



City of Traverse City and DDA

Bid Document

Posted: January 22, 2024

The Traverse City Downtown Development Authority (DDA) will receive sealed bids in the office of City of Traverse City Human Resources Department, 400 Boardman Avenue, Traverse City, Michigan, 49684, until **Wednesday February 7, 2024 at 10:00 AM** for the following project:

Executive Search Services
(specifications attached)

If the specifications are obtained from the City's website link at: [City of Traverse City Bids](#), 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 the same to ksheridan@traversecitymi.gov

DDA 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 DDA. 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. Results will be posted on the City's website. If you desire, you may call Kim Sheridan at (231) 922-4440 for results.

You must indicate on the **outside** of the sealed envelope that the bid is for **"Executive Search Services."** You must submit **TWO (2) SEALED COPIES** of the bid to the CITY prior to the above-indicated time and date or the bid will not be accepted. Postmark is not accepted. Emailed bids will be accepted. If submitting an emailed bid, the subject line of your e-mail must contain the words "Sealed Bid-Executive Search Services", and submit your e-mailed bid to tmanage@traversecitymi.gov.

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.

Please direct ALL questions to: Kristine Bosley, HR Director, City of Traverse City, at phone #(231) 922-4481 or via email to: kbosley@traverseCitymi.gov before the bid is submitted.

PLEASE SUBMIT BID TO:

Kim Sheridan, Purchasing Agent
City of Traverse City
400 Boardman Avenue, 2nd Fl.
Traverse City, MI 49684
tmanage@traversecitymi.gov

SPECIFICATIONS

A. INTENT

The DDA is seeking to engage an experienced executive search firm to assist the DDA in identifying and selecting a successor to the Chief Executive Officer position. This position is the top leadership position for the DDA and is responsible for the management of the Downtown District and ensuring its high performance. The CEO is employed by, and reports to, a twelve-member Board appointed by the City Commission. Pursuant to City Charter, the DDA Board has the authority to hire and compensate the CEO. The DDA is a component unit of the City of Traverse City.

The DDA is seeking competitive proposals from qualified executive search firms to conduct a recruitment process to ensure the DDA finds a qualified candidate to fill the vacated position. The current CEO Position Summary is attached as Attachment A.

B. COMPANY OVERVIEW

Like many downtowns in post-industrial cities throughout the Midwest during the second half of the 20th century, Downtown Traverse City suffered from a lack of private investment, job loss, empty storefronts, crumbling infrastructure, polluted properties and underutilized parcels. Looking to spark new investment and promote additional opportunities for community and economic development, city leaders established the Downtown Development Authority (DDA) in 1978. Since then, the DDA serves as the lead agent working to enhance Downtown, focused on place making, infrastructure, events, parking and business procurement, promotion, and growth. The primary funding mechanism used by the DDA to finance public infrastructure initiatives is Tax Increment Financing (TIF). TIF is a commonly-applied, state-authorized financial tool used by DDAs throughout Michigan and the nation to develop, construct, and maintain critical public infrastructure that supports and promotes economic development within a downtown and region. Infrastructure improvements within the Downtown District are funded through two TIF Districts – “TIF 97” which was established in 1997 for a period of 30 years and “Old Town TIF” which was created in 1985 and renewed in 2016 for an additional 25 years. The DDA also provides services that create a vibrant Downtown environment. To fund services, the DDA is funded also through a 2-mill levy on property owners within the Downtown District as well as management contracts for services that include parking, community arts and events, and promotions.

The DDA is pro-active and engaged, and completed in December 2022 a strategic document called “Moving Downtown Forward” which was initiated to engage community members and Downtown stakeholders regarding their perspectives on what has worked well and what needs to change, as well as their vision for Downtown, its needs, and the way it relates to the surrounding region. This plan identifies both the shared and competing values and interests of stakeholders, as well as the potential approaches, structures, and resources available to help the DDA effectively provide ‘clean, green, and safe’ programs, public infrastructure, and place making to move Downtown forward.

