



CITY of
TRAVERSE CITY MICHIGAN

Request for Qualifications (RFQ) Traverse City Public Pier

Civic Engagement, Design, Preliminary Engineering, Studies, Contract Construction Drawings

The City of Traverse City
Traverse City Public Pier Study Group

Date of RFQ: May 15, 2014

Date Responses Required: June 12, 2014, 4:00 PM

Project Completion Date: No later than June 1, 2015

Contents

1. Summary	3
2. Purposes of Study Group	3
3. Summary of Process	4
4. Responses	5
5. Limitations and Responsibilities	5
6. Background Materials	5
7. Overview – Scope of Work	6
8. Required Information - Responses	7
9. Signature Page	10

1. Summary

This is a Request for Qualifications (RFQ) seeking responses from qualified consultants or consultant teams to complete the design, preliminary engineering, studies and construction drawings and details to build a universally accessible public pier at the mouth of the Boardman River on Grand Traverse Bay in Traverse City, Michigan. **Responses to this RFQ are due June 12, 2014 by 4:00 p.m. in a manner and form described in this RFQ.**

The engagement of all interests in completing this project to solicit their questions, ideas, opinions and participation is an integral and essential element of this project.

This project is funded under a Great Lakes Fisheries Trust grant award to and accepted by the Traverse City Commission. The grant requires that this phase of the project be completed by no later than June 1, 2015. A complete copy of the grant award as well as other documents related to this project are available at the City's web site at www.traversecitymi.gov/tcpublicpier.asp

This RFQ was developed and disseminated by a Traverse City Public Pier Study Group (hereinafter Study Group) that consists of diverse interests that has purposes described later in this RFQ.

2. Purposes and Responsibilities of Study Group and Staff Support

The purposes of the Study Group are to:

- a. Finalize and develop this RFQ
- b. Screen and interview candidates identified as a result of this RFQ
- c. Recommend a candidate to the City of Traverse City
- d. Help engage all interests in the process and project
- e. Stay informed of the status of the project and provide project input

Study group members are:

- Mayor Michael Estes, City of Traverse City
- Commissioner Ross Richardson, City of Traverse City
- Todd Kalish, Chief, Lake Michigan Basin, Mich. Dept. of Natural Resources Fisheries Division
- Steve Largent, Grand Traverse County Conservation District
- Cathie Cunningham Ballard, Resident, City of Traverse City (and former Chief, Michigan Coastal Management Program)
- Erik Olsen, Natural Resource Department, Grand Traverse Band of Ottawa and Chippewa Indians
- Ryan Matuzak, Grand Traverse Sport Fishing Association
- Jack Knol, Architect

Traverse City staff members involved with the project include:

- Jered Ottenwess, City Manager
- Russ Soyring, Planning Director
- Missy Luick, Planning and Engineering Assistant
- Tim Lodge, City Engineer

Project Facilitation:

- Tim Ervin, Consultant, NorthSky Nonprofit Network

3. Summary of Process

This RFQ process follows the steps that are typical under a qualifications based selection process, reflecting the intent of the Study Group and City to place priority on partnering with a consultant or consultant team that has the strongest qualifications and experience to successfully complete the project. The steps and target dates include:

- a. Preparation of a RFQ by the Study Group
- b. Dissemination of the RFQ by the Study Group: May 15, 2014
- c. Deadline for Receipt of Responses: June 12, 2014
- d. Review and rating of Responses by Study Group
- e. Interviews of selected consultant respondents by Study Group: TBD
- f. Recommended consultant presented to City: TBD
- g. City convenes with consultant to develop definitive work plan and budget (if plan and budget cannot be agreed to, City will proceed to work with the recommended second choice of Study Group to develop definitive work plan and budget) and resulting Consultant Agreement: TBD
- h. City presents Consultant Agreement to City Commission for action (a presentation by the consultant may be required): TBD
- i. Assuming City Commission approval, project proceeds with recommended consultant: TBD
- j. Project completed according to definitive work plan and budget with advisory support of Study Group throughout the life of this project: TBD

As noted above, respondents are to submit their responses to this RFQ by 4 p.m. on June 12, 2014. Each respondent shall deliver a total of 15 copies of their response along with one copy on a thumb drive to:

**Ms. Missy Luick, Planning and Engineering Assistant
City of Traverse City
2nd Floor, Governmental Center
400 Boardman Ave
Traverse City, MI 49684**

Responses to this RFQ sent by telefax or email will not be accepted. If there are questions about the submission, Ms. Luick may be reached at m luick@traversecitymi.gov or 231-922-4778.

