
The City of Traverse City
Office of the City Manager

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, MI 49684
(231) 922-4440
(231) 922-4476 Fax



May 18, 2016

Consultant:

The City of Traverse City will receive sealed proposals in the Office of the City Manager, second floor, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan, 49684, until **Monday, June 13, 2016, at 2:00 p.m.** for the following:

Professional Audit Services (Specifications attached)

There will be a pre-proposal conference on **June 2, 2016, from 2:00–3:00 p.m.** in the 2nd floor Conference Room at the Traverse City/Grand Traverse County Governmental Center, 400 Boardman Ave, Traverse City, MI 49684. A conference call option will also be available for out of town firms.

If the specifications are obtained from the City's website link at: http://www.traversecitymi.gov/bids_and_rfps.asp, it is the sole responsibility of the Bidder to check the website for updates and addenda prior to the bid being submitted. Bidder may also sign up to receive notifications when bids and RFPs are posted by sending an e-mail requesting same to jdalton@traversecitymi.gov

The City of Traverse City reserves the right to accept or reject any or all bids, waive irregularities, and to accept the bids either on an entire or individual basis that is in the best interest of the City.

The City accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the Bidder. Only the successful Bidder will be notified.

You must indicate on the outside of the sealed envelope that the bid is for the **“Professional Audit Services Proposal.”**

You must submit **FIVE (5) SEALED COPIES** of the bid to the City Manager's Office prior to the above-indicated time and date or the bid will not be accepted. Telefaxed or E-Mail bids will not be accepted.

Please note that if you have previously submitted an informal quote, you will still need to submit a sealed bid prior to the date and time specified above in order to be considered. Please ensure that all requirements listed in the specifications are met.

If you have any questions, please contact William Twietmeyer, City Treasurer, at (231) 922-4436 before the proposal is submitted.

PLEASE SUBMIT BID TO: Julie Dalton, Purchasing Agent
400 Boardman Avenue, 2nd floor
Traverse City, MI 49684

City of Traverse City, Michigan

Request for Proposals
To Provide Municipal Auditing Services for
Fiscal Years Ending June 30, 2016, 2017 and 2018

Treasurer's Department
400 Boardman Avenue
Traverse City, MI 49684



ADVERTISEMENT

REQUESTS FOR PROPOSALS

Sealed proposals for professional audit services will be accepted by the City of Traverse City, c/o Julie Dalton, Purchasing Agent, 2nd Floor, Governmental Center, 400 Boardman Avenue, Traverse City, MI 49684, until 2:00 pm, Monday, June 13, 2016. Facsimile or electronically transmitted proposals will not be accepted.

The complete Request for Proposals is on file with and may be obtained from Julie Dalton, Purchasing Agent, at the address above, or by email at jdalton@traversecitymi.gov or by calling 231-922-4440. The Request for Proposals can also be obtained from the City's website <http://www.traversecitymi.gov>

The City reserves the right to reject any or all proposals, to waive any irregularities, and further reserves the right to accept any proposal, which it deems to best serve the City.

Questions should be addressed to William Twietmeyer, City Treasurer, at 231-922-4436.

PLEASE INDICATE ON THE ENVELOPE: **PROFESSIONAL AUDIT SERVICES PROPOSAL**

**CITY OF TRAVERSE CITY
REQUEST FOR PROPOSAL FOR PROFESSIONAL AUDIT SERVICES
TABLE OF CONTENTS**

SECTION 1 – GENERAL INFORMATION	
Requests for Proposal	5
Schedule of Request for Proposal	5
Official Contact	5
Proposal Due Date	5
Proposal Withdrawal	6
Pre-Proposal Conference	6
Addenda	6
Cancellation, Irregularities, Delay, or Suspension of Solicitation; Rejection of Proposal	6
Incurred Costs	6
Public Record	6
Disclaimers	7
SECTION 2 - SCOPE OF WORK	
Proposal	7
Financial Statement Audit Specifications	7
Exit Conferences	9
Additional Services	9
Schedule	9
Other Information	9
SECTION 3 - PROPOSAL FORM AND CONTENT	
Proposal Submittal	10
Proposal Form and Content	10
SECTION 4 - CITY PROVIDED AND OTHER INFORMATION	
General Information	12
PROPOSAL SUMMARY	14
DRAFT AGREEMENT	16

**SECTION 1
GENERAL INFORMATION**

1. Requests for Proposal

The City of Traverse City invites qualified individuals or firms to submit proposals for Financial Audit Services as described in the scope of work set forth in Section 2 Scope of Work of this Request for Proposals (RFP).

