



September 10, 2015

Vendor:

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 **September 30, 2015 at 3:00 p.m.** for the following:

Operation of Equipment Rental at Clinch Park
(specifications attached)

Bid documents and specifications may be 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. Bid results are posted on the City website noted above.

Bids must be in a sealed envelope and clearly marked "**Clinch Park Equipment Rental Bid.**"

You must submit **THREE (3) 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 Lauren Vaughn, Parks Superintendent, at (231) 922-4910 ext. 114 before the bid is submitted.

PLEASE SUBMIT PROPOSAL TO:

**Julie Dalton, Purchasing Agent
400 Boardman Avenue, 2nd Floor
Traverse City, MI 49684**

INTENT

It is the intent of this request to solicit proposals for rental of appropriate non-motorized recreational items such as bicycles, kayaks, stand-up paddle boards etc. at Clinch Park (located on the north side of Grandview Parkway, across from Cass Street, Traverse City, MI) during the 2016-2018 summer seasons, and to reserve the option for a renewal of this proposal, mutually agreed upon by both parties, for a period of up to two (2) additional years, in one-year increments.

Vendors submitting proposals are required to tour the facility with City staff prior to submitting a bid to become fully familiar with the facility and requirements set forth in this Request for Proposals (RFP). **The mandatory pre-bid on-site meeting at Clinch Park, 161 E. Grandview Parkway, Traverse City, MI 49684 will take place on Tuesday, September 22, 2015 at 9:30 am.**

The City intends to select proposals on the basis of:

1. Qualifications
2. Quality of product
3. Quality of service(s)
4. Ability to perform the work
5. Relevant experience
6. Type and amount of equipment
7. Highest financial benefit to the City
8. Operation best suited to provide services desired
9. Possession of proper required insurance, licenses, etc.
10. Other pertinent factors the City may deem necessary

The Vendor must have all required licenses and will be required to enter into a Contract with the City for this work. All requirements of the Contract must be met, including workers' maintaining compensation insurance.

PROPOSAL

Vendors submitting proposals shall complete and return the enclosed "Proposal Summary" sheet. As indicated on the summary sheet, proposals shall not be less than Twenty Thousand Dollars (\$20,000.00).

The requirements of this RFP shall be construed to be minimum requirements. All items and labor necessary to operate the rental stand but not specifically mentioned in these specifications shall be construed to be furnished by the Vendor.

SILENCE OF RFP

The apparent silence of any portion of this RFP and any supplemental requirements as to any

details or the omission of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All services are to be first quality.

All interpretations of the RFP shall be made upon the basis of this statement.

The successful Vendor must possess the ability, manpower, equipment and licenses to properly operate an equipment rental stand at Clinch Park for the period of time described above.

ACCEPTANCE OF PROPOSAL CONTENT

The content of the Request for Proposals will become contractual obligations should the proposal be accepted. The City reserves the right to request information from any Vendor submitting a proposal without such request indicating acceptance.

The City reserves the right to accept or reject any and all proposals, negotiate differences, waive any irregularities and to accept the proposal either on an entire or individual basis deemed to be in the best interest of the City.

If selected, the Vendor will be required to enter into a Contract with the City for this work. A draft Contract is attached to the Request for Proposals. All requirements of the Contract must be met.

SUBMITTAL OF PROPOSALS

Vendors interested in contracting with the City for providing recreational equipment rentals at Clinch Park should submit **THREE (3)** copies of their proposal containing:

1. Detailed description of the items or type of operation the Vendor is proposing
2. List of equipment, including date of manufacture
3. Proof of liability insurance as stated under INSURANCE, at least one week prior to operations
4. Proposed sales and/or rental services (The primary purpose of this RFP is to provide for rental services in Clinch Park. Incidental sales of items in the park such as sunscreen or swim diapers will be permitted.)
5. Proposed prices
6. Proposed schedule of operation
7. Method of storing, transporting and displaying the rental items
7. References as listed under REFERENCES
8. Proposal Summary

ECONOMY OF PREPARATION

Each proposal should be prepared simply and should provide in straightforward language the requests in the "SUBMITTAL OF PROPOSALS."

QUESTIONS REGARDING RFP

It is the responsibility of each participating Vendor to insure that its interpretation of the Request for Proposal is consistent with that of the City.

