



THE CITY OF
DOWAGIAC

CREATING
TOMORROW

Request for Proposal

Assessor of Record

PROPOSAL SPECIFICATIONS

Issued August 4, 2017

**Deadline 4:30 p.m.
Thursday, September 7, 2017**

Contact: Kevin Anderson, City Manager
241 South Front Street, PO Box 430
Dowagiac, Michigan 49047
(269)782-2195
FAX (269)782-9744
kanderson@dowagiac.org
www.cityofdowagiac.com

The City of Dowagiac is issuing this Request for Proposals (“RFP”) seeking competitive proposals from qualified professional firms and individuals to provide assessment services under a three-year contract (for the years 2018, 2019, 2020). The Assessor will be responsible for performance of all the duties and have all the powers required of and possessed by assessing officers by law in accordance with the State of Michigan.

We are providing the following information to assist with your quotation proposal:

Background Information

The City of Dowagiac is located in southwest Michigan in Cass County with a 2016 population of 5,879. The 2017 State Equalized Value for the City is \$92,488,100. The appraisal software utilized by the City is the “Assessing/Equalization” application from BS&A Software (www.bsasoftware.com). The City of Dowagiac has the following parcel counts:

Category/Class or Use	# of Parcels 2017	Taxable Value 2017
REAL		
Residential	2360	
Commercial	250	
Industrial	58	
Agricultural	1	
PERSONAL		
Commercial	185	
Industrial	12	
Utilities	2	
Tax Exempt	272	
Ind. Facilities Exemption Certificates /Special Acts Parcels	15	\$ 725,700
TIF Districts		
DDA	1	
L DFA	1	

Assessor Services Required

The contractor shall provide the following services within the proposed annual fees, without additional fees, costs, or charges, except as otherwise stated:

1. Presence on site a minimum of 8 hours per week with Assessor's time divided between office hours and field work as necessary.

2. Continue to appraise at least 20% of the City's properties each year to assure proper assessments when parcels are "uncapped". Maintenance renovations to structures are to be tracked so that they can be claimed as "new construction" when property is sold rather than treated as Headlee "uncapping" which results in the possibility of a Headlee rollback.
3. Development/maintenance of DDA and LDFA tax capture reports and completion/submittal to State of all related reports.
4. Assistance with applicants in preparation for IFT forms. Preparation of State required IFT reports for all certificates.
5. Representation and defense of the City in all appeals of assessments before the Michigan Tax Tribunal (MTT), appeals at local and State levels, and Circuit Court proceedings at no extra cost (reimbursement of direct expenses shall only occur if travel out of Cass County is required, gas cost will be reimbursed based upon vouchers for mileage at maximum per mile rate allow by the Internal Revenue Service). Coordinate with and support the City's attorney in the defense of these tax appeals.
6. Conduct random personal property audits when warranted. This requires the Assessor has successfully passed an examination before the State Tax Commission to obtain a Personal Property Audit Certificate.
7. Coordinate with County Equalization (uses Resource software) and City staff in keeping property tax descriptions and maps updated, mailing assessment and personal property tax forms and complying with all State, County and local assessing and reporting requirements.
8. Michigan Certified Assessing Officer designation with a minimum of a Level II Certificate (provide copy with proposal).
9. Continue to use and update the City's Equalizer software program and files.
10. Coordinate and schedule Board of Review meetings as required, attend the Organizational meeting and attend all Board of Review Meetings. Attend other board of Review meetings as necessary to properly inform its members prior to voting on appeals/clerical error adjustments.
11. Process parcel splits and provide descriptions and assistance to the Department of Public Services for keeping tax parcel maps current.
12. Respond to inquiries from the public, property owners, title companies, real estate agents, and other parties regarding assessing issues. Answer telephone calls and respond to walk-in requests for information.
13. Plan, supervise, and participate in the appraisal, reappraisal, and assessment of all real and personal properties in the City in accordance with the City Charter, ordinances and state law.

14. Immediate proficiency in use and operation of the City's property tax software system.
15. Availability of vehicles owned by the contractor for the performance of all duties of the Assessor.

City Facilities and Clerical Support

The following limited clerical duties will be provided by the City to aid the assessor:

1. Adequate office space, office furniture and associated equipment necessary for administration of the assessment function.
2. Desk-top computer, printer, digital camera and Equalizer software.
3. When approved by the City Manager, software upgrades and support services through software provider.
4. Customary assessing department office supplies, assessment notices and forms, and postage.
5. Clerical support using existing City staff for customary correspondence, data entry, servicing simple inquiries, and Board of Review minute taking and preparation.
6. Retention and payment of fees for legal counsel and certified property appraisers when required for defense of assessments at the full Tribunal.

Term of Proposal and Agreement

If the qualifications of the candidate/firm, and the costs and level of services offered in the proposals are determined to be in the best interest of the City, the City intends to offer the successful candidate/firm a three-year agreement. This agreement will be in effect from October 1, 2017 through September 30, 2020. Although a definite term agreement, the agreement may be terminated without cause by either party on thirty (30) days written notice to the other party.

