel is located at Main and Stadium. While no specific Ann Arbor code is available on wind turbines, cell towers in excess of 155 ft require approval with the zoning board of appeals. Setbacks must be at least the height of the tower if residential property is adjacent, and 20% of the tower height if other zoning types are adjacent.
- Ann Arbor Permits – Any additional permit requirements will be investigated and provided to the project developer. This will include the necessary building permit for construction of the foundation and tower, and an electrical permit for the installation of the electrical infrastructure needed to connect to the existing power system transmission system.
- Michigan Tall Structure Act – The tall structure Act 259 of 1959 addresses issues of height, location, impact on visual characteristics, and aircraft. This requirement is for structures that are over 200 feet unless the location is within 20,000 feet of an airport. In this case, the project is within 12,000 ft of the Ann Arbor airport, so the maximum height of any tower is based on the runway approach surface and transition surfaces developed around these airport runway approaches. To comply, this requires development of the Tall Structures Permit.
- FAA Compliance – The Federal Aviation Regulation (FAR) Part 77 addresses the construction of anything, including wind turbines that may obstruct the airspace in the vicinity of airports, or 200 feet in other

areas. To comply, FAA Form 7460-1, request for Construction or Alteration, which is virtually identical to the Michigan Tall Structures Permit, must be completed.

- DTE Energy – With the generation of renewable energy, DTE allows energy generated from renewable energy sources to reduce the energy purchase costs through the use of credits. The cost of distribution is required by the customer regardless of the direction of power flow from the renewable energy source. Metering of the inflow and outflow of power is likely needed.

## **NEPA Compliance**

Prepare the NEPA documentation to provide to the Department of Energy (DOE), with the objective to achieve a Categorical Exclusion (CE) for the site. The documentation will include a Purpose and Need Statement, an Alternatives Analysis discussion, an Affected Environment analysis, and recommended mitigation if required. CDM Smith will assist in consultation requirements per Section 7 of the Endangered Species Act and Section 106 of the National Historical Preservation Act. If a Categorical Exclusion cannot be obtained and an Environmental Assessment is determined to be required by DOE, a scope and budget revision will be required. The following items will be evaluated for the wind turbine project:

- Wildlife and Endangered Species (Flora and Fauna) – A major concern at other wind turbines has been the fatalities of passing birds and bats on the spinning turbine blades. Most recent analysis of the impacts on local and migratory species will be reviewed and summarized. We will evaluate the potential impacts on local bird and bat populations and identified endangered species based on the most recent studies. A biologist will complete a site evaluation and prepare the necessary documentation to use in consultation with the USFWS.
- Wetlands – Wetlands may be located near the proposed location. A wetland assessment will be performed during the biological site evaluation to identify potential wetlands and access routes on the property that could be impacted by construction or maintenance activities.
- Habitat – A habitat assessment will be performed as part of the biological assessment to determine the presence of any habitats of special concern.
- Noise – The information from the turbine manufacturer for the selected turbines will be used to evaluate the potential impact on the nearby residents and facility users.
- Visual, including Shadow Flicker – The visual impact of the turbines and the production of shadow flicker estimated by the project developer will be used to evaluate resident and facility user impacts.
- Cultural Resources – CDM Smith will complete a records check for the proposed project area. Section 106 consultation with the Michigan SHPO will also be completed to determine the potential affect the project may have on cultural resources. The following items are not anticipated to be required for the CE and are not included in this scope of services: Cultural resources site visit, subsurface archaeological investigation, coordination with Tribal communities.

## **Deliverables**

- Permit Requirement Memo – Prepare a memorandum identifying the permits required for construction.
- NEPA Documentation – Prepare the documentation needed by DOE to obtain a Categorical Exclusion (CE) for the proposed project site.

## **TASK B – Assist with Public Participation**

*Objective: Identify stakeholders and develop a community outreach and educational program in coordination with the project developer. Hold community outreach and informational sessions to discuss the project and its impact on neighboring properties, as well as broader issues related to wind generation in the city.*

Public involvement is a fundamental element of an infrastructure project such as this wind generator installation, which will be highly visible in the areas adjoining the project site, including at the U of M stadium. The public participation process should be designed to build a consensus for the need and approaches to control the impact of the wind turbines on local residents, institutions, and businesses, and on the local environment. This crucial process is intended to provide the community with information about the proposed option(s) so that they can have a better framework with which to respond. It should enable citizens the opportunity to learn about and comment on the proposed design, as opposed to seeing the project for the first time when the towers are being raised.

