



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: June 28, 2023



To: Mark F. Miller, City Manager

From: Robert J. Bruner, Deputy City Manager
Meg Schubert, Assistant City Manager
Robert C. Maleszyk, Chief Financial Officer
Dee Ann Irby, Controller
Emily Frontera, Purchasing Manager
Salim Huerta, Building Official

Subject: Bid Waiver Purchase: Sarah Ames, LLC Independent Service Provider - Administration of Certificate of Occupancy Permits for the City of Troy Building Department (*Introduced by: Salim Huerta, Building Official*)

History

The City of Troy is engaged in the business of managing building codes, including the administration of Certificates of Occupancy which are outlined in Section 111 of the 2015 Michigan Building Code. Providing Certificates of Occupancy involves issuing permits as well as administrative tasks including but not limited to the tracking of occupancy permits, communicating with owners, scheduling inspections, and the verification of said certificates.

The Building Department is looking to engage with an independent *Service Provider* to provide Certificates of Occupancy permits and administer other associated tasks outlined in the attached Service Agreement (Exhibit 1). The Building Department wishes to engage with Sarah Ames of Sarah Ames, LLC, to be the Service Provider administering the Certificates of Occupancy Permits for the City.

Purchasing

Sarah Ames of Sarah Ames, LLC, has worked with the City of Troy in various administrative and advising capacities since 2019. She possesses extensive knowledge of the City of Troy's Building Department procedures and internal communications, as well as a profound understanding of the community at large. It is in the best interest of the City to waive the bid process and engage with Sarah Ames to act as the Service Provider responsible for administering Certificate of Occupancy permits, per the terms of the attached agreement. The Agreement's annual compensation is not to exceed \$20,000 and will be valid until July 1, 2025, with the option to renew for an additional 1 year period.



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Financial

The Service Provider will be compensated at an hourly rate of \$40.00 for 20 hours a week, unless otherwise necessary, and work done by the Service Provider is not to exceed \$20,000 annually. Funds are budgeted and available in the Building Inspection Consultant Services Operating Budgets for the 2024 fiscal year 101.371.816.

Recommendation

City Management, in the best interest of the City, recommends waiving the bid process and entering into the Service Provider Agreement with Sarah Ames of Sarah Ames, LLC for an amount not to exceed \$20,000 annually to administer Certificates of Occupancy for the City of Troy until July 1, 2025 with the option to renew for a one (1) year period.

Legal Review

This item was submitted to the City Attorney for review pursuant to City Charter Section 3.17.

Service Agreement

This Service Agreement (the "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between the City of Troy, MI (City of Troy) located at 500 W. Big Beaver Rd, Troy, MI 48084 and Sarah Ames, LLC (the "Service Provider") located at 120 S. 5th Avenue, Winterset, IA 50273.

WHEREAS, the City of Troy is engaged in the business of managing building codes, and thus providing Certificates of Occupancy permits and all associated tasks, including but not limited to tracking occupancy permits, communicating with owners, scheduling inspectors to inspect buildings, and verifying certificates of occupancy.

WHEREAS, the Service Provider independently engaged in the business of consulting, thus providing Certificate of Occupancy permits and other associated tasks.

WHEREAS, the City of Troy desires to hire the Service Provider to perform those services as described herein this Service Agreement, and as such, the Service Provider does herein desire to provide such services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises established and set forth herein, the City of Troy and Service Provider hereby acknowledge and agree as follows:

SERVICE PROVIDER DUTIES & RESPONSIBILITIES

Services:

It shall be agreed upon, that during the term of this Agreement the Service Provider shall provide the services ("Services") that are described within the attached exhibit ("Schedule") and on any such additional consecutively numbered supplementary schedules, as which may be executed at any time by both parties to this Agreement. Each attached or subsequently attached Schedule shall contain a description of the deliverables required to be provided by the Service Provider (collectively "Deliverables"). Included in the Schedule includes Service Provider fees and payment schedule. All services will be completed in accordance with the workload and objectives defined by the City of Troy and led by the Building Official. The Service Provider will supply a biweekly report for the City of Troy stating the hours worked and the deliverables that have been met. The Service Provider will meet weekly with the Building Official to discuss workload and objectives.

Service Provider's Control Over Services Provided:

The Service Provider shall retain the unqualified right of control over the means, manner and methods by which their Services are rendered and performed, and the right to perform those Services at the location(s) and time(s) that the Service Provider independently determines and sets forth. The Service Provider shall be responsible for providing all equipment, materials and supplies that the Service Provider determines shall be required to timely provide those Services which have been requested by the City of Troy. The Service Provider shall use City of Troy

equipment, materials, and supplies if necessary or required by the City of Troy for security or other purposes.