The guiding principles for the DDA identified within the Moving Downtown Forward Report are to:

- Design a great place for all ages and future generations.
- Advance Climate Action, Sustainability, Renewable Energy, Energy Efficiency, and Resiliency
- Protect and Preserve Small Local Independent Businesses
- Champion the Development of Attainable and Workforce Housing
- Support Job Growth and Varied Career Opportunities

The DDA is currently amending TIF 97 to be Called Moving Downtown Forward Tax Increment Financing Plan. This Financing Plan will be a 30-year amendment with a cost-sharing approach for all taxing jurisdiction partners.

C. SCOPE OF WORK

The selected firm will conduct a search for a successor CEO to be in place as soon as possible. The recruitment will include a group of applicants that demonstrates the characteristics, experience, and competencies that would qualify them for the position. A national search is envisioned, with the ideal candidate being experienced in a leadership position and well-recognized within the industry for his or her experience. The DDA is not interested in looking for someone to train, but rather is committed to finding the best person who can continue its path of excellence. The firm will provide applicable services which will include, but not be limited to the following:

1. Work with the DDA Board and DDA Governance Committee to refine the job description, develop characteristics and attributes of the successful candidate, develop appropriate and necessary selection criteria, selection process and timeline.
2. If requested by the DDA Governance Committee, conduct limited phone interviews with downtown stakeholders to inform the refinement process of the job description.
3. Develop a strategy for carrying out the recruitment, including outreach to encourage applicants from diverse backgrounds to apply.
4. Conduct a broad and thorough recruitment process including, but not limited to, professional publications, advertisements, internet, targeted recruitment and professional contacts to ensure a pool of qualified candidates.
5. Advise potential candidates that if they wish their application to be confidential, they must request confidentiality in writing, but that all interviews by the DDA will be public. MCL 15.268(f).
6. Acknowledge receipt of candidates' application materials.
7. Review resumes and conduct initial screening of all candidates' applications.
8. Review resumes for background and qualifications and conduct telephone interviews to clarify each applicant's experience. Prepare a written summary to the DDA detailing background, achievements, and strengths of each candidate, including the resume of up to 10 candidates with the most promising qualifications.
9. The DDA will review the written summary and resumes, and select up to 8 candidates to interview.
10. Coordinate all on-site portions of the selection process including scheduling interviews and other activities, and making travel and lodging arrangements as directed by the DDA Board or DDA Governance Committee
11. Assist the DDA Board and Governance Committee in the interview and selection process.
12. After selection by the DDA Board, the firm shall conduct a comprehensive background check. The background check will include, but not be limited to, verification of education and employment history, and a detailed financial, criminal and civil litigation investigation. In the event a politically sensitive or potentially embarrassing issue arises in the candidate's background, conduct in-depth interviews with principal parties to clarify the event and clearly describe the event to the DDA Board.

13. The Firm will conduct and provide notes on professional reference checks
14. The firm will lead the board in the selection process and facilitate the salary, employment, and contract negotiations with the successful candidate.
15. Provide notification to all candidates not selected for the position.
16. Provide a 6 month guarantee whereby if the selected candidate leaves or is let go for cause within the first six months, the Firm will work with the DDA Board to identify and select another candidate

D. REQUESTED PROPOSAL INFORMATION

1. A general overview of your organization and its qualifications.
2. Examples of recent executive searches performed for similar organizations; including top executives in state or local governmental settings (i.e. recruitment efforts subject to Open Meetings Act requirements and Freedom of Information Act requirements).
3. Identification of specific staff member(s) dedicated to this process and who will lead, including brief bios of each.
4. Confirmation of staff availability to manage the process in a fashion likely to result in filling the vacancy within six months of the effective date of the consultant agreement.
5. A general process description with an achievable timeline including required meetings.
6. A list of additional DDA Board and DDA Governance Committee obligations in support of this process
7. A cost proposal, including the timing of requested payments. If your travel expenses are additional, please indicate the estimated cost per trip and the number of trips expected.
8. References from relevant clients (ideally within local municipal government or another Downtown Authority) who have retained your organization to conduct top executive, or senior executive, searches within the past 2 years. (3 to 5 references are preferred, including telephone or e-mail contact information.)