All questions are to be addressed directly to: Lauren Vaughn, Parks Superintendent at (231) 922-4910, ext. 114, Parks and Recreation Department, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

GENERAL REQUIREMENTS FOR EQUIPMENT/MATERIALS

The Vendor will employ competent labor to satisfactorily perform work in accordance with this RFP. *At least one week prior to the commencement of operations, the Vendor shall provide a list of all its employees to the City including names and addresses for the purpose of conducting background checks.*

PARK USAGE

The City Commission from time to time may permit special events or vending activities which may be in direct competition with the Vendor (i.e. the Cherry Festival & Film Festival). The Vendor's services are rendered subject to any City-sanctioned event held in Clinch Park. In the event the City schedules or sanctions an event in Clinch Park that conflicts with the Vendor's services, the City-sanctioned event shall take priority and the Vendor shall modify or suspend its services as necessary to accommodate the City-sanctioned event.

It is expressly understood that the Vendor has no property interest in the park where it is to provide services and may not sublet the park facilities under any circumstances. *It is expressly understood that the Vendor may not expand his services beyond those outlined in this RFP.* All park usage must be arranged pursuant to the City's Parks and Public Land Use Policy.

VENDOR'S RESPONSIBILITIES

The selected Vendor will be required to assume responsibilities for all services listed in this RFP, whether or not the Vendor produces them. Further, the City will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Agreement. This operation cannot be, in any part, subcontracted out.

The Vendor is solely responsible to ensure the safety of all its workers on the job and the compliance with any and all MIOSHA safety requirements and regulations, as well as any health standards and regulations. Vendor is responsible for keeping all "minor work permits," and/or appropriate hiring papers for all employees on hand and in compliance with all state and federal

laws.

The Vendor shall pick up litter in the surrounding area within a 25 to 30-foot radius of the rental stand.

ITEMS TO BE PROVIDED BY THE CITY

Vendor understands that the City shall furnish the building and electricity for the operation of the rental stand. The City will furnish a dumpster in the marina area; however, the Vendor must provide disposal/trash bags for use at the equipment rental area.

All other items required to run an equipment rental operation are the responsibility of the Vendor.

LENGTH AND HOURS OF OPERATION

The Vendor shall operate one (1) equipment rental stand.

The hours of operation will be a minimum of 11:00 a.m. to 5:00 p.m., seven days a week for the entire season. The Vendor may open earlier and close later, but shall not close later than 9:00 p.m. **It is the City's intent, that the season, at a minimum, will be from the Saturday of Memorial Day through Labor Day Monday, but will not be longer than from mid-May through the end of September.**

The City requires an operation which runs in conjunction with the above-listed schedule. IF THE VENDOR'S PROPOSED OPERATION WOULD DIFFER FROM THE ABOVE HOURS PLEASE DESCRIBE FULLY IN PROPOSAL SUMMARY.

PAYMENT TO THE CITY

Payment to the City will be made in four installments per Agreement period, see attached Schedule of Payments.

INSURANCE

Insurance. The Vendor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Vendor 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 Vendor is required to name the City as additional insured, and 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 Vendor'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, Vendor 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 Vendor 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 Vendor'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 Vendor 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 Vendor shall provide a certificate of insurance or copy of state approval for self- insurance to the City Clerk upon execution of this Agreement.

EQUIPMENT RENTAL STAND PRICING

The Vendor must submit as part of its proposal the proposed prices for each rental item. The City will review the proposed list, and make the final decision as to the equipment and services provided. Prior permission by the City is required prior to any changes being made.

No vending machines or food service shall be accepted as a form of equipment rental operations.

Prior permission must be granted by the City to make any in-season changes. New items must then be mutually agreed upon in writing by the City Manager and the Vendor before changes actually take place.

JANITORIAL DUTIES

The Vendor shall regularly monitor and pick up litter within the equipment rental service area.

Vendor shall supply all cleaning equipment and all cleaning supplies necessary for the job required.

Cleaning Schedule

1. The equipment rental stand and surrounding area shall be kept free of litter; rentals shall be placed in an orderly fashion.
2. Garbage must be cleared and hauled away daily, or more often if needed, to the dumpster provided by the City.

3. Vendor must break down and recycle all cardboard boxes, etc. Vendor must not leave any paper, boxes, etc. on the ground or outside along building. All boxes must be removed by end of day.
4. All equipment must be removed at the end of each season.

