
The City of Traverse City

Office of the City Manager

GOVERNMENTAL CENTER

400 Boardman Avenue

Traverse City, MI 49684

(231) 922-4440

(231) 922-4476 Fax



September 3, 2015

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 **Friday, September 18, 2015, at 2:00 PM** for the following:

STREET BANNER PROGRAM
(specifications attached)

If the specifications are obtained from the City's website link at:

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

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

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

You must indicate on the outside of the sealed envelope that the bid is for the **“Street Banner Program.”**

You must submit **TWO (2) SEALED COPIES OF THE BID AND ONE (1) DIGITAL COPY ON USB OR DISK** 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 Rob Bacigalupi, DDA Executive Director, at (231) 922-2050 before the bid is submitted.

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

INTENT

The City of Traverse City (City) is requesting proposals from qualified vendors (Vendors) for a three-year term contract to manage the City's light pole banner program downtown and along Grandview Parkway. The selected Vendor will process banner requests on behalf of the City pursuant to the City's Banner Policy, replace old banner hardware on City poles, be the exclusive supplier of banners on the City's banner poles, and provide and install them at or below a set price.

The City intends to select a proposal on the basis of banner hardware quality, qualifications, ability, relevant experience, cost, possession of the required insurances, and other pertinent factors. Special consideration will be given to proposals that include compensation to the City for each banner installed. The Vendor will be required to accept a **Vendor Agreement, Contract and/or Service Order** with the City for this work. A sample Vendor Agreement is attached to this Request For Proposals.

SCOPE OF SERVICES

The selected Vendor will provide the following products and services to the City:

- A. Provide, install, and maintain at least 290 sets of banner hardware on poles to be identified by the City. The banner pole hardware must be of industry standard and be able to withstand at least 72 MPH sustained winds.
- B. Process requests for banner installation based on the City's Banner Policy (attached).
- C. Produce and install banners capable of being installed on the City's light poles at a not-to-exceed price to organizations that apply for and receive permission to place banners on the City's banner poles.
- D. Maintain the banner schedule with respect to dates and location.
- E. Remove banners according to the banner schedule.
- F. Provide regular reports to the City with respect to the banner program including installations and removal.

In exchange for the above services, the selected Vendor will be given the exclusive right to produce and install banners on approximately 290 light poles in the City for the life of the contract pursuant to the City's Banner Policy. Such banners shall be offered to a successful applicant for banner placement at or below a not-to-exceed price. Each proposal shall include the selected Vendor's proposed not-to-exceed price.

TIME FRAME

It is anticipated that the services pursuant to the Agreement shall be ongoing and on an as-needed basis and that the Agreement for services will be a three-year contract, renewable at the option of the City and the selected Vendor.

OWNERSHIP

Any banner pole hardware installed and maintained by the Vendor shall be and remain the property of the Vendor. The Vendor shall each year timely file a personal property statement with the City Assessor and shall be responsible for payment of personal property tax on the hardware. Breach of this covenant shall be a material breach of this contract and, in addition to any other remedy available, the City may elect to assume ownership of the banner pole hardware.

CONTRACT/SERVICE ORDER

The selected Vendor will be required to enter into a contract for this project. A sample Vendor Agreement is attached. All requirements of the contract, these specifications and the Vendor's proposal will become contractual obligations of the Vendor.

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, 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.

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.

Automobile Liability. The Vendor shall acquire and maintain during the life of the Agreement, automobile liability insurance, including applicable "no-fault" coverage, combined single limit bodily injury and property damage and shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

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 the Agreement.

SUBCONTRACTING

The selected Vendor will be required to assume responsibility for all services outlined in this RFP, whether or not that firm provides them or subcontracts them to another entity. None of the Vendor's duties under the Vendor shall be assigned, subcontracted or transferred without prior written consent of the City. Any assignment, subcontract or transfer of duties under the Agreement shall be in writing. The City will consider the Vendor to be the sole point of contact with regard to contractual matters, including payment of any or all charges resulting from the Agreement. If any of the work is to be subcontracted, the Vendor awarded the proposal must provide a complete description of the work to be subcontracted and a description of the subcontractor's organization and capabilities. The Vendor must list all subcontractors to be used on the Proposal Summary sheet. The Vendor is totally responsible for adherence by the subcontractor to all provisions of the Agreement and its specifications.

PROTECTION OF WORK AND PROPERTY

The Vendor shall continuously maintain adequate protection and shall assume full responsibility for the Vendor's work from loss or damage and shall protect all public and private property from injury or loss arising in connection with the Vendor's work. The Vendor shall indemnify and save the City harmless from all such damages or injuries occurring because of the Vendor's work.

SILENCE OF SPECIFICATIONS

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

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 the Agreement in whole or in part upon written notice to the Vendor specifying the portions of the Agreement and in the case of suspension shall specify a reasonable period not more than thirty (30) days nor less than fifteen (15) days from receipt of the notice, during which time the 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, the 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 the 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 the 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 the Agreement until the date of such termination.