E. IRAN ECONOMIC SANCTIONS ACT

**Sworn and Notarized Affidavit of Compliance
Iran Economic Sanctions Act
Michigan Public Act No. 517 of 2012**

All bidders must submit the following certification statement in compliance with Public Act No. 517 of 2012 (the “Iran Economic Sanctions Act”) and attach this form to the bid. **City of Traverse City shall not accept any bid that does not include this sworn and notarized certification of statement.**

The undersigned, the owner or authorized officer of _____, hereby certifies, represents and warrants that the Bidder (including its officers, directors and employees) is not an “Iran linked business” within the meaning of the Iran Economic Sanctions Act, and that in the event the Bidder is awarded a contract for the Executive Search Services, the Bidder will not become an

“Iran linked business” at any time during the course of performing the work or any services under the contract.

The Bidder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification is made, whichever is greater, the cost of City of Traverse City’s investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a Request for Proposal for 3 years from the date it is determined that the person has submitted the false certification.

BIDDER:

By: _____
Its: _____
Date: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2024, by _____.

NOTARY PUBLIC:

(Name)
_____ County, _____

My Commission Expires:

F. BID SUMMARY

Bidder – Please complete and return:

TITLE: **Executive Search Services**

DUE DATE: **Wednesday, February 7, 2024 at 10:00 AM**

Having carefully examined the specifications and any other applicable information, the bidder proposes to furnish all items necessary for and reasonably incidental to the proper completion of this bid. Bidder submits this bid and agrees that the bid may not be withdrawn for a period of 60 days from the actual date of the opening of the bid.

Bidder understands and agrees, if selected as the successful bidder, to accept a Contract from the DDA, (Attachment B) and to provide proof of any required insurance. The DDA will not entertain changes to its standard Contract.

Bidder submits this bid and agrees to meet or exceed all of the DDA's requirements and specifications unless otherwise indicated in writing and attached hereto.

Bid forms are to be completed, including bid sheet, and submitted. Additional sheets may be used and submitted with bid.

Bidder understands that the DDA reserves the right to accept any or all bids in whole or in part and to waive irregularities in any bid in the best interest of the DDA. The bids will be evaluated and awarded on the basis of the best value to DDA. Criteria used will include, but not be limited to, bidder/Successful Bidder's ability, qualifications, experience, price and overall capability to meet the needs of the DDA.

Bidder shall pay all sales, consumer, use and other similar taxes required to be paid by Bidder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the work.

The Bidder certifies that it is in compliance with the City of Traverse 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 DDA indicates that the bidder is unable to perform responsibility or which reflects a lack of integrity that could negatively impact or reflect upon the DDA, 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.

Terms: Payment will be made within thirty (30) days after invoicing.

Bidder certifies that as of the date of this bid, Bidder's company or Bidder 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 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.

Please direct ALL questions to: Kristine Bosley, HR Director, City of Traverse City, at (231) 922-4481 or kbosley@traversecitymi.gov.

G. SUBMISSION FORM

By submitting a response to this RFP you acknowledge that the DDA may be required from time to time to release records in its possession under the Michigan Freedom of Information Act. By submitting a response, you hereby give permission to the Traverse City DDA to release any records or materials submitted by you, as the City may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 et seq.

Bid Total: \$

Submitted by:

Signature

Company Name

Name and Title (Print)

Company Address

Phone

Fax

City,

State,

Zip Code

Sole Proprietorship/Partnership/Corporation

If Corporation, State of Corporation

The Successful bidder's name shall appear as follows on any Contract or Purchase/Service Order documents:

Company Name

Contract or Purchase/Service Order documents shall be mailed to:

Attention

Street Address

City ,

State,

Zip

Email Address

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

1.

Name of Organization

Contact Person

Phone Number

2.

Name of Organization

Contact Person

Phone Number

3.

Name of Organization

Contact Person

Phone Number

ATTACHMENT A

Position Summary

The Chief Executive Officer (CEO) serves at the pleasure of the Traverse City Downtown Development Authority (DDA) Board of Directors. The CEO is the catalyst, promoter and keeper of the Traverse City downtown vision, a community that has the distinction of being recognized as:

- *21 Nicest Small Towns in America Everyone Should Visit before They're 50* (Reader's Digest, April 2017)
- *21 of the Best Small Towns in America* (Architectural Digest, October 2016)
- *25 Coolest Midwest Lake Vacation Spots* (Midwest Living, August 2016)
- *Top 25 Places to Retire* (Forbes Magazine, April 2016)
- *20 Best Small Towns* (Smithsonian Magazine, April 2015)

The CEO works with the Board, oversees all DDA staff to ensure successful implementation of the Board's strategic plan and annual operating plan for the DDA which may include contractual work for other entities and enjoys working with people and organizations.