PLAZA/PARK USE

If the Vendor requires outdoor space to position rental equipment, such requests must be included in the proposal. Clinch Park is a public space and use by the Vendor or Vendor's customers is not exclusive and shall not be construed by the Vendor as exclusive at any time.

BIKE RACKS

Bike racks are provided for public use. Vendor may place additional, vendor-owned bike racks in the area designated on Attachment A (map of Clinch Park) during the summer season.

QUALIFICATIONS

Proposals will not be accepted without qualifications. Qualifications are to include the following:

1. Number of years the Vendor has been involved in providing equipment rentals.
2. List of companies the Vendor has and now provides services for.
List contact person for each company.
3. Does the Vendor have replacement equipment for immediate use upon unforeseen breakdowns?
4. Number of years the Vendor has been in business as a vendor under present name?
5. List of improvements that the Vendor made to increase equipment and personnel productivity in the past four years

REFERENCES

Proposals will not be accepted without references.

References are to include the following:

1. Relationship of the reference to the applicant.
2. Contact person for each company/individual used as a reference.

INSPECTIONS AND PERMITS

The Vendor must post in a visible area, all pertinent licenses and permits. All permits required by the state, local or federal agencies for equipment rental operations must be available for viewing by posting in the equipment rental building.

SPECIAL REQUIREMENTS/CONSIDERATIONS

The successful Vendor will be given a key to the Clinch Park equipment rental building in good faith. The Vendor shall comply with the City's policies and procedures for lockup and security at Clinch Park. These keys may not be duplicated without written permission from the Superintendent of Parks and Recreation. If keys must be replaced due to loss or for any other reason, the Vendor shall be responsible for the cost of replacement of new locks and keys.

ALL LOADING AND UNLOADING OF SUPPLIES AND EQUIPMENT MUST BE DONE FROM THE SIDEWALK THAT LEADS FROM THE MARINA PARKING LOT TO THE EQUIPMENT RENTAL BUILDING.

DAMAGES

The Vendor or the Vendor's employees are responsible for any damage done while operating the equipment rental stand. Damage must be reported within 24 hours to the Superintendent of Parks and Recreation. Failure to do this may result in termination of the contract/services. Damage must be repaired or replaced within a reasonable time period set by the Superintendent of Parks and Recreation.

The equipment rental and surrounding area must be left in as good or better condition. The City is not responsible for any equipment left behind or stolen.

PARKING

Parking is available in certain City parking lots on the south side of Grandview Parkway. Parking passes may be obtained through the Traverse City Parking Services at the Hardy Parking Deck office. One space is available for the designated concession operator.

The Vendor is responsible for any violations they receive or costs associated with parking permits.

PROPER ATTIRE AND ETIQUETTE

The Vendor shall ensure that all employees under the Vendor's jurisdiction are dressed in proper attire (i.e., no tank tops, sheer clothing, no clothing or hats with offensive language or graphic

depictions).

Use of offensive or foul language or gestures is strictly prohibited. The Vendor's employees shall show proper respect for all customers and members of the public.

BUSINESS SIGNAGE

If the Vendor chooses to post a business sign on the equipment rental building, the sign MUST be approved (in size and content) by the Superintendent of Parks and Recreation, prior to installation of sign. Vendor is solely responsible for this sign in all regards (vandalism must be repaired within 24 hours of vandalism occurring).

SAFETY

The Vendor is expected to properly train all persons engaged in performing work under this RFP regarding the safe handling and operation of equipment rental as well as any applicable safety issues. Compliance with MIOSHA standards and regulations is mandatory. Worker violations of these standards and fines are the responsibility of the Vendor.

The Vendor is expected to provide all appropriate safety equipment to its customers such as helmets and life jackets. Any waiver of liability form the Vendor uses or requires for rental equipment shall include the City of Traverse City.

ACCEPTANCE OF PROPOSAL CONTENT

The contents of this RFP and the submitted proposal will become contractual obligations should the proposal be accepted.

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

The City reserves the right to accept or reject any or all proposals, negotiate differences, waive any irregularities and to accept the proposal either on an entire or individual basis deemed to be in the best interest of the City.

ADDITIONAL INFORMATION AND COMMENTS

Include any other information that you believe pertinent, but not specifically asked for elsewhere.

