

**NOTICE**

Thank you for your inquiry regarding the City of Portage project listed below:

4-WAY FLASHING BEACON  
OAKLAND DRIVE/OSTERHOUT ROAD

If your firm plans to bid on this project, please send an e-mail response to [purchasing@portagemi.gov](mailto:purchasing@portagemi.gov) with the following information:

Firm Name: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Firm's Contact Person: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Postal Address: \_\_\_\_\_

The City of Portage Purchasing Department will use this information to communicate with you in the event an addendum or change to this project is issued. If you do not send this information to the City of Portage, you will not receive any follow-up notification of any changes to the project.

Date of Issue: October 18, 2011

REQUEST FOR PROPOSALS – PROFESSIONAL SERVICES

The City of Portage invites interested Firms to submit information regarding their experience, qualifications, and fees for providing professional engineering services for performing design and engineering of the work for a 4-way flashing beacon at Oakland Drive/West Osterhout Drive. The information submitted, including experience, qualifications, fee schedule, and information requested, as a part of this Request for Proposal will be reviewed for the purpose of evaluating the firm for further consideration. The City is desirous of receiving proposals for an amount not to exceed a specified dollar figure for the duration of the project, as described in the following pages. In the event the firm is unable to submit such a proposal, the firm is invited to submit a proposal based on the fee/compensation structure that you deem most appropriate. In any case, the proposal submitted should cover any and all expenses related to the project. **PRIMARY CONSIDERATION WILL BE GIVEN TO PROPOSALS SUBMITTED IN THE FIRM SPECIFIC DOLLAR FORMAT REQUESTED.**

Favorable pricing will be one element of the selection process, but the experience of the firm, qualifications, experience and ability of assigned staff, resources, ingenuity, creativity, completeness of the level of service proposed and timeliness of service proposed by the Firm will be significant factors in award of this professional service contract. Final decision on selection of the Firm for this project will be determined by the Portage City Council. The City of Portage reserves the right to reject any proposals or parts of proposals. The City also reserves the right to waive any irregularities, inconsistencies, or take what other action is appropriate as determined by the City to be in the best interest of the City.

Questions regarding the scope of work to be accomplished may be directed to Jereme Rowland, Project Manager at (269) 329-4428. Questions pertaining to the selection process, insurance requirements, or other procedural requirements should be directed to Purchasing Department at (269) 324-9284. Proposals may be mailed or delivered to the City of Portage Purchasing Department, 7900 South Westnedge Avenue, Portage, Michigan 49002. Sealed envelopes should be plainly marked:

A complete Request for Proposal may be viewed or downloaded at  
[www.portagemi.gov/Departments/Purchasing/BidOpportunities.aspx](http://www.portagemi.gov/Departments/Purchasing/BidOpportunities.aspx)  
or mailed by contacting the Purchasing Department.

REQUEST FOR PROPOSAL: PROFESSIONAL ENGINEERING SERVICES  
4-Way Flashing Beacon  
Oakland Drive/West Osterhout Road

CLOSING DATE AND TIME: November 10, 2011, at 3:00 p.m.

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PROFESSIONAL ENGINEERING SERVICES

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Attachments:  
Location map  
Draft Contract

1 **CITY OF PORTAGE INSTRUCTIONS FOR PROPOSAL SUBMISSION**

1.1 Examination of Request for Proposal Documents

Before submitting a proposal, the Firm shall carefully examine the specifications and shall fully inform themselves as to all existing conditions and limitations and shall indicate in the proposal the sum to cover the cost of all items included on the proposal form.

1.2 City of Portage Contract Conditions and Specifications

Any Firm that submits a proposal should be prepared to provide professional services being provided and for City of Portage/third party contracts that involve professional and/or administrative assistance of the Firm. The Contract Conditions and Specifications can be obtained from the Purchasing Department. The first set will be provided to the Firm at no cost and subsequent sets or copies must be purchased for \$25.00.

1.3 Withdrawal of Proposals

Any Firm may withdraw its proposal, either personally, by facsimile or by letter, at any time prior to the scheduled closing time for receipt of proposals.

Each proposal shall be considered binding and in effect for a period of one hundred and twenty (120) days after the closing date.

1.4 Opening of Proposals

Proposals will be opened and evaluated as soon as practical after the closing date and time set forth in cover page.

1.5 Evaluation of Proposals

It is the intent of the City of Portage to evaluate all proposals quickly and be prepared to recommend an award at the December 6, 2011 City Council meeting.

1.6 Proposal Form

1.6.1 Whenever forms are provided, each proposal shall be made on the form provided and, except for proposals submitted via facsimile equipment, shall be submitted in a sealed envelope bearing the title of work and the name of the Firm, and shall be signed by an individual authorized to execute the proposal on behalf of the Firm. The requested extra copies must be submitted with the original proposal.

1.6.2 Modifications: Alternate written proposals submitted may be considered; however, final determination as to suitability and compliance with specifications of the City will lie with the City. It is recommended that if an alternate proposal is to be suggested that the firm provide both a proposal that meets all specifications and any alternate proposals. In this way the Firm can have its alternate considered, but if the alternate is not acceptable the proposal meeting specifications can still be considered.

1.6.3 Delivery of Proposals: Proposals shall be delivered by the time and to the place stipulated in the Request for Proposals. It is the sole responsibility of the Firm to see that its proposal is received in the proper time. Any proposals received after the closing date and time will be returned unopened.

1.7 Proposals Submitted Via Facsimile Equipment

Proposals may be submitted via facsimile equipment to (269) 329-4535 in the following manner.

1.7.1 Transmittal page must be plainly marked:

“Proposal Bid \_\_\_\_\_ for opening \_\_\_\_\_.”  
Proposal Name Date

1.7.2 When bids are submitted via facsimile equipment, both the original document and the facsimile printout are considered counterpart originals.

1.7.3 Proposals submitted via facsimile equipment must meet all requirements of Section 1.12 to be considered responsive.

1.7.4 The Firm assumes all responsibility for errors due to illegibility, omission, or any other action(s) or inaction(s) whatsoever, pertaining to the receipt of the City by a proposal submitted via facsimile equipment.

1.7.5 In electing to use the facsimile option, the Firm assumes full responsibility for any and all errors, omissions, or mistakes that result in a proposal not being submitted in a timely manner, whether or not the mistake was the fault of the Firm.

1.8 Non-Discrimination

The Contractor agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans With Disabilities Act of 1990 as amended; the Elliott-Larsen Civil Rights Act, Article 2, Act no. 453, Public Act of 1976 as amended; the Michigan Handicapper’s Civil Rights Act, Article 2, Act. No. 220; Public Act of 1976, as amended and all other applicable Federal, State and Local laws and regulations. Specifically, contractors and subcontractors are required not to discriminate against any employee or applicant for employment with respect to such person’s hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of such person’s height, weight, race, color, religion, national origin, ancestry, age, marital status, sex or disability, as defined by law. Breach of this covenant may be regarded as a material breach of the contract.

The City of Portage in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of gender, disability, race, color or national origin in consideration for an award.

1.9 Indemnity and Insurance

1.9.1 Indemnity:

To the fullest extent permitted by Laws and Regulations, the Firm shall indemnify and hold harmless the City and its officers, directors, employees, agents and consultants from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work or from the failure to comply with any covenant or term of

the contract, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom or (ii) is caused in whole or in part by any act or omission of the Firm, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any act or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

In any and all claims against the City or any consultants, agents, officers, directors or employees of the City by any employee (or the survivor or personal representative of such employee) of the Firm, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any such Subcontractor, Supplier or other person or organization under workers' compensation Acts, disability benefit Acts or other employee benefit Acts.