4. Responses

Responses to this RFQ must:

- a. Have a cover letter of no longer than 2 pages that includes: a summary statement about why the respondent is uniquely qualified to perform the project; the name and contact information for the primary contact for the response.
- b. Be no longer than 20 pages, including attachments.
- c. Be completed in a font no smaller than 11 point with margins of at least one inch on all sides of the paper with single sided pages.
- d. Contain all of the information required by this RFQ. Responses deemed to be incomplete may be rejected from further consideration.

5. Limitations and Responsibilities

Neither the Study Group, the City of Traverse City or the City of Traverse City Commission are obligated to recommend or select a consultant as a result of this RFQ. The City may modify, suspend or terminate the RFQ and the RFQ process at any time without notice. Neither the Study Group, the City of Traverse City or the City of Traverse City Commission has any liability, responsibility or any costs or expenses or other obligations as a result of this RFQ.

6. Background Materials

Respondents to this proposal are encouraged to fully review information that is relevant to this project, much of which is contained on the City of Traverse City's web site: www.traversecitymi.gov/tcpublishpier.asp

The material includes:

- Final Report – Your Bay, Your Say
- Final Report - Traverse City Bayfront Plan
- Master Plan – Traverse City
- Grant award scope of work - Great Lakes Fishery Trust grant for this project

7. Overview – Scope of Work

As noted, above, respondents must review the scope of work contained in the Great Lakes Fishery Trust (GLFT) grant award to develop a meaningful response to this RFQ. The scope of work as contained in the GLFT grant award includes:

- **Goal:** To complete the design, preliminary engineering, studies and contract construction drawings and specifications to build an approximately 550 foot universally accessible fishing pier at the mouth of the Boardman River on Grand Traverse Bay.
- **Purpose:** The pier will provide unique, outstanding access for people of all ages, needs and abilities to fish for migratory and other species, to learn about the importance of the Great Lakes, the importance of stewardship and the value, challenges and opportunities involving the fishery.
- **Fishing & Education Related Amenities:** The scope of work includes design and content material for informational signs about fish species found in this part of Grand Traverse Bay, seasonality of the fishery and successful fishing techniques; lighting; parking; expansion of the walkway under the US 31 bridge to provide additional fishing opportunities; restrooms in close proximity to the pier; a planned fish cleaning facility; railings with openings for inserting nets to land species; integrated fishing rod holders; and durable benches for users.
- **Habitat Improvement:** The studies that will be conducted as part of this project will identify potential negative impacts and options for mitigating or eliminating impacts, including sand deposition.
- **Maintenance and Safety:** The City will post uses of the pier that may not be permissible and that the restrictions will be enforced. Examples may include use of bicycles and skateboards on the pier and open alcoholic beverages. There will also be signs to warn people about swimming hazards from the pier, including rip currents and other hazards, including use of the pier during cold weather months where ice and waves may pose hazards. There will be life rings and ladders stationed on the pier. The City will enlist the assistance of professionals, including their insurance carriers, to identify and mitigate risks as part of the work that will be done.
- **Accessibility:** Universal design will be an emphasis of the design of the pier that will feature universal access to maximum extent possible, supported by the technical assistance and guidance of the Northern Michigan Disabilities Network. All Federal and other applicable Americans with Disabilities Act (ADA) requirements must be met at a minimum.