Insurance Requirements & Indemnification/Hold Harmless

The contractor shall not commence work under this contract until they have obtained the insurance required under this paragraph, and shall keep such insurance in force during the entire life of this contract. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the City of Dowagiac. The requirements below should not be interpreted to limit the liability of the Contractor. All deductibles and SIR's are the responsibility of the Contractor.

The Contractor shall procure and maintain the following insurance coverage:

- Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

- Commercial General Liability Insurance on an “Occurrence Basis” with limits of liability not less than \$1,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included;
- Automobile Liability including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- Professional Liability covering negligent acts, errors and omissions in the performance of the assessor services, with policy limits of not less than \$1,000,000 per occurrence.
- Additional Insured: Commercial General Liability, Professional Liability, and Automobile Liability as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Dowagiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Dowagiac as additional insured, coverage afforded is considered to be primary and any other insurance the City of Dowagiac may have in effect shall be considered secondary and/or excess.
- Cancellation Notice: All policies, as described above, shall include an endorsement stating that it is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: (The City of Dowagiac, Kevin Anderson, City Manager, 241 South Front Street, PO Box 430, Dowagiac, Michigan 49047).
- Proof of Insurance Coverage: The Contractor shall provide the City of Dowagiac at the time that the contracts are returned by him/her for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Contractor shall provide written notification of any insurance coverage termination/cancellation immediately upon occurrence.
- If any of the above coverages expire or are subject to change of carrier during the term of this contract, the Contractor shall deliver new or renewal certificates and endorsements to the City of Dowagiac at least ten (10) days prior to the expiration date or effective date of new coverage.
- To the fullest extent permitted by law Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Dowagiac, its elected and appointed officials, employees, agents and volunteers, and others working on behalf of the City of Dowagiac against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City of Dowagiac, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, for all actions or inactions of the Contractor, their employees, agents or subcontractors.

General Quotation Requirements

Each proposal submitted to the City of Dowagiac shall contain the following information:

1. The proposal must identify the firm name, address and specific assessment services experience in Michigan.
2. The proposal shall provide a description of the Assessor's qualification (level) and experience in providing appraisal and assessing services to local units of government.
3. The proposal shall identify the individual to be assigned primary responsibility for the City account with a resume of the same.
4. All personnel providing assessing services shall be currently certified in compliance with State of Michigan Statutes. Documentation must be provided to show that at least one of the professional staff servicing the City of Dowagiac has an Assessor Level II Certification or better. Evidence of current certification and satisfaction of continuing certification requirements shall be filed with the proposal and annually during the term of the contract.
5. The proposal shall address the specific services required as listed above. If the proposer is unable to meet any of the required services they shall specifically address their inability within the proposal and the alternative method for addressing the item.
6. The proposal shall identify five references from municipal clients for which bidder has provided assessment services within the past five years. References must include the name, title, address and phone number of the contact person.
7. The proposal shall include the total annual compensation rate requested to provide the assessment services described above and in accordance with the laws of the State of Michigan. The City will pay the annual compensation rate in monthly installments.
8. The proposal shall identify any and all contractual requirements that the bidder currently has.
9. The successful bidder is not permitted to assign, subcontract or transfer the work of providing assessment services, without the prior approval of the City.

Evaluation Criteria

The Assessor will be selected and hired by the City Manager with formal approval by the Dowagiac City Council.

The following evaluation criteria will be used to review the Assessor of Record Proposals:

1. Demonstration of successful experience in providing general assessment services to a municipality of similar size.
2. Past experience with providing assessment revaluation services.

3. Demonstration of a high level of accuracy in assessment work for municipal clients.
4. Ability to provide and maintain a computerized database of property assessment records.
5. Cost of assessment services.
6. Evidence of positive customer interaction.

Proposal Submission

Deadline: Applicants must submit an original and 3 copies of a written proposal in a sealed envelope in response to this RFP. Proposals must be received at Dowagiac City Hall no later than 4:30 p.m. on Thursday, September 7, 2017. Postmarked proposals of this date and late proposals will not be considered.

Proposals should be submitted in a sealed envelope and bear the following information:

Assessor of Record Proposal
City of Dowagiac
Attn: Kevin Anderson, City Manager
241 S. Front St., PO Box 430
Dowagiac, MI 49047

The City of Dowagiac reserves the right to request additional information to supplement all written statements of qualifications or proposals. Interviews are anticipated and will be on an invitation basis.

Right to Reject/Accept

The City reserves the right to accept or reject any or all proposals or parts of proposals and to waive any or all irregularities, informalities, or inconsistencies in any proposal. The City reserves the right to negotiate contract terms with the successful applicant that are different from or in addition to those set out in the RFP or any attachments to this RFP. The City reserves