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The City of Traverse City

Office of the City Manager

GOVERNMENTAL CENTER

400 Boardman Avenue

Traverse City, MI 49684

(231) 922-4440

(231) 922-4476 Fax

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April 30, 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, May 22, 2015, at 10:00 AM** for the following:

**WATER & SEWER MAINTENANCE  
STREET REPAIR BIDS**  
(specifications attached)

If the specifications are obtained from the City's new updated website link at: [http://www.traversecitymi.gov/bids\\_and\\_rfps.asp](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](mailto: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 **“Water & Sewer Street Repair Bid.”**

You must submit **TWO (2) SEALED COPIES** of the bid to the City Manager's Office prior to the above-indicated time and date or the bid will not be accepted. Telefaxed or E-Mail bids will not be accepted.

Please note that if you have previously submitted an informal quote, you will still need to submit a sealed bid prior to the date and time specified above in order to be considered. Please ensure that all requirements listed in the specifications are met.

If you have any questions, please contact Justin Roy, Water & Sewer Maintenance Supervisor, at (231) 922-4923 before the bid is submitted.

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

FY 2015-17  
DEPARTMENT OF PUBLIC SERVICES  
WATER & SEWER MAINTENANCE  
STREET REPAIR BIDS

OWNER  
CITY OF TRAVERSE CITY  
400 Boardman Avenue  
Traverse City MI 49684

Penny Hill, Acting City Manager  
Benjamin Marentette, City Clerk  
Dave Green, DPS Director

4/30/2015

CITY OF TRAVERSE CITY  
REQUEST FOR BIDS

DEPARTMENT OF PUBLIC SERVICES  
WATER & SEWER MAINTENANCE  
STREET REPAIRS BID

1) INTENT

The City of Traverse City requests bids from qualified contracting companies to repair streets after water taps, water main breaks and sewer repairs. The City will notify the Contractor of the location and the approximate size of the street to be repaired, and the Contractor will repair the street, using like materials, within two weeks.

The City intends to select a bid on the basis of qualifications, ability, relevant experience, cost, work plans, time frame, and possession of the required licenses and insurances and other pertinent factors. The Contractor will be required to enter into a contract with the City for this work. A sample contract is attached to this Request for Bids.

2) SCOPE

The scope of this project consists of furnishing all materials, equipment and labor to patch utility holes, form and replace curb and gutter, or sidewalk within a two week period of notification for the 2015-2016 construction season, with option to re-authorize for two additional years if parties are agreeable. All work, methods and materials shall be performed as specified and requested in accordance with the 2012 Standard Specifications for Construction as published by the Michigan Department of Transportation (MDOT), and Specifications enclosed herein with the Bid Documents. All work will meet with MDOT barricading guidelines and MIOSHA safety standards.

The successful bidder will patch holes, varying in size, in City streets, as needed. The Contractor shall repair each hole with similar materials and thicknesses as the street section surrounding the hole (i.e., asphalt over gravel, asphalt over concrete). All restoration work shall attempt to return the existing pavement to its original condition. **Permanent road repair must be completed using infrared asphalt restoration technology at all times of the year.**

**Pavement Restoration:** All permanent pavement restoration shall be done over compacted backfill and a minimum eight inches (8") compacted MDOT 22A gravel base. The gravel base shall be placed and maintained in accordance with section 3.02 of the 2012 MDOT Standard Specifications and will be considered incidental to pavement restoration. Prior to laying the bituminous patch, the adjacent road surfaces shall be swept clean of all foreign materials.

A bituminous bond coat shall be placed between successive lifts of the bituminous patch and bituminous lifts of the bituminous patch and bituminous surfacing. Each lift shall be thoroughly compacted before adding the next lift. This includes running the compaction roller longitudinally along the entire length of the joints between the patch and the existing pavement.

The Contractor shall maintain access, whenever possible for traffic for local residences, commercial establishments and deliveries, and for emergency vehicles.

**Bituminous Patching:** Existing asphalt roads and driveways shall be patched using MDOT Bituminous Surfacing Mixture 13A or 31A, whichever most closely matches. All patches shall match the original width and depth of the asphalt and in no case a depth less than 2 inches (220 pounds per square yard). Any asphalt patch that requires a depth greater than 2-1/2 inches (275 pounds per square yard) shall be placed in two (2) lifts with the final course being no less than one (1") inch.