### **Public Involvement Plan**

The Public Involvement Plan (PIP) defines the goals and objectives of the public involvement effort, identifies key stakeholders, and outlines the public involvement techniques and materials that will be used. We propose to develop the fact sheets for the environmental aspects of the project once site the configuration constraints is prepared. This will allow us to provide basic information on what the key project issues are and the physical aspects of the proposed wind turbines to allow the stakeholders to evaluate them. The PIP will identify interface opportunities during the project.

Timely and accurate project information will help inform and gain public support. We will develop the fact sheet to allow it to be placed on the City's web page.

### **Conduct Public Outreach**

The PIP will identify the stakeholders and define the messages that will be presented. Initially, we understand that this should include local residents, the Ann Arbor airport staff and users, Washtenaw County and Ann Arbor elected officials and staff, the University of Michigan, Ann Arbor Public Schools, and other community organizations that may potentially be impacted by this project. Once the stakeholders have been identified and contacts developed for each, we suggest the following meetings:

- **Stakeholder Meeting** – We anticipate participating in one meeting of invited stakeholders described above using a workshop setting to provide information and then have a discussion on environmental issues and concerns. Because this is intended to include the groups most impacted by the wind turbines, it would be in advance of the public meeting to gain a better understanding of the issues and focus on addressing those concerns.
- **Public Meeting(s)** – We will participate in one public meeting which will be held after the stakeholder meeting. This meeting will include a short presentation, exhibits, and time to answer questions and concerns from the public. A summary document will be prepared that captures the concerns from the public. Answers will also be prepared to the questions received as part of this meeting.
- **Regulatory Meetings** – We will participate in up to two regulatory meetings. First, the focus would be to identify the regulatory issues, discuss the proposed approach, and discuss the steps and timing to proceed. A second meeting would be used to discuss the final recommendations that are compliant with the requirements, and would include a discussion of the permit applications, if needed.
- **Ann Arbor Council Meeting** – Following the public meeting, CDM Smith will attend one council meeting to present the results of the environmental analysis and public meeting comments.

- Site Tour – CDM Smith will send one person on a site tour to another Wind Turbine location to learn more about the proposed project and to assist in the public meetings.

We have provided a budget for a single stakeholder meeting, two public meetings, and two regulatory meetings as part of this scope.

### **Deliverables**

- Support materials for one stakeholder workshops, two public meetings, and two regulatory meetings.
- Presentations from each of the stakeholder workshops and meetings
- Project website fact sheet

## **TASK C – Provide Construction Oversight**

*Objective: Provide limited site inspection and oversight for work performed by the project developer*

Provide limited oversight during the excavation and installation of the tower foundations, underground electrical ducts, and power equipment and interface with DTE. Provide daily inspection reports to make sure the work is done per specification. Short daily site visits will be performed between these major construction activities to assess the timing of needed inspection.

### **Deliverables**

- Daily report of construction when staff is on site.
- Construction photos during the work effort when staff is on site.

## **SCHEDULE**

Given that the project will be largely driven by the Project Developer, the support services included in the proposal will need to react to the other tasks being performed. However, we have provided information on the time required for the tasks included in the scope of services, provided earlier in this section.

- Environmental & Permitting Reviews – Once the specific project area and layout on the Pioneer High School parcel has been identified, the review of wetland areas can begin immediately in the spring of 2013 within about a week. We will also review the zoning and building requirements. The permitting reviews would require about 3 weeks to complete.
- NEPA Evaluation – Once the wind turbine characteristics such as tower height and type, blade type and tip speed, and proposed site have been identified, the NEPA evaluation can begin. The application process will require about 2 weeks of effort, but since there is input required from SHPO, MDEQ, and Federal Agencies, it is expected that this will require at least 3-4 months to gain a Categorical Exclusion for the work. Note that if a full Environmental Assessment is required, additional time budget will be needed to address those requirements.
- Public Involvement – We would recommend that the initial stakeholders meeting be held prior to finalization of the design to allow input from the group. The regulatory meetings should take place at that time as well to allow input into the final design by the project developer. The public meeting should be held once the design and NEPA CE has been obtained to provide information on the final configuration.
- Construction Oversight – We have estimated that the construction will require about 3 weeks to complete. For this effort, we would provide inspection only during the foundation excavation, placement

of the tower foundation, and review of the electrical ducts and terminations. Short daily visits between major construction activities will be provided as needed.