2. Schedule of Request for Proposal

RFP Advertised	May 18, 2016
Auditor Pre-Conference	June 2, 2016 @ 2:00 pm
Proposal due	June 13, 2016 @ 2:00 pm
City Commission Approval	June 20, 2016
Commencement of Services	June 2016

3. Official Contact

Questions regarding the scope of services must be directed to:

William Twietmeyer, City Treasurer/Finance Director
City of Traverse City Treasurer's Department
400 Boardman Avenue
Traverse City, MI 49684
Phone: 231-922-4436

4. Proposal Due Date

Five copies of the proposal must be delivered to Julie Dalton, Purchasing Agent, 2nd Floor, Governmental Center, 400 Boardman Avenue, Traverse City, MI 49684 no later than June 13, 2016 at 2:00 pm. Facsimile or electronically transmitted proposals will not be accepted. Proposals must be sealed and clearly addressed and marked PROFESSIONAL AUDIT SERVICES PROPOSAL. Final determinations as to suitability and compliance with specifications of City shall be with the City. Proposals not meeting all of the specifications may be rejected. Any proposal received after the proposal opening date and time shall be returned to the Auditor unopened.

5. Proposal Withdrawal

Any proposal may be withdrawn at any time before the “Proposal Due” date and time by providing a written request for the withdrawal of the proposal to the issuing office. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal.

6. Pre-Proposal Conference

In order to assist the Auditor in formulating their proposal, the City will schedule a pre-proposal conference open to all interested parties. Auditors may examine documents and ask questions about unfamiliar items. This conference is scheduled for Thursday, June 2, 2016 from 2:00 pm to 3:00 pm in the 2nd floor Mayor’s conference room at the Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

7. Addenda

The City may modify the RFP at any time prior to the RFP due date, by issuance of written addendum to all proposers who are participating in the process at the time the addendum is issued. Addenda will be numbered consecutively. Verbal modifications to the RFP specifications shall not be binding upon the City.

8. Cancellation, Irregularities, Delay, or Suspension of Solicitation; Rejection of Proposals

The City may cancel, delay or suspend this solicitation if in the best interest of the City as determined by the City. In addition, the City reserves the right to reject any or all proposals, to waive any irregularities, and further reserves the right to accept any proposal, which it deems to best serve the City.

9. Incurred Costs

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal. The City is not liable for any cost incurred by a proposer in protesting the City’s selection decision.

10. Public Record

All proposals and information submitted by proposers are not open for public inspection until after the notice of intent to award a contract is issued. Except for exempt materials, all proposals and information submitted by proposers will be available for viewing after the evaluation process is complete and the notice of intent to award is sent to all participating parties.

11. Disclaimers

The Auditor, if selected, agrees to hold the City harmless from any and all physical injury to the person or damage to the property of, or any loss of expense incurred by, any employee of the City which arises out of or pursuant to the Auditor's performance.

The Auditor, if selected, shall also hold the City harmless from any claims by the Auditor's employees arising out of, or pursuant to, the Auditor's and/or employee's performance under this agreement. The Auditor agrees to hold the City harmless for any injuries to persons, or any injury, loss, expense, or damage to property caused by the Auditor's employees.

The Auditor, if selected, shall provide evidence that it possesses professional liability insurance with the minimum coverage of \$1 million per occurrence, automobile liability and workers compensation insurance, as outlined in the Consultant Agreement.

Within the duration that this agreement is in effect, the Auditor, if selected, agrees that neither it nor its employees will intentionally influence the City or its representatives for purposes of seeking employment with the City. Proof of such activity may cause immediate cancellation of the agreement.

SECTION 2 SCOPE OF WORK

1. Proposal

The proposal shall be made as a three-year contract for the fiscal years ending June 30, 2016, 2017 and 2018.

2. Financial Statement Audit Specifications

- a. The City's financial statements shall be audited in accordance with:
 - i. Generally Accepted Auditing Standards as included in the "Statements of Auditing Standards" published by the American Institute of Certified Public Accountants.
 - ii. Generally Accepted Government Auditing Standards (the Yellow Book).
 - iii. State of Michigan and local laws and regulations along with the "Bulletins for Audits of Local Units of Government."
 - iv. City Charter and Code Provisions.
 - v. The Single Audit Act and OMB Circular A-133.
 - vi. Such other standards, which may apply to audits of local units of government in the State of Michigan.

