



July 1, 2014

Bidder:

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 **Monday, July 21, 2014, at 2:00 p.m.** for the following:

**DEVELOPMENT AND IMPLEMENTATION OF A
LEGALLY VALIDATED COMPREHENSIVE HEALTH & FITNESS PROGRAM
INCLUDING TESTING TAILORED SPECIFICALLY FOR FIREFIGHTERS**
(specifications attached)

If the specifications are obtained from the City's new updated 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. If you so desire, you may call for results.

You must indicate on the outside of the sealed envelope that the bid is for the **“Firefighter Health & Fitness Program Proposal.”**

You must submit **SIX (6) 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 James Tuller, Fire Chief, at (231) 922-4930 ext. 2 before the bid is submitted.

PLEASE SUBMIT BID TO: Julie Dalton, Purchasing Agent
City Manager's Office, Governmental Center
Second Floor, 400 Boardman Avenue
Traverse City, MI 49684

**REQUEST FOR PROPOSALS
DEVELOPMENT AND IMPLEMENTATION OF A
LEGALLY VALIDATED COMPREHENSIVE HEALTH & FITNESS PROGRAM
INCLUDING TESTING TAILORED SPECIFICALLY FOR FIREFIGHTERS
CITY OF TRAVERSE CITY FIRE DEPARTMENT**

1. INTENT; BACKGROUND.

The City of Traverse City (City) is requesting proposals from qualified Exercise Physiologists or greater (Consultant) for the development and implementation of a legally validated comprehensive health & fitness program including testing tailored specifically for Firefighters (Program) per the terms of the specifications in the attached. The Program is anticipated to begin in August 2014.

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

Sealed proposals will be accepted by Julie Dalton, City Manager's Office, 2nd Floor, Governmental Center, 400 Boardman Avenue, Traverse City, MI 49684, until **Monday, July 21, 2014 @ 2 PM.**

There will be a **Pre-proposal Conference on Wednesday, July 16, 2014 at 2:00 PM** at Fire Station #1, 500 West Front Street, Traverse City, MI. All interested parties are strongly encouraged to attend.

In order to assist the Consultant in formulating their proposal, the City is attaching Article 31 Health and Fitness Program from the current Traverse City Firefighters Association Agreement (Attachment A).

If selected, the Consultant will be required to enter into a Consultant Agreement for a period of one year, with automatic renewals for one-year periods unless contract is terminated by either party by providing the other party with a thirty-day written notice. A draft agreement is attached (Attachment B).

If selected, the Consultant will be required to grant to the City an exclusive, perpetual license in the Program developed by the Consultant for the City to use, reproduce, amend, modify, copy, publish, distribute, and create and reproduce derivative works without limitation. Consultants submitting proposals are required to include a sample of a program that they have written.

The City requires a Business Associate Agreement with any person or vendor that the City contracts or has a relationship with where personal health information may be disclosed. Therefore, if selected, the Consultant shall be required to execute the City's Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate Agreement. A draft agreement is attached (Attachment C).

2. PROPOSAL INSTRUCTIONS.

A. Examination of Documents. Before submitting a proposal, Consultant shall carefully examine the specifications and shall fully inform themselves as to all existing conditions and limitations and shall indicate in an itemized form on the proposal, the sum to cover the cost of all items.

B. Withdrawal of Proposals. Any Consultant may withdraw their proposal, either personally or by written request, at any time prior to the scheduled closing time of receipt of proposals.

C. Proposal Form. Each proposal shall be submitted in a sealed envelope bearing the title of "Health and Fitness Program Proposal" and the name of the Consultant.

Alternative written proposals submitted may be considered; however, final determination as to suitability and compliance with specifications of the City shall be with the City. Proposals submitted not meeting all of the specifications may be rejected. Oral proposals or modifications will not be considered.

Six (6) copies of the proposal shall be delivered by the time, and to the place, stipulated in the RFP. It is the sole responsibility of the Consultant to see that its proposal is received within the proper timeframe. Any proposal received after the proposal opening date and time shall be returned to the Consultant.

The proposal should include the full name and address of your organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work. Include the name of the person to whom inquiries should be directed, with an address and telephone number, identifying the person to be responsible for this service.

D. The proposal shall separately identify the total cost for developing the Program and the total cost for implementation of the Program. The City reserves the right to accept all or a portion of the proposal. If the City accepts only that portion of the proposal for the development of the Program, the Consultant shall be responsible for annually revising the Program as necessary and training for implementation of the Program. Therefore, the proposal for developing the Program should include as alternate costs the costs for these services.

