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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



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June 7, 2016

The City of Traverse City will receive **sealed bids** in the Office of the City Manager, second floor, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan, 49684, until **June 23, 2016 at 2:00 p.m.** for the following:

**CROSS CONNECTION CONTROL PROGRAM  
WATER/WASTEWATER MAINTENANCE DEPARTMENT**  
(Specifications attached)

If the specifications are obtained from the City's website link at: [http://www.traverscitymi.gov/bids\\_and\\_rfps.asp](http://www.traverscitymi.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@traverscitymi.gov](mailto:jdalton@traverscitymi.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 **“Cross Connection Control Program Bid.”**

You must submit **TWO (2) 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, Justin Roy, Water/Wastewater Maintenance Superintendent, between 7:00 a.m. and 3:00 p.m., Monday through Friday at (231) 922-4923 before the bid is submitted.

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

**CITY OF TRAVERSE CITY  
WATER/WASTEWATER MAINTENANCE DEPARTMENT  
CROSS CONNECTION CONTROL PROGRAM**

**INTENT**

The City of Traverse City requests bids from qualified contracting companies for operation of a Cross Connection Control Program in accordance with State of Michigan Public Act 399, 1976, Rule 325.11401 through 325.11407 of the Administrative Code, and The Codified Ordinances of the City of Traverse City, Section 1044.13.

The Contractor 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. Criteria used may include, but will not be limited to: ability, qualifications, timeframe, experience, price, type and amount of equipment, accessories, options, insurance, permits, licenses and overall capability to meet the needs of the City.

The Contractor will be required to enter into a three-year contract with the City for this work. A sample contract is attached to these specs.

Inspections may not be scheduled before all proper permits and insurances have been obtained and submitted to the City.

**SCOPE OF SERVICES**

1. Provide complete cross connection control inspections and data management including:
  - A. Conduct initial surveys/re-inspections, 350 commercial/industrial (non-residential) water customers and 200 residential water customers per year. Conduct compliance surveys and periodic re-inspections (based on the water customer degree of hazard schedule as determined by the City's Cross Connection Control Plan) for the elimination of direct or indirect cross connections and the inventory of testable backflow preventer(s) per Michigan Plumbing Code/Sanitation Standard 4201 and MDEQ Cross Connection Control Rules/Policies. This includes all mailings for survey notifications and non-compliance notices.
  - B. Coordinate and notify customers of inspections and/or re-inspections in writing. Where notices are returned as undeliverable, or as new customers are discovered by the field inspectors, work with City staff on updating the database of customers and customer contact information.
  - C. Inspect, inventory and document all testable & non-testable backflow prevention devices. Document program requirements and relevant code violations during an on-site inspection.

- D. Generate all program notifications for users failing initial inspections and/or re-inspections, informing them of installation requirements and/or testing requirements.
- E. Perform re-inspection for each noncompliant location upon notification of completion of compliance requirements. All compliance inspections will be scheduled and completed as required.
- F. Provide full-time phone support for customer questions by a trained individual. Phone will be staffed during normal business hours Monday through Friday. An automatic message service will be provided for after-hour calls.
- G. All notices sent to the water customer for surveys, non-compliance or testing of backflow prevention assemblies shall be put on the City of Traverse City letterhead and a copy of each notice shall be furnished to the City. A copy of all correspondence concerning City of Traverse City Cross Connection Control Program shall be forwarded to the City.
- H. Coordinate and manage the testing of all testable backflow prevention devices in accordance with MDEQ requirements. Services to include testing notification, requirements, receipt of executed test report, and maintenance of all testing data. All testing results will be maintained for a period of 7 years. Provide up to 6 atmospheric vacuum breakers for hose bibs per facility, not to exceed 2100, at no additional cost.
- I. Activity reporting on the status of the Cross Connection Control Program shall be done quarterly with the City. The reporting will consist of, status of surveys, status of compliance, status of assembly testing and future scheduling.
- J. Provide a comprehensive annual report that includes a program summary, copy of the annual MDEQ report, a detailed listing of all inspection locations, and individual listing of those facilities in, or not in, compliance, inspections completed, sites never inspected, and notifications sent.
- K. Provide progress review meetings with the City's designated representative to discuss program status and specific recommendations as requested.
- L. Inspector will check in/out with the City of Traverse City contact person on a daily basis or as requested during the inspection period. The check in will include a list of inspections scheduled for the day. The check out will include a verbal summary and the number of inspections completed for the day.
- M. All expenses related to "time and travel" for completion of job scope is to be included in the bid.