- b. The examination shall be made of all funds of the City including the Downtown Development Authority and Traverse City Light and Power Discrete Component Units. The Housing Commission financials have not been incorporated within the City's Financial Statements since fiscal year ending June 30, 2007 and is not expected to be included in future periods.
- c. The Auditor shall express an unqualified opinion of the financial statement. If the Auditor is unable to express an unqualified opinion, the Auditor shall state the reason for qualifications or disclaimer of opinion.
- d. The engagement shall include recommendations to management, prepared by the selected audit firm in letter form which include any findings, observations, opinions, comments or recommendations relating to internal control, accounting systems, data processing, compliance with laws, rules and regulations, or any other matters that come to the attention of the auditor during the course of the examination. Such recommendations shall not be construed as special or additional studies but shall be limited to those usually associated with the study of internal control systems and procedures as a part of any examination of financial statements. The recommendations will be discussed with appropriate City officials prior to publication, and a management response will be prepared by the City Treasurer's office.
- e. The Auditor is required to disclose immediately all findings of suspected fraud or embezzlement to the Deputy State Treasurer in charge of the Local Audit Division of the State Department of Treasury.
- f. The Auditor shall prepare twenty copies of the City's printed audit report, containing all financial statements and supplemental information. The Auditor shall prepare twenty-five copies of the Light and Power Department and twenty-five copies of the printed audit report of the Downtown Development Authority. In addition, the Auditor shall create a PDF file and submit the files along with the Auditing Procedures Report to the State for filing by December 31st for fiscal years ending June 30, 2016, 2017 and 2018.
- g. Working papers must be retained for at least three years or longer if required by Federal or State regulations. Working papers will be available for examination by authorized representatives of Federal, State or City agencies.
- h. The audit will comply with all applicable audit and financial reporting requirements, including those that may become effective during the course of the contract. If significant additional audit procedures are required that would cause a change in the proposed fees, a separate contract will be negotiated to address the additional requirements.

3. Exit Conferences

Exit conferences to review the report and management letter drafts are required with the City Treasurer and City Manager, the Light and Power Executive Director and Controller, and the Downtown Development Authority Executive Director. The exit conferences shall occur at the earliest opportunity after field work is completed but at least two weeks before financial statements are issued.

4. Additional Services

If unusual circumstances are encountered making it necessary for the Auditor to do added work over and above described in the “Request for Proposal”, the Auditor shall immediately report such conditions to the City Manager and both parties may negotiate such additional compensation as appears justified. No additional billings should be invoiced unless a written amendment is made to the original agreement.

In addition, the audit firm may be requested to perform special projects for the City during the year. Contractual agreements or service orders for such other examinations will be negotiated separately at the time of need.

5. Schedule

The audit report is required by law to be submitted to the State no later than six months after June 30 fiscal year end. The current audit firm performs preliminary work at the end/beginning of June/July and return to complete audit fieldwork no later than the second Monday of October unless a mutually agreeable date is established. The proposal should contain a preliminary timeline to complete the audit report in a timely manner. The City and the selected audit firm will finalize the timeline as part of the contract negotiations.

6. Other Information

The City considers the audit reports as its own property and will use these reports for any financial purposes such as reports or official statements.

If selected, the Auditor shall be required to sign an agreement prepared by the City. A sample agreement is enclosed.

As part of the overall financial audit contract, the City expects to receive from the audit firm a variety of technical assistance throughout the fiscal year. This assistance would include answers to accounting, reporting, or internal control questions.

**SECTION 3
PROPOSAL FORM AND CONTENT**

1. Proposal Submittal

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFP, and should be easily reproducible. Emphasis should be on completeness and clarity of content and cost effectiveness of the proposal. Please provide five copies of the proposal.

All pages of the proposal must be numbered consecutively. The proposal must be organized in accordance with the list of proposal contents.