E. If unusual circumstances are encountered making it necessary for the Consultant to do additional work over and above that described in the RFP, the Consultant shall immediately report such conditions to the City Manager or his/her designee. Both parties may elect to negotiate such additional compensation as appears justified within the terms of the contract.

F. If selected, the Consultant shall be required to sign the agreements in the draft forms attached.

3. PROPOSAL SPECIFICATIONS.

Consultants submitting proposals shall consider the information hereunder.

The City is seeking a Consultant for the development and implementation of a legally validated comprehensive health & fitness program including testing tailored specifically for Firefighters (Program) to the standards set as determined by the City. Consultants submitting proposals are required to include a sample of a program that they have written. There are about 22 Firefighter personnel in the Fire Department that would fall under this Program.

The Firefighters have been under the terms of a health & fitness evaluation program for many years. There is on-site cardio and strength training equipment for Firefighters' use in attaining health and fitness objectives. Elements involved in the program are:

City

Health & Fitness Committee

City's Doctor

Consultant

Lab Physicals

Fitness Testing

Scores & Results

Education & Ongoing Coordination

Annually, our designated Doctor will order lab work and conduct employee physicals. The results of the lab and physicals are shared with the Consultant. The Consultant coordinates the fitness testing. The scores are tabulated by the Consultant. Scores along with supporting documents are sent to the City Manager or his/her designee.

Consultant:

- Develops and implements a Program, based on and in accordance with the American College of Sports Medicine, The Cooper Institute, the NFPA 1582 and other Associations/Programs to update and continue the validity of the internal Program. The Program shall include but not be limited to Body Composition, Cardiovascular Endurance (Monarch bicycle ergometer test), Muscular Development (grip strength, bench press, leg press, bench repetitions and abdominal curls) and Flexibility (trunk flexion and shoulder flexion).
- Recommends changes to the City's Program. Works with designated Doctor, Fire Chief and City Manager or his/her designee along with the Health & Fitness Committee.
- Consultant and Doctor will propose recommended Program changes to the Health & Fitness Committee for consideration.
- Program changes adopted by the committee for the Program will be identified in writing by the City/Consultant and incorporated into the Program in writing or as an amendment to the document.

- Appropriate personnel and/or Consultant will be notified of any and all changes to the Program.

Consultant Responsibilities:

On an annual basis, the Consultant will ensure that the current Program is updated and will coordinate health/wellness, fitness and measurement, and education for the Firefighters to include, but not be limited to:

Evaluation

- A. Based upon health/wellness scores, will coordinate quarterly assessments for individual benchmarking and how well the employee is applying himself/herself to attain personal goals and objectives.
- B. Based upon health and fitness scores, will coordinate with Doctor to establish health and fitness prescriptions for individual employee improvements.
- C. Sets individual goals and objectives and coordinates measurements for these goals and objectives.
- D. Coordinates with appropriate staff and Doctor to assist in recovery of those individuals returning to work from an on, or off, the job illness/injury.

Reports, Reviews and Documentation

- A. Will calculate, tabulate, compile and document all evaluation results.
- B. Will document and review with employee the results of their health and fitness evaluation.
- C. Will document and review personal health and fitness goals and objectives with employee.
- D. Will provide documentation of all employees' results to Doctor, Fire Chief and City Manager or his/her designee.
- E. Will monitor, document, and report individual and group trends, averages, strengths and weaknesses to those identified in "D" above.

Education

- A. Coordinates nutrition and cooking education.

- B. Provides instruction on the fundamentals of proper strength training, aerobic training, flexibility and stretching.
- C. Demonstrates the proper use of onsite cardio equipment, free weights, and weight machines.
- D. Provides education on other alternative methods to reach personal objectives and goals.
- E. Provides risk factor reduction education, i.e., stress management, smoking cessation, etc.

Monitoring of Health and Fitness Program

- A. Is responsible for staying informed, trained, and certified (where applicable) regarding current research data in order to effectively monitor and update Program, methods and evaluation techniques, norms and standards.
- B. Will present recommendations, along with documentation, for updates and changes of current Program to Doctor, Fire Chief and City Manager or his/her designee.