Three copies of a sealed proposal must be received at the following address NO LATER THAN **3:00 P.M.** (LOCAL TIME) ON **SEPTEMBER 30, 2015.**

CLEARLY MARK SEALED PROPOSALS AS "CLINCH PARK EQUIPMENT RENTAL BID" AND SEND TO:

**JULIE DALTON
PURCHASING AGENT
CITY MANAGER'S OFFICE
SECOND FLOOR, 400 BOARDMAN
TRAVERSE CITY, MI 49684**

Telefaxed and e-mailed proposals are not acceptable.

TERMINATION

The City requires the Vendor to operate in good faith financially. If for any reason, the City finds this not to be the case, Contract termination will be immediate.

PROPOSAL SELECTION

All proposals will be reviewed by representatives of the City. If a vendor is accepted for an interview, the actual persons conducting the equipment rental operation at Clinch Park must participate in the interview.

ADDITIONAL QUESTIONS

Regarding items mentioned in the RFP, all questions are to be directed to: Lauren Vaughn, Parks Superintendent, (231) 922-4910, ext. 114, Parks and Recreation Department, between the hours of 9:00 a.m. - 4:00 p.m., Monday through Friday.

SAMPLE CONTRACT

CITY OF TRAVERSE CITY VENDOR AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2015, 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, include State of incorporation) (the "Vendor");

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

[BRIEF DESCRIPTION OF PROJECT]

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

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

3. Compensation and Method of Payment. The Vendor shall pay to the City and the City 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 Vendor to the City is that of an independent contractor and in accordance therewith, the Vendor 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 Vendor to be a joint venture.

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

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 Vendor 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 Vendor or its employees, agents, servants and subcontractors. Losses include damages the City may sustain as a result of the failure of the Vendor to comply with the provisions of this Agreement. The Vendor 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 Vendor 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 Vendor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Vendor 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 Vendor is required to name the City as additional insured, and 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 Vendor'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, Vendor 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 Vendor 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 Vendor'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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor with all information currently available to the City upon request of the Vendor. 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 Vendor because of its ability and reputation and none of the Vendor'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 Vendor's duties under this Agreement must be in writing.

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

19. Covenant Against Contingent Fees. The Vendor 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 Vendor. The Vendor 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 Vendor 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 Vendor 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 Vendor shall correct the violations referred to in the notice. If the Vendor 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 Vendor 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 Vendor 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 Vendor specifying the services terminated and the effective date of such termination. Upon termination, the Vendor shall be entitled to and the City shall pay the costs actually incurred in compliance with this Agreement until the date of such termination. Upon termination, the Vendor shall be entitled to and the City shall pay a pro-rated amount of any amount pre-paid by the Vendor under this Agreement.

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 Vendor 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 Vendor 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 Vendor, or if a person of masculine or feminine gender joins in this Agreement on behalf of the Vendor, 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 may 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 Vendor. Copies of the City-furnished data that may be relied upon by

the Vendor are limited to the printed copies (also known as hard copies) that are delivered to the Vendor. Files on electronic media of text, data or graphics or of other types that are furnished by the City to the Vendor are only for convenience of the Vendor. 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 Vendor. 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 Vendor. Files on electronic media of text, data or graphics or of other types that are furnished by the Vendor 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 Vendor's seal or the identification of the Vendor in the title block.

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

By _____
Benjamin C. Marentette, City Clerk

VENDOR

By _____
Signature

APPROVED AS TO SUBSTANCE:

Martin A. Colburn, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

Name and Title (print or type)

SCOPE OF SERVICES

1. The Vendor shall provide for recreational equipment rentals in Clinch Park.
2. The Vendor's Proposal and the City's RFP are hereby incorporated herein by reference.
3. The Vendor will provide access to all concession areas for authorized representatives of the City, and any other authority for the purpose of inspection and/or maintenance. The Vendor is responsible for any fines placed upon the Vendor for infractions occurring as a result of the Vendor's actions.
4. Use of Other Premises: The Vendor shall have general use of the park grounds in the areas specified on **Attachment A** to carry out its services in cooperation with the Parks & Recreation Division and the general public. Vendor may utilize the north portion of the Aquatics Building for storage. Vendor may utilize the most easterly, hash-marked parking space south of Marina Drive as indicated on **Attachment A** for parking one kayak trailer. Vendor may place removable bike racks in the area specified on **Attachment A** for storage of its rental bicycles. Vendor may store kayaks, boats or other equipment for rental purposes on the retaining wall embankment south of the boat launch as indicated on **Attachment A**. Vendor may use the kayak rental shed located just south of the boat launch as specified on **Attachment A** for equipment rental. Vendor may store equipment in the Aquatics Building and rental stand during the time that the Vendor is open according to the Timetable for Activities. All equipment must be removed from Clinch Park by November 1 of each year.
5. The Vendor shall use the premises for its services and the storage and maintenance of equipment related to said activities and for no other purpose without prior written consent of the City.