2. Proposal Form and Content

a. Letter of Transmittal

- i. All proposals must include a cover letter addressed to the City of Traverse City and signed by a duly constituted official legally authorized to bind the applicant to both its proposal and cost schedule.
- ii. The cover letter must include name, address and telephone number of the proposer submitting the proposal and the name, title, address, telephone number and email address of the person, or persons to contact whom are authorized to represent the proposer and to whom correspondence should be directed.

b. Table of Contents

- i. Include a clear identification of the material by section and by page number.

c. Profile of the Proposer

- i. Description of the firm.
- ii. State whether the firm is local, regional, national, or international.
- iii. If applicable, state whether the local office will be assigned the responsibility for the audit. If not, state which office will be assigned responsibility for the audit and give its address.
- iv. The number of years in business and the number of governmental engagement employees in the local office and total number of employees involved in governmental engagements firm wide.
- v. Provide information on the firm's latest peer review and participation in the program. Include as an attachment the latest peer review letter.
- vi. Make an affirmative statement that the audit firm and all key personnel assigned to the engagement is licensed to practice in the State of

Michigan, the audit firm has professional liability insurance with minimum coverage of \$1 million per occurrence, and the audit firm is independent of City of Traverse City.

- vii. Describe the local office (if applicable) and firm's experience in providing additional (non-audit) services to government clients.
- viii. Firm's policy on notification of changes in key personnel.
- ix. A statement of whether your firm or any member of your firm has been the object of any disciplinary action during the past three years from any federal or state agency and any professional organizations.
- x. A statement describing the results of any federal or state desk reviews of its audits from the past three years.

d. Statement of Understanding

- i. The proposer shall include a detailed statement of understanding of the financial audit services to be provided.

e. Approach to Audit and Schedule

- i. Audit methodology, which will be used.
- ii. Type of audit programs used.
- iii. Use of sampling techniques and the extent to which statistical sampling may be used.
- iv. Extent of the use of data analysis software in the engagement.
- v. Type and extent of analytical procedures that may be used in the engagements.
- vi. Approach to be taken to gain and document an understanding of the government entity's internal control.
- vii. Approach to be taken in drawing audit samples for purposes to tests of compliance.
- viii. Explain any modification of the work items and scope of work presented in the RFP.
- ix. Propose a schedule for preliminary, field and concluding work and expected date of final report issuance and presentations to the Boards.
- x. Describe any potential audit problems you forecast and how they would be resolved.
- xi. Any additional information about the proposer's audit approach that would be beneficial to the selection committee.

f. Additional Information

- i. Any other information that the proposer feels applicable to the evaluation of the proposal or of their qualifications for accomplishing the audit services should be included in this section.

- ii. You may use this section to address those aspects of your services that distinguish your firm from other firms.
- iii. Include a statement that if any of the audits are judged to be unacceptable by the State, a cognizant agency, or any other government agency, that you will do whatever is necessary to satisfy the agency which rejected the audit at no extra cost to the City.

g. Audit Team and Qualifications

- i. List the managing partner, in-charge manager, all other key personnel and management to be utilized for the work, along with the number of staff to be assigned to the engagement.
- ii. Include a description of education, certificates or licenses, professional background, experience, skills, expertise and training for the types of services required relating to governmental accounting and auditing.
- iii. Include references of current clients with specific clients, which have municipal electric utilities, Downtown Development Authorities, and single audit reporting. Please provide names and telephone numbers of client officials for three of the audits listed.
- iv. Resumes and client references may be attached as an appendix item.

h. Cost Schedule

- i. The cost schedule will include the associated hours for each element (preliminary and fieldwork and report issuance) of the audit services by staff classification with a total hours and cost for all services.
- ii. All out of pocket expenses should be listed separately and include the cost of producing paper copies of each audit report, management letter, and creating and filing the PDF audit report required by the State of Michigan.
- iii. The proposer's fee for the "Single Audit" shall be listed separately for each year as the City does not always need a "Single Audit".
- iv. The City will pay \$10,000 of the audit fee up front and the remaining amount once the audit engagement is complete.

**SECTION 4
CITY PROVIDED AND OTHER INFORMATION**

1. General Information

- a. The City shall provide space for the Auditor in order to conduct the audit efficiently. Any technical capabilities (phone, access to the accounting system, and internet) requested by the audit firm will need to be made three weeks before arrival.

- b. The City follows the State Chart of Accounts mandated by the State of Michigan Department of Treasury except for the modified accounts for the electric utility, which adhere more to FERC requirements.
- c. The City uses an AS400 computer system and all of the accounting records are computerized.
- d. The City shall provide electronic or hard copies of receipts, invoices, or documents when provided a list by the Auditor.
- e. The City will prepare all work papers discussed in the pre audit conference between the City and the auditing firm selected including confirmation letters and forms and return them to the audit firm to be mailed.
- f. The City will prepare all lead sheets in Microsoft Excel.
- g. The City will prepare all sections of the financial statements using Microsoft Excel and Word except for the opinion and compliance letters, however, all printing and binding will be completed by the auditing firm selected. The audit firm will perform a detail check and technical standards review, but all changes will be approved and made by the City.