4. QUALIFICATIONS.

A. A Consultant may be required before the award of the contract to demonstrate to the satisfaction of the City that it has the necessary ability and resources to provide the services specified herein in a satisfactory manner. A Consultant may be required to give additional past history and references in order to satisfy the City in regard to the Consultant's qualifications. The City may make reasonable investigations deemed necessary and proper to determine the ability of the Consultant to perform the work, and the Consultant shall furnish to the City all information for this purpose that may be requested. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the Consultant fails to satisfy the City that the Consultant is properly qualified to carry out the obligations of the agreement and to complete the work described therein. Evaluation of the Consultant's qualifications shall include:

- 1. The ability, capacity, skill, educational certification, and financial resources to perform the work or provide the service required.
- 2. The ability of the Consultant to perform the work or provide the service within the timeframes and structure of the City.
- 3. The character, integrity, reputation, experience and involvement of the Consultant in the arena of health and fitness.

B. The opening and reading of the proposals shall not be construed as an acceptance of the Consultant as a responsible Consultant. The City reserves the right to determine the

responsibility of the Consultant from its knowledge of the Consultant's qualifications or from other sources.

C. Lack of competence as revealed by financial, education and/or professional experience, or statements made as to qualifications or professional ability may be considered sufficient for the disqualification of a Consultant and the rejection of Consultant's proposal.

5. SUBCONTRACTING.

The selected Consultant will be required to assume responsibility for all services offered in the proposal. Subcontracting will be allowed in providing services, as long as it is mutually agreeable between the City and the Consultant. Subcontractors must clearly have the expertise to which Consultant subcontracts with. Costs for such will be borne by the Consultant.

6. INFORMALITIES AND IRREGULARITIES.

The City reserves the right to reject any and all proposals, waive defects or irregularities, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the City. The City does not intend to recommend award of a contract solely on the basis of any response made to this request or otherwise pay for the information solicited or obtained.

7. SILENCE OF SPECIFICATIONS.

The apparent silence of any portion of this Request for Proposals 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 Request for Proposals shall be made upon the basis of this statement.

8. PROPOSAL SELECTION.

All proposals submitted to the City Manager's Office by the proper date and time will be reviewed. If a Consultant is requested for an interview, the actual persons providing the services must participate in the interview.

9. COMPENSATION.

Payment shall be made bi-annually upon Consultant's satisfactory performance as determined by the City.

10. INDEPENDENT CONTRACTOR.

The relationship of the Consultant to the City is that of an independent contractor and in accordance therewith. Consultant shall covenant and agree 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, per the contract.

The Consultant agrees to hold the City harmless from any and all physical injury to the person or damage to the property of, or any loss of expense incurred by, any employee of the City which arises out of or pursuant to the Consultant's performance under this agreement. The Consultant shall also hold the City harmless from any claims by the Consultant's subcontracts and or employees or interns arising out of, or pursuant to, the Consultant's and/or subcontracts, employees or interns. The Consultant agrees to hold the City harmless of any injuries to persons, or any injury, loss, expense, or damage to property caused by the Consultant's persons, per the contract.

11. INSURANCE.

The Consultant shall acquire and maintain during this contract commercial general liability insurance in the amount of \$1,000,000 per occurrence naming the City as additional insured. The Consultant agrees not to change and agrees to maintain such insurance throughout the period of performance of this Agreement. Consultant will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that a 10-day notice will be given to the City prior to termination or any change in the policy. Should any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City.

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

12. QUESTIONS.

It is the responsibility of each Consultant to insure that their interpretation of the RFP is consistent with the City's intent. **All questions are to be addressed to James Tuller, Fire Chief, at (231) 922-4930 (ext 2) between 8:00 a.m. and 5:00 p.m. Monday through Friday or at the pre-proposal conference.** Only the successful Consultant will be notified. If you desire, you may call for results.

13. PROPOSAL SUBMITTAL.

Six (6) copies of the proposal must be received at the following address no later than **Monday, July 21, 2014.** Proposals should be addressed to:

PLEASE SUBMIT TO: Julie Dalton, Purchasing Agent
City Manager's Office, Governmental Center
Second Floor, 400 Boardman Avenue
Traverse City, MI 49684

You must indicate on the outside of the sealed envelope that the proposal is the “**Firefighter Health & Fitness Program Proposal.**”

You must submit the proposal to the City Manager's Office prior to the above-indicated time and date or the proposal will not be accepted. Faxed or E-Mailed proposals will not be accepted.