NOTE: THE ABOVE SECTION IS INTENDED ONLY TO SUMMARIZE SOME OF THE SIGNIFICANT ELEMENTS OF THE SCOPE OF WORK FOR THIS PROJECT. RESPONDENTS MUST REVIEW THE ENTIRE SCOPE OF WORK TO DEVELOP A MEANINGFUL RESPONSE TO THIS RFQ. As previously stated, the grant can be accessed on the City of Traverse City's website: www.traversecitymi.gov/tcpublicpier.asp

8. Required Information – Responses

Respondents to this RFQ should supply the following information about their organization and contacts:

- a. Name of lead contact for project accompanied by mailing address, email address and phone number.

- b. The name, qualifications and experience of company principals and individuals who would have significant involvement with the project, including their credentials the professional affiliations that are germane to this project.

In responding to this RFQ, respondents are encouraged to consider partnerships with firms where appropriate to provide highly qualified and experienced support for all elements of the project.

In cases where a respondent involves a partnership of firms, the response should explain how accountability will be ensured throughout the project.

Respondents to this RFQ must demonstrate their qualifications with regard to the above referenced scope of work in the Great Lakes Fishery Trust grant award, including but not limited to a demonstration of qualifications and experience with the following. Responses to this RFQ should propose how the respondent will apply their qualifications and experiences in completing the scope of work contained in the grant award within the schedule that is included in the grant award. **TO BE CLEAR, RESPONSES ARE TO INCLUDE A DEMONSTRATION OF QUALIFICATIONS AND EXPERIENCE AT A STAFF AND ORGANIZATIONAL LEVEL AND INCLUDE A PROPOSAL ABOUT HOW THEY PROPOSE TO CARRY OUT THE PROJECT USING THEIR QUALIFICATIONS AND EXPERIENCE. IN KEEPING WITH THE QUALIFICATIONS BASED SELECTION PROCESS, IT IS OUR GOAL TO COMPLETE A DEFINITIVE SCOPE OF WORK AND BUDGET ONCE THE CONSULTANT OR CONSULATANT TEAM IS RECOMMENDED TO THE CITY BY THE STUDY GROUP.**

- a. Prior experience constructing a pier in a Great Lake-type environment is a prequalification requirement.
- b. Using effective strategies and methods to meaningfully engage the general public, including project stakeholders to obtain input in completing similar projects.
- c. Responding to questions, ideas and concerns expressed by the general public with regard to similar projects.
- d. Identifying and using best practices to achieve successful outcomes with similar projects.
- e. Identification of all applicable permits that will or may be required by this project and all studies and construction documents shall be developed to meet all such anticipated permit requirements.
- f. Completing of coastal studies and assessments that will or may be required by this project, including those required by all permits and other approvals that the respondent believes will be required for this project.
- g. Consideration of options in all elements of projects such as that to be addressed through this RFQ.
- h. Applying principles of universal design to ensure universal access so that people of all ages, needs and abilities can access, use and enjoy to their fullest the end product of similar design projects.

- i. Assessing and ensuring that user safety is considered and addressed to reduce or eliminate risks and that facilities and facility users are readily accessible to first responders or other emergency personnel.
- j. Considering and designing various forms of passive and active recreation to ensure that the design reflects a menu of realistic, safe and appropriate uses and appeals to a broad range of users.
- k. Using various forms of media and other resources to educate and inform users of similar facilities about: proper use and care of the facility; safety precautions and procedures; how to use the facility to maximize enjoyment; such as instructions/directions about how and when to fish for various species; how users can become good stewards of the facility, Grand Traverse Bay and Lake Michigan; natural resource information about the Bay, Great Lakes, etc. so that the facility is a hub of useful and interesting information.
- l. Developing and assessing design and construction options for facilities such as those included in this RFQ.
- m. Developing design specifications and construction drawings and details in a manner that ensures the success of this and similar projects.
- n. Meeting project deadlines for projects that have multiple phases and include significant opportunities for public participation.
- o. Identifying all future asset management costs including anticipated operation and maintenance the City to incur should the pier be constructed.

Finally, respondents are also to provide the names, phone numbers and email addresses of at least three and not more than six individuals and their corporate affiliation who may be contacted as references. References should be for projects that best resemble the project that is the subject of this RFQ.