Consultant - Please complete and return

PROPOSAL SUMMARY

TITLE: PROFESSIONAL AUDIT SERVICES

DUE DATE: MONDAY, JUNE 13, 2016, 2:00 p.m.

Having carefully examined the attached specifications and any other applicable information, the undersigned proposes to furnish all items necessary for and reasonably incidental to the proper completion of this bid. Bidder submits this bid and agrees to meet or exceed all requirements and specifications unless otherwise indicated in writing and attached hereto.

Bidder certifies that as of the date of this bid the Company or he/she is not in arrears to the City of Traverse City for debt or contract and is in no way a defaulter as provided in Section 152, Chapter XVI of the Charter of the City of Traverse City.

Bidder understands and agrees, if selected as the successful Bidder, to accept a purchase/service order and to provide proof of the required insurance.

The Bidder shall comply with all applicable federal, state, local and building codes, laws, rules and regulations and obtain any required permits for this work.

The Bidder certifies that it is in compliance with the City's Nondiscrimination Policy as set forth in Administrative Order No. 47 and Chapter 605 of the City's Codified Ordinances.

The Bidder certifies that none of the following circumstances have occurred with respect to the Bidder, an officer of the Bidder, or an owner of a 25% or more share in the Bidder's business, within 3 years prior to the bid:

- (a) Conviction of a criminal offense incident to the application for or performance of a contract;
- (b) Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense which currently, seriously and directly reflects on the Bidder's business integrity;
- (c) Conviction under state or federal antitrust statutes;
- (d) Attempting to influence a public employee to breach ethical conduct standards; or
- (e) conviction of a criminal offense or other violation of other state, local, or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the City indicates that the bidder is unable to perform responsibility or which reflects a lack of integrity that could negatively impact or reflect upon the City of Traverse City,

including but not limited to, any of the following offenses or violations of:

- i. The Natural Resources and Environmental Protection Act.
- ii. A persistent and knowing violation of the Michigan Consumer Protection Act.
- iii. Willful or persistent violations of the Michigan Occupational Health and Safety Act.
- iv. A violation of federal, local, or state civil rights, equal rights, or non-discrimination laws, rules, or regulations.
- v. Repeated or flagrant violations of laws related to the payment of wages and fringe benefits.

(f) the loss of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

Bidder understands that the City reserves the right to accept any or all bids in whole or part and to waive irregularities in any bid in the best interest of the City. The bid will be evaluated and awarded on the basis of the best value to the City. The criteria used by the City may include, but will not be limited to: ability, qualifications, timeframe, experience, price, type and amount of equipment, accessories, options, insurance, permits, licenses, other pertinent factors and overall capability to meet the needs of the City. The City is sales tax exempt – Government.

Bidder agrees that the bid may not be withdrawn for a period of sixty (60) days from the actual date of the opening of the bid.

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone

Fax

City, State, Zip

Sole proprietorship/partnership/corporation

If corporation, state of corporation

CITY OF TRAVERSE CITY
CONSULTANT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016, by and between the CITY OF TRAVERSE CITY, a Michigan municipal corporation, of 400 Boardman, Traverse City, Michigan, 49684, (the "City"), and _____, a (sole proprietorship/partnership/corporation) of _____, (if a corporation, state of incorporation) (the "Consultant");

WHEREAS, the City desires to engage the services of the Consultant to furnish technical and professional assistance concerning the project which is described as:

[BRIEF DESCRIPTION OF PROJECT]

and the Consultant wishes to furnish such technical and professional service to the City and has represented that the Consultant has the education, expertise, capability and the necessary licenses to perform such services;

THEREFORE, the parties mutually agree as follows:

1. Agreement Documents. The following shall be deemed to be a part of this Agreement and incorporated herein.

- A. Notice
- B. Request for Proposals/Bids
- C. Consultant's Proposal/Bid
- D. Schedule of Payments
- E. Timetable for Activities

2. Scope of Services. The Consultant shall provide services in accordance with and as set forth in the Agreement documents.

3. Compensation and Method of Payment. The City shall pay to the Consultant and the Consultant agrees to accept as full compensation for services under this Agreement the total sum of \$_____ in accordance with the Schedule of Payments.