Bidder - Please complete and return

BID SUMMARY

TITLE: DEVELOPMENT AND IMPLEMENTATION OF A LEGALLY VALIDATED COMPREHENSIVE HEALTH & FITNESS PROGRAM INCLUDING TESTING TAILORED SPECIFICALLY FOR FIREFIGHTERS

DUE DATE: MONDAY, JULY 21, 2014 @ 2 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.

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

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

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

- (a) conviction of a criminal offense incident to the application for or performance of a contract;
- (b) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense which currently, seriously and directly reflects on the Bidder's business integrity;
- (c) conviction under state or federal antitrust statutes;
- (d) attempting to influence a public employee to breach ethical conduct standards; or

(e) conviction of a criminal offense or other violation of other state, local, or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the City indicates that the bidder is unable to perform responsibility or which reflects a lack of integrity that could negatively impact or reflect upon the City of Traverse City, including but not limited to, any of the following offenses or violations of:

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

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

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

Bidder agrees that the bid may not be withdrawn for a period of thirty (30) days from the actual date of the opening of the bid.

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone

Fax

City, State, Zip

Sole proprietorship/partnership/corporation

If corporation, state of corporation

REFERENCES: (include name of organization, address, contact person, daytime phone number, and length of time services have been performed).

1. _____

2. _____

3. _____

SUBCONTRACTORS: (include name of organization, address, contact person, daytime phone number, and services to be performed).

1. _____

2. _____

3. _____

ATTACHMENT A

ARTICLE 31

HEALTH AND FITNESS PROGRAM

Section 1 - General: Performing emergency activities safely and effectively requires a level of conditioning that cannot be achieved without a structured and rigorous health management and exercise routine. A Health & Fitness Program for the TCFD employees will include medical screening, exercise, assessment, and health promotion.

Section 2. A tailored well-structured health and fitness program shall be in writing. Implementation of this program shall be in the following manner:

- A) A health and fitness committee shall be established. Members should include:
 - Management person (selected by the City Manager)
 - Chief Officer
 - Representative from Fire Officers (selected by the Fire Chief)
 - Representative from Firefighters Association (selected by the Union President)
 - Medical Doctor (will be the City's recognized physician)
 - Exercise Physiologist and/or Physical Therapist (chosen by the majority members of the committee)

A Tester (selected by the committee subject to the terms of the City's Purchasing Policy -competitive bid) will be selected to conduct the assessment.
- B) Policy and objectives shall be established by the committee.
- C) Research on local, state and federal regulations shall be conducted to avoid any possible legal obstacles.
- D) Program emphasis shall be placed on individual development and concern for health.
- E) Participation shall be mandatory and involve all personnel.
- F) Time for program participation shall be allocated in the work schedule.
- G) Preliminary screening shall be performed on all personnel.
- H) The program shall build in flexibility.
- I) The program shall develop good lines of communication.
- J) Periodic monitoring of person's progress, in addition to a regularly scheduled exam is a must. This information shall be made available to the participant.

Section 3. Health and Fitness Standards:

- A) The health and fitness test and standards shall be developed and recommended by majority vote of the Health and Fitness Committee to the Fire Chief, and based on a minimum score of 55% for each employee. Health and Fitness Evaluations shall be performed on all members annually.
- B) Physical handicaps and testing procedure incompatibilities shall be considered by the Health and Fitness Committee. Alternate tests may be approved by the committee in determining an employee's health and fitness score.

Section 4 - Personnel Actions: All Traverse City Fire Department employees must maintain a minimum of 55% score on the health and fitness testing. Failure to meet the minimum will result in the following actions:

- A) First Failure: Written Reprimand, counseling and a personal health and exercise prescription, and retest in six (6) months.
- B) A Second Failure will result in employee's health and fitness to be evaluated by the Medical Doctor to determine whether any physical or mental limitation may exist. If none exists the employee will receive one (1) day off without pay and be retested in six (6) months. A Third Failure will result in two (2) days off without pay. A Fourth Failure will result in three (3) days off without pay.

An employee who increases their score to above 55% shall be considered as if they had never failed.

Section 5 - Incentives: Beginning with health and fitness testing 2004/2005, and thereafter, all Traverse City Fire Department employees who attain a score of 87.0% or higher will receive one thousand dollars (\$1,000). Employees who attain a score of 75.0% to less than 87% will receive seven hundred fifty dollars (\$750); and for 65% to less than 75% five hundred dollars (\$500).

Section 6 - Repeal of Punishment: Section 4 in its entirety shall be eliminated and considered invalid if the Fire Chief fails to meet the 55% minimum standard.