Compliance with Applicable Law:

The Service Provider shall be responsible for complying with any and all applicable federal, state and local laws, rules, ordinances, regulations, and/or codes that pertain to the performance of the Services requested and provided. The Service Provider's failure to comply with the responsibilities and duties described in this Paragraph shall constitute a material breach of the Agreement.

Insurance:

The Service Provider agrees to secure and maintain, at the Service Providers sole cost and expense, Workers' Compensation Coverage where required by law and General Liability Insurance, as required by the City of Troy.

All insurance policies must be approved as to form and amount by the City and copies of certificates of insurance furnished to the City. All policies, except workmen's compensation, must name the City as an additional insured.

Permits and Licenses:

The Service Provider shall be responsible for acquiring and maintaining, during the term of this Agreement, any and all permits, licenses and authorizations, if applicable, required to conduct the Service Provider's business and to perform the Services requested. The Service Provider's failure to comply with the responsibilities and duties herein described in the Paragraph shall constitute a material breach of this Agreement.

Taxes:

The Service Provider shall be solely responsible for filing all tax returns, tax declarations and tax schedules, and for the payment of all taxes required when due, with respect to any and all compensation earned by the Service Provider as set forth in accordance to this Agreement. The Service Provider's failure to comply with the duties described herein this Paragraph shall constitute a material breach of this Agreement.

Workers Compensation Insurance:

The Service Provider shall comply with the applicable worker's compensations laws, and shall provide to the City of Troy a certificate verifying worker's compensation if required by law.

DUTIES IMPOSED ON THE City of Troy

Fees:

The Service Provider's entire compensation for the performance of the Services provided hereunder shall be set forth in specific detail contained within the Schedule that corresponds to the specific Services provided and shall be payable solely by the City of Troy. As a material term of the compensation arrangement agreed to by these parties, the Service Provider agrees that

the fees described in the Schedule represents the entire compensation to which the Service Provider shall be entitled for performing the corresponding Services, and that the Service Provider is not eligible for any additional compensation in the form of cash or in the form of employee benefits under any plans or programs maintained by the City of Troy or its clients, including, but not limited to, any bonus, paid time off, health, pension and incentive compensation (collectively, "Benefit Plans"). If for any reason the Service Provider is deemed to be a common-law employee of the City of Troy by any governmental agency, court or other entity, the Service Provider hereby waives any right to, and agrees to neither seek nor accept any benefits under the Benefit Plans, even if the terms thereof the Service Provider would be eligible to receive such benefits. An hourly rate of \$40.00 to the Service Provider for 20 hours a week, unless otherwise necessary, for work done by the Service Provider not to exceed \$20,000 annually. All work is to be completed during the City of Troy's hours of operations, 8:00AM-4:30PM Monday through Friday.

Form 1099 Compliance:

The City of Troy shall report the amounts it pays the Service Provider on IRS Form 1099, to the extent so required under the Internal Revenue Code.

No Reimbursements:

The Service Provider shall not be entitled to any reimbursement by the City of Troy for any cost or expense outside of what has been originally agreed upon for compensation to the Service Provider from the City of Troy and set forth in the herein attached Schedule.

INDEPENDENT CONTRACTOR RELATIONSHIP

For all intent and purposes, including, but not limited to the Federal Insurance Contributions Act ("FICA"), the Self Employment Contributions Act ("SECA"), the Social Security Act, the Federal Unemployment Tax Act ("FUTA"), the Internal Revenue Code and any and all other federal, state and local laws, rules and regulations, each party hereto, including its officers, agents and employees, shall be at all times an independent contractor relative to the other party. Nothing in this Agreement shall be construed to make or render either party, including any of its officers, agents or employees, an agent, servant or employee of, or a joint venture of or with the other.

OWNERSHIP AND ASSIGNMENT OF WORK PRODUCT

The Service Provider does herein agree that any and all Work Product will be the exclusive property of the City of Troy, and in consideration of the Agreement, without further compensation, hereby assigns, and agrees to assign to the City of Troy all right, titles, and interest to all Work Products that:

- (a) Relates to
 - (i) All or any aspect of the City of Troy's actual or anticipated business, research, and development or existing or future products or services, or

- (ii) An actual or demonstrably anticipated research or development project of the City of Troy;
- (b) Is conceived, created, or reduced to practice, developed, or made entirely or in any part;
 - (i) During which time services are provided or on City of Troy time, or using any equipment, supplies, facilities, assets, materials, information including confidential information or resources of any of the City of Troy's intellectual property rights.
- (c) Results from any work performed by the Service Provider for the City of Troy. Any creative works, enhancements, know-how, product, formulation, concept, or idea that the Service Provider has within one year following the cessation or termination of the Service Provider with the City of Troy shall be deemed to be the Work Product owned by the City of Troy under this section unless otherwise proven by the Service Provider to have been outside of each criteria specified above in this section.