4. Period of Performance. The services to be rendered under this Agreement shall commence within _____ working days of execution hereof. Performance shall be in accordance with the Timetable for Activities. The agreement is a three-year contract for the fiscal years ending June 30, 2016, 2017 and 2018.

5. Independent Contractor. The relationship of the Consultant to the City is that of an independent contractor and in accordance therewith, the Consultant covenants and agrees to conduct itself consistent with such status and that neither it nor its employees, officers or agents

will claim to be an officer, employee or agent of the City or make any claim, demand or application to or for any rights or privileges applicable to any officer or employee of same, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. The parties do not intend the services provided by the Consultant to be a joint venture.

6. The Consultant's Responsibility. The Consultant shall perform the work in a good and workmanlike manner and assumes the risk in performing under this Agreement. The Consultant shall be solely responsible and answerable in damages for all improper work, accidents or injuries to person or property.

7. Recovery of Money. Whenever, under this Agreement, any sum of money shall be recoverable from or payable by the Consultant to the City, the same amount may be deducted from any sum due to the Consultant under this Agreement or under any other contract between the Consultant and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Consultant.

8. Disclosure by City Commissioner. Pursuant to 1968 Public Act 317, a City Commissioner with a pecuniary interest in a business submitting a bid for which the City may enter into a contract or issue a service/purchase order is required to publicly disclose their pecuniary interest prior to awarding the contract or issuing the service/purchase order. A form is provided and should be included with the bid.

9. Indemnity. The Consultant shall indemnify and save harmless the City, its officers, agents and employees from and against any and all claims, liabilities, losses, damages, actual attorney fees and settlement expenses arising from bodily injury or death of any persons and damage or loss of any property resulting or arising out of or in connection with the willful or negligent acts, omissions, or errors of the Consultant or its employees, agents, servants and subcontractors. Losses include damages the City may sustain as a result of the failure of the Consultant to comply with the provisions of this Agreement. The Consultant shall not be obligated to indemnify the City for the City's own negligence. This indemnification provision shall not be limited by reason of insurance coverage of any type. This provision is not intended to waive the defense of governmental immunity that may be asserted by the City in an action against them.

The City hereby reserves the right to select its own counsel, in defense of any matter arising hereunder, and no payment or acknowledgment of liability, loss, fine, penalty or charge shall be made against the City without its express written consent. This indemnity shall survive the expiration and termination of this Agreement. However, this survival shall be no longer than the expiration of the applicable statute of limitation.

The Consultant expressly acknowledges and agrees that this indemnification provision is intended to be as broad and inclusive as is permitted by law and that if any portion thereof is held

invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. This provision shall survive the termination of this Agreement.

10. Insurance. The Consultant agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Consultant will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy. Should any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City. Upon request by the City Clerk, Consultant shall provide a full copy of any insurance policy for insurance coverage required under this agreement within ten (10) days of request. This time frame may be extended by the City Clerk in cases where the policy has not been issued.

A. Commercial General Liability. The Consultant shall acquire and maintain commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence with the City being named as additional insured for all claims arising out of the Consultant's work, including completed operations coverage (if required in the Request for Proposals/Bids). For contracts in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), the Consultant shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

B. Professional Liability. The Consultant shall also acquire and maintain professional liability insurance coverage in the amount of \$1,000,000 minimum per occurrence or, if per occurrence is unavailable to the Consultant, on a claims made basis with a three (3) year reporting period; or in the alternative, the Consultant must continuously maintain the required Professional Liability coverage on a claims made basis for the duration of the project plus three years after project completion. If the Consultant's Professional Liability policy is canceled or not renewed and replacement coverage without an equivalent retro date is not procured, then the Consultant must purchase a three-year Extended Reporting Period at the Consultant's expense (if required in the Request for Proposals/Bids).

C. Workers Compensation. The parties shall maintain suitable workers compensation insurance pursuant to Michigan law and the Consultant shall provide a certificate of insurance or copy of state approval for self-insurance to the City Clerk upon execution of this Agreement.

11. Compliance with Regulations. The Consultant shall comply with all applicable statutes, rules and regulations of all federal, state and local governments and agencies having jurisdiction, and bears the risk of any such authorities or changes thereto.

12. Standard of Conduct. The Consultant shall render all services under this Agreement according to generally accepted professional practices for the intended use of the work or project.