ATTACHMENT B

DRAFT

CITY OF TRAVERSE CITY CONSULTANT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2014, by and between the CITY OF TRAVERSE CITY, a Michigan municipal corporation, of 400 Boardman, Traverse City, Michigan, 49684, (the "City"), and _____, a (sole proprietorship/partnership/corporation) of _____, (if a corporation, state of incorporation) (the "Consultant");

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

[BRIEF DESCRIPTION OF PROJECT]

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

THEREFORE, the parties mutually agree as follows:

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

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

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

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

4. Period of Performance. The services to be rendered under this Agreement shall commence within _____ working days of execution hereof. Performance shall be in accordance with the Timetable for Activities.

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

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

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

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

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

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

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

The Consultant expressly acknowledges and agrees that this indemnification provision is intended to be as broad and inclusive as is permitted by law and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. This provision shall survive the termination of this Agreement.

10. Insurance. The Consultant agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Consultant will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy; and in the case where Consultant 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 Consultant'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.

A. Commercial General Liability. The Consultant shall acquire and maintain commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence with the City being named as additional insured for all claims arising out of the Consultant's work, including completed operations coverage (if required in the Request for Proposals/Bids).

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

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

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

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

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

14. Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of

employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.

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

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

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

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

19. Covenant Against Contingent Fees. The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty, the City shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

21. Notice. Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to

the respective party at its address as specified in this Agreement, or at such other address as either party may, from time to time, designate by written notice to the other.

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

23. Termination.

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

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

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

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

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

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

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

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

B. Arbitration. If they are unable to resolve the dispute through mediation, it 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 Consultant. Copies of the City-furnished data that may be relied upon by the Consultant are limited to the printed copies (also known as hard copies) that are delivered to the Consultant. Files on electronic media of text, data or graphics or of other types that are furnished by the City to the Consultant are only for convenience of the Consultant. Any conclusion of information obtained or derived from such electronic files will be at the user's sole risk. Economic benefit to the City for having these files is predicated on the files being media form, software release number and hardware operating system number as utilized by the Consultant. Copies of documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files on electronic media of text, data or graphics or of other types that are furnished by the Consultant to the City shall be in a compatible software format for use by the City. Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk. Electronic file copies of drawings will not contain the Consultant's seal or the identification of the Consultant in the title block.

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

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

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

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

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

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

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

CITY OF TRAVERSE CITY

By _____
Michael Estes, Mayor

By _____
Benjamin C. Marentette, City Clerk

CONSULTANT

By _____
Signature

Name and Title (print or type)

APPROVED AS TO SUBSTANCE:

Jered Ottenwess, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

SCOPE OF SERVICES

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

SCHEDULE OF PAYMENTS

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

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

TIMETABLE FOR ACTIVITIES

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

Services shall be completed no later than _____.

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*

ATTACHMENT C
CITY OF TRAVERSE CITY
BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered into on this ____ of _____, 20__, by and between _____ (“Business Associate”) and City of Traverse City.

WHEREAS, by virtue of the services that Business Associate performs for the Covered Entity, Business Associate is a “business associate,” as that term is defined at 45 CFR §160.103;

WHEREAS, in connection with Business Associate’s provision of services Covered Entity may disclose to Business Associate Protected Health Information as defined below, and

WHEREAS, pursuant to the final regulations promulgated to the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, Business Associate agrees to undertake certain responsibilities as required by those Regulations,

NOW, THEREFORE, it is agreed as follows:

1. Definitions. When used in this Agreement, the following terms have the following meanings:

(a) “Business Associate” shall mean the Business Associate named above and shall include all successors and assigns, affiliates, subsidiaries (as applicable), and related companies of the Business Associate.

(b) “EDI Rule” shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.

(c) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

(d) “Individual” shall have the same meaning as the term “Individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(e) “Privacy Rule” shall mean the Standards for Privacy of Individual Identifiable Health Information as set forth at 45 CFR Part 160 and 164 Subparts A and E.

(f) "Protected Health Information (PHI)" shall have the same meaning as the term "protected health information" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.501.

(h) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

Terms used, but not defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 164.103 and 164.501.

2. Obligations and Activities of Business Associate Regarding PHI.

(a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity, as soon as reasonably practicable, any use or disclosure of PHI not provided for by this Agreement.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designed by Covered Entity or, as directed by Covered Entity, to an Individual in order meet the requirements under 45 CFR §164.524.