PAYMENT

There will be no monetary payment from the City to the Vendor for the services provided. The consideration for the Vendor's services shall be the exclusive right to produce and install banners on approximately 290 banner poles in the City for the life of the Agreement at or below a not to exceed price.

INQUIRIES

Please direct any questions concerning any part of these specifications to **Rob Bacigalupi at (231) 922-2050, between the hours of 8:00 a.m. and 5:00 p.m., Monday-Friday, or by e-mail at rob@downtowntc.com.**

SUBMISSION OF PROPOSALS

Interested Vendors must submit a sealed proposal containing:

- A) A completed Proposal Summary.
- B) A statement of the Vendor's previous experience and professional qualifications, identifying the person responsible for drafting the proposal and listing at least four (4) recent commercial references.
- C) Banner hardware detail, banner request turnaround time, not-to-exceed banner install price(s), and any fee paid to the City for banner installations.
- D) Identification of a contact person to whom inquiries should be directed, with an address, telephone number, and fax number (if available).
- E) Specify on a separate sheet of paper any items not possible to accomplish with the above specifications.

Sealed proposals must be submitted to Julie Dalton, Purchasing Agent, City Manager's Office, 400 Boardman Avenue, Traverse City, MI 49684, clearly marked "**Street Banner Program**" on the outside of the envelope, no later than 2:00 p.m. on Friday, September 18, 2015 . **A digital copy is also required to be included on USB or Disk.** Telefaxed or e-mail proposals will not be accepted.

Bidder - Please complete and return

BID SUMMARY

TITLE: STREET BANNER PROGRAM

DUE DATE: FRIDAY, SEPTEMBER 18, 2015 AT 2:00 PM

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

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

Bidder understands and agrees, if selected as the successful Bidder, to accept a Purchase Order / Service Order / Contract and to provide proof of the required insurance.

Bidder submits this bid and agrees to meet or exceed all the City of Traverse city's requirements and specifications unless otherwise indicated in writing and attached hereto. Bidder shall comply with all applicable federal, state, local and building codes, laws, rules and regulations and obtain any required permits for this work.

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

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

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

the opinion of the City indicates that the bidder is unable to perform responsibility or which reflects a lack of integrity that could negatively impact or reflect upon the City of Traverse City, including but not limited to, any of the following offenses or violations of:

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

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

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

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

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone Fax

City, State, Zip

Sole proprietorship/partnership/corporation

If corporation, state of corporation

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

1. _____
Contact Person: _____ Telephone: _____

2. _____
Contact Person: _____ Telephone: _____

3. _____
Contact Person: _____ Telephone: _____

4. _____
Contact Person: _____ Telephone: _____



CITY OF TRAVERSE CITY

BANNER POLICY

- A. Purpose: The purpose of the City of Traverse City's ("City") Street Banner Program is to make available specified City policies for the display of banners to Non-Profit Organizations and Governmental Units to assist in the advertising of Events sponsored by Non-Profit Organizations and Governmental Units in a manner that contributes to the Visual Interest of the City.
- B. Definitions:
1. **Banner Committee**: The Banner Committee shall be the City Manager or his or her designees.
 2. **Event**: An activity or gathering occurring at a specified time.
 3. **Governmental Unit**: The United States, a state, county, city, village, or township, or a board, department, commission, council, or agency thereof, or any other body which is created by state or local authority or which is primarily funded by or through state or local authority.
 4. **Non-Profit Organization**: An organization meeting the requirements for tax-exempt status under the Internal Revenue Code.
 5. **Primary Events**: Those events that occurred primarily within the City at least once each year for a period of more than 5 consecutive years immediately preceding the year of application.
 6. **Secondary Events**: Those events that have occurred primarily within the City at least once each year for a period of more than 2 consecutive years, but less than 5 consecutive years, immediately preceding the year of application.
 7. **Visual Interest**: Special appeal, visual excitement, or a sense of fun.
- C. Eligibility:
1. In order to be eligible to display banners an applicant must demonstrate the following:
 - a. The applicant is a Non-Profit Organization or Governmental Unit;
 - b. That the banner advertises an Event sponsored by the Non-Profit Organization or Governmental Unit or highlights activities and interests occurring in or around the City; and
 - c. The banner contributes to the Visual Interest of the City.
 2. Each application shall be reviewed to determine whether the proposed banner meets the eligibility criteria.
- D. Applications: Each application shall be on a form approved by the City and shall meet the following standards:
1. Time for filing: A Banner Application shall be submitted to the Vendor no later than 30 days prior to the intended display period.
 2. Contents:
 - a. Name of Organization

