

**<INSERT TITLE OF CONTRACT>**

This agreement (hereinafter “Agreement”) by and between the City of Flint, a Michigan Municipal Corporation, 1101 S. Saginaw Street, Flint, MI 48502, (hereinafter the “City”), and \_\_\_\_\_, hereinafter referred to as “Contractor.”

**1. Applicable Law:** This Agreement and all related disputes shall be governed by and interpreted in accordance with the laws of the State of Michigan.

**2. Arbitration:** Contractor agrees that for all claims, disputes, and other matters arising out of or relating to this agreement, Contractor must request the City’s consent to arbitrate within 30 days from the date the Contractor knows or should have known the facts giving rise to the claim, dispute or question.

- (a) Notice of a request for arbitration must be submitted in writing by certified mail or personal service upon the Chief Legal Officer.
- (b) Within 60 days from the date a request for arbitration is received by the City, the City shall inform Contractor whether it agrees to arbitrate. If the City does not consent, Contractor may proceed with an action in a court of competent jurisdiction within the State of Michigan. If the City does consent, then within 30 days of the consent each party shall submit to the other the name of one person to serve as an arbitrator. The two arbitrators together shall then select a third person, the three together shall then serve as a panel in all proceedings. Any unanimous decision of the three arbitrators shall be a final binding decision. The City’s failure to respond to a timely, conforming request for arbitration is deemed consent to arbitration.
- (c) The costs of the arbitration shall be split and borne equally between the parties and such costs are not subject to shifting by the arbitrator.
- (d) Contractor’s failure to comply with any portion (including timeliness) of this provision shall be deemed a permanent waiver and forfeiture of the claim, dispute, or question.
- (e) This provision shall survive the expiration or termination of this Agreement in perpetuity.

**3. City Income Tax Withholding:** Contractor and any subcontractor engaged in this contract shall withhold from each payment to his employees the City income tax on all of their compensation subject to City tax, after giving effect to exemptions, as follows:

- (a) Residents of the City: At a rate equal to 1% of all compensation paid to the employee who is a resident of the City of Flint.
- (b) Non-residents: At a rate equal to 1/2% of the compensation paid to the employee for work done or services performed in the City of Flint.

These taxes shall be held in trust and paid over to the City of Flint in accordance with City ordinances and State law. Any failure to do so shall constitute a material breach of this contract.

**4. Compensation:** The City shall pay for such services as have been set forth herein within 45 days of submission of proper invoices, releases, affidavits, and the like. Notwithstanding, the contract price shall not to exceed \$(INSERT AUTHORIZED AMOUNT). Contractor recognizes that the City does not guarantee it will require any set amount of services. Contractor's services will be utilized as needed and as determined solely by the City of Flint. Contractor expressly acknowledges that it, without limitation, has no right to payment of an amount exceeding the amount set forth in this Section. Contractor agrees that oral agreements by City officials to pay a greater amount are not binding.

- (a) Contractor shall submit itemized invoices for all services provided under this Agreement identifying:
  - (i) The date of service
  - (ii) The name of person providing the service and a general description of the service provided.
  - (iii) The unit rate and the total amount due.

Invoices shall be submitted to:

City of Flint  
Accounts Payable  
P.O. Box 246  
Flint, MI 48501-0246

It is solely within the discretion of the City as to whether Contractor has provided a proper invoice. The City may require additional information or waive requirements as it sees fit.

**<THE BELOW SUBSECTION IS ONLY APPLICABLE TO CONSTRUCTION CONTRACTS. FOR ALL OTHER CONTRACTS, DELETE THIS SUBSECTION>**

- (b) The City shall make payments to the Contractor as specified herein:
  - (i) As of the day agreed to each month during which satisfactory progress has been made toward the final completion of the project, the Contractor shall submit to the City an application for payment based upon the amount and value of the work which has been done under this contract during that month or since the date of the past previous estimate.

The Contractor shall submit, along with such application for payment, waiver of lien or sworn affidavits or other vouchers showing payments for materials and labor, payments to subcontractors and such other evidence of

the Contractor's right to payment application, the city will pay to the Contractor an amount of such application except that the City may deduct and retain out of any such partial payment, a sum sufficient to meet any undischarged obligations of the Contractor for labor and/or materials incorporated in the work.