(f) Business Associate agrees to make any amendment to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(g) Business Associate agrees to make internal practices books, and records relating to the use and disclosure of PHI available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any request by the Secretary to conduct an investigation with respect to PHI received from the Covered Entity.

(h) Business Associate agrees to document any disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(i) Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (h) above of the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

(j) Business Associate agrees to use or disclose PHI pursuant to the request of Covered Entity; provided, however, that Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate.

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities, or services for, or on behalf of, Covered Entity as previously agreed to by the parties provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI if such disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B).

4. Obligations of Covered Entity Regarding PHI.

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and discloses.

(c) Covered Entity shall notify Business Associate of any restriction to the use for disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.

(d) Covered Entity and its representatives shall be entitled on ten (10) business days prior written notice to Business Associate, to audit Business Associate from time-to-time to verify Business Associate's compliance with the terms of this Agreement. Covered Entity shall be entitled and enabled to inspect the records and other information relevant to Business Associate's compliance with the terms of this Agreement. Covered Entity shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with such entity's normal operations.

5. Compliance with EDI Rule and other Aspects of Administration Simplification Regulations.

Business Associate agrees that, on behalf of Covered Entity, it will perform any transaction for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of Covered Entity.

Business Associate agrees that it will comply with all applicable EDI standards no later than the date that the EDI Rule becomes effective with regard to Business Associate. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA, no later than the date such provisions become effective with regard to Business Associate.

6. Amendment.

The parties agree to take any action necessary to amend the Agreement from time to time as is necessary for them to comply with the requirements of the Administrative Simplification Subtitle HIPAA. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This agreement shall not be amended except by written instrument executed by Covered Entity and Business Associate.

7. Term and Termination.

(a) *Term.* Except as set forth in Section 5, this Agreement shall be effective as of the date first above written and shall terminate when the Business Associate is no longer performing a service for the City involving the use or disclosure of PHI or as otherwise provided by this Agreement.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within 30 days of the date that Covered Entity provides notice of such breach to Business Associate, Covered Entity shall have

the right to terminate this Agreement, the Services Agreement, or both of them, by providing 30 days advance written notice of such termination to Business Associate.

Covered Entity may terminate the Agreement without penalty or recourse to Covered Entity if Covered Entity determines that Business Associate has violated a material term of the Agreement.

Upon Business Associate's knowledge of a material breach by Covered Entity, for example, if Covered Entity makes illegal demands on Business Associate, Business Associate shall provide an opportunity for Covered Entity to cure the breach. If Covered Entity does not cure the breach within 30 days of the date that Business Associate provides notice of such breach to Covered Entity, Business Associate shall have the right to terminate this Agreement, the Services Agreement, or both of them, by providing 30 days advance written notice of such termination to Covered Entity.

(c) Effect of Termination.

(1) Except as provided in subparagraph (2) next below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(3) The respective rights and obligations of Business Associate under this paragraph (c) shall survive the termination of this Agreement.

8. Indemnification.

Business Associate shall indemnify and hold harmless Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against Covered Entity as a result of a breach of this Agreement or any violation of the Administrative Simplification Subtitle of HIPAA by Business Associate.

The indemnification obligations provided for in this Section will commence on the effective date of this Agreement and will survive its termination.

9. Notices.

All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party’s address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity:

Organization Name: City of Traverse City
To the Attention of: City Clerk, HIPAA Privacy Official
Address: 400 Boardman Avenue
Traverse City, MI, 49684
Facsimile: (231) 922-4476

If to the Business Associate:

Organization Name: _____
To the Attention of: _____
Address: _____
Facsimile: _____

10. Severability.

All parties intend this Agreement to be enforced as written. However, (i) if any portion or provision of this Agreement will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agrees that the court making such determination will have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision will then be enforceable and will be enforced.

11. Headings and Captions.

The headings and captions of the various subdivisions of the Agreement are for convenience of reference only and will in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

12. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

13. Regulatory References.

A reference in this Agreement to a section in the EDI Rule or the Privacy Rule means the referenced section or its successor, and for which compliance is required.

14. Governing Law.

This Agreement will be governed by and construed in accordance with federal laws and, to the extent applicable, the laws of the State of Michigan.

15. Entire Agreement.

This Agreement sets forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter hereof.

16. Interpretation.

Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Administrative Simplification Subtitle of HIPAA.

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.

The parties have executed this Agreement as of the date first stated above.

Business Associate

By: _____

Title: _____

Covered Entity

By: _____

Jered Ottenwess

Title: City Manager