Required Experience, Skills, and Abilities

Education

- Bachelor's degree in an area of concentration related to the position.

Experience

- At least 7 (seven) years of work experience with accomplishments that are relevant to this job description.
- Understanding and working knowledge of purposes and roles of DDAs.
- Successful management of community-based programs.
- Successful in leading and participating in outreach and community engagement processes, including use and application of multiple forms of media to reach and have two-way communications with stakeholders.
- Successful planning, development and implementation of strategies and operating plans that address community priorities.
- Familiarity with how to attain goals in communities of similar size and nature as Traverse City.
- Well versed in general funding sources available for communities and how to help develop funding.
- Experience in setting and attaining personal and organizational performance measures.

Skills and Abilities

- Demonstrated leadership, communication and team building skills.
- Demonstrated ability and interest in collaboration and collective impact and in developing common agendas for addressing complex needs, issues and priorities. A "connector" between businesses, people, governments and other organizations.
- Outstanding communicator in all respects who demonstrate through example the positive influence of inclusiveness in attaining priorities. A "modern" thinker and communicator, adept in social

media and modern communication methods. Capability and experience with educating various sectors on options and implications involving government programs.

- Forward thinker and effective planner who deals with needs and priorities proactively.
- Enjoys and comfortable dealing with concepts and large visions of the future.
- Successful management of and coping with stressful conditions.
- Enjoys working with people and can readily fit with and manage small staff unit.
- Understanding of small town dynamics.
- Prior experience in implementing Tax Increment Financing plans a plus.
- Can readily prioritize in short and long-term contexts.
- Familiarity with work and jobs that have elected officials as primary stakeholders.
- Experience with leveraging partnerships, affiliations, volunteers and staff to maximize productivity in ways that contain or reduce operation costs as a function of output.

Position Responsibilities

The CEO is a champion, cheerleader and visionary for Traverse City's downtown. The CEO is a strong leader who invites and embraces engagement with all interests in fulfilling the annual goals and priorities of the TCDDA. The CEO builds and sustains relationships and provides services and programs that are valued by businesses and other organizations located within the TCDDA district. The CEO's work is driven by the future vision for Traverse City's downtown.

CEO's duties encompass:

- Implementing the DDA's strategic and developing and implementing operating plans.
- Implementing Tax Increment Financing plans and strategies.
- Leading, cultivating and promoting a thriving business environment.
- Proactive communications and engagement with stakeholders, including businesses, downtown groups and organizations, neighboring communities and governments, funding sources and others.
- Developing and participating with partnerships to achieve strategic goals operating plan priorities.
- Overseeing the development and management of downtown parking facilities.
- Achieving the goals of an annual capital improvement program.
- Fulfilling contractual obligations with other entities.
- Handling all employee transactions, including employee training and evaluation.

Each year, the Board of Directors through its Executive Committee, works with the CEO to establish:

- Annual goals
- Objectives to achieve goals
- Milestones to measure progress

These are done for the six areas of focus that are weighted to reflect annual priorities based upon trends, evolving needs and opportunities and other circumstances. In this way, the Board, CEO and organization establish clear accountability based on new, evolving and ongoing priorities. The Areas of Focus are:

Area of Focus

Weight Assigned/Fiscal Year

1. Leadership
2. Development (Infrastructure, etc.)
3. Parking

4. Business Recruitment and Retention
5. Marketing and Promotion
6. Partnership and Collaboration

Supervision and Management

The CEO has the authority to hire and manage DDA staff including those who may work under contract. Beginning in 2018, all staff will participate in “360” performance evaluations.

Evaluation

The CEO will complete an annual self-evaluation and participate in a “360” performance evaluation that will be developed and used by the Board in 2018 and then annually thereafter with interim evaluations that may occur quarterly or as otherwise determined by the Board. In completing the evaluation, the Board will give priority to assessing attainment of annual goals, objectives and milestones within the Areas of Focus referenced.