13. The City's Obligation. The City shall provide the Consultant with all information currently available to the City upon request of the Consultant. The City Manager shall designate a City employee to be the City's representative for purposes of this Agreement.

14. Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.

15. Prohibition Against Assignment. This Agreement is intended to secure the service of the Consultant because of its ability and reputation and none of the Consultant's duties under this Agreement shall be assigned, subcontracted, or transferred without the prior written consent of the City Manager. Any assignment, subcontract or transfer of the Consultant's duties under this Agreement must be in writing.

16. Third Party Participation. The Consultant agrees that despite any subcontract entered into by the Consultant for execution of activities or provision of services related to the completion of this project, the Consultant shall be solely responsible for carrying out the project pursuant to this Agreement. The Consultant shall specify in any such subcontract that the subcontractor shall be bound by this Agreement and any other requirements applicable to the Consultant in the conduct of the project unless the City Manager and the Consultant agree to modification in a particular case. The Consultant shall not subcontract unless agreed upon in writing by the City.

17. Third Party Beneficiaries. This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

18. Interest of the Consultant. The Consultant represents that its officers and employees have no interest and covenant that they will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of the Consultant's services and duties hereunder. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed. The Consultant further covenants that neither it nor any of its principals are in default to the City.

19. Covenant Against Contingent Fees. The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee,

excepting bona fide employees. For breach of violation of this warranty, the City shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

20. Qualifications of the Consultant. The Consultant specifically represents and agrees that its officers, employees, agents and contractors have and shall possess the experience, knowledge, and competence necessary to qualify them individually for the particular duties they perform hereunder.

21. Notice. Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified in this Agreement, or at such other address as either party may, from time to time, designate by written notice to the other.

22. Amendments. This Agreement may be modified from time to time, but such modifications shall be in writing and signed by both parties.

23. Termination.

A. For Fault. If the City Manager determines that the Consultant has failed to perform or will fail to perform all or any part of the services, obligations, or duties required by this Agreement, the City Manager may terminate or suspend this Agreement in whole or in part upon written notice to the Consultant specifying the portions of this Agreement and in the case of suspension shall specify a reasonable period not more than thirty (30) days nor less than fifteen (15) days from receipt of the notice, during which time the Consultant shall correct the violations referred to in the notice. If the Consultant does not correct the violations during the period provided for in the notice, this Agreement shall be terminated upon expiration of such time. Upon termination, any payment due the Consultant at time of termination may be adjusted to cover any additional costs occasioned the City by reason of the termination. This provision for termination shall not limit or modify any other right to the City to proceed against the Consultant at law or under the terms of this Agreement.

B. Not for Fault. Whenever the City Manager determines that termination of this Agreement in whole or in part is in the best interest of the City or in the event that termination is required by any state or federal agency, the City Manager may terminate this Agreement by written notice to the Consultant specifying the services terminated and the effective date of such termination. Upon termination, the Consultant shall be entitled to and the City shall pay the costs actually incurred in compliance with this Agreement until the date of such termination.

24. Force Majeure. If because of force majeure, either party is unable to carry out any of its obligations under this Agreement (other than obligations of such party to pay or

expend money for or in connection with the performance of this Agreement), and if such party promptly gives to the other party concerned written notice of such force majeure, then the obligations of the party giving such notice will be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. "Force Majeure" means unforeseeable events beyond a party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of public enemy, acts of the federal government, acts of another party to this Agreement, fire, flood, inclement weather, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, legislation, charter amendments or referendum, orders or acts of civil or military authority, injunctions, or other causes of a similar nature which wholly or substantially prevent performance. If the suspension of work lasts for more than 30 days, the City may terminate this Agreement.

25. Delay. If the Consultant is delayed in the completion of the work due to force majeure or otherwise, the time for completion may be extended for a period determined by the City in its sole discretion to be equivalent to the time of such delay. The City may terminate this Agreement if the delay lasts for more than 30 days. Upon termination by the City, the Consultant shall be entitled to the costs actually incurred in compliance with this Agreement less any costs incurred by the City as a result of the delay until the date of such termination, but not more than the maximum Agreement amount.

26. Interpretation. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. This Agreement was drafted at the joint direction of the parties. The pronouns and relative words used herein are written in the neuter and singular. However, if more than one person or entity joins in this Agreement on behalf of the Consultant, or if a person of masculine or feminine gender joins in this Agreement on behalf of the Consultant, such words shall be interpreted to be in the plural, masculine or feminine as the sense requires. In the event that any term, clause or provision of this Agreement conflicts with any term, clause, or provision contained in any attachments to this Agreement, this Agreement's terms shall prevail.