The bituminous materials for all wearing course surfaces shall be asphaltic cement having a penetration grade of 85-100 and shall make up 5% to 7% of the total mixture. Failure of the Contractor to adhere to the required bitumen content as specified herein may result in an adjustment in contract prices, as determined by the City Engineer or designated representative. Such areas will be evaluated, and if, in the judgment of the City Engineer or designated representative, the defective areas warrant removal, the Contractor shall remove and replace the defective pavement with pavement meeting the specifications required. No payment will be made for the work of placing and removing the defective areas.

The composition of the bituminous concrete mixture for resurfacing shall conform to MDOT Specifications per Division 5 for 13A and 31A Bituminous Concrete.

The Bituminous Tack Coat shall be RC-70 or an approved equal and uniformly applied by means of a pressure distributor. Bituminous Tack Coats shall be applied at a rate of 0.05 gallons per square yard and shall have ample time to cure before any Bituminous Surface Course shall be applied.

Bituminous mixtures shall not be placed nor the Tack Coat applied when rain is threatening or when the surface to be treated is wet. Bituminous courses having a nominal application rate of 100 pounds per square yard or less shall not be placed when the air temperature is lower than 50 degrees F, and courses of greater depth when the air temperature is lower than 40 degrees, unless otherwise approved by the Engineer.

All loads shall be delivered continuously in covered vehicles and immediately spread and compacted. All mixes shall be delivered at a temperature of 300 degrees F and shall not vary by more than  $\pm 20$  degrees F of this specified temperature.

Upon completion of the work the Contractor shall, as directed by the Engineer, remove from the vicinity of the work all equipment and all temporary structures, waste materials and rubbish resulting from his operations, leaving the premises in a neat and presentable condition. In the event of his failure to do so, the same may be done by the City at the expense of the Contractor.

## **SPECIAL PROVISION FOR INFRARED JOINT REPAIR**

### **DESCRIPTION**

This work consists of furnishing the labor, materials and equipment required to blend new bituminous material with infrared heated existing material to form a joint free integral mix. This special provision is for locations as indicated on the plans or as directed by the City Engineer. Generally, infrared joints shall be used when placing new bituminous pavements adjacent to or otherwise abutting existing bituminous pavements that are ten years old or newer.

### **EQUIPMENT**

Pavement Restoration Vehicle (PRV) shall be truck mounted, self-contained pavement maintenance heating system equipped with a fuel system and a heated chamber capable of maintaining the new bituminous pavement at a temperature of 275 degrees or higher.

The adjustable height infrared heating unit may be truck or trailer mounted to the PRV. The unit shall be equipped with a chamber or chambers capable of heating the existing bituminous pavement to a workable condition without oxidation or burning. There shall be no flame in direct contact with the existing bituminous surface.

Compaction shall be achieved with a self-propelled vibratory roller of sufficient size to provide complete compaction to the full heated depth of the patched area.

### **MATERIALS**

The new bituminous material shall conform to the specifications. A minimum of 20 percent of new material shall be added to all joint areas.

### **CONSTRUCTION METHODS**

- a. Area shall be swept clean prior to setting infrared heating unit.
- b. The infrared heating unit shall be lowered to within 6 inches to 9 inches of the existing pavement. The heated area must extend at least 6 inches outside the area of repair. Apply heat to the area continuously until the surface is heated to a depth of approximately 2 inches. When the bituminous pavement can be worked with a rake, proper heat penetration has been achieved.
- c. If it is windy, metal shields shall be placed against three sides. (This is not to trap heat but to block the wind and provide for an even surface.)
- d. Etch an outline of the perimeter of the repair area with the back of a rake at least 3 inches beyond the edges of the repair area. Scarify the existing bituminous surface within the repair area to the full heated depth.

e. Remove enough existing bituminous material (as required by adjacent grades) to allow for the addition of 20 percent (approximately 1 inch of depth) new bituminous pavement to achieve a blend of 20 percent new/80 percent existing heated material within the area of the joint.

f. Reshape joint area by hand with rake and lute to match grade of existing adjacent pavement.

g. Outside perimeter shall be compacted as soon as possible to ensure thermal bonding. Compact new pavement with the specified roller to the full depth of the heated joint. Compacted surface shall be smooth, in texture and shall have positive drainage matching the slope of the existing adjacent pavement.

h. Clean-up site after paving. Remove all debris resulting from repair operation.