Compensation

- Base wage based on qualifications and experience.
- Financial performance incentives subject to Board approval.
- Health, dental and vision benefits
- 401-K Retirement Savings Account

Professional Development

The DDA has budgeted a sum for professional development of the individual filling this position. Specific professional development goals and programs will be defined in collaboration with the Executive Committee during the first 4-6 months of hire.

ATTACHMENT B

(Draft Consultant Agreement)

CITY OF TRAVERSE CITY CONSULTANT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20__, by and between the CITY OF TRAVERSE CITY, a Michigan municipal corporation, of 400 Boardman, Traverse City, Michigan, 49684, (the "City"), and _____, a (sole proprietorship/partnership/corporation) of _____, (if a corporation, state of incorporation) (the "Consultant");

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

[BRIEF DESCRIPTION OF PROJECT]

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

THEREFORE, the parties mutually agree as follows:

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

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

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

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

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

5. Independent Contractor. The relationship of the Consultant to the City is that of an independent contractor and in accordance therewith, the Consultant covenants and agrees to conduct itself consistent with such status and that neither it nor its employees, officers or agents will claim to be an officer, employee or agent of the City or make any claim, demand or application to or for any rights or privileges applicable to any officer or employee of same, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. The parties do not intend the services provided by the Consultant to be a joint venture.

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

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

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

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

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

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

10. Insurance. The Consultant agrees not to change and agrees to maintain the following insurance throughout the period of performance of this Agreement. The Consultant will upon execution of this Agreement provide a certificate of insurance to the City Clerk. The policy shall contain endorsements stating that at least a 10-day notice will be given to the City prior to termination or any change in the policy. Should any required insurance be cancelled, materially reduced or expired, all activities under this Agreement shall immediately cease until substitute insurance in compliance with all requirements hereof has been procured and evidence thereof presented to the City. Upon request by the City Clerk, Consultant 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 Consultant shall acquire and maintain commercial general liability insurance coverage in the amount of \$1,000,000 per occurrence with the City being named as additional insured for all claims arising out of the Consultant's work, including completed operations coverage (if required in the Request for Proposals/Bids). For contracts in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), the Consultant shall provide ISO general aggregate endorsement CG 25 03 which provides a project specific aggregate of \$2 million for general liability.

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

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

execution of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

23. Termination.

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

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

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

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

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

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

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

A. Mediation. If they are unable to resolve the dispute themselves and before formally instituting any other dispute mechanism, they shall utilize the services of a mutually

acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring them together in at least one mediation session.

B. Arbitration. If they are unable to resolve the dispute through mediation, it shall be decided by final and binding arbitration according to the rules and procedures of Michigan's Uniform Arbitration Act being PA 371 of 2012, MCL 691.1681 *et seq* or as otherwise agreed to by the parties. The parties shall mutually agree to the selection of an arbitrator and if they are unable to agree, the arbitrator shall be appointed by the chief judge of the 13th Circuit Court. Judgment upon the arbitrator's award may be entered in Grand Traverse County 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 require the parties to participate in at least one mediation session before issuing an award.

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

30. Freedom of Information Act. The Consultant acknowledges that the City may be required from time to time to release records in its possession by law. The Consultant hereby gives permission to the City to release any records or materials received by the City as it may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 *et seq*. Provided, however, that

the Consultant shall not be held liable for any reuse of the documents prepared by the Consultant under this Agreement for purposes other than anticipated herein.

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

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

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

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

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

36. Iran Economic Sanctions Act. The Consultant certifies that it is not an Iran linked business as defined under the Iran Economic Sanctions Act (MCL 129.311 *et seq.*) and will not, during the performance of this Contract, violate the provisions of the Iran Economic Sanctions Act, as amended.

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

CITY OF TRAVERSE CITY

By _____
Amy Shamroe, Mayor

By _____
Benjamin C. Marentette, City Clerk

CONSULTANT

APPROVED AS TO SUBSTANCE:

Elizabeth Vogel, City Manager

APPROVED AS TO FORM:

Lauren Tribble-Laucht, City Attorney

By _____
Signature

Name and Title (print or type)

SCOPE OF SERVICES

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

SCHEDULE OF PAYMENTS

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

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

TIMETABLE FOR ACTIVITIES

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

Services shall be completed not later than _____.