27. Venue. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Grand Traverse, State of Michigan.

28. Dispute Resolution. If any party has a dispute with another regarding the meaning, operation, or enforcement of any provision of this Agreement, the disputing parties agree to meet and confer to negotiate a resolution of the dispute. They further agree as follows:

A. Mediation. If they are unable to resolve the dispute themselves and before formally instituting any other dispute mechanism, they shall utilize the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring them together in at least one mediation session.

B. Arbitration. If they are unable to resolve the dispute through mediation, it shall be decided by final and binding arbitration according to the rules and procedures of the American Arbitration Association or a similar agreed to organization or arbitrator. Judgment upon the award rendered by the arbitrator may be entered in Circuit Court.

C. Venue. All meetings, hearings and actions to resolve the dispute shall be in Grand Traverse County.

D. Notice. Written notice of a claim shall be given to the other party not later than 90 days after the occurrence giving rise to the dispute becomes known or should have become known. Negotiations and mediation shall occur within 60 days after such notice. Unless a longer time is agreed upon, arbitration must be demanded within 120 days after such notice and, if not, the claim is deemed waived. Arbitration must be demanded within this time limit even if negotiation or mediation has not occurred, but the arbitrator must direct the parties to mediation before issuing an award.

29. Reuse of Documents. All documents and electronic files delivered to the City are instruments of service in respect of the project. Nevertheless, all documents and electronic files delivered to the City shall become property of the City upon completion of the work and payment in full of all monies due the Consultant. Copies of the City-furnished data that may be relied upon by the Consultant are limited to the printed copies (also known as hard copies) that are delivered to the Consultant. Files on electronic media of text, data or graphics or of other types that are furnished by the City to the Consultant are only for convenience of the Consultant. Any conclusion of information obtained or derived from such electronic files will be at the user's sole risk. Economic benefit to the City for having these files is predicated on the files being media form, software release number and hardware operating system number as utilized by the Consultant. Copies of documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files on electronic media of text, data or graphics or of other types that are furnished by the Consultant to the City shall be in a compatible software format for use by the City. Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk. Electronic file copies of drawings will not contain the Consultant's seal or the identification of the Consultant in the title block.

30. Freedom of Information Act. The Consultant acknowledges that the City may be required from time to time to release records in its possession by law. The Consultant hereby gives permission to the City to release any records or materials received by the City as it may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 *et seq.* Provided, however, that the Consultant shall not be held liable for any reuse of the documents prepared by the Consultant under this Agreement for purposes other than anticipated herein.

31. Digital Signatures. The parties hereto acknowledge and agree under the Uniform

Electronic Transactions Act, MCL 450.832, *et seq.* that this Agreement may be executed with the electronic signature of any person authorized and required to sign on behalf of the parties hereto.

32. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

33. No Waiver. No waiver by any party of any default by another party in the performance of any portion of this Agreement shall operate or be construed as a waiver of any future default, whether like or different in character.

34. Entire Agreement. This Agreement, together with all items incorporated herein by reference, constitutes the entire agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein. It is understood that should the Consultant recommend further work concerning the project, the City is under no obligation to engage the Consultant in such work.

35. Authority to Execute. The parties agree that the signatories appearing below have the authority and are duly authorized to execute this Agreement on behalf of the party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF TRAVERSE CITY

By _____
James C. Carruthers, Mayor

By _____
Benjamin C. Marentette, City Clerk

CONSULTANT

By _____
Signature

Name and Title (print or type)

APPROVED AS TO SUBSTANCE:

Martin A. Colburn, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

SCOPE OF SERVICES

[Request for Proposals/Bids and the Consultant's Proposal/Bid inserted here]

SCHEDULE OF PAYMENTS

Payments may be made to the Consultant after satisfactory service and upon receipt of a valid invoice approved by the City.

Final payment shall be made upon completion of all the Consultant's services. Total payment including expenses shall be \$_____.

TIMETABLE FOR ACTIVITIES

The Consultant's services shall commence within ____ working days after execution of this Agreement. The schedule of activities shall follow the City's Request for Proposals/Bids and the Consultant's Proposal/Bid attached hereto and incorporated herein by reference.

Services shall be completed not later than _____.