CONFIDENTIALITY - UNAUTHORIZED DISCLOSURE:

Within or after the services period, the Service Provider shall at no time divulge, release, or remove for his/her use or that of any other individual or City of Troy, any documentation, information, or knowledge pertaining to the operation or business of the City of Troy or any of its subsidiaries or affiliates, obtained or made available to him/her during the course of their employment with the City of Troy, subsidiaries or affiliates. Furthermore, the City of Troy and the Service Provider agree as follows:

- (a) Confidential Information shall include, but is not limited to, all non-public information, written or oral, whether disclosed directly or indirectly, through any means of communication or observation by the City of Troy or any of its affiliates or representatives to or for the benefit of the Service Provider.
- (b) Confidential information excludes that which is public knowledge.
- (c) Service Provider shall not copy or modify any Confidential Information without prior written consent of the City of Troy.
- (d) The Service Provider shall, upon termination of this Agreement, (whether voluntary or involuntary), or upon request of the Service Recipient, immediately return to the City of Troy any and all property in their possession or that which may be under their control or care, including but not limited any proprietary information, customer names and lists, trade secrets, intellectual property, written documents, plans, recordings, software, accounting or financial information and/or any other materials of a confidential nature.

Unauthorized Disclosure:

Should the Service Provider, during, or after termination of employment, disclose or threaten to disclose any information of a confidential nature, the Service Provider shall be deemed in violation of this Agreement, and the City of Troy at that time shall be entitled to obtain an

injunction to restrain the Service Provider from disclosing or further disclosing, in whole or in part, Confidential Information. The City of Troy shall also be entitled to pursue other legal remedies, as may be deemed appropriate, for any loss and/or damages incurred as a result of any unauthorized disclosure made by the Service Provider during or after termination of their services.

TERMS AND TERMINATION

The terms of the herein contained Agreement shall commence on the previously established effective date. This contract shall terminate on July 1, 2025, which may be renewed for an additional 1 year period based upon mutual consent of both parties within 60 days of contract expiration. Either party upon provision of 90 days written notice may cancel the contract. If neither party takes action after 30 work days from when the contract is scheduled to terminate, the contract will automatically renew for another year.

Breach Cause for Termination:

This Agreement may be terminated at any time by either party should a material breach by the other party remain uncured thirty (30) days after submission of written notice being provided of the breach thereof, or a shorter period of time as may be specified within this Agreement or within the applicable Schedule provided to the Service Provider by the City of Troy

Return of City of Troy Property:

At the end of the Service Providers contract or upon termination of their services, whether voluntary or involuntary, said Service Provider shall immediately return to the City of Troy any and all City of Troy property including. but not limited to, the following:

- (a) Connection to City of Troy software systems; and any
- (b) City of Troy related documents and/or materials.

The City of Troy shall reserve the right, and shall be entitled to pursue any legal remedies, as may be deemed appropriate, for any loss and/or damages, incurred as a result of the Service Providers failure to return City of Troy property after termination.

INDEMNIFICATION

Both parties shall guarantee, guard against and hold harmless the other party, any current or former employees, shareholders, partners or any ownership interest and agents from and/or against any alleged claim, including, but not limited to third-party claims, demands, loss, damages and or expense, including any legal or attorney fees that may be in relation to:

- (a) any negligence, recklessness or any willful misconduct of the indemnifying party or any other party under the direction or control of the indemnifying party;
- (b) any material breach of this Agreement by the indemnifying party; or

(c) any damage, loss or destruction relating to any property of the indemnifying party or their client or clients, injury or death to any individuals that may result from the actions or inactions of any employee, agent or subcontractor of the indemnifying party as such damage may arise out of or is in the course of fulfilling their obligations under and with relation to this Agreement, and to the extent that such damage may be due to any negligence, unlawful conduct, omission or default of the indemnifying party, their employees, agents or subcontractors.

GENERAL

Work Product:

The Service Provider herein acknowledges and agrees that all work of authorship performed for the City of Troy shall be subject to the City of Troy's direction and control and that such work constitute Work for Hire Work Product pursuant to United States Code Title 17 Chapter 2 Sections 201 & 202 Ownership of Copyright & Material.