- N. Facilitate an annual meeting for the public and local backflow prevention assembly testers and plumbers to review the City of Traverse City Cross Connection Control Program including basic information on what a cross connection is and a review of assembly testing and forms to be completed by the testers and where to submit them to.
  - O. Provide up to 1,000 water customer education and public relations materials concerning the Cross Connection Control Program and provide a digital copy to be to the City.
2. Evaluate the City of Traverse City’s Cross Connection Control Plan, make recommendations based on the findings, and assist City staff in the implementation and/or maintenance of a comprehensive Cross Connection Control Program.
  3. The contractor must have a cross connection control software package for program management. The software package must be approved by the City of Traverse City and be able to produce at a minimum the following reports and notices:
    - A. Standard notices and reports to include, inspection, re-inspection, testing, noncompliance and compliance notices.
    - B. Produce management reports for notices, inventory of devices, device tests, inspection schedules, device test schedules, overdue inspections, and device test forms.
    - C. Schedule inspection and device testing notices from internal records, standard procedures, and timing as required by MDEQ approved, City of Traverse City CCC Plan.
    - D. Track testable and non-testable devices and compliance requirements.
    - E. Automatically access all data relevant to a particular facility or period of time.
    - F. Generate the Annual MDEQ Water Supply Cross Connection Control Report and supporting documents.
    - G. Will be made available for purchase by the City of Traverse City if requested, along with any necessary licenses.

**CITY OF TRAVERSE CITY RESPONSIBILITIES**

1. Supply letterhead stationery, envelopes and City forms or City logo as required by program.
2. Current account listing. Contractor will assist City in updating account listings and customer contact information.

## **SAFETY**

The Contractor shall comply with all federal, state and local laws and regulations governing the furnishing and use of all safeguards, safety devices, and protective equipment, and take any other needed actions on his own responsibility as necessary to protect the life and health of employees on the job and the safety of the public and to protect property during the performance of the agreement.

## **WORKMANSHIP**

Only personnel trained and experienced in the various aspects of the applicable operation as required herein shall perform all contractual services.

## **QUALIFICATIONS**

The following criteria will be used as a minimum for approval of this bid:

1. Contractors must demonstrate that they are recognized by the State of Michigan Department of Environmental Quality in the Municipal Cross Connection Control Programs.
2. Contractors must provide written documentation from previous cross connection control survey and municipal inspection work, and show that they have been employed in cross-connection control surveying and municipal inspections in municipalities and/or facilities of similar characteristics.
3. Have a minimum five (5) years' experience of continuous municipal cross connection inspection/survey experience.
4. Provide a minimum of five municipal references where contractor is currently providing cross connection services.
5. Contractor will provide a listing of all staff that will be engaged in this contract with their experience and educational level with respect to cross connection control.

## **PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously maintain adequate protection of the Contractor's work from damage and shall protect all public and private property from injury or loss arising in connection with Contractor's work, and shall defend and save the City harmless from all such damages or injuries occurring because of Contractor's work.

## **PAYMENT**

Payment shall be made within thirty (30) days of satisfactory completion of the work, or in monthly draws against the full amount. The City may withhold payment in whole or in part for:

1. Defective work not remedied, or
2. Damage to City property, or
3. Failure to obtain proper permits and insurance, or
4. Claims filed or reasonable evidence indicating probability or claims being filed, or
5. Failure of the Contractor to make payments properly for material or labor, or
6. A reasonable doubt that the contract can be completed, or
7. Damage to another Vendor.

## **BID PRICING**

Contractor will provide total annual and monthly contract pricing. Contract price will be a lump sum, not-to-exceed, amount.

## **REFERENCES**

1. Provide current client list (list municipal and industrial).
2. Provide a contact person and phone number for each client.

## **PERSONNEL**

1. List personnel who will be responsible for performance and specific qualifications.
2. Indicate office location, staffing, emergency phone numbers.

## **INQUIRIES**

Questions regarding this bid may be directed to Water/Wastewater Maintenance Superintendent for the City of Traverse City, Justin Roy at 231-922-4923.

