



October 21, 2014

Vendor:

The City of Traverse City will receive sealed proposals in the Office of the City Manager, Second floor, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan, 49684, until **Thursday, November 6, 2014, at 2:30 p.m.** for the following:

Operation of Concession Stand at Hickory Hills Ski Area

(specifications attached)

If the specifications are obtained from the City's new updated website link at: http://www.traversecitymi.gov/bids_and_rfps.asp, it is the sole responsibility of the Bidder to check the website for updates and addenda prior to the proposal 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 proposals, waive irregularities, and to accept the proposals either on an entire or individual basis the proposal 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 proposal. Such expenses shall be borne exclusively by the Bidder.

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

You must indicate on the outside of the sealed envelope that the proposal is for the **“Hickory Hills Concession Stand.”**

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

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

If you have any questions, please contact Lauren Vaughn, Superintendent of Parks and Recreation, at (231) 922-4900 ext. 114 between the hours of 9:00 a.m. and 4:00 p.m., before the proposal is submitted.

PLEASE SUBMIT PROPOSAL TO:

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

INTENT

It is the intent of this request to solicit proposals for the operation of a concession stand at Hickory Hills Ski Area (located on the west end of Randolph Street, Traverse City, MI) during 2014-2015 through the 2016-2017 ski seasons, and to reserve the option for a renewal of this proposal, mutually agreed upon by both parties, for a period of up to three (3) additional years, in one year increments.

Vendors submitting proposals are urged to tour the facility with staff prior to the proposal due date to become fully familiar with the facility and requirements set forth in this Request for Proposals.

The City intends to select proposals on the basis of:

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

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

PROPOSAL

Vendors submitting proposals shall complete and return the enclosed "Proposal Summary" sheet. As indicated on the summary sheet, proposals shall not be less than \$1,500.00 or 10% of the gross receipts, whichever is greater.

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

SILENCE OF PROPOSAL

The apparent silence of any portion of this Request for Proposal and any supplemental requirements as to any details or the omission of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All services are to be first quality.

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

The successful Vendor must possess the ability, manpower, equipment and licenses to properly operate the concession stand at Hickory Hills during and through the 2016/2017 ski season with the option of extending the agreement for up to three more years in one year increments.

ACCEPTANCE OF PROPOSAL CONTENT

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

The City reserves the right to accept, or reject, any and all proposals, negotiate differences, and to accept the proposal deemed to be in the best interest of the City of Traverse City.

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

SUBMITTAL OF PROPOSALS

Firms interested in contracting with the City of Traverse City for operating the concession stand at Hickory Hills should submit a copy of their proposals containing:

1. List of equipment.
2. Proof of liability insurance as stated under INSURANCE, at least one week prior to operations.
3. Proposed menu.
4. Proposed prices.
5. Proposed schedule of operation.
6. Qualifications as listed under QUALIFICATIONS.
7. Proposal Summary

ECONOMY OF PREPARATION

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

QUESTIONS REGARDING PROPOSAL

It is the responsibility of each participating Vendor to insure that their interpretation of the REQUEST FOR PROPOSAL is consistent with that of the City.

All questions are to be addressed directly to: Lauren A. Vaughn, Superintendent of Parks and Recreation, between 9:00 a.m. and 4:00 p.m., Monday through Friday. Phone number is (231) 922-4900 ext. 114.

GENERAL REQUIREMENTS FOR EQUIPMENT AND MATERIALS

The Vendor shall furnish all National Sanitation Foundation (NSF) approved equipment, microwave, ovens, etc. and fixtures necessary for the complete and satisfactory and acceptable operation of a concession business. An on-site refrigerator may be supplied by the City.

The Vendor will employ competent labor to satisfactorily perform work in accordance with this Request for Proposals.

Vendor will allow other group organizations, who obtain permission from the City Commission, to sell items not in direct competition with food service in and around Hickory Hills property from time to time for special events. In addition, the Grand Traverse Ski Club holds one or two events per season where food is provided to club members and guests. The City also may provide food to participants on "Fun Day" near the end of the season.

Vendor is responsible for securing all required health inspections, food permits, etc. **SEE HEALTH INSPECTIONS.**

VENDOR'S RESPONSIBILITIES

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

The Vendor is solely responsible to ensure the safety of all its workers on the job and the compliance with any and all MIOSHA safety requirements and regulations, as well as any health standards and regulations.

The Vendor may be asked to work in cooperation with the City of Traverse City staff to pick up litter in the lodge area, oversee skiers in the lodge area, and to "stoke the wood burning fireplace."