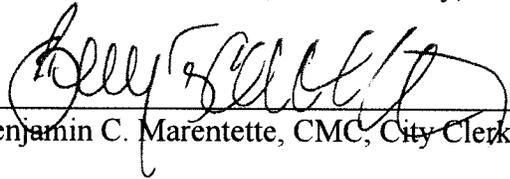
- b. Proof of eligibility as a Non-Profit Organization or Governmental Unit.
 - c. Name of Event or activity of interest.
 - d. Date of Event
 - e. Date(s) of any prior occurrence of the Event.
 - f. Requested display location and dates.
 - g. Preliminary sketch of the proposed banner, including proposed banner language.
3. Filing: The City's Street Banner Program is administered by a Street Banner Program Vendor (the "Vendor"). Requests to place banners shall be submitted to and reviewed by the Vendor in accordance with this Policy. The Vendor shall date and time stamp an application upon receipt.
- E. Review Process: Once a completed application is reviewed:
- 1. The Vendor shall make an initial determination as to whether the proposed banner meets the eligibility criteria. In the event that the Vendor is unable to make this determination, the Vendor shall forward the application to the Banner Committee who shall review the application within 21 days of receipt to determine whether the application meets the eligibility criteria.
 - 2. If the application meets the eligibility criteria, the Vendor will determine space availability on a first come, first served basis with preference as follows:
 - a. City sponsored banners, including those from departments or sub-units of the City.
 - b. Primary Events.
 - c. Secondary Events.
 - d. Non-Profit Organization or Governmental Unit sponsored Events within the City, which are free to the public.
 - e. Non-Profit Organizations or Governmental Units sponsored Events within the City, which charge a fee for admission.
 - f. Non-Profit Organization or Governmental Unit sponsored Events outside of the City, but within Grand Traverse, Leelanau, or Antrim Counties.
 - g. Banners highlighting activities or interests in and around the City which are not Events.
 - 3. If the application meets the eligibility criteria and space is available, the Vendor will work with the applicant on design and art work.
 - 4. Once the design and art work is finalized the Vendor shall forward the application to the Banner Committee, who shall review the banner for compliance with this policy within 10 days of receipt of the application and art work.
- F. Period of Display: Banners associated with an Event shall be displayed no longer than two weeks after the conclusion of the Event and in no case longer than four weeks. All other banners may be displayed until the space is needed.
- G. Fees: Cost of the banner: Variable, but not to exceed the "not-to-exceed" cost provided for in the Street Banner Program Vendor Agreement to be paid directly to the Vendor. The Vendor shall provide a quarterly statement to the City demonstrating how many banners have been installed for the quarter and the fees collected.
- H. Prohibitions: The purpose of the Street Banner Program is to assist Non-Profit Organizations and Governmental Units in promoting Events sponsored by such entities and highlight activities or interests in and around the city in a manner that contributes to the Visual Interest of the City. In order to ensure that this purpose is met, no banner displayed shall contain:

1. Commercial advertising.
2. Political advertising.
3. Public issue advertising.
4. Other material incompatible with the purpose of this Policy.
5. Obscenity or fighting words.

I. Appeal:

1. A determination made by the Vendor may be appealed by the applicant to the Banner Committee within 7 days of the date of the Vendor's determination. Upon receipt of an appeal by an applicant, the Banner Committee shall review the application for compliance with this policy within 21 days from the date of appeal.
2. Any determination made by the Banner Committee may be appealed to the City Commission within 7 days from the date of determination. Upon receipt of an appeal by an applicant, the City Commission shall consider the appeal at its next available, regular meeting. A decision of the City Commission on an appeal shall be final.

I hereby certify that the above policy was adopted by the City Commission of the City of Traverse City at its regular meeting of May 21, 2007, held in the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.



Benjamin C. Marentette, CMC, City Clerk

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, 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 City shall pay to the Vendor and the Vendor 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 acknowledgement 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, 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.

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 to 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.

36. Ownership. Any banner pole hardware installed and maintained by the Vendor shall be and remain the property of the Vendor. The Vendor shall each year timely file a personal property statement with the City Assessor and shall be responsible for payment of personal property tax on the hardware. Breach of this covenant shall be a material breach of this

contract and, in addition to any other remedy available, the City may elect to assume ownership of the banner pole hardware.

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

APPROVED AS TO SUBSTANCE:

CITY OF TRAVERSE CITY

Martin A. Colburn, City Manager

By: _____
Michael Estes, Mayor

By: _____
Benjamin C. Marentette, City Clerk

APPROVED AS TO FORM:

VENDOR

Lauren Tribble-Laucht, City Attorney

By: _____
Signature

Its: _____

SCOPE OF SERVICES

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

SCHEDULE OF PAYMENTS

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

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

TIMETABLE OF ACTIVITIES

The Vendor'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 Vendor's Proposal/Bid attached hereto and incorporated herein by reference.

Services shall be completed not 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.