(ii) Payment and retainage on the pay estimate shall be as follows:

The Contractor agrees that the partial payment request shall consist of the cost of work certified as completed to the date as estimated in the contract price subject to the decisions of:

1. Ten percent (10%) of the sum to be retained until payment of the first fifty percent (50%) of the contract work is in place, and
2. The amount of previous payments to the Contractor, and ten percent (10%) of the dollar value of work, which is certified as in place.
3. More than fifty percent (50%) in place, if the City in its sole discretion determines that the Contractor is not making satisfactory progress, or that the Contractor is not performing the contract in a satisfactory manner. The Contractor agrees that the City shall have the option to submit any dispute concerning whether the Contractor is making satisfactory progress or is not performing the contract in a satisfactory manner and is thus entitled to continue withholding ten percent (10%) as retainment to a third party. The Contractor agrees that for purposes of this section the word "unsatisfactory" shall mean that the Contractor is failing to comply with any section of this contract or with any part of the project schedule submitted by the Contractor which schedule has been approved by the City.

The City shall deposit any retained funds in an interest bearing account in the City of Flint's name, and the Contractor agrees to pay all expenses regarding the deposit, investment, and administration with the interest bearing account.

The Contractor agrees that the City shall have sole control over the interest bearing account. The Contractor agrees that the interest rate paid on a regular passbook savings account at any federally chartered financial institution shall be the proper and reasonable interest, which shall be paid on any retainment of the Contractor.

4. At any time after fifty percent (50%) of the written contract is complete, and at the request of the Contractor, the City may reduce the retainage to five percent (5%) for the remainder of the work to be completed.

- (iii) Withholding payments: The City, before making any payment, will require the Contractor to furnish releases or receipts from any or all persons performing work and supplying material or services to the Contractor, or any subcontractor, if this is deemed necessary to protect its interest. The City, however, may make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments so made shall in no way impair the obligations of any surety or sureties on any bond or bonds furnished under this contract.
- (iv) Payments subject to submission of certificates: Each payment to the Contractor by the City shall be made subject to the following:
  - 1. Submission by the Contractor of all written certifications required of it and its subcontractors under general conditions, and
  - 2. No payment made under the contract shall act as a waiver of the right of the owner to require the fulfillment of all of the terms of the contract. The City reserves the right to issue joint warrants naming the prime and subcontractors when such action is in the interest of the owner.
- (v) Final payments: After the final inspection by the City of all work under the contract, the Contractor shall prepare its requisition for final payment and submit it to the City's representative for approval. The final payment shall consist of the total cost of all work, as adjusted in accordance with approved change orders, less all previous payments to the Contractor and subject to withholding of any amount due the City under "liquidated damages," if applicable less the costs of depositing, investing and administering the retained amount or any other costs associated with the interest bearing account.
- (vi) The Contractor shall not withhold any retainage from payments to suppliers unless there is an executed written agreement to that effect between the Contractor and the supplier.
- (vii) Progress payment shall be made in the following manner: A single check each month to Contractor.

**5. Contract Documents:** The invitation for bids, instructions to bidders, proposal, affidavit, addenda (if any), statement of bidder's qualifications (when required), general conditions, special conditions, performance bond, labor and material payment bond, insurance certificates, technical specifications, and drawings, together with this agreement, form the contract, and they are as fully a part of the contract as if attached hereto or repeated herein.

**6. Disclaimer of Contractual Relationship With Subcontractors:** Nothing contained in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or Sub-subcontractor.

**7. Effective Date:** This contract shall be effective upon the date that it is executed by all parties and presented to the City of Flint Clerk. *<PICK ONE OF THE FOLLOWING AND DELETE THE OTHER>*

This contract shall not extend beyond fiscal year (insert fiscal year).

This contract shall terminate on (insert date).

**8. Certification, Licensing, Debarment, Suspension and Other Responsibilities:** Contractor warrants and certifies that Contractor and/or any of its principals are properly certified and licensed to perform the duties required by this contract in accord with laws, rules, and regulations, and is not presently debarred, suspended, proposed for debarment or declared ineligible for the award of any Federal contracts by any Federal agency. Contractor may not continue to or be compensated for any work performed during any time period where the debarment, suspension or ineligibility described above exists or may arise in the course of Contractor contractual relationship with the City. Failure to comply with this section constitutes a material breach of this Contract. Should it be determined that contractor performed work under this contract while in non-compliance with this provision, Contractor agrees to reimburse the City for any costs that the City must repay to any and all entities.