INSPECTION

To inspect Hickory Hills, prior arrangements must be made at least 24 hours in advance. Call Lauren A. Vaughn, Superintendent, Parks and Recreation, 922-4910, ext. 114, 9:00 a.m. to 4:00 p.m., Monday through Friday, to schedule an appointment.

ITEMS TO BE PROVIDED BY THE CITY

Vendor understands that the City shall furnish all necessary utilities (water, electricity, heat) in the building for the operation of the concession stand. The City will furnish a dumpster; however, the Vendor must provide disposal/trash bags for use at the concession stand area.

LENGTH AND HOURS OF OPERATION

The vendor shall operate one (1) concession stand.

The hours of operation depend a great deal upon skiing conditions and may vary throughout the season. Generally, the hours of operation shall be the regular City hours of operation of the Hickory Hills ski area which currently are Monday through Friday 4:00 p.m. - 8:30 p.m.; Saturday 11:00 a.m. - 8:30 p.m.; Sunday 11:00 a.m. - 5:00 p.m. Hickory Hills will be closed on Christmas and New Year's Day. No operations shall be permitted during these observed holidays. Other nationally celebrated holidays will be considered regular working days. Special events or parties mutually agreed upon by the City and the Vendor shall also be included. Special extended school holiday and snow day hours will be in effect. A proposed schedule is available upon request.

The City of Traverse City requires an operation which runs in conjunction with the above listed schedule. **IF YOUR PROPOSED OPERATION WOULD DIFFER FROM THE ABOVE HOURS, PLEASE DESCRIBE FULLY IN PROPOSAL SUMMARY.**

The City of Traverse City has the right, and will execute their right, to close Hickory Hills for any reason during the ski season. Reasons may include weather conditions (lack of snow, rain, storm damage), utility problems, lack of attendance, etc.

FINANCIAL RESPONSIBILITY AND REPORTING OF THE VENDOR

The Vendor chosen by The City of Traverse City will be selected on the basis of the Vendor who returns the highest financial benefit to the City and who presents their operation to be the best suited to provide the services desired by the City of Traverse City. The chosen Vendor shall provide to the City Parks and Recreation Superintendent, **a monthly accounting of all concession receipts substantiated by cash register tape, or other proposed methods, within 30 days after the end of the month. The daily (detailed) itemized cash register tapes should total the gross receipt amount on the Vendor's Report; see Schedule D - FINANCIAL REPORT.**

Formats of the reports due to the City Parks and Recreation Superintendent may be changed during the season; this will be determined by the City Treasurer. The City Treasurer will have the final say on all reports and when they are due.

PAYMENT TO CITY

Payment to the City will be made in one lump sum within thirty (30) days of the end of the ski season. See SCHEDULE B - SCHEDULE OF PAYMENTS.

INSURANCE

The Vendor is required to provide and maintain insurance at all times during the performance of this contract. The insurance shall be contracted with a company licensed to do business in the

State of Michigan and shall be subject to the approval by the City. Certified copies in duplicate, 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:

1. Commercial General Liability Insurance. The Vendor shall procure and maintain during the life of the contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage providing coverage for premises, products and complete operations. The City of Traverse City must be listed as additional insured.

2. Workers Compensation Insurance. The Vendor shall procure and maintain during the life of this contract, Workers Compensation Insurance, including Employers' Liability Coverage in accordance with all applicable statutes of the State of Michigan.

MENU

The Vendor must submit as part of this proposal the proposed menu and prices for each item. The City of Traverse City will review the menu, and make the final decision as to the foods served. The City of Traverse City recommends, but Vendor is not limited to serving or furnishing: soup, sandwiches, juice, fresh fruit, popcorn, yogurt, nachos, soda pop (fountain type preferred), hot coffee and chocolate, pizza, cookies, etc. No deep fryers allowed. Food must be of high quality and served fresh daily, including healthy menu choice items. The Concession stand is strictly limited to selling only food products. At no time will the sale of non-food items be permitted.

No vending machines shall be accepted as a form of concession operations.

Prior permission must be granted by the Superintendent of Parks and Recreation to make any changes in the menu. Any new menu must be mutually agreed upon in advance and in writing by the Superintendent of Parks and Recreation and the Vendor before changes actually take place.