## **CITY RIGHTS**

The City reserves the right to reject any or all bids/proposals or accept the bid deemed to be in the best interest of the City. The City retains the right to review status of the program on a one-year basis for reauthorization or termination of contract.

All information generated by Contractor remains the property of the City of Traverse City.

## **TERMINATION**

A. For Fault. If the City Manager determines that the Contractor 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 Contractor specifying the portions of the 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 Contractor shall correct the violations referred to in the notice. If the Contractor 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 Contractor 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 Contractor 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 Contractor specifying the services terminated and the effective date of such termination. Upon termination, the Contractor shall be entitled to and the City shall pay the costs actually incurred in compliance with this Agreement until the date of such termination.

### **SILENCE OF SPECIFICATIONS**

The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and only material of the first quality and correct type, size, and design are to be used. All interpretations of these specifications will be made upon the basis of this statement.

### **EXAMINATION OF THE WORK**

Prior to submission of a bid, the Contractor shall make and shall deem to have made a careful examination of the scope, specifications, and contract included herewith. The Contractor shall become informed as to the location and nature of the bid, transportation facilities, general local conditions and all other matters that may affect the cost and completion of the bid.

It is the Contractor's responsibility to become fully aware of the requirements of a comprehensive Cross Connection Control Program. Ignorance of conditions that now exist or that may hereinafter exist, or of any conditions or difficulties that may be encountered in the execution of the work as a result of failure or omission on the part of the Contractor will not be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every respect all of the requirements of the bid, and will not be accepted as a basis for extra compensation or extension of time.

### **INSURANCE**

The Contractor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Contractor 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; and in the case where Contractor is required to name the City as additional insured, shall provide an endorsement stating that the City has been named as an additional insured onto such policy for all claims arising out of the Contractor's work. 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, Contractor 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. Contractor's Commercial Liability Insurance:**

The Contractor 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 Contractor'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 Contractor shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

**B. Workers Compensation Insurance:**

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

**ACCEPTANCE OF BID CONTENT**

The contents of these specifications and the submitted bid will become contractual obligations should the bid be accepted.

The City reserves the right to request information from any contractor submitting a bid without such request indicating acceptance.

The City reserves the right to accept or reject any or all bids, negotiate differences, and to accept the bid or part of the bid deemed to be in the best interest of the City of Traverse City.

**SUBCONTRACTING**

No subcontracting will be allowed for this program.

**CONTRACT**

If selected, the Contractor shall be required to sign a Contractor Agreement (draft attached).

## **BID SUBMITTAL**

### **Interested Contractors must submit two (2) copies of a sealed bid containing:**

1. A completed Bid Summary (attached hereto).
- 2.. A statement of Contractor's previous experience and professional qualifications, identifying the person responsible for drafting the bid and listing at least five (5) recent commercial references.
3. Identification of a contact person to whom inquiries should be directed, with an address, telephone number, and fax number (if available).
4. Specify on a separate sheet of paper any items not possible to accomplish with the above specifications.

**SEALED BIDS CLEARLY MARKED "CROSS CONNECTION CONTROL PROGRAM  
BID MUST BE RECEIVED AT THE FOLLOWING LOCATION NO LATER THAN 2:00  
P.M. on Thursday, June 23, 2016:**

Julie Dalton, Purchasing Agent  
400 Boardman Avenue, 2<sup>nd</sup> floor  
Traverse City, MI 49684

Telefaxed or e-mailed bids/proposals are not acceptable.

Only the successful Contractor will be notified. If you so desire, you may call for results.

**Bidder - Please complete and return**

**BID SUMMARY**

**TITLE: CROSS CONNECTION CONTROL PROGRAM**

**DUE DATE: THURSDAY, JUNE 23, 2016 AT 2:00 PM**

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 Order / Service Order / Contract and to provide proof of the required insurance.

Bidder submits this bid and agrees to meet or exceed all the City of Traverse city's requirements and specifications unless otherwise indicated in writing and attached hereto. 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.

The Cross Connection Control Program project will be for a period of three years beginning in July 2016 for the Department of Public Services, Water/Wastewater Maintenance Division, and will be completed per specifications for a total not-to-exceed cost of:

**Month** \$ \_\_\_\_\_

**Annual** \$ \_\_\_\_\_

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

REFERENCES: (include name of organization, contact person, and daytime phone number).

1. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

2. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

3. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

4. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

5. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

**DRAFT-SAMPLE**  
CITY OF TRAVERSE CITY  
CONTRACTOR 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 "Contractor");

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

[BRIEF DESCRIPTION OF PROJECT]

and the Contractor wishes to furnish such technical and professional service to the City and has represented that the Contractor 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. Contractor's Proposal/Bid
- D. Schedule of Payments
- E. Timetable for Activities

2. Scope of Services. The Contractor 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 Contractor and the Contractor 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.

5. Independent Contractor. The relationship of the Contractor to the City is that of an independent contractor and in accordance therewith, the Contractor 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 Contractor to be a joint venture.

6. The Contractor's Responsibility. The Contractor shall perform the work in a good and workmanlike manner and assumes the risk in performing under this Agreement. The Contractor 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 Contractor to the City, the same amount may be deducted from any sum due to the Contractor under this Agreement or under any other contract between the Contractor 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 Contractor.

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 Contractor 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 Contractor or its employees, agents, servants and subcontractors. Losses include damages the City may sustain as a result of the failure of the Contractor to comply with the provisions of this Agreement. The Contractor 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 Contractor 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 Contractor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Contractor 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; and in the case where Contractor is required to name the City as additional insured, shall provide an endorsement stating that the City has been named as an additional insured onto such policy for all claims arising out of the Contractor's work. 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, Contractor 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 Contractor 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 Contractor'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 Contractor shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

B. Workers Compensation. The parties shall maintain suitable workers compensation insurance pursuant to Michigan law and the Contractor 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 Contractor 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 Contractor 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 Contractor with all information currently available to the City upon request of the Contractor. 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 Contractor because of its ability and reputation and none of the Contractor'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 Contractor's duties under this Agreement must be in writing.

16. Third Party Participation. The Contractor agrees that despite any subcontract entered into by the Contractor for execution of activities or provision of services related to the completion of this project, the Contractor shall be solely responsible for carrying out the project pursuant to this Agreement. The Contractor shall specify in any such subcontract that the subcontractor shall be bound by this Agreement and any other requirements applicable to the Contractor in the conduct of the project unless the City Manager and the Contractor agree to modification in a particular case. The Contractor 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 Contractor. The Contractor 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 Contractor's services and duties hereunder. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed. The Contractor further covenants that neither it nor any of its principals are in default to the City.

19. Covenant Against Contingent Fees. The Contractor 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 Contractor. The Contractor specifically represents and agrees that its officers, employees, agents and consultants 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 Contractor 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 Contractor 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 Contractor shall correct the violations referred to in the notice. If the Contractor 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 Contractor 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 Contractor 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 Contractor specifying the services terminated and the effective date of such termination. Upon termination, the Contractor 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 Contractor 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 Contractor 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 Contractor, or if a person of masculine or feminine gender joins in this Agreement on behalf of the Contractor, 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 Contractor. Copies of the City-furnished data that may be relied upon by the Contractor are limited to the printed copies (also known as hard copies) that are delivered to the Contractor. Files on electronic media of text, data or graphics or of other types that are furnished by the City to the Contractor are only for convenience of the Contractor. 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 Contractor. 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 Contractor. Files on electronic media of text, data or graphics or of other types that are furnished by the Contractor 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 Contractor's seal or the identification of the Contractor in the title block.

30. Freedom of Information Act. The Contractor acknowledges that the City may be required from time to time to release records in its possession by law. The Contractor 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 Contractor shall not be held liable for any reuse of the documents prepared by the Contractor 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 Contractor recommend further work concerning the project, the City is under no obligation to engage the Contractor 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

CONTRACTOR

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

SCHEDULE A  
SCOPE OF SERVICES

The parties agree that the project for the City of Traverse City shall consist of the following duties and obligations:

(Insert City's Specifications and Contractor's Bid here)

**SCHEDULE B  
TIMETABLE FOR ACTIVITIES**

Contractor's services shall commence on July 5, 2016 and will be for a period of three years. The schedule of activities shall follow the specifications and Contractor's Bid attached and incorporated herein by reference.

## SCHEDULE OF PAYMENTS

Payments may be made to the Contractor monthly in the amount of \$\_\_\_\_\_ after satisfactory service and upon receipt of a valid invoice approved by the City.

Final payment shall be made upon completion of all Contractor's services. Total payment including expenses shall not exceed \$\_\_\_\_\_ per year.