**9. Force Majeure:** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, and acts of God. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the services may continue.

**10. Furnishing of Bonds - Payment/Performance/Materials/Fidelity:** Contractor shall furnish to the City at his or her own cost, performance and payment bonds which shall become binding upon the awarding of the contract to Contractor. *<Use only for construction contracts for more than \$50,000. If not used, DELETE it.>*

**11. Good Standing:** Contractor must remain current and not be in default of any obligations due the City of Flint, including the payment of taxes, fines, penalties, licenses, or other monies due the City of Flint. Violations of this clause shall constitute a substantial and material breach of this contract. Such breach shall constitute good cause for the termination of this contract should the City of Flint decide to terminate on such basis.

**12. Indemnification:** To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Flint, its elected and appointed officials, employees and volunteers and other working on behalf of the City of Flint, against any and all claims, demands, suits, or losses, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City of Flint, its elected and

appointed officials, employees, volunteers or others working on behalf of the City of Flint, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which may arise as a result of Contractor's acts, omissions, faults, and negligence, or that of any of his employees, agents, and representatives in connection with the performance of this contract. Should the Contractor fail to indemnify the City in the above-mentioned circumstances, the City may exercise its option to deduct the cost that it incurs from the contract price forthwith or may file an action in a court of competent jurisdiction, the costs of which shall be paid by Contractor. This provision shall survive the termination and/or expiration of this agreement, in perpetuity.

**13. Independent Contractor:** No provision of this contract shall be construed as creating an employer-employee relationship. It is hereby expressly understood and agreed that Contractor is an "independent contractor" as that phrase has been defined and interpreted by the courts of the State of Michigan and, as such, Contractor is not entitled to any benefits not otherwise specified herein.

**14. Insurance/Worker's Compensation:** Contractor shall not commence work under this contract until he has procured and provided evidence of the insurance required under this section. All coverage shall be obtained from insurance companies licensed and authorized to do business in the State of Michigan unless otherwise approved by the City's Finance Department. Policies shall be reviewed by the City's Finance Department for completeness and limits of coverage. All coverage shall be with insurance carriers acceptable to the City of Flint. Contractor shall maintain the following insurance coverage for the duration of the contract.

- (a) Commercial General Liability coverage of not less than one million dollars (\$1,000,000) combined single limit with the City of Flint, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as "Additional Insureds." This coverage shall be written on an ISO occurrence basis form and shall include: Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products and Completed Operations, Independent Contractors; Broad Form Commercial General Liability Endorsement, (XCU) Exclusions deleted and a per contract aggregate coverage. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing, or excess.
- (b) Workers Compensation Insurance in accordance with Michigan statutory requirements, including Employers Liability coverage.
- (c) Commercial Automobile Insurance in the amount of not less than \$1,000,000 combined single limit per accident with the City of Flint, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as "Additional Insureds." This coverage shall be written on ISO business auto forms

covering Automobile Liability, code "any auto." **<DELETE IF NOT APPLICABLE>**

- (d) Professional Liability - Errors and Omissions. All projects involving the use of Architects, civil engineers, landscape design specialists, and other professional services must provide the City of Flint with evidence of Professional Liability coverage in an amount not less than one million dollars (\$1,000,000). Evidence of this coverage must be provided for a minimum of three years after project completion. Any deductibles or self-insured retention must be declared to and approved by the City. In addition, the total dollar value of all claims paid out on the policy shall be declared. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retention with respect to the City, its officials, employees, agents and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim, administration, and defense expenses. **<DELETE IF NOT APPLICABLE>**

Contractor shall furnish the City with two certificates of insurance for all coverage requested with original endorsements for those policies requiring the Additional Insureds. All certificates of insurance must provide the City of Flint with not less than 30 days advance written notice in the event of cancellation, non-payment of premium, non-renewal, or any material change in policy coverage. In addition, the wording "Endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed from the standard ACORD cancellation statement. These certificates must identify the City of Flint, Finance Department, as the "Certificate Holder." Contractor must provide, upon request, certified copies of all insurance policies. If any of the above policies are due to expire during the term of this contract, Contractor shall deliver renewal certificates and copies of the new policies to the City of Flint at least ten days prior to the expiration date. Contractor shall ensure that all subcontractors utilized obtain and maintain all insurance coverage required by this provision.