TIMETABLE FOR ACTIVITIES

Vendor services shall be provided at a minimum beginning on the Saturday before Memorial Day and ending on Labor Day of each year (the "summer season") for 2016, 2017 and 2018. The period of operation may be extended from mid-May through the end of September if mutually agreed upon in writing by the parties. Hours of operation for Vendor services will be a minimum of six hours per day, 11:00 AM to 5:00 PM, seven days a week for the entire season. The Vendor will have the option of opening earlier or closing later in the day, but shall close no later than 9:00 PM.

The initial term of this Agreement begins during the 2016 summer season at Clinch Park and continues through the 2018 summer season at Clinch Park. The term may subsequently be renewed for two (2) one year terms in increments of one year as authorized by the City Manager by a letter agreement prior to the beginning of each season. If the Vendor wishes to renew as described herein it must provide notice to the City at least 120 days prior to the Saturday before Memorial Day 2019, which is the beginning of the 2019 summer season at Clinch Park.

SCHEDULE OF PAYMENTS

The Vendor agrees to pay the City a minimum of Twenty Thousand Dollars (\$20,000.00) per season for the right to operate an equipment rental stand at Clinch Park. Payment to the City shall be as follows:

The City shall invoice the Vendor as follows and the Vendor shall pay each invoice within thirty (30) days:

- a. June 15
- b. July 15
- c. August 15
- d. September 15

Payment shall be made according to the instructions on the invoice.

Should this Contract be renewed by the Vendor and the City, successive years' payment amount and schedule shall be agreed upon by the City and Vendor at the time of renewal.

DISCLOSURE BY CITY COMMISSIONER

I would like to make the following disclosure:

The City of Traverse City may be entering into a contract with or issuing a service/purchase order to:

_____, and

(Describe your pecuniary interest, see examples below)

As I have a pecuniary interest, I will be abstaining from deliberations and the vote on that contract or service/purchase order.

Signature

Print name

Date

Pecuniary Interest. In the Disclosure you must state your pecuniary interest. Examples are given below, but you need to customize this depending on your circumstances:

This is a company in which I have an ownership interest.

My spouse owns the business.

I am a subcontractor on this project

Bidder - Please complete and return the following pages

PROPOSAL SUMMARY

TITLE: Operation of Equipment Rental at Clinch Park

DUE DATE: SEPTEMBER 30, 2015 at 3:00 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.

Bidder: Please complete and return this sheet – page 3

Proposed Hours of Operation: _____

Proposed Rentals, Equipment and/or Items and pricing to the public:

Proposed Schedule for Rentals:

VENDOR QUALIFICATIONS:

1. Number of years the Vendor has been involved in providing equipment rentals _____

2. List the companies that the Vendor has and now provides services for and contact person for each company along with phone number.

3. Does the Vendor have replacement equipment for immediate use upon unforeseen breakdowns or vandalism? _____

4. Number of years the Vendor has been in business as a vendor under present name. _____

5. Improvements that the Vendor has made to increase equipment and personnel productivity in the past four years. _____

Bidder: Please complete and return this sheet – page 4

PROPOSAL – EQUIPMENT RENTAL SERVICES

Clinch Park: Proposals shall not be less than Twenty Thousand Dollars (\$20,000.00) annually.