Insurance coverage required by the firm constitutes the minimum requirements and those requirements shall in no way lessen or limit the liability of the firm under the terms of the contract. The contractor shall procure and maintain at firm's own cost and expense any additional claims or amounts of insurance that, in the judgment of the City, may be necessary for contractor's proper protection in the prosecution of the work.

1.9.2 Insurance:

The successful Firm agrees to provide insurance as outlined below:

A) Worker's Compensation Insurance - Covering all persons engaged in work under this contract to the full statutory limits stipulated in the Michigan Worker's Compensation Act.

B) Comprehensive General Liability Insurance:

Bodily Injury - at least \$1,000,000/occurrence  
Property Damage - at least \$1,000,000/occurrence  
Personal Injury - at least \$1,000,000/occurrence

C) Professional Liability Coverage (errors and omissions) covering an actual or alleged error, statement, act, omission, neglect or breach of official duty, including misfeasance, malfeasance, and non-feasance - at least \$2,000,000/occurrence.

D) Motor Vehicle Liability Insurance:

Bodily Injury - at least \$1,000,000/occurrence  
Property Damage - at least \$1,000,000/occurrence  
Personal Injury - at least \$1,000,000/occurrence

THE CITY OF PORTAGE, ITS AGENTS, ELECTED OFFICIALS, AND EMPLOYEES, SHALL BE INCLUDED AS ADDITIONALLY NAMED INSURED WITH RESPECT TO ALL LIABILITY POLICIES HEREIN (WITH THE EXCEPTION OF PROFESSIONAL LIABILITY AND WORKER'S COMPENSATION

COVERAGE) WHICH SHALL BE INDICATED ON ALL APPLICABLE CERTIFICATES OF INSURANCE.

If an “occurrence” policy is unavailable for the professional liability coverage, please include a statement from your insurance agent or broker indicating non-availability of the occurrence form. Under these circumstances, a “claims made” form will be considered if written in the requested amount.

The certificates of insurance indicated above shall be endorsed to provide prior written notice to the City of cancellation, material change in policy or of intent not to renew or cancellation notice for non-payment of premium, and shall be submitted within ten (10) working days of notification of award and prior to the execution of any work under this contract.

It shall be the responsibility of the Firm to ensure that each subcontractor utilized by the Firm (if any) provides evidence that each subcontractor carries insurance in like amounts, prior to the time such subcontractor proceeds to perform under the contract.

1.10 Representations

If any questions or responses require revision to the Request for Proposal as originally published, such revisions will be by formal amendment only. If the Request for Proposal includes a contact person for technical information, firms are cautioned that any oral or written representations made by this or any person that appear to change materially any portion of the Request for Proposal shall not be relied upon unless subsequently ratified by a written addendum to the Request for Proposal issued by the purchasing Department. For determination as to whether any representation made requires that an amendment be issued, contact the Purchasing Department.

1.11 Project Information Sheet

Responsive proposals must include a fully executed interested party information sheet located in the document proposal, Section 4.0. This document is self-explanatory.

1.12 Concept Statement

After fully evaluating proposal requirements and the project description, each Firm shall develop a concept statement that will describe the proposed method for project implementation. The City will use the concept statement to determine the degree of understanding of the project, evaluate methodology proposed and compare feasibility of the methods proposed in evaluating proposals received. The concept statement should be limited to five 8-1/2 “ x 11” page(s) to be double-spaced. The estimated number of man hours reflected in the lump sum proposal shall be indicated in the Project Information Sheet Item Number 4.6.

1.13 Responsive Proposals

At a minimum, responsive proposals shall include the following:

- 1.13.1 A project information sheet in format provided in the Request for Proposal package (2 copies)
- 1.13.2 A project concept statement (2 copies)
- 1.13.3 A proposal cost summary page in format provided in the Request for Proposal package (2 copies). Maximum consideration will be given to projects quoted in the single not-to-exceed project cost format.

Interested Firms may also provide any additional information not otherwise requested that may aid the responsible parties in award of this professional service contract. Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to the solicitation are not desired and may be construed as an indication of the offerer's lack of cost consciousness. Unless specifically requested in the solicitation, elaborate art work, corporate brochures, lengthy narratives, expensive paper, specialized binding, and other extraneous presentation materials are neither necessary nor desired

#### 1.14 Award Criteria

Favorable pricing will be one element of the selection process, but all of the following factors will be used in evaluating proposals received:

1.14.1 Responsiveness to Request for Proposal specifications.

1.14.2 Project Cost.

1.14.3 Qualifications of Firm

1.14.4 Qualifications and experience of the staff to be assigned to the project.

1.14.5 References.

1.14.6 Demonstrated capability to perform the type of work requested.

1.14.7 Understanding of project requirement including the estimated number of hours of work.

1.14.8 Professional creativity including proposal preparation and presentation.

1.14.9 Scope of services to be provided.

1.14.10 Timeliness of services to be provided.

1.15 Evaluation of the above criteria shall be the responsibility of City Administration and the Portage City Council. Regrettably, the number and quality of proposals received may logistically prohibit the possibility of providing every Firm with the opportunity to make a formal presentation. Therefore, Firms are encouraged to take maximum advantage of representing the qualities of the Firm through its proposal presentation.

## 2 **PROFESSIONAL ENGINEERING SERVICE REQUIREMENTS**

### 2.1 Professional Services Minimum Requirements

The scope of professional services to be provided shall be in compliance with the following provisions. Interested firms are expected to comply with all conditions outlined in the request for proposals, but if exception is taken to any provision, the exception taken shall be annotated and explained on a plain bond sheet that must be attached to the proposal page.

### 2.2 Scope of Services

#### 2.2.1 Background

Oakland Drive is a minor arterial roadway running north-south. West Osterhout Road is a collector street running east-west. Current traffic volume on Oakland Drive is

approximately 5,100 vehicles per day (VPD), and West Osterhout Road is approximately 4,600 VPD. Oakland Drive and West Osterhout Road are both 2-lane roadways without curb and gutter that utilize Stop signs at all 4 legs. Approaching the intersection, both roads have a posted speed of 40 mph.

#### 2.2.2 Proposed Project

The Oakland Drive /West Osterhout Road project shall consist of the installation of two (2) span wire mounted four way flashers, along with the installation of two (2) 30-ft steel poles, and all of the associated electrical, controllers, hand-holes, etc. Concrete C-4 curb will be added at all four corners. The project will also consist of sign and pavement marking upgrades.

#### 2.2.3 Level of Effort Required:

The level of effort required by the consultant for the Oakland Drive/West Osterhout Road project includes, but is not limited to:

- A. Verify accuracy of existing data and drawings.
- B. Establish the right-of-way limits.
- C. Prepare construction plans and specifications and cost estimates in accordance with City and current MDOT regulations (including all necessary soil testing for foundations) for:
  - (i) Roadway and reconstruction including typical cross-section.
  - (ii) Utility trench details and design.
  - (iii) Maintenance of traffic and traffic control plans.

#### 2.2.4 Information Furnished by the City

The City of Portage has limited information including preliminary drawings, quarter section drawings identifying individual parcels, full section drawings showing existing sanitary sewers, water mains, and storm sewers, and full section aerial drawings flown in February 2009.

#### 2.2.5 Design Scope

The design effort has been defined as follows:

##### A. Design Phase

During this phase, the consultant shall develop the final design documents in accordance with the above described project. The purpose of this phase of the design is to prepare final drawings and calculations and to outline specifications and cost estimates as necessary for review by the City. The information developed during the Design Phase shall be assembled in a Final Design Package (six bound copies) which shall contain the following information (where applicable) as a minimum:

- (i) Final Design including flasher detail and design (where necessary).
- (ii) Reproducible Mylar construction and/or structural drawings.
- (iii) Obtain soils information (where appropriate).
- (iv) Also during this phase the consultant shall prepare any necessary environmental applications and supporting data for submittal to MDOT or any other appropriate agencies. (SHPO)
- (v) Specifications and contract documents as required by the MDOT for letting.