## EXHIBIT B

### FEE SCHEDULE

#### LEVEL OF EFFORT AND ASSOCIATED COSTS

The following table provides the labor hours by staff member for each task and sub task included in the scope of services when 100% complete. Labor will be charged using current raw labor rates with an indirect overhead rate of 175% and a fee of 12%. Outside Professionals and Other Direct Costs will include a fee of 5%. The total ODCs and Outside Professionals are also included in this table.

**Table 2: Project Cost**

Budget for RFP-814 - Engineering Services Ann Arbor Wind Generator Project

	CDM Smith							AR	SOMAT					
Description	Mark TenBroek Project Manager	Erich Klun Civil Engineer	Brenda Fierro Electrical Engineer	Murray Wade Wildlife Specialist	Todd Davis NEPA Specialist	Mike Striff CADD/Inspection	Kerry Sheldon Public Involvement	Catherine Weirauch Geotechnical		Hours	Labor	ODCs	OP	Total (Labor, ODC & Fees)
<b>RFP-814 Wind Generator Project</b>														
<b>Task A: Conduct Permit and NEPA Analysis</b>	4	26	10	60	24	0	0	0		124	\$22,254	\$1,000	\$0	\$23,304
Permit Investigations	2	24	8	16						50	\$8,045	\$200	\$0	\$8,255
NEPA Compliance	2	2	2	44	24					74	\$14,209	\$800	\$0	\$15,049
<b>Task B: Public Participation</b>	4	0	2	16	18	0	48	0		88	\$7,978	\$820	\$7,200	\$16,399
Public Involvement Plan	2				2		16			20	\$904	\$20	\$2,400	\$3,445
Conduct Public Outreach	2		2	16	16		32			68	\$7,074	\$800	\$4,800	\$12,954
<b>Task C: Construction Oversight</b>	8	24	12	0	0	24	0	8		76	\$8,985	\$300	\$838	\$10,180
Inspections	4	24	8	0		24		8		68	\$7,561	\$150	\$838	\$8,598
Reports	4		4							8	\$1,424	\$150	\$0	\$1,582
<b>GRAND TOTAL</b>	16	50	24	76	42	24	48	8		288	\$39,217	\$2,120	\$8,038	\$49,883

EXHIBIT C  
FAIR EMPLOYMENT PRACTICE

The consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

9:161 NONDISCRIMINATION BY CITY CONTRACTORS

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.
- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable Federal or State labor laws:
  - (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;

- (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
  - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:
- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
  - (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
  - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
  - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 10,000 - 24,999	\$25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00
1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00



- (e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

EXHIBIT D  
LIVING WAGE REQUIREMENTS

If a "covered employer," Contractor will comply with all the requirements of Chapter 23 of the Ann Arbor City Code (Sections 1:811 B 1:821), in particular but not limited to the following sections thereof:

**1:813. Definitions.**

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
  - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
  - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.

- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other nonpersonnel costs.
- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

#### **1:814. Applicability.**

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a nonprofit contractor/vendor or nonprofit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

#### **1:815. Living Wages Required.**

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
  - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).

- (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.
- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

#### **1:816. Employees Covered.**

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

#### **1:817. Exemptions.**

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.
- (2) For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:

- (a) To avoid any application of this Chapter that would violate federal, state or local law(s); or
  - (b) The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a nonprofit organization, and the City Council finds that said harm outweighs the benefits of this Chapter; provided further that the otherwise covered nonprofit employer shall provide a written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the nonprofit organization sufficient time to reach full compliance with this Chapter.
- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

#### **1:818. Monitoring and Enforcement.**

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the Human Rights Office and approved by the City Administrator.
- (2) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall

provide satisfactory proof of compliance with the living wage provisions of this Chapter.

- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

#### **1:819. Penalties and Enforcement.**

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter

\* \* \* \* \*

#### **1:821. Other Provisions.**

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.

\* \* \* \* \*

- (3) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.
- (4) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (5) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for high school and/or college students:

- (a) A bona fide training program;
- (b) A summer or youth employment program;
- (c) A work study, volunteer/public service, or internship program.

\* \* \* \* \*