JANITORIAL DUTIES

The Vendor must regularly monitor and pick up litter and perform other daily janitorial duties in the kitchen and eating area/lobby, as explained in the next paragraphs. Vendor shall supply all cleaning equipment and all cleaning supplies necessary for the job required

Cleaning Schedule

1. Cleanup operations will consist of one complete cleanup of kitchen area (mopping floors, washing tables, counters, appliances, cleaning equipment, etc.), either before or after work EVERY day. Areas to be cleaned and sanitized include kitchen/food area, and tables in the

eating area/lobby. Use appropriate cleaner for work done. Use non-abrasive cleaners when cleaning stainless steel products, USDA approved cleaners when cleaning around food service areas, and disinfectants and all purpose cleaners when sterilizing and cleaning objects away from food service area.

2. Garbage must be cleared and disposed of daily, twice daily if needed, to the dumpster provided by the City. No garbage shall be left out overnight. Garbage containers must be lined with plastic liners. Liners must be replaced daily or more often if necessary. Containers must be washed out weekly with an approved all-purpose cleaner. If odor becomes obvious or if the City receives complaints, containers will be required to be washed out every other day.

3. Wipe tables off with an all-purpose cleaner, every time tables are soiled. Tables must be kept clean at all times.

4. Keep fireplace kindled as needed. Do not let fire get low. Continue a warm heat throughout the operating day. City is to provide and stack wood.

Janitorial duties will be routinely monitored by the Parks and Recreation division. If complaints are filed, the Parks and Recreation division may choose to start a daily cleaning check list that the Vendor will be required to follow and turn into the Parks and Recreation division on a daily or weekly basis.

QUALIFICATIONS

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

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

HEALTH INSPECTIONS

Copies of any inspections performed, by the Grand Traverse County Health Department, Michigan Department of Health, etc., on the vending operation must be delivered to the Department of Public Services within 24 hours of receipt of inspection reports. Vendor is

responsible for any fines placed on Vendor by the County and/or State for infractions occurring relative to their operations.

SPECIAL REQUIREMENTS/CONSIDERATIONS

The successful Vendor will be given a key to Hickory Hills in good faith. The City of Traverse City trusts that the Vendor will obey and practice our policies and procedures for lockup and security at Hickory Hills. This key is your responsibility and cannot be duplicated without written permission from the Superintendent of Parks and Recreation.

Telephones are to be used for emergency purposes only. NO LONG DISTANCE CALLS ARE PERMITTED.

Signs advertising or soliciting business will not be permitted outside the ski lodge and surrounding area.

DAMAGES

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

PARKING

Parking is available in the lower parking area only. Vendor or employees hired by Vendor must be informed of this situation and must not block other city or private vehicles or park in the drop off area near the lodge.

PROPER ATTIRE AND ETIQUETTE

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

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

SAFETY

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

ACCEPTANCE OF PROPOSAL CONTENT

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

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

The City reserves the right to accept or reject any or all proposals, negotiate differences, and to accept the proposal deemed to be in the best interest of the City of Traverse City.

ADDITIONAL INFORMATION AND COMMENTS

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

A copy of the proposal must be received at the following address **NO LATER THAN 2:30 P.M. (LOCAL TIME) ON THURSDAY, NOVEMBER 6, 2014.**

CLEARLY MARK SEALED PROPOSALS AS "HICKORY HILLS CONCESSION STAND" AND SEND TO:

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

Telefaxed and e-mailed proposals are not acceptable.

PROPOSAL SELECTION

All proposals will be reviewed by representatives of the City of Traverse City. If a Vendor is accepted for an interview, the actual persons conducting the vending operation for the concession at Hickory Hills must participate in the interview.

ADDITIONAL QUESTIONS

Regarding items mentioned in the Request for Proposal (RFP), all questions are to be directed to: Lauren A. Vaughn, Superintendent of Parks and Recreation, (231) 922 - 4900, extension 114, between the hours of 9:00 a.m. - 4:00 p.m., Monday through Friday.

SAMPLE CONTRACT

CITY OF TRAVERSE CITY VENDOR AGREEMENT

THIS AGREEMENT made this _____ day of _____, 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 "Vendor");

WHEREAS, the City desires to engage the services of the Vendor to operate a concession stand for the sale of food and non-alcoholic refreshments at Hickory Hills Ski Area; and

WHEREAS, the Vendor desires to operate such concession stand, and has represented that 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 proposal 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 proposal.

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

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

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

10. Insurance. The Vendor agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Vendor will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall

contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy; and in the case where Vendor is required to name the City as additional insured, and shall provide an endorsement stating that the City has been named as an additional insured onto such policy for all claims arising out of the Vendor's work. Should any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City.