Year One: \$20,000/year Plus \$ _____/year = TOTAL BID/YEAR 1 \$ _____

Year Two: \$20,000/year Plus \$ _____/year = TOTAL BID/YEAR 2 \$ _____

Year Three: \$20,000/year Plus \$ _____/year = TOTAL BID/YEAR 3 \$ _____

Is the Insurance Attached: Yes No

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone Fax

City, State, Zip

Sole proprietorship/partnership/corporation

If corporation, State of incorporation

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

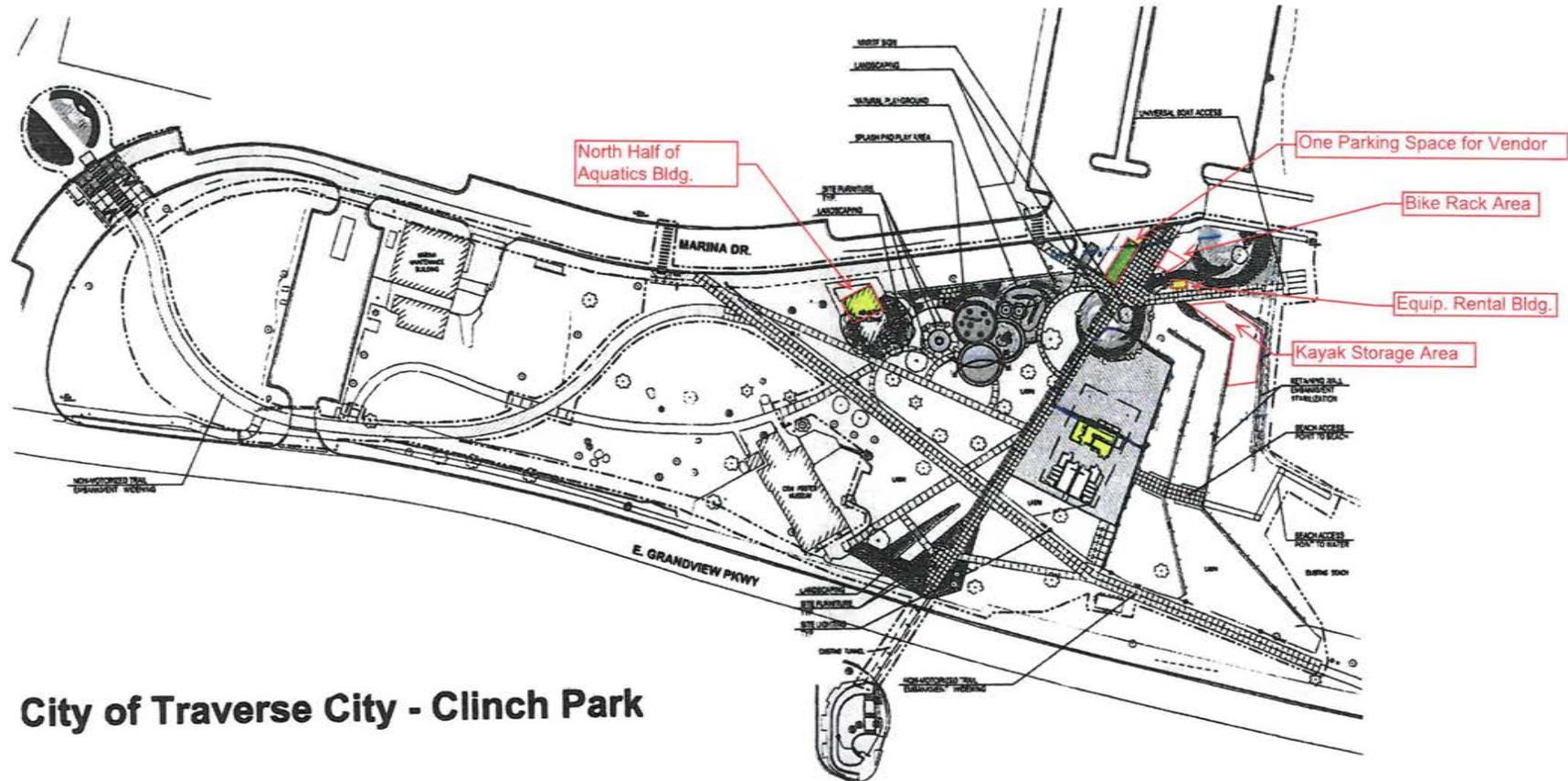
1. _____
Contact Person: _____ Telephone: _____

2. _____
Contact Person: _____ Telephone: _____

3. _____
Contact Person: _____ Telephone: _____

ADDITIONAL REFERENCES LIST AND ALL ADDITIONAL COMMENTS MUST BE ATTACHED.

Appendix A - Equipment Rental



City of Traverse City - Clinch Park