Nonrestrictive Relationship:

The herein named parties relationship shall be considered nonrestrictive and the Service Provider shall have the right to perform services for others during the term of this Agreement that would include any services that may be similar to those which are or may be supplied by the Service Provider.

Exemption:

Neither party named herein, shall be held liable for or believed to be in breach of this Agreement by way of any delay, or failure to perform as necessitated by this Agreement as a consequence of any cause or condition that may be beyond either party's reasonable control and of which either party may be unable to overcome by the use or exercise of reasonable diligence.

Notice:

Both parties, when required, shall provide written notice or communication by:

- 1) email
- 2) personal delivery,
- 2) facsimile,
- 3) overnight carrier, or
- 4) a written notice mailed by certified mail, return receipt requested, provided that such notice is addressed to the parties at the addresses set forth below:

- (1) City of Troy;
500 W. Big Beaver,
Troy, MI 48084
- (2) Service Provider;
120 S. 5th Avenue,
Winterset, IA 50273

No Relinquishment:

Any waiver or relinquishment for any breach of any term, condition or provision hereof and shall not be deemed to be a waiver of any other breach of the same or any other provision.

Full and Complete Agreement:

This Agreement has set forth the full and complete agreement and shall supersede any and all prior agreements between the parties concerning all aspects of the subject matter herein contained. The Agreement may not and shall not be amended except by way of a written instrument that must be signed by both parties named hereto.

Delegation:

The herein contained Agreement may not and shall not be assigned by the Service Provider without first providing prior written consent of the City of Troy. The City of Troy, however, may assign, delegate or make transfer of the Agreement to another entity that controls, is controlled by or that is under common control with, the City of Troy now or in the future, or which may succeed to its business through a sale, merger or other corporate transactions. However, all rights and obligations shall be assumed by the assignee, transferee, or successor without modification.

Formation, Severability, Endurance:

in any event that any provision of this Agreement conflicts with the law pursuant to which this Agreement is to be construed or if any other provision is held to be invalid by a court within the jurisdiction over the parties to this Agreement, and

(it) that any such provision shall be deemed to be restated to reflect, as nearly as possible, the original intentions of the parties in accordance with applicable law, and

(iv) in the remaining terms of this Agreement shall remain in full force and effect.

All provisions of this Agreement, which by their nature should reasonably survive the termination of this Agreement, and shall survive the termination of this Agreement.

Counterparts:

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

ARBITRATION AND DISPUTE RESOLUTION

The herein contained Agreement shall be governed by, construed and enforced pursuant with the laws of the State of, without giving any effect to any conflicts of law provisions. Any and all disputes between the City of Troy, and including but not limited to its affiliates, shareholders, directors, officers, employees, agents, successors, attorneys and assigns, and the Service Provider, including their affiliates, shareholders, directors, officers, employees, agents, successors, attorneys and/or assigns, relating in any manner whatsoever to this Agreement ("Arbitral Claims"), and shall be resolved by and through the use of arbitration. Arbitration of such claims shall be done in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as amended, and shall be conducted within the jurisdiction in which the City of Troy is located. The Federal Arbitration Act shall govern the interpretation and

enforcement of this paragraph. The fees associated with the arbitrator shall be shared equally by both parties. The parties agree that this paragraph shall survive the termination of the Agreement.

IN WITNESS WHEREOF the parties hereto, each acting pursuant with due and proper authority, have executed this Agreement as of the aforementioned Effective Date.

CITY OF TROY

SERVICE PROVIDER

Rep. Name: Salim Huerta
Troy Building Official

Rep. Name: Sarah Ames

Schedule

Deliverables:

The deliverables identified as needed by the Company for the Service Provider to complete include the following:

- Organizing and tracking Occupancy Permits
- Inform Technicians at City Hall to Cancel or Schedule Inspections
- Sending Letters to Owners regarding Occupancy Permit Requirements
- Phone calls with Owners regarding Occupancy Permit Requirements
- Verifying Certificates of Occupancy
- Virtual meetings with Building Department staff
- Phone calls with Building Department staff

This list is not exhaustive and the Deliverables section of the Schedule may be updated by the Company if there is needed modification to the deliverables completed by the Service Provider.

Fees:

An hourly rate of \$40.00 to the Service Provider for 20 hours a week, unless otherwise necessary, for work done by the Service Provider not to exceed \$20,000 annually. All work is to be completed during the City of Troy's hours of operations, 8:00AM-4:30PM Monday through Friday.

Payment schedule:

The Company shall pay the Service Provider within 30 days after the date of the invoice (Net 30).