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).

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

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

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

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

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

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

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

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

CITY OF TRAVERSE CITY

By _____
Michael Estes, Mayor

By _____
Benjamin C. Marentette, City Clerk

VENDOR

APPROVED AS TO SUBSTANCE:

Jered Ottenwess, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

By _____
Signature

Name and Title (print or type)

SCHEDULE A

SCOPE OF SERVICES

1. The Vendor shall operate one concession stand at Hickory Hills Ski Area in a building to be provided by the City of Traverse City. Services shall commence approximately December 19, 2014 and continue through the 2016-2017 season, with the season usually ending in mid-March. The Vendor agreement may be extended by the mutual written agreement of the Vendor and the City Manager, for up to three (3) additional years, in one year increments.
2. The snack bar will be open seven days a week whenever Hickory Hills is open for skiing - See "LENGTH AND HOURS OF OPERATION."
3. Menu regulations are described in detail under "MENU."
4. The Vendor's proposal and the City's Request for Proposals are hereby incorporated herein by reference.
5. The Vendor will provide access to all concession areas for authorized representatives of the City of Traverse City, Grand Traverse County Health Department, and the Michigan Department of Health for the purpose of inspection and/or maintenance. Vendor is responsible for any fines placed upon Vendor by the State for infractions occurring as a result of the Vendor's actions.

The attached Request for Proposals and Contractor's Proposal are attached hereto and incorporated into the Contractor Agreement as "Schedule A."

SCHEDULE B

TIMETABLE FOR ACTIVITIES

Vendor services shall commence approximately December 19, 2014 and continue through the 2016-2017 season. Hours of operation for Vendor services will be Monday through Friday 4:00 p.m. to 8:30 p.m.; Saturday 11:00 a.m. to 8:30 p.m.; Sunday 11:00 a.m. to 5:00 p.m. Hickory Hills will be closed on Christmas and New Year's Day. Longer hours will be in effect during Christmas break and on other days when school is closed.

SCHEDULE C

SCHEDULE OF PAYMENTS

The Vendor agrees to pay the City a minimum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) or Ten Percent (10%), of the gross receipts, whichever amount is greater (per season) for the right to operate a concession stand at Hickory Hills. Payment to the City shall be as follows:

1. A monthly accounting of all concession receipts substantiated by cash register tapes or other agreed upon method must be provided to the City within 30 days after the end of each month of operation.
2. Payment to the City will be made in one lump sum within thirty (30) days of the end of the ski season.
3. Should this agreement be renewed by the Vendor and the City, successive years' payment schedule shall be agreed upon by the City and the Vendor at the time of renewal.

SCHEDULE D
(Sample)

FINANCIAL REPORT
FOR HICKORY HILLS CONCESSION STAND

VENDOR: _____

Month _____ Year _____

Gross Receipts for Month - Totaling \$ _____

FOR OFFICE USE ONLY

Date Received _____

Receipts Attached: _____ Yes _____ No

Signed By: _____

DISCLOSURE BY CITY COMMISSIONER

I would like to make the following disclosure:

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

_____, and

(Describe your pecuniary interest, see examples below)

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

Signature

Print name

Date

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

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

My spouse owns the business.

I am a subcontractor on this project

Bidder - Please complete and return

PROPOSAL SUMMARY

TITLE: **Operation of Concession Stand at Hickory Hills Ski Area**

DUE DATE: **Thursday, November 6, 2014 at 2 PM**

Having carefully examined the attached specifications and any other applicable information, the undersigned proposes to furnish all items necessary for and reasonably incidental to the proper completion of this proposal. Bidder submits this proposal 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 proposal the Company or he/she is not in arrears to the City of Traverse City for debt or contract and is in no way a defaulter as provided in Section 152, Chapter XVI of the Charter of the City of Traverse City.

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

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

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

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

- (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 proposals in whole or part and to waive irregularities in any proposal in the best interest of the City. The proposal 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 proposal may not be withdrawn for a period of sixty (60) days from the actual date of the opening of the proposal.

NOTE: NOT LESS THAN “\$1,500.00 OR 10% OF GROSS RECEIPTS (WHICHEVER IS GREATER) PER SEASON.”

\$ _____ or _____ % OF GROSS RECEIPTS (WHICHEVER IS GREATER) PER SEASON.

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone

Fax

City, State, Zip

Sole proprietorship/partnership/corporation

If corporation, state of corporation

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

1. _____

2. _____

3. _____