INSURANCE:

The Firm is required to provide and maintain at all times during this project the following insurance. Certified copies, setting forth the limits and coverage, shall be furnished to the City Clerk before commencing with any work. 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 and shall describe the project and provide coverage for the following terms:

- A. Comprehensive General Liability Insurance with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit with the City listed as an additional insured. Professional liability insurance coverage in the amount of \$1,000,000 minimum.
- B. Motor Vehicle Liability Insurance, including applicable no-fault coverage, combined single limit bodily injury and property damage shall be maintained during the life of the contract. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

- C. Workers Compensation Insurance, including Employers' Liability Coverage in accordance with all applicable statutes of the State of Michigan.
- D. If any of the insurance is canceled, the Firm shall cease operations, and shall not resume until new insurance is obtained.

SUPPLEMENTAL INFORMATION AND REQUIREMENTS:

The City of Traverse City reserves the right to waive any informality or defect in any proposal, to accept any proposal or parts thereof or to reject any or all proposals, should it deem it to be in the best interest of the City of Traverse City to do so. The City reserves the right to revise the contents of the proposal and to negotiate all aspects of this proposal and any future agreement with the successful firm of the City's choice. The City further accepts no responsibility for expenses which may be incurred in the preparation of such proposals. The selected firm shall be expected to comply with all applicable State and Federal laws in the performance of services. Submittals to the City are considered public information. The City has the right to disclose information contained in the submittals. The City further reserves the right to photocopy, circulate or otherwise distribute any material submitted in response to the RFQ. Original materials which the consultant may wish returned shall be clearly marked to be returned to them.

The selection of the successful firm shall be made without regard to race, color, sex, age, religion, sexual preferences, handicap, political affiliation, veteran status, or national origin. The City is an Equal Opportunity Employer.

The selected Firm will be required to enter into a Consultant Agreement for this project. A sample agreement is attached.

Any questions regarding this request for proposal shall be submitted in writing to the Planning and Engineering Assistant at least seven (7) days prior to the deadline for submitting the request for proposal. Written answers to questions, which in the opinion of the City may change or substantially clarify the request for proposal, will be submitted to all prospective firms.

9. Signature Page

TITLE: **Traverse City Public Pier RFQ**

DUE DATE: **June 12, 2014 at 4:00 p.m.**

Having carefully examined the attached RFQ and any other applicable information, the undersigned proposes to furnish all items necessary for and reasonably incidental to the proper completion of this RFQ.

The undersigned understands and agrees that they must be licensed to do business as Professionals in the State of Michigan.

The undersigned submits this proposal and agrees to meet or exceed all requirements and specifications listed on the RFQ, unless otherwise indicated in writing and attached hereto, and acknowledges a thorough understanding of the City's Great Lakes Fisheries Trust grant agreement.

The undersigned certifies, as of the date of this RFQ, not to be in arrears to the City of Traverse City for debt or contract or is in any way a defaulter as provided for in Section 152, Chapter XVI of the Charter of the City of Traverse City.

The undersigned understands and agrees, if selected to be awarded this work, to enter into an agreement with the City to supply this work.

The undersigned understands that the City reserves the right to accept any or all proposals in whole or in part and to waive irregularities in any proposal in the interest of the City. The RFQ will be evaluated and awarded on the basis of qualifications and best value to the City. The decision criteria to be used, but will not be limited to, is qualifications, technical expertise and experience, key staff, past similar work, firm's understanding of the project scope, quality of the firm's project approach and overall capability to meet the needs of the City.

The undersigned agrees that the RFQ may not be withdrawn for a period of 60 days from the actual date of the opening of proposals.

Submitted by:

(Signature)

(Name & Title - print)

(Telephone Number)

(Company Name)

(Company Address, City, State, Zip Code)

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. 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

APPROVED AS TO SUBSTANCE:

Jered Ottenwess, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

Name and Title (print or type)

SCOPE OF SERVICES

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

DRAFT

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 \$_____.

DRAFT

TIMETABLE FOR ACTIVITIES

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

Services shall be completed not later than _____.

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