- (vi) MDOT specifications, additional technical specifications and special provisions for specialty items. (2012 Specification Book)
- (vii) Final cost estimate by specification section as previously described. Cost estimate shall be prepared on the basis of available current pricing.

#### 2.2.6 Design Criteria

The Consultant shall prepare plans and specifications which are consistent with standard design practice, meet the overall applicable design standards of the Michigan Department of Transportation (MDOT) and the City and preserve the integrity of the environment. Upon completion of the work the Consultant shall provide the City with two (2) bound copies of plans, specifications, and design notes indexed by appropriate discipline designation. The following design criteria are described by technical discipline and shall be followed unless deviation is approved by the City.

- A. All design work shall consist of showing all new or modified roads, drives, curbs, sidewalks, fences, gates, structures, and removal of existing features where required. All grades shall be designed so as to blend in with the existing conditions to the extent possible. Utilities shall be relocated or extended as required for the proposed work. Site drainage shall be provided as noted in the detailed level of effort for the project.
- B. The Consultant shall be fully responsible for obtaining sufficient soil borings and interpretation necessary to adequately design the proposed traffic signal foundations.
- D. City standards shall be followed for roadway and utility design where applicable as determined by the Director of Transportation and Utilities.
- E. All design shall be compatible with current City and applicable MDOT Standard Specifications.

#### 2.2.7 Drawing Requirements

All drawings shall be prepared in a professional manner in accordance with the following criteria:

- A. The Engineer's Drafting Standards shall be used as the basis for drawing requirements unless otherwise directed by the City and MDOT. The plans shall be designed in English units. Final drawing shall be at 1' = 20' scale.
- B. Final design drawings shall be done in erasable ink and include Mylar cover sheet prepared by the Consultant listing all drawings included.
- D. All tracings shall be approved by the City for final printing and bidding.

#### 2.2.8 Specifications

All specifications shall be prepared in a professional manner in accordance with the following criteria:

- A. The City shall provide some standard guide technical specifications for editing by the Consultant. The 2012 MDOT Standard Specifications shall be followed in so far as practical.
- B. All retyping of the specifications shall be accomplished by the Consultant.

- C. Plans and Specifications - Prepare all plans and specifications to solicit bids for bidding.

2.2.9 Bidding Administration

Provide staff and support necessary to accomplish bidding of the project under MDOT Standards. Prepare bidder question response as necessary.

2.2.10 Contract Award

Review contract award by the State of Michigan.

2.2.11 Length of Service

The consultant's services shall be required up to and including the contract letting by MDOT.

2.2.12 Responsibilities of the City

The City's representative through the Department of Transportation and Utilities will closely follow progress of the work and will provide the following:

- A. Execute overall project management functions.
- B. Ensure compliance of all financial obligations.
- C. Transmit instructions, receive information, interpret and define the City policies and provide decisions in a timely manner.
- D. Furnish pertinent City records and/or information for use by the Consultant.
- E. Provide access to public lands as required by the Consultant.
- F. Promptly notify the Consultant when the Department observes or becomes aware of any deviation in the project.
- G. Review progress drawings and specifications and offer in writing decisions pertaining thereto in a timely fashion.

3 **PROFESSIONAL SERVICE REQUIREMENTS**

3.1 Available Information

The City of Portage has limited information, including parcel maps, topographic maps and construction drawings of existing projects.

3.2 Funding

Project funding is programmed in the City of Portage Capital Improvement Program (CIP) for the project in the amount of \$40,000 which includes \$24,000 in Federal STP Safety Funds.

City share funds will be provided through Major Street Millage. The allocated funds are to cover all City share costs associated with the project, engineering, construction, and City Administration costs.

3.3 Coordination of Work Required

Unless specifically identified as work to be provided by the City staff, the Firm shall furnish supervision and all labor, equipment, supplies, materials (except as otherwise noted herein), and

perform satisfactorily the professional services at the frequencies and during the times as specified herein. The professional service shall include all functions normally considered a part of completing this work in a satisfactory manner. Compensation to cover any and all expenses shall be included in the proposed project cost.

3.4 Default

The City may, by written notice to the Firm, terminate the right to proceed as to the whole or any part of the contract (1) if the Firm fails to perform the services within the time specified or any extension thereof, (2) so fails to make progress as to endanger performance of the contract in accordance with its terms, or (3) the Firm fails to perform any other provisions of the contract. The Firm shall not be subject to this provision if failure to perform the contract arises out of any cause beyond its control and without any fault or negligence by the Firm or subcontractors.

3.5 Extra Work

During the period of this contract there may be occasions when extra services are required which are not a part of this contract. The Firm shall indicate the hourly rate to be paid for extra work on Section 4.8 of the Project Information Sheet. Rates for any expense items related to extra work shall also be indicated on the Project Information Sheet (i.e., copy/duplication, telephone calls, lodging, mileage, etc.). The hourly rates provided shall be inclusive of all labor, overhead, and profit. Costs for services provided in these situations will be negotiated at the time of each occurrence and will be based on the rates quoted. Any such work must have pre-approval of the City contract administrator. The City will not be responsible for additional invoices for work or materials that did not have written pre-approval.

3.6 Status of Firm

The Firm and its employees at all times shall be considered as independent contractors and not as City employees. In delivering services, the Firm shall exercise all supervisory control and general control over all day-to-day operations, including control over all workers' duties, payment of all wages to its employees, and the right to hire, fire, and discipline all employees. As an independent contractor, payment to the Firm under this contract shall not be subject to any withholding for tax, social security, or other purposes, nor shall the Firm or employees of the Firm be entitled to any City of Portage fringe benefit programs.

3.7 Time and Progress

It is understood and agreed that TIME IS OF THE ESSENCE in respect to the work contemplated hereunder, and the Firm agrees to do the work covered by the contract in conformity with the provisions set forth herein and to prosecute all work with all due diligence, so as to complete any work required under the contract within the shortest reasonable period of time. The Firm shall identify on the Cost Summary Proposal Page the estimated time necessary to complete each phase of the project in as short a period of time as possible that will allow for an overall high quality project.

It is of utmost importance that the following timetable be adhered to:

<u>Phase</u>	<u>Completion Date</u>
Consultant Proposals Due	November 20, 2011
Award Contract to Consultant	December 6, 2011
Begin Plan Preparation	December 20, 2011
Submit Grade Inspection Plan	January 6, 2012
Grade Inspection	January 22, 2012
Letting Date	May 4, 2012

Begin Construction	July 2012
Substantial Completion	August 2012
Final Construction Complete	August 31, 2012

Please note this timeline is not meant to hold the Firm responsible for conditions over which it has no control, but is intended to provide the Consultant with direction on how the project must progress using high quality standards necessary to implement a first class and professional project.

3.8 Employees of the Firm

The Firm shall at all times be responsible for the conduct and discipline of its employees and/or any subcontractor or persons employed by the Firm. All workers must have sufficient knowledge, skill, and experience to properly perform the work assigned to them. Any worker employed by the Firm, who in the opinion of the City Contract Administrator, does not perform work in a skilled manner, or acts in a disorderly or intemperate manner, or engages in sexual harassment or other forms of inappropriate behavior as defined by the City Contract Administrator, shall, at the written request of the City Contract Administrator, be removed immediately from the project and shall not be utilized again in any portion of the work without approval of the City Contract Administrator.

3.9 Laws and Municipal Ordinances

The Firm shall keep fully informed of all laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the equipment and materials used in the work, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Firm shall at all times observe and comply with all such existing laws, codes, ordinances, regulations, orders, and decrees.

