**AGREEMENT**

Between

The City of Grand Rapids

Michigan

and

\_\_\_\_\_\_\_\_\_\_\_\_

(Contractor)

for

xxxx

Project No. *xxxx*

**General**

This Agreement entered into this day of , 2023 by and between the City of Grand Rapids, Michigan, a Michigan municipal corporation, 300 Monroe Avenue, NW, Grand Rapids, MI 49503 (“the City”), *pursuant to and under the authority of City Commission Proceeding No. xxxxx , dated xxxxx* , and (“the Contractor”);

WHEREAS, the City desires to obtain various professional Contractor services related to the provision of the *xxxxx.*

WHEREAS, the Contractor desires to provide Grand Rapids with professional services related to those matters;

NOW, THEREFORE, in consideration of the foregoing and the acceptance of all responses, verbal and written, submitted by the Company to the Request for Proposal for Participatory Budgeting Community Reading Initiative, hereby incorporated by reference, and intending to be legally bound, the parties enter into an AGREEMENT as follows:

For purposes of this Contract, the words “contract” “Contract” “agreement” and “Agreement” shall be used interchangeably.

All information in the proposal response and the subsequent Contract is subject to the provisions of the Freedom of Information Act 1976 no. 442, as amended, MCL 15.231 or latest revision thereof.

Pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517, by submitting a bid, proposal or response, Contractor certifies, under civil penalty for false certification, that it is fully eligible to do so under law and that it is not an “Iran linked business,” as that term is defined in the Act.

The City shall not be bound by any part(s) of any separate agreements which contains information, options, conditions, terms, or prices not requested nor required in this contract unless such conditions are agreed to by both parties prior to entering a contract.

**Non-Discrimination:**

The Contractor agrees not to discriminate against any employee or applicant to be employed in the performance of such contract with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as material breach of the contract as provided for in Act 453 of the Public Acts of 1976, as amended, entitled “Michigan Civil Rights Act.” The Contractor further agrees to require similar provisions from any sub-contractors used to service this proposal.

**Taxpayer Identification Number Certification:**

Contractors are certifying with the signature applied to this response the following,

1. The number shown on this document is the correct taxpayer identification number (or I am waiting for a number to be issued to me)

2. I am not subject to backup withholding,

 (a) I am exempt from backup withholding, or

 (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a failure to

 report all Interest or dividends, or

 (c) the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding and

3. I am an U.S. person (including an U.S. resident alien)

Certification Instructions:

You shall cross out item #2 above if you have been notified by the Internal Revenue Service (IRS) that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item #2 does not apply.

**Non-Collusion:**

By signed submittal and completion of this document, the Contractor certifies that this proposal response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same product and that this proposal is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. The Contractor understands collusive bidding is a violation of Federal Law and that any false statement thereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages.

**Insurance Coverages:**

The Contractor shall provide and maintain continued insurance coverage as required by the City throughout the life of the Agreement. Failure to maintain insurance coverage required by the City, or failure to provide proof of the required coverage in a timely manner, shall result in cancellation of the Agreement.

**Indemnity Requirements:**

The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, directors and employees (collectively, City) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Contractor 's negligent performance of professional services under this Agreement and that of its sub-contractor or anyone for whom the Contractor is legally liable.

The City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Contractor, its officers, directors, employees and sub-contractor (collectively, Contractor) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the City's negligent acts in connection with the Project and the acts of its contractors, subcontractors or Company’s or anyone for whom the City is legally liable.

Neither the City nor the Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

**Contacts:**

For the City:

The project manager when hereinafter used shall refer to the administrator or designated representative responsible for services requested as defined herein and will be the contact person for day-to-day operations. At this time the City project manager is *xxxx*, or designee.

For the Contractor:

The project manager when hereinafter used shall refer to the administrator or designated representative responsible for services requested as defined herein and will be the contact person for day-to-day operations.

**Grant Funds:**

The products or services specified herein may be purchased utilizing funds from a Federal award (grant), and are subject to the standards and requirements of 2 CFR Chapter 1, Chapter II, Part 200, et al. The terms and conditions of 2 CFR Chapter I, Chapter II, Part 200, et al shall supersede any other terms and conditions. Should Federal Funding be utilized for the purchase of any items or services, the Contractor may be required to complete additional Federal Forms as required. The Contractor shall be responsible for determining which terms are applicable to its products and/or services.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). DAVIS-BACON ACT COMPLIANCEContractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148 to 3148) as supplemented by Department of Labor regulations (29 CFR part 5). ANTI-KICKBACK ACT COMPLIANCE Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). Contract Work Hours and Safety Standards Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5) Rights to Inventions Made Under a Contract or Agreement Contractor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. CLEAN AIR AND WATER REQUIREMENTS Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.), and the Clean Water Act (33 U.S.C. 1251 et. seq.). Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate EPA regional office. ENERGY CONSERVATION REQUIREMENTS The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201) NO SUSPENSION OR DEBARMENT Contractor certifies that neither it nor its Principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. Byrd Anti-Lobbying. If the Maximum Contract Amount exceeds $100,000, the Contractor must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. The contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Note: To the greatest extent possible, the use of Federal Grant Funds should be used for the purchase of goods and services manufactured, assembled, and distributed in America. The Contractor shall attest to this fact in writing at any time, on or in any form, at the request of the City.