### MEASUREMENT AND PAYMENT

The completed work, as described, will be measured and paid for at the contract unit price using the following pay item:

<u>PAY ITEM</u>	<u>PAY UNIT</u>
Infrared Joint Repair	FT

### 3) EXAMINATION OF THE WORK

Prior to submission of the bid, the Contractor shall make and shall deem to have made a careful examination of the plans, specifications and contract included herein. The Contractor shall become informed as to the nature of the proposed project, general local conditions and all other matters that may affect the cost and time of completion of the project.

### 4) CONTRACT

The selected Contractor will be required to accept a contract for this project. A sample contract is attached. All requirements of the contract, these specifications and Contractor's bid will become contractual obligations of the Contractor.

### 5) INSURANCE

The Contractor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Contractor will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy; and in the case where Contractor is required to name the City as additional insured, shall provide an endorsement stating that the City has been named as an additional insured onto such policy for all claims arising out of the Contractor's work. Should

any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City. Upon request by the City Clerk, Contractor shall provide a full copy of any insurance policy for insurance coverage required under this agreement within ten (10) days of request. This time frame may be extended by the City Clerk in cases where the policy has not been issued.

A. Commercial General Liability. The Contractor shall acquire and maintain commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence with the City being named as additional insured for all claims arising out of the Contractor's work, including completed operations coverage (if required in the Request for Proposals/Bids). For contracts in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), the Contractor shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

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

#### 6) SUBCONTRACTING

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

#### 7) PROTECTION OF WORK AND PROPERTY

The Contractor shall continuously maintain adequate protection of the Contractor's work from damage and shall protect all public and private property from injury or loss arising in connection with Contractor's work, and shall defend and save the City harmless from all such damages or injuries occurring because of Contractor's work. Contractor shall furnish and maintain all passageways, barricades, signage, and other facilities for protection required by public authority or by local conditions, all at no additional cost to the City.

The Contractor shall assume full responsibility for loss or damage during the construction period resulting from all causes whatsoever not directly due to the acts or negligence of the City, including fire, flooding, vandalism and malicious mischief.

#### 8) 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.

#### 9) TERMINATION

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

**Not for Fault.** Whenever the City 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 may terminate this Agreement by written notice to the Contractor specifying the services to be terminated and the effective date of such termination. Upon termination, the Contractor shall be entitled to and the City shall pay the costs actually incurred in compliance with this Agreement until the date of such termination plus any costs the Contractor incurs directly resulting from such termination.

#### 10) PAYMENT

Unless otherwise noted below, all restoration costs will be incidental to the various types of work delineated in the Contractor's proposal. No extra pay will be allowed for restoration work outside the normal work limits of the proposed construction unless approved in advance by the Water/Wastewater Maintenance Supervisor or his representatives prior to the work being undertaken. The costs for removal of asphalt, concrete pavements, fill, etc. are incidental to the cost of replacement of the items, unless otherwise indicated in the contract documents.

Payment for replacement and clean-up shall be limited to those items completed under the proposal. Payment shall be made within thirty (30) days of satisfactory completion of the work. The City may withhold payment in whole or in part for:

- A. Defective work not remedied, or
- B. Damage to City property, or
- C. Failure to obtain proper permits and insurance, or
- D. Claims filed or reasonable evidence indicating probability of claims being filed, or
- E. Failure of the Contractor to make payments properly for subcontractors, or for material, or labor, or
- F. A reasonable doubt that the Contract can be completed, or
- G. Damage to another Vendor.

11) INQUIRIES

Please direct any questions concerning any part of these specifications to Justin Roy at 922-4923, between 7 a.m. and 3:00 p.m., weekdays.

12) SUBMISSION OF BIDS

Interested Contractor's must submit a sealed bid containing:

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

**SEALED BIDS CLEARLY MARKED "WATER & SEWER STREET REPAIR BID" MUST BE RECEIVED AT THE FOLLOWING LOCATION NO LATER THAN 10:00 A.M. ON FRIDAY, MAY 22, 2015:**

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

Telefaxed or e-mailed bids are not acceptable.