3.10 City Contract Administrator

The Director of Transportation and Utilities, or his designated representative, shall be the City Contract Administrator. The City Contract Administrator will approve payments, oversee schedules, and generally be responsible for overseeing the execution of the contract.

3.11 Supervision by Firm

The Firm will supervise and direct the work of its employees. The Firm will be solely responsible for the means, methods, techniques, sequences, and procedures of the professional services performed. The Firm will appoint a Project Supervisor who shall have been designated in writing by the Firm at the time the Request for Proposal is submitted. The Project Supervisor shall have fully authority to act on behalf of the Firm and all communications given to the Project Supervisor shall be as binding as if given to the Firm. The Project Supervisor shall be present to the extent necessary so as to perform adequate supervision and coordination of the work.

3.12 Billing and Payment

The Firm shall present an invoice in duplicate at the appropriate identified times, billing for services rendered. The billing shall be at the contracted price. The billing shall reference the appropriate purchase order number. The billing shall contain, if applicable, adjustments for additions, deletions, or changes in service. The City will strive to pay the billed amount within thirty (30) days after receipt of invoice, but the City will not pay any interest penalties for late payments.

3.13 Assignability

The Firm agrees that the work proposed shall be accomplished by the Firm identified under Section 4.2 and any subcontractors identified under Section 4.9. The Firm agrees that any work under the contract to be assigned to another firm, and/or subcontractor shall be done only with the prior approval of the City Contract Administrator.

3.14 Copyright

The Firm shall irrevocably transfer, assign, set over, and convey to the City of Portage all rights, title, and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to the Contract. The Firm further agrees to execute such documents as the City of Portage may request to affect such transfer or assignment. Further, the Firm agrees that the rights granted to the City of Portage by this paragraph are irrevocable. The Firm's remedy in the event of termination of or dispute over any agreement entered into as a result of this solicitation shall not include any right to rescind, terminate, or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of any agreement entered into as a result of this solicitation shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

4      **CITY OF PORTAGE PROJECT INFORMATION SHEET – ADDENDUM NO. 1**

If adequate space is not provided for complete response, please attach additional pages as necessary and identify by number. Proposals will not be considered responsive unless all requests for information are provided. Please use such terms as none, not applicable, unknown, etc., if requested information does not pertain or cannot be provided.

4.1      Please indicate the response that best describes your business:

\_\_\_\_\_ Sole Proprietor    \_\_\_\_\_ Partnership    \_\_\_\_\_ Corporation

\_\_\_\_\_ Other (please explain) \_\_\_\_\_

4.2      Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

First Date in Business: \_\_\_\_\_

4.3      Is your Firm involved in any proceedings that may affect the ability of the Firm to continue under the current Firm name for the duration of the project?

\_\_\_\_\_ Yes    \_\_\_\_\_ No

If yes, please explain (use additional Page)

4.4      Is your Firm up for sale?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

If yes, please explain (use additional page).

4.5      Primary staff to be assigned to the project:

Owner/Partner: \_\_\_\_\_

Project Supervisor: \_\_\_\_\_

Principal Professional(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other Significant Technicians and Employees to be Assigned:

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Please provide resume for Project Supervisor and principal professionals to be assigned at time of proposal submission for personnel listed above.

- 4.6 Estimated project hours of work reflected in the lump sum proposal are as follows: (Design phase includes all work up to and including final submission to MDOT):

Design Phase

4.6.1 Owner/Partner: \_\_\_\_\_ hours

4.6.2 Professionals: \_\_\_\_\_ hours

4.6.3 Technicians: \_\_\_\_\_ hours

4.6.4 Clericals: \_\_\_\_\_ hours

4.6.5 Others (Please Identify)

\_\_\_\_\_ hours

\_\_\_\_\_ hours

- 4.7 Experience: Please indicate below the experience of the individuals listed in Item 4.5 from your Firm pertaining to the specific type of work listed. Please restrict projects listed to those projects performed by the individuals identified for the Portage project. Under the Self-Evaluation Section, please rate how you believe the contact person in charge of the project would rate services if they were contacted by the City of Portage and asked to rate overall satisfaction with the services provided by your Firm. Please restrict your Self-Evaluation responses to the terms Excellent, Good, Satisfactory, and Unsatisfactory.

4.7.1 Please list professional service projects similar to work requested for this project where staff identified in Section 4.5 have provided professional services.

<u>Name of Unit/ Company</u>	<u>Project Contact Person</u>	<u>Phone</u>	<u>Construction Cost</u>	<u>Self Evaluation</u>
----------------------------------	---------------------------------------	--------------	------------------------------	----------------------------

- A
- B.
- C.

(If more than three projects have been performed, please list the top three that you feel are most comparable to the scope of work being requested. Do not list projects over 10 years old.)

4.7.2 Please list other related projects that staff identified in Section 4.5 have provided professional services for.

<u>Name of Unit/ Company</u>	<u>Project Contact Person</u>	<u>Phone</u>	<u>Construction Cost</u>	<u>Self Evaluation</u>
----------------------------------	---------------------------------------	--------------	------------------------------	----------------------------

- A
- B.
- C.

(If more than three projects have been performed, please list the top three that you feel are most comparable to the scope of work being requested. Do not list projects over 10 years old.)

4.7.3 List any other professional service projects that you feel may indicate the ability of your firm to perform the work requested {use additional page(s) if necessary}.

4.8 If it becomes necessary to perform extra work as defined in Section 3.5, the following hourly rates will apply:

4.8.1 Owner/Partner: \$ \_\_\_\_\_ /hour

4.8.2 Professionals: \$ \_\_\_\_\_ /hour

4.8.3 Technicians: \$ \_\_\_\_\_ /hour

4.8.4 Clericals: \$ \_\_\_\_\_ /hour

4.8.5 Others (Please Identify)

\_\_\_\_\_ \$ \_\_\_\_\_ /hour

\_\_\_\_\_ \$ \_\_\_\_\_ /hour

Rates quoted should be inclusive of all expenses including, but not limited to personnel services, fringe benefits, overhead, and profit required by the Firm.

4.8.6 Please list any expense rates that may apply to extra work. If no expense rates are indicated, no expenses will be allowed. Expenses and Charge Back Rates:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.9 Subcontractors

4.9.1 Do you propose to use any subcontractors to perform work in accordance with this proposal? \_\_\_\_ Yes \_\_\_\_ No. (If yes, please identify subcontractor and work to be performed.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.10 A project Information Sheet (2 copies), and Project Concept Statement (2 copies), and a Request for Proposal Cost Page (2 copies) are required for submission as a part of these specifications. Have all items been included with your proposal?

\_\_\_\_ Yes \_\_\_\_ No If answer is no, please explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.11 Section 1.2 requires that proposals be submitted in compliance with the City of Portage Contract Conditions and Specifications. Do you agree to comply with the Contract Conditions and Specifications?

\_\_\_\_\_ Yes \_\_\_\_\_ No. If answer is no, please explain

\_\_\_\_\_  
\_\_\_\_\_

4.12 The award of the contract for professional services is based upon the draft contract form attached. Is this document, as proposed, acceptable to you if you were to be awarded the bid? \_\_\_\_\_ Yes \_\_\_\_\_ No.

If no, please explain in detail any provisions that would need to be changed, added, or deleted. (Use additional page(s) if necessary.)

4.13 Section 3.7 establishes a firm timeline for this project. Can your Firm implement the project fully and professional within the timeline outlined? \_\_\_\_\_ Yes \_\_\_\_\_ No.

If no, please explain why the timeline cannot be met and provide a timeline below that addresses the major landmarks addressed in Section 3.7 {use additional Page(s) if necessary}.