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended):

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency

Access to Records:

The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the City of Grand Rapids, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and

transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other

work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City of Grand Rapids and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS Seal:

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Debarment:

Contractor hereby warrants that it, its employees, contractors, subcontractors or agents (collectively “Contractor”) are not suspended, debarred, excluded, or ineligible for participation in or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the City if, during the term of this Purchase Order, Contractor becomes suspended, debarred, excluded or ineligible for participation or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the City harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

**Services by the Contractor:**

*xxxx Complete services and associated costs to accomplish these services provided through the submitted proposal are hereby incorporated.*

The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the services described herein, in a competent and professional manner. The Contractor shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the service.

In the performance of all services provided through this contract, the Contractor shall comply fully with all applicable laws, court decisions, and administrative regulations, and with all regulations and rules of the City. The City shall not be responsible for any failure to adhere or follow any applicable laws, rules, and regulations, or for any penalties incurred in relation to any such failure.

Parking fees, costs, and/or fines shall not be provided or reimbursed by the City. A parking area may be provided, but a parking space is not guaranteed (“first-come first-served”). The Contractor and their employees shall be responsible for any parking fines or fees incurred during the performance of services.

**Performance by Subcontractors:**

The City understands and agrees that the actual performance of the services shall be made by the primary contractor as specified herein on the bid form page. For purposes of this agreement, performance of the services by any subcontractor shall be deemed as performance by the primary contractor itself. The successful contractors must obtain approval from the authorized City project manager for each such subcontractor. The primary contractor shall remain exclusively responsible for the performance or non-performance of the services by any subcontractor, to the same extent as if the primary contractor itself performed or failed to perform such services. Rates for subcontractor staff will not exceed any fee schedule established for the contractor for the job title/classification. The City agrees to solely consider the primary contractor, and not to any subcontractor, for satisfaction of any claims that the City may have arising out of this Agreement or the performance or nonperformance of services. In the event the prime contractor utilizes one or more subcontractors, the prime contractor will assume all responsibility for performance of services by the subcontractor(s).

**Non-assignment:**

The contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the City of Grand Rapids.

**Contract term:**

It is the intent of the City to engage the Contractor until all services have concluded, not to exceed one year in length from the date of this signed Contract.

**Modifications:**

This contract shall not be modified, amended, extended, or augmented without prior approval of the City. Changes of any nature reflecting a material modification or change to this Contract, or any increase or decrease in total costs, shall not be permitted without a properly drafted Change Order provided by the City Purchasing Agent or designee.

**Compensation:**

The compensation to be paid to the Contractor for services under this Agreement shall be as provided in the proposal. Any provision in this Agreement to the contrary notwithstanding, the maximum obligation of the City for services described in this agreement is limited to the not-to-exceed amount of *$xxxx* unless this Agreement is modified in writing after the City Commission has authorized additional funds. The City is not obligated to spend any minimum or maximum obligation authorized under this Agreement.

**City Income Tax to Be Withheld:**

The Contractor shall certify the status of such payment to the City by Affidavit assuring the City in regard to the withholding of income taxes, as needed.

**Personal Property Tax:**

The Contractor shall certify the status of such payment to the City by Affidavit assuring the City in regard to the payment of property taxes, as needed.

**Invoicing:**

All invoicing of goods and services related to the project shall be in U.S. dollars, and shall be forwarded to the City’s project manager. During the performance of services under this Agreement, the Contractor shall submit detailed invoices in the format requested by the City, accompanied by adequate supporting documentation, and include a brief progress report delineating the progress on each task of the services. The City’s payment terms are net 30 days.

The Contractor shall be aware that invoicing shall be accepted only from the contractor as listed on the response form and subsequent term purchase order and only in the format as specified herein. Invoices not meeting this requirement shall be discarded. No consideration shall be made by the City on behalf of the Contractor for any reason in these circumstances. In these circumstances corrected invoices resubmitted for payment shall not be considered after (90) ninety days.

No additional costs shall be recognized unless negotiated and agreed to in writing by both parties.

**Method of resolving dispute:**

The Contractor hereby acknowledges to endeavor to resolve any Contract dispute in accordance of this provision. Any Dispute will be referred to each party’s respective Project Managers, and shall include a description of the issues along with written, supporting documentation. The Contractor must, in the first instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their differences within a reasonable amount of time, the Contractor may escalate the dispute to the City Purchasing Agent for final resolution, up to and including termination. The parties will continue performing while a dispute is being resolved.