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

# DRAFT

## CITY OF TRAVERSE CITY CONTRACTOR 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 "Contractor");

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

### [BRIEF DESCRIPTION OF PROJECT]

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

THEREFORE, the parties mutually agree as follows:

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

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

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

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

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

5. Independent Contractor. The relationship of the Contractor to the City is that of an independent contractor and in accordance therewith, the Contractor covenants and agrees to conduct itself consistent with such status and that neither it nor its employees, officers or agents will claim to be an officer, employee or agent of the City or make any claim, demand or application to or for any rights or privileges applicable to any officer or employee of same,

including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. The parties do not intend the services provided by the Contractor to be a joint venture.

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

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

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

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

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

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

10. Insurance. The Contractor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Contractor

will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy; and in the case where Contractor is required to name the City as additional insured, shall provide an endorsement stating that the City has been named as an additional insured onto such policy for all claims arising out of the Contractor's work. Should any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City. Upon request by the City Clerk, Contractor shall provide a full copy of any insurance policy for insurance coverage required under this agreement within ten (10) days of request. This time frame may be extended by the City Clerk in cases where the policy has not been issued.

A. Commercial General Liability. The Contractor shall acquire and maintain commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence with the City being named as additional insured for all claims arising out of the Contractor's work, including completed operations coverage (if required in the Request for Proposals/Bids). For contracts in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), the Contractor shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

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

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

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

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

14. Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement.

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

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

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

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

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

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

21. Notice. Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified in this Agreement, or at such other address as either party may, from time to time, designate by written notice to the other.

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

23. Termination.

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

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

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

25. Delay. If the Contractor is delayed in the completion of the work due to force majeure or otherwise, the time for completion may be extended for a period determined by the City in its sole discretion to be equivalent to the time of such delay. The City may terminate this Agreement if the delay lasts for more than 30 days. Upon termination by the City, the Contractor shall be entitled to the costs actually incurred in compliance with this Agreement less

any costs incurred by the City as a result of the delay until the date of such termination, but not more than the maximum Agreement amount.

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

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

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

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

B. Arbitration. If they are unable to resolve the dispute through mediation, it 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 Contractor. Copies of the City-furnished data that may be

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

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

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

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

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

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

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

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

CITY OF TRAVERSE CITY

By \_\_\_\_\_  
Michael Estes, Mayor

By \_\_\_\_\_  
Benjamin C. Marentette, City Clerk

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Penny Hill, Acting City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Lauren Tribble-Laucht, City Attorney

CONTRACTOR

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (print or type)

## SCOPE OF SERVICES

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

## SCHEDULE OF PAYMENTS

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

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

## TIMETABLE FOR ACTIVITIES

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

Services shall be completed not later than \_\_\_\_\_.

**Bidder - Please complete and return**

**BID SUMMARY**

**TITLE: WATER & SEWER MAINTENANCE STREET REPAIR BIDS**

**DUE DATE: FRIDAY, MAY 22, 2015 AT 10:00 AM**

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.

Price per lineal foot for infrared joint repair on existing cold patch or butt joints \_\_\_\_\_/ft

Price per square foot for seamless asphalt over gravel patch (minimum 2” asphalt over 8” gravel base) \_\_\_\_\_/sq ft

Price per square foot for seamless asphalt over concrete patch (minimum 2” asphalt over 9” concrete) \_\_\_\_\_/sq ft

Price per square foot for reclaimed asphalt for winter patches \_\_\_\_\_/sq ft

Price per square foot for asphalt seal coating (coal tar emulsion) \_\_\_\_\_/sq ft

Price per lineal foot for line striping:  
     New layout \_\_\_\_\_/ft  
     Restriping \_\_\_\_\_/ft

Price per lineal foot for hot rubber crack sealing (heat lance method) \_\_\_\_\_/ft

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: \_\_\_\_\_

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

1. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Services to be Performed: \_\_\_\_\_

2. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Services to be Performed: \_\_\_\_\_

3. \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Services to be Performed: \_\_\_\_\_