I certify that all information provided above is complete, accurate, and to the best of my knowledge, true. I further certify that I am fully authorized by the Firm identified in Question 4.2 above to execute this information sheet on behalf of that Firm.

I hereby state that I have read, understand, and agree to be bound by all terms of this Request for Proposal Document.

FIRM: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

NAME: \_\_\_\_\_  
(Please Print)

POSITION: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

**5 CITY OF PORTAGE REQUEST FOR PROPOSALS  
COST SUMMARY**

I the undersigned, certify that I have read and fully understand all of the specifications supplied by the City of Portage in this Request for Proposals.

ALL EXCEPTIONS TAKEN TO SPECIFICATIONS SUPPLIED BY THE CITY OF PORTAGE ARE ATTACHED AND IDENTIFIED BY NUMERICAL REFERENCE TO THE REQUEST FOR PROPOSAL SECTION ON A PLAIN SHEET IMMEDIATELY FOLLOWING THE PROPOSAL PAGE.

I propose to provide professional services as specified in the Request for Proposals, except as outlined on the attached sheet entitled "Exception to Specification", for the total sum of:

Design Engineering \_\_\_\_\_ \$ \_\_\_\_\_  
(in words – governs over number in case of discrepancy)

I commit to meet the timetable for project completion as detailed in Proposal Section 3.7.

If you cannot submit a proposal in the format requested, please attach a schedule of total compensation that will cover any and all expenses and services related to the project.

I hereby state that I have the authority to submit this proposal which will become a binding contract if accepted by the City of Portage. I further state that I have not communicated with nor otherwise colluded with any other person or Firm, nor have I made any agreement with nor offered or accepted anything of value from an Official or employee of the City of Portage that would tend to destroy or hinder free competition.

I hereby state that I have read, understand, and agree to be bound by all terms of this Request for Proposal Document.

Signed: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_



City of Portage Map Document



  
 1:1400  
**Map Publication:**  
 Fri Oct 14 2011 04:43:22 PM

**Disclaimer:**  
 This map does not represent a survey or legal document and is provided on an "as is" basis. City of Portage expresses no warranty for the information displayed on this map document.



## *DRAFT CONTRACT AGREEMENT*

Following is a “*draft copy*” of the contract that will be executed by the City and the Firm for the completion of this project.

**AGREEMENT BETWEEN CITY OF PORTAGE AND THE FIRM**

**AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Two Thousand Eleven

**BETWEEN** the City of Portage, 7900 South Westnedge Avenue, Portage, Michigan, hereinafter referred to as the “City” and \_\_\_\_\_ hereinafter referred to as the “firm”:

For the City of Portage project in accordance with the Request for Proposal and the proposal submitted by the Firm dated \_\_\_\_\_, which by reference are incorporated into this contract as part of this binding Agreement.

**ARTICLE 1 -- RESPONSIBILITIES OF THE FIRM**

**1 SERVICES OF THE FIRM**

- 1.1 The services of the Firm consist of those services performed by the Firm, its employees and subcontractors as enumerated in Articles 2 and 3 of this agreement and any other services included in Article 13.
- 1.2 The services of the Firm shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the City, the Firm shall submit for the approval by the City, a schedule for the performance of the services of the Firm which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the review and approval of the City of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the City shall not, except for reasonable cause, be exceeded by the Firm or the City. It is understood and agreed that **TIME IS OF THE ESSENCE** in respect to the work contemplated hereunder, and the Firm agrees to do the work covered by the contract in conformity with the provisions set forth herein and to prosecute all work with all due diligence so as to complete any work required under the contract within the shortest reasonable period of time.
- 1.3 The Firm agrees to a preliminary timetable for the Oakland Drive Street Improvement project as follows:

<u>Phase</u>	<u>Completion Date</u>
Begin Plan Preparation	December 20, 2011
Submit Grade Inspection Plan	January 6, 2012
Grade Inspection	January 22, 2012
Letting Date	May 4, 2012
Begin Construction	July 2012
Substantial Completion	August 2012
Final Construction Complete	August 31, 2012

- 1.4 The services covered by this Agreement are subject to other conditions and other services described in Article 13.

**ARTICLE 2 -- BASIC SERVICES OF THE FIRM**

**2 BASIC SERVICES**

**2.1 Definitions**

- 2.1.1 The Basic Services of the Firm consist of those described in Paragraphs 2.2.1 through 2.2.15 and any other services identified in Article 13 as part of Basic Services.
- 2.1.2 The Firm shall submit a progress report biweekly in the form as may be required by the City showing status of all work. If progress is delayed, the report shall state the reasons for that delay. Further, if the Firm believes a deadline established by this contract will not be met, the Firm shall inform the City contract administrator as soon as the Firm becomes aware of such delay.
- 2.1.3 During all phases required under this contract, the Firm shall attend conferences as scheduled by the City. The Firm shall attend scheduled job meetings at the site and other meetings as reasonably required by the City to ensure a timely project completion. The Firm shall at reasonable times be available for all required interpretations of the plans and specifications and shall promptly advise the City of inadequacies of, or conflicts between drawings, specifications, or both.

**2.2 PROFESSIONAL ENGINEERING SERVICE REQUIREMENT**

2.2.1 Background.

Oakland Drive is a minor arterial roadway running north-south. West Osterhout Road is a collector street running east-west. Current traffic volume on Oakland Drive is approximately 5,100 vehicles per day (VPD), and West Osterhout Road is approximately 4,600 VPD. Oakland Drive and West Osterhout Road are both 2-lane roadways without curb and gutter that utilize Stop signs at all 4 legs. Approaching the intersection, both roads have a posted speed of 40 mph.

2.2.2 Proposed Project

The Oakland Drive /West Osterhout Road project shall consist of the installation of two (2) span wire mounted four way flashers, along with the installation of two (2) 30-ft steel poles, and all of the associated electrical, controllers, hand-holes, etc. Concrete C-4 curb will be added at all four corners. The project will also consist of sign and pavement marking upgrades. Signal conduits/hand holes do not exist at this intersection.

2.2.3 Level of Effort Required

The level of effort required by the consultant for the Oakland Drive/West Osterhout Road project includes, but is not limited to:

- A. Verify accuracy of existing data and drawings.
- B. Establish the right-of-way limits.
- C. Prepare construction plans and specifications and cost estimates in accordance with City and current MDOT regulations (including all necessary soil testing for foundations) for:
  - (iv) Roadway and reconstruction including typical cross-section.
  - (v) Utility trench details and design.

- (vi) Maintenance of traffic and traffic control plans.
- (vi)

2.2.4 Information Furnished by the City

The City of Portage has limited information including preliminary drawings, quarter section drawings identifying individual parcels, full section drawings showing existing sanitary sewers, water mains, and storm sewers, and full section aerial drawings flown in February 2009.

2.2.5 Design Scope

The design effort has been defined as follows:

A. Design Phase

During this phase, the consultant shall develop the final design documents in accordance with the above described project. The purpose of this phase of the design is to prepare final drawings and calculations and to outline specifications and cost estimates as necessary for review by the City. The information developed during the Design Phase shall be assembled in a Final Design Package (six bound copies) which shall contain the following information (where applicable) as a minimum:

- (i) Final Design including flasher detail and design (where necessary).
- (ii) Reproducible Mylar construction and/or structural drawings.
- (iii) Obtain soils information (where appropriate).
- (iv) Also during this phase the consultant shall prepare any necessary environmental applications and supporting data for submittal to MDOT or any other appropriate agencies. (SHPO)
- (v) Specifications and contract documents as required by the MDOT for letting.
- (vi) MDOT specifications, additional technical specifications and special provisions for specialty items. (2012 Specification Book)
- (vii) Final cost estimate by specification section as previously described. Cost estimate shall be prepared on the basis of available current pricing.