**Force Majeure:**

Whenever a Contractor’s place of business, mode of delivery, or source of supply has been disrupted by strike, or act of God, it shall be the responsibility of the Contractor to promptly advise the City of such circumstance. In such circumstance, the City reserves the right to cancel all orders with the Contractor, and source the needed items or material from another source of its choice, at no additional cost.

**Independent Contractor:**

The Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City of Grand Rapids. Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City of Grand Rapids and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City of Grand Rapids, norshall any such person be entitled to any benefits available or granted to employees of the City of Grand Rapids.

**Suspension of Services:**

The City may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the services for such period of time as may be determined to be appropriate for the convenience of the City. In the event of such a suspension, the Contractor may be entitled to extra compensation for damages if there are documented wage or material cost increases; however, the Contractor shall make no claim for lost profit, office overhead or other damages. The City will be responsible for Contractor losses, performance failures, delays, and work stoppages when they result by the City’s failure to provide information or performance of other actions that creates project delay. The extra compensation will be submitted as change orders to the project. An exception to this would be any losses suffered as a result of a labor strike, city work stoppage, or acts of nature.

**Termination:**

The City may, at any time prior to the completion of full performance by the Contractor, terminate the Agreement by giving written notice not less than thirty (30) days prior to the effective date of its intention to do so. Such termination may be for cause or for the convenience of the City.

If the termination is for the City's convenience, payment to the Contractor will be made promptly for the amount of any fees earned to the effective date of the notice of termination, less any payments previously made. Should the City be eligible for any reimbursement based on pro-rated formula(s), such reimbursement shall be promptly paid to the City. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval.

The City may terminate this Agreement for cause upon thirty (30) days’ notice if the Contractor has substantially failed to perform in accordance with the terms of the agreement, including but not limited to the requirement that the Project be completed in a timely manner. If the termination is for cause, the City shall compensate the Contractor the amount of any fees earned prior to the effective date of the notice of termination, less any payments previously made and less any amount retained by the City to defer additional cost the City may sustain in connection with the unsatisfactory performance of the Contractor, including but not limited to costs associated with finishing the project.

In the event that the City terminates the Agreement for cause pursuant to this section, and it later determined that the City did not have sufficient cause for the termination, the City shall compensate the Contractor as if it had terminated the Agreement for its convenience.

In the event the Agreement is terminated prior to its completion, the Contractor, upon payment as specified in this section, shall deliver to the City all reports, interview notes, and other documents, including electronic files, which have been prepared in the course of the work done under this Agreement. All such material shall become and remains the property of the City, to be used in such manner and for such purpose as the City may choose. It is further agreed that in the event the City shall terminate this Agreement due to failure to properly perform in a manner satisfactory to the Project Manager, the City may make such arrangements as it desires for the completion of the Project. The Contractor shall make no claim for additional compensation against the City by reason of such termination, beyond the amounts described in this section.

Vendor shall note: if the City obtains or becomes aware of any past or pending complaints, disciplinary actions, civil actions, criminal actions, etc concerning the Contractor, the City reserves the right to unilaterally cancel the contract immediately, as it deems in its own best interests to do so.

**Remedies:**

All claims, counterclaims, disputes and other matters in question between the City and the Contractor, including their agents, employees, subcontractors, Contractors or other subordinate parties arising out of or relating to this Agreement or its breach shall be decided in a court of competent jurisdiction within the County of Kent, State of Michigan, or in the U.S. District Court for the Western District of Michigan. This Agreement is to be governed by and interpreted in accordance with the law of the State of Michigan.

**Waiver:**

This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

**Severability:**

This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

**Press Release or Other Public Communications:**

Under no circumstances shall the Contractor without the express written consent of the City: a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and b) Communicate in any way with any Contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the City; and c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the City.

**Acceptance of Facsimile, Scanned, or Electronic Signatures:**

The parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission or delivered by scanned image or such other electronic means including a signature entered into the City’s Purchasing Software. Such facsimile, scanned, or electronic signature shall be treated in all respects as having the same effect as an original, wet-ink signature.

**Counterparts:**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**Entirety of Agreement:**

This Agreement, and any attachments, incorporated by reference, constitutes the entire Agreement between City and Contractor relating to the subject matter hereof and supersedes any previous agreements or understandings, oral or written. If additional or supplemental terms and conditions either intentionally or inadvertently appear separately in any service quotations, invoices, transmittal letters, specifications, literature, conversations, web sites, conversations, price lists or warranties, it is understood and agreed that the general and any special conditions of this Contract are the only conditions applicable.

Company complies with all terms and conditions contained herein: [x]  Yes [ ]  No

The City of Grand Rapids, a Contractor

Michigan Municipal Corporation

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Rosalynn Bliss, Mayor Full Legal Company Name (Type or Print)

Attested: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Joel H. Hondorp, City Clerk Signature of Authorized Representative

Witnessed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title of Authorized Representative

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature of Company Officer

 Witnessed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_