**15. Laws and Ordinances:** Contractor shall obey and abide by all of the laws, rules and regulations of the Federal Government, State of Michigan, Genesee County and the City of Flint, applicable to the performance of this agreement, including, but not limited to, labor laws, and laws regulating or applying to public improvements.

**16. Liquidated Damages:** Liquidated damages of \$\_\_\_\_\_ per week shall be assessed for each 7 days beyond the specified date of completion. The parties agree that the City's actual damages in the event of non-performance by Contractor cannot be predetermined with certainty, and that the amount of liquidated damages stated herein is reasonable, fair, and proportionate to the City's probable loss. ***<USE ONLY IF DAMAGES DUE TO DELAY CAN BE CALCULATED WITH REASONABLE ACCURACY. OTHERWISE, DELETE THIS PROVISION.>***

**17. Modifications:** Any modifications to this contract must be in writing and signed by the parties or the authorized employee, officer, board or council representative of the parties authorized to make such contractual modifications under State law and local ordinances.

**18. No Third-Party Beneficiary:** No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person dealing with the principal Contractor shall be, nor shall any of them be deemed to be, third-party beneficiaries of this contract, but each such person shall be deemed to have agreed (a) that they shall look to the principal Contractor as their sole source of recovery if not paid, and (b) except as otherwise agreed to by the principal Contractor and any such person in writing, they may not enter any claim or bring any such action against the City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the City and such person, each such person shall be deemed to have waived in writing all rights to seek redress from the City under any circumstances whatsoever.

**19. Non-Assignability:** Contractor shall not assign or transfer any interest in this contract without the prior written consent of the City provided, however, that claims for money due or to become due to Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

**20. Non-Disclosure/Confidentiality:** Contractor agrees that Contractor will not disclose any such information provided to Contractor in furtherance of this Agreement, or in any other way make such documents public, without the express written approval of the City or the order of a court of competent jurisdiction.

**21. Non-Discrimination:** The Contractor shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq., and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, association with the federal government, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position or status with respect to public assistance. A breach of this covenant is a material breach of this Agreement.

**22. Anti-Lobbying:** The Contractor shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "Lobbying" means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Contractor shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State or City. Further, the Contractor agrees to require that language of this assurance be included in the award documents of all subawards.



**23. Ethics:** Pursuant to the Flint City Charter §1-602 (I) entitled Notice, every public servant, volunteer and city, contractor is to receive training and be provided with a copy of these ethical standards upon passage of this Charter or at the time of appointment and or hire or the commencement of services. Therefore, Contractor acknowledges receipt of Flint City Charter §1-602 and agrees that Contractor and its staff shall abide by the terms and participate in any training provided by the City/or update orientation as may be necessary from time to time. Public servants are all persons employed or otherwise engaged by the corporation of the City of Flint to conduct business on its behalf including but not limited to elected officials, appointed employees, members of boards and commissions, classified employees, contractual employees, and volunteers, in accordance with Flint City Charter §1-602.

**24. Notices:** Notices to the City of Flint shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to dept head and **Inez Brown, City Clerk, City of Flint, 1101 S. Saginaw Street, Flint, Michigan 48502**, or to such other address as may be designated in writing by the City from time to time. Notices to Contractor shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to \_\_\_\_\_, or to such other address as may be designated in writing by Contractor from time to time.

**25. Records Property of City:** All documents, information, reports and the like prepared or generated by Contractor as a result of this contract shall become the sole property of the City of Flint, and shall be disclosed to the City upon request.

**26. Scope of Services:** Contractor shall provide all of the materials, labor, equipment, supplies, machinery, tools, superintendence, insurance and other accessories and services necessary to complete the project in accordance with the proposals submitted on \_\_\_\_\_ (fill in appropriate date). Contractor shall perform the work in accordance with the Standard General Conditions and any Special Conditions provided for in this contract and warrants to the City that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the contract documents.

All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. In addition to any other remedies the City may have, if, within one year of the date of substantial completion of work, or within one year after acceptance by the City, or within such longer period of time as may be prescribed by law, any of the work is found to be defective or not in accord with the contract documents, Contractor shall correct promptly after receipt of a written notice from the City to do so, unless the City has previously given Contractor a written acceptance of such condition.

**27. Severability:** In the event that any provision contained herein shall be determined by a court or administrative tribunal to be contrary to a provision of state or federal law or to be unenforceable for any reason, then, to the extent necessary and possible to render the remainder of this Agreement enforceable, such provision may be modified or severed by such court or administrative tribunal so as to, as nearly as possible, carry out the intention of the parties hereto, considering the purpose of the entire Agreement in relation to such provision. The invalidation of one or more terms of this contract shall not affect the validity of the remaining terms.

**28. Sole Proprietor Worker's Compensation Substitute:** I, \_\_\_\_\_ as an independent Consultant performing work or services for the City of Flint, acknowledge that I am a Sole Proprietor business and will not employ any person(s) in the work to be performed for the City of Flint under this contract. As a Sole Proprietor with no employees, I further acknowledge that I am not subject to the Workers' Compensation Act of the State of Michigan. In consideration of being awarded this contract, I agree to hold harmless the City of Flint for any and all injuries or illness that I may sustain during the course of this contract. I hereby agree to notify the City of Flint in writing, prior to hiring any person(s), full time or part time, to assist in this contract and to secure Worker's Compensation Insurance prior to any person beginning work or assisting in the performance of work under this contract and that none of the work to be performed under this contract will be subcontracted to any other subcontractor or entity. **<USE THIS PROVISION ONLY IF CONTRACTOR IS A SOLE PROPRIETOR. OTHERWISE, DELETE IT.>**

**29. Standards of Performance:** Contractor agrees to exercise independent judgment and to perform its duties under this contract in accordance with sound professional practices. The City is relying upon the professional reputation, experience, certification, and ability of Contractor. Contractor agrees that all of the obligations required by him under this Contract shall be performed by him or by others employed by him and working under his direction and control. The continued effectiveness of this contract during its term or any renewal term shall be contingent upon Contractor maintaining any certifications in accordance with any applicable legal requirements.

**30. Subcontracting:** No subcontract work, if permitted by the City, shall be started prior to the written approval of the subcontractor by the City. The City reserves the right to accept or reject any subcontractor.

**31. Termination:** This contract may be terminated by either party hereto by submitting a notice of termination to the other party. The City, through its City Administrator, may terminate this agreement upon actual notice to Contractor. Contractor may terminate this agreement by providing written notice that shall be effective 30 days from the date it is submitted unless otherwise agreed to by the parties hereto. Contractor, upon receiving such notice and prorated payment upon termination of this contract shall give to the City all pertinent records, data, and information created up to the date of termination to which the City, under the terms of this contract, is entitled.

**<SOME CONTRACTS WILL HAVE A DIFFERENT TERMINATION CLAUSE. ONLY USE THE ALTERNATIVE CLAUSE IF DIRECTED BY THE PURCHASING DEPARTMENT. THAT CLAUSE IS:>**

In the event of a failure by either party to perform any material provision of this Contract, the other side shall give written notice of the breach along with 30 days to cure the breach. If after the 30 day period the breach has not been cured, the non-breaching party may terminate the contract. Either party may also terminate the contract if required by law to do so.

**32. Time of Performance:** Contractor's services shall commence immediately upon receipt of the notice to proceed and shall be carried out forthwith and without reasonable delay.

**33. Union Compliance:** Contractor agrees to comply with all regulations and requirements of any national or local union(s) that may have jurisdiction over any of the materials, facilities, services, or personnel to be furnished by the City. However, this provision does not apply if its application would violate Public Act 98 of 2011.

**34. Waiver:** Failure of the City to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any term, covenant, or condition. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

**35. Whole Agreement:** This Agreement and the documents cited herein embody the entire agreement between the parties. Any additions, deletions or modifications hereto must be in writing and signed by both parties. This Agreement may be executed by facsimile and in counterparts, all of which, taken together, shall constitute a single agreement.

<SIGNATURES ON NEXT PAGE>

**CONTRACTOR:**

**WITNESS(ES):**

\_\_\_\_\_  
**Date**

\_\_\_\_\_

Its \_\_\_\_\_

**CITY OF FLINT, a Michigan Municipal Corp.: (ALSO INCLUDE MAYOR'S SIGNATURE BLOCK IF OVER \$50,000)**

\_\_\_\_\_  
**Sheldon A. Neeley, Mayor**      **Date**

\_\_\_\_\_  
**Clyde Edwards, City Administrator**      **Date (ONLY USE CITY ADMINISTRATOR'S SIGNATURE BLOCK IF \$50,000 OR LESS)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Angela Wheeler, Chief Legal Officer**      **Date**