2.2.6 Design Criteria

The Consultant shall prepare plans and specifications which are consistent with standard design practice, meet the overall applicable design standards of the Michigan Department of Transportation (MDOT) and the City and preserve the integrity of the environment. Upon completion of the work the Consultant shall provide the City with two (2) bound copies of plans, specifications, and design notes indexed by appropriate discipline designation. The following design criteria are described by technical discipline and shall be followed unless deviation is approved by the City.

- A. All design work shall consist of showing all new or modified roads, drives, curbs, sidewalks, fences, gates, structures, and removal of existing features where required. All grades shall be designed so as to blend in with the existing conditions to the extent possible. Utilities shall be relocated or extended as required for the proposed work. Site drainage shall be provided as noted in the detailed level of effort for the project.
- B. The Consultant shall be fully responsible for obtaining sufficient soil borings and interpretation necessary to adequately design the proposed traffic signal foundations.

- C. City standards shall be followed for roadway and utility design where applicable as determined by the Director of Transportation and Utilities.
- D. All design shall be compatible with current City and applicable MDOT Standard Specifications.

2.2.7 Drawing Requirements

All drawings shall be prepared in a professional manner in accordance with the following criteria:

- A. The Engineer's Drafting Standards shall be used as the basis for drawing requirements unless otherwise directed by the City and MDOT. The plans shall be designed in English units. Final drawing shall be at 1' = 20' scale.
- B. Final design drawings shall be done in erasable ink and include Mylar cover sheet prepared by the Consultant listing all drawings included.
- C. All tracings shall be approved by the City for final printing and submittal to MDOT by the Consultant.

2.2.8 Specifications

All specifications shall be prepared in a professional manner in accordance with the following criteria:

- A. The City shall provide some standard guide technical specifications for editing by the Consultant. The 2012 MDOT Standard Specifications shall be followed in so far as practical.
- B. All retyping of the specifications shall be accomplished by the Consultant.
- C. Plans and Specifications - Prepare all plans and specifications to solicit bids for bidding.

2.2.9 Bidding Administration

Provide staff and support necessary to accomplish bidding of the project under MDOT standards. Prepare bidder question responses as necessary.

2.2.10 Contract Award

Review contract award by the State of Michigan.

2.2.11 Length of Service

The consultant's services shall be required up to and including the contract letting by MDOT.

2.2.12 Responsibilities of the City

The City's representative through the Department of Transportation and Utilities will closely follow progress of the work and will provide the following:

- A. Execute overall project management functions.
- B. Ensure compliance of all financial obligations.

- C. Transmit instructions, receive information, interpret and define the City policies and provide decisions in a timely manner.
- D. Furnish pertinent City records and/or information for use by the Consultant.
- E. Provide access to public lands as required by the Consultant.
- F. Promptly notify the Consultant when the Department observes or becomes aware of any deviation in the project.
- G. Review progress drawings and specifications and offer in writing decisions pertaining thereto in a timely fashion.

### **ARTICLE 3 -- PROJECT REQUIREMENT**

#### **3 PROJECT REQUIREMENT**

- 3.1 **Available Information** The City of Portage has limited information, including parcel maps, topographic maps and construction drawings of existing projects.
- 3.2 **Funding.** Project funding is programmed in the City of Portage Capital Improvement Program (CIP), for the project in the amount of \$40,000, which includes \$24,000 in Federal SPT Safety Funds.
- City share funds will be provided through Major Street Millage. The allocated funds are to cover all City share costs associated with the project, engineering, construction, and City Administration costs.
- 3.3 **Coordination of Work Required** Unless specifically identified as work to be provided by the City staff, the Firm shall furnish supervision and all labor, equipment, supplies, materials (except as otherwise noted herein), and perform satisfactorily the services at the frequencies and during the times as specified herein. The services shall include all functions normally considered a part of completing this work in a satisfactory manner as determined by the City of Portage. Compensation to cover all expenses shall be included in the proposed project cost.
- 3.4 **Default** The City may, by written notice to the Firm, terminate the right to proceed as to the whole or any part of the contract (1) if the Firm fails to perform the services within the time specified or any extension thereof, (2) so fails to make progress as to endanger performance of the contract in accordance with its terms, or (3) the Firm fails to perform any other provisions of the contract. The Firm shall not be subject to this provision if failure to perform the contract arises out of any cause beyond its control and without any fault or negligence by the Firm or subcontractors.
- 3.5 **Extra Work** During the period of this contract there may be occasions when extra services are required which are not a part of this contract. Costs for services provided in these situations will be negotiated at the time of each occurrence. Any such work must have pre-approval of the City of Portage. The City will not be responsible for additional invoices for work or materials that did not have pre-approval.
- 3.6 **Engineering Firm Status** The Firm employees at all times shall be considered as independent contractors and not as City employees. The Firm shall exercise all supervisory control and general control over all day-to-day operations, including control over all workers' duties, payment of all wages to employees, and the right to hire, fire, and discipline all employees. As an independent contractor, payment under this contract shall not be subject to any withholding for tax, social security, or other purposes, nor shall employees be entitled to any of the City's fringe benefit programs.

- 3.7 **Engineering Firm Employees** The Firm shall at all times be responsible for the conduct and discipline of employees and/or any subcontractor or persons employed by the firm. All workers must have sufficient knowledge, skill and experience to properly perform the work assigned to them. Any workers employed by the Firm, who in the opinion of the Contract Administrator, does not perform his work in a skilled manner, or acts in a disorderly or intemperate manner, or engages in sexual harassment or other forms of inappropriate behavior at the written request of the Contract Administrator, shall be removed immediately from the project and shall not be utilized again in any portion of the work without approval of the Contract Administrator.
- 3.8 **Laws and Municipal Ordinances** The Firm shall be fully informed of all laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the equipment and materials used in the work, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Firm shall at all times observe and comply with all such existing laws, codes, ordinances, regulations, orders, and decrees.
- 3.9 **Contract Administrator** The Director of Transportation/Utilities or his designated representative, shall be the Contract Administrator. The Administrator will approve payments, oversee schedules, and generally be responsible for overseeing the execution of the contract.
- 3.10 **Time and Progress** It is understood and agreed that TIME IS OF THE ESSENCE in respect to the work contemplated hereunder, and the Firm agrees to do the work covered by the contract in conformity with the provisions set forth herein and to prosecute all work with all due diligence, so as to complete any work required under the contract within the shortest reasonable period of time. The Firm shall identify on the Cost Summary Proposal Page the estimated time necessary to complete each phase of the project in as short a period of time as possible that will allow for an overall high quality project.

It is of utmost importance that the following timetable be adhered to:

<u>Phase</u>	<u>Completion Date</u>
Begin Plan Preparation	December 20, 2011
Submit Grade Inspection Plan	January 6, 2012
Grade Inspection	January 22, 2012
Letting Date	May 4, 2012
Begin Construction	July 2012
Substantial Completion	August 2012
Final Construction Complete	August 31, 2012

Please note this timeline is not meant to hold the Firm responsible for conditions over which it has no control, but is intended to provide the Consultant direction on how the project must progress using high quality standards necessary to implement a first class and professional project.

- 3.11 In the event that any changes required in the plans, drawings, specifications, or other documents because of defect of design or unworkability of details, or because of any other fault or errors of the Firm, no additional compensation shall be paid to the Firm for making those changes.
- 3.12 **Supervision by the Firm** The Firm will supervise and direct the work of its employees. The Firm will be solely responsible for the means, methods, techniques, sequences, and procedures of the professional services performed. The Firm will appoint a Project Supervisor who shall have been designated in writing by the Firm at the time the Request for Proposal is submitted. The Project Supervisor shall have fully authority to act on behalf of the Firm and all communications given to the Project Supervisor shall be as binding as if given to the Firm. The Project Supervisor shall be present

to the extent necessary so as to perform adequate supervision and coordination of the work.

- 3.13 **Billing and Payment** The Firm shall present an invoice in duplicate at the appropriate identified times, billing for services rendered. The billing shall be at the contracted price. The billing shall reference the appropriate purchase order number. The billing shall contain, if applicable, adjustments for additions, deletions, or changes in service. The City will strive to pay the billed amount within thirty (30) days after receipt of invoice, but the City will not pay any interest penalties for late payments.
- 3.14 **Assignability** The Firm agrees that the work proposed shall be accomplished by the Firm identified under Section 4.2 and any subcontractors identified under Section 4.9 of the Proposal. The Firm agrees that any work under the contract to be assigned to another firm, and/or subcontractor shall be done only with the prior approval of the City Contract Administrator.
- 3.15 **Copyright** The Firm shall irrevocably transfer, assign, set over, and convey to the City of Portage all rights, title, and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to the Contract. The Firm further agrees to execute such documents as the City of Portage may request to affect such transfer or assignment. Further, the Firm agrees that the rights granted to the City of Portage by this paragraph are irrevocable. The Firm's remedy in the event of termination of or dispute over any agreement entered into as a result of this solicitation shall not include any right to rescind, terminate, or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of any agreement entered into as a result of that solicitation shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

#### **ARTICLE 4 -- RESPONSIBILITIES OF THE CITY**

#### **4 RESPONSIBILITIES OF THE CITY**

- 4.1 The City shall provide all available information regarding requirements for the Project, including the objectives of the City, schedule, constraints and criteria.
- 4.2 The City shall establish and update an overall budget for the Project, including the Construction Cost.
- 4.3 If requested by the Firm, the City shall furnish evidence that financial arrangements have been made to fulfill the obligations of the City under this Agreement.
- 4.4 The City shall designate a Project Manager authorized to act on behalf of the City with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Firm in order to avoid unreasonable delay in the orderly and sequential progress of services of the Firm.
- 4.5 The City may furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the City shall require to verify Applications for Payment of the Contractor or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the City.
- 4.6 Prompt written notice shall be given by the City to the Firm if the City becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

#### **ARTICLE 5 -- CONSTRUCTION COST**

#### **5 Construction Cost**

**5.1 Definition**

- 5.1.1 The Construction Cost shall be the total cost or estimated cost to the City of all elements of the project designed or specified by the Firm.
- 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials and equipment designed, specified, selected or specially provided for by the Firm, plus a reasonable allowance for overhead and profit of the Contractor. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.
- 5.1.3 Construction Cost does not include the compensation of consultants of the Firm, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the City.

**5.2 Responsibility for Construction Cost**

- 5.2.1 Evaluations of the project budget of the City, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Firm, represent the best judgment of the Firm as a professional familiar with the construction industry. It is recognized, however, that neither the Firm nor the City has control over the cost of labor, materials or equipment, over the methods of determining bid prices of the Contractor, or over competitive bidding, market or negotiating conditions. Accordingly, the Firm cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget of the City or from any estimate of Construction Cost or evaluation prepared or agreed to by the Firm
- 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto.

**ARTICLE 6 --  
USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS OF THE FIRM**

**6 USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS OF THE FIRM**

- 6.1 The Drawings, Specifications, and other documents prepared by the Firm for this Project are instruments of the Service of the Firm for use solely with respect to this Project and, unless otherwise provided, the Firm shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The City shall be permitted to retain copies, including reproducible copies, of the Drawings, Specifications and other documents of the Firm for information and reference in connection with the Project. The Drawings, Specifications or other documents of the Firm may be used by the City or others on other projects, for additions to this Project or for completion of this Project by others provided that such use is for improvement of the City of Portage infrastructure.
- 6.2 Submission or distribution of documents to meet official, regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Firm.

**ARTICLE 7 -- ARBITRATION**

**7 ARBITRATION**

- 7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.
- 7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations. A demand for arbitration shall not limit or affect the rights of the City to withhold payment pursuant to Section 10.1.2.
- 7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner any additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the City, Firm, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described herein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- 7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**ARTICLE 8 -- TERMINATION, SUSPENSION OR ABANDONMENT**

**8 TERMINATION, SUSPENSION OR ABANDONMENT**

- 8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 8.2 If the project is suspended by the City for more than 30 consecutive days, the Firm shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the compensation of the Firm shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the services of the Firm. Suspension of the project under this section shall not give rise to any claim against the City.
- 8.3 This Agreement may be terminated by the City upon not less than seven day's written notice to the Firm in the event that the Project is permanently abandoned. If the Project is abandoned by the City for more than 90 consecutive days, the Firm may terminate this Agreement by given written notice.
- 8.4 In the event of termination not the fault of the Firm, the Firm shall be compensated for services performed prior to termination.
- 8.5 Termination not the fault of the Firm shall not give rise to any claim against City for damages or for compensation in addition to that provided under this section. Such payment so made to Firm shall be in full settlement for services rendered under and pursuant to this agreement. In the event of termination by either party, all finished or unfinished documents, data studies and reports prepared by

Firm under and pursuant to this agreement for which the Firm has been compensated shall, at the option of the City, be available to be used by the City.

- 8.6 In the event of termination by the City for the default of the Firm, the City may take over the work and services and prosecute them to completion by contract or otherwise, and the Firm shall be liable to the City for any excess cost caused the City by reason of such completion of work.

#### **ARTICLE 9 -- MISCELLANEOUS PROVISIONS**

#### **9 MISCELLANEOUS PROVISIONS**

- 9.1 This agreement shall be governed by the law of the State of Michigan.
- 9.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.
- 9.3 The City and the Firm, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City nor the Firm shall assign this Agreement without the written consent of the other.
- 9.4 This Agreement represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Firm.
- 9.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Firm.
- 9.6 The Firm shall have the right to include representations of the design of the Project, including photographs, among the promotional and professional materials of the Firm. The materials of the Firm shall not include the confidential or proprietary information of the City if the City has previously advised the Firm in writing of the specific information considered by the City to be confidential or proprietary. The City shall provide professional credit for the Firm on the construction sign and in the promotional materials for the Project.

#### **ARTICLE 10 -- PAYMENTS TO THE FIRM**

#### **10 PAYMENTS WITHHELD**

- 10.1 Except as provided in 10.2, no deductions shall be made from the compensation of the Firm on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Firm has been found to be liable. Reimbursable expenses shall include preparation and duplication of plans and specifications required by a contractor to bid on this project. Reimbursable expenses may also include any other expenses agreed to by the Firm and the City, provided the expenses were identified and agreed to prior to the expense being incurred.
- 10.2 When the City has reasonable grounds for believing that a claim exists or will exist against the Firm, arising out of the negligence of the Firm or breach of any provisions of this agreement, then the City may withhold payment of any amount otherwise due and payable to the Firm under this agreement.

The amount withheld may be retained by the City for that period as it may deem advisable to protect the City against any loss and may, after written notice to the Firm, be applied in satisfaction of any claim described. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

**ARTICLE 11 -- BASIS OF COMPENSATION**

**11 THE CITY SHALL COMPENSATE THE FIRM AS FOLLOWS**

11.1 FOR BASIC SERVICES, as described in Article 2 and Article 3, the City of Portage Request for proposal Document, and any other services, terms, and conditions included in Article 13 as part of Basic Services, Total Compensation shall be:

Design and Construction Engineering \_\_\_\_\_ \$ \_\_\_\_\_  
(in words – governs over number in case of discrepancy)

TOTAL \$ \_\_\_\_\_

**11.2 Compensation for Additional Services**

11.2.1 **Reimbursable Expenses.** The Firm is to be reimbursed for the direct costs associated with printing expenses of the final bid set of documents, including plans, specifications, final computer plotting of the documents, distribution, and the like for the purposes of bidding the project to General Contractors. Any printing, plotting, or distribution costs as a result of changes made by the Owner or Contractor shall be reimbursed at direct cost to the Firm.

11.2.2 Additional services shall be provided at the rates agreed to by the City and Firm in accordance with the proposal submitted.

If it becomes necessary to perform extra work as defined in Section 3.7, the following hourly rates will apply:

11.2.2.1 Owner/Partner: \$ \_\_\_\_\_/hour

11.2.2.2 Professionals: \$ \_\_\_\_\_/hour

11.2.2.3 Technicians: \$ \_\_\_\_\_/hour

11.2.2.4 Clericals: \$ \_\_\_\_\_/hour

Rates quoted above are inclusive of all expenses, including but not limited to personnel services, fringe benefits, overhead, and profit required by the Firm.

List any expense rates that may apply to extra work. If no expense rates are indicated, no expenses will be allowed.

## **ARTICLE 12 – INDEMNITY AND INSURANCE**

### **12 INDEMNITY AND INSURANCE**

12.1 The Firm shall defend, indemnify and hold harmless the City of Portage, its employees, elected officials, departments, agents, boards, commissions, City Council Members, and volunteers against and from claims, judgments, losses, damages, demands, payments, recoveries, legal proceedings, orders, and decrees of every nature and description arising out of, or resulting from the negligent performance of the Firm specified. The successful Firm agrees to provide insurance as outlined below.

12.1.1 Worker’s Compensation Insurance - Covering all persons engaged in work under this contract to the full statutory limits stipulated in the Michigan Worker’s Compensation Act.

12.1.2 Comprehensive General Liability Insurance:

Bodily Injury - \$1,000,000/occurrence  
Property Damage - \$1,000,000/occurrence  
Personal Injury - \$1,000,000/occurrence

12.1.3 Professional Liability Coverage (errors and omissions) covering an actual or alleged error, statement, act, omission, neglect or breach of official duty, including misfeasance, malfeasance, and non-feasance - at least \$2,000,000 on an “occurrence” basis.

12.1.4 Motor Vehicle Liability Insurance:

Bodily Injury - at least \$1,000,000/occurrence  
Property Damage - at least \$1,000,000/occurrence  
Personal Injury - at least \$1,000,000/occurrence

THE CITY OF PORTAGE, ITS AGENTS, ELECTED OFFICIALS, AND EMPLOYEES, SHALL BE INCLUDED AS ADDITIONALLY NAMED INSURED WITH RESPECT TO ALL LIABILITY POLICIES HEREIN (WITH THE EXCEPTION OF PROFESSIONAL LIABILITY AND WORKER’S COMPENSATION COVERAGE) WHICH SHALL BE INDICATED ON ALL APPLICABLE CERTIFICATES OF INSURANCE.

If an “occurrence” policy is unavailable for the professional liability coverage, please include a statement from your insurance agent or broker indicating non-availability of the occurrence form. Under these circumstances, a “claims made” form will be considered if written in the requested amount.

The insurance Certificates indicated above shall carry a 30 day notice of cancellation and shall be submitted within ten (10) working days of notification of award and prior to the execution of any work under this contract.

It shall be the responsibility of the Firm to ensure that each subcontractor utilized by the Firm (if any) provides evidence that each subcontractor carries insurance in like amounts, prior to the time such subcontractor proceeds to perform under the contract.

**ARTICLE 13 -- OTHER CONDITIONS OR SERVICES**

**13 OTHER CONDITIONS OR SERVICES**

- 13.1 **SUPERVISION BY THE FIRM** The Firm will supervise and direct the work covered under this contract. It will be solely responsible for the means, methods, techniques, sequences, and procedures of the work performed. The Firm will appoint a Project Supervisor who shall have full authority to act on behalf of the Firm and all communications given to the Project Supervisor shall be as binding as if given to the Firm.
- 13.2 **LAWS AND MUNICIPAL ORDINANCES** The Firm shall keep fully informed of all laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the equipment and materials used in the work, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. It shall at all times observe and comply with all such existing laws, codes, ordinances, regulations, orders, and decrees.
- 13.3 **WARRANTY AND GOOD FAITH** The Firm shall remain available and on-call to address any potential warranty claims that may result from any phase of the project. The Firm shall also be available to evaluate any possible system failure that may be allegedly attributable to evaluate any possible system failure that may be allegedly attributable to a design criteria provided by the Firm. This provision shall be defined as a basic service for which compensation is represented in Section 12.1.
- 13.4 **ATTORNEY FEES** In the event that any actions filed in any court as a result of the breach of this agreement by the Firm, in addition to all the sums that the Firm may be called upon to pay for said breach, it is also responsible for all the actual attorney fees and costs of the City in pursuing the litigation.
- 13.5 **NON-DISCRIMINATION** The Firm agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans with Disabilities Act of 1990 as amended; the Elliott-Larsen Civil Rights Act, Article 2, Act No. 453, Public Act of 1976 as amended; the Michigan Handicapper's Civil Rights Act, Article 2, Act No. 220; Public Act of 1976, as amended and all other applicable Federal, State and Local laws and regulations. Specifically, the Firm is required not to discriminate against any employee or applicant for employment with respect to such person's hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of such person's race, color, religion, national origin, ancestry, age, sex or disability, as defined by law.
- 13.6 **AGREEMENT VALIDITY** The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provision shall be deemed to be in full force and effect as if it had been executed by both parties subsequent to the expungement of the invalid provision.

This Agreement entered into as of the day and year first written above.

CITY OF PORTAGE

FIRM

\_\_\_\_\_  
(signature)

Maurice S. Evans, City Manager  
\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
Name and Title

Approved as to form:

\_\_\_\_\_  
Randall Brown  
Portage City Attorney

INSTRUCTIONS FOR EXECUTING CONTRACT WITH CITY OF PORTAGE

**A. If the contractor is a corporation, the following certificate must be executed:**

I, \_\_\_\_\_, certify that I am the Secretary of  
print or type name  
the corporate entity named as Contractor in the contract and that such corporate entity is a  
corporation in good standing in the State of \_\_\_\_\_ and has authority  
print or type name of state  
to transact business in the State of Michigan. I certify that the contract between the City of Portage  
and \_\_\_\_\_, Inc. was validly executed on behalf of the  
print or type name of corporation  
corporation by \_\_\_\_\_ who was then the \_\_\_\_\_  
print or type name print or type name of title  
of said corporation and has the authority to bind the corporation to the contractual agreements  
pursuant to the authority of its governing body and by-laws and is within the scope of its corporate  
powers.

\_\_\_\_\_  
Print or type name of corporation

Dated: \_\_\_\_\_, 20\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_

**B. If contractor is an LLC, the following certificate must be executed:**

I, \_\_\_\_\_, certify that I am a member of the  
print or type name  
Limited liability company named as Contractor in the contract and that such LLC is in good standing  
in the State of \_\_\_\_\_ and that the LLC has the  
print or type name of state  
authority to transact business in the State of Michigan. I certify that the contract between the City of  
Portage and \_\_\_\_\_ LLC was validly executed on behalf  
print or type name of LLC  
of the LLC by \_\_\_\_\_ who was then a member of said  
print or type name  
LLC and has the authority to bind the LLC to contractual agreements and that such contract is within  
the scope of its powers.

\_\_\_\_\_  
Print or type name of LLC

Dated: \_\_\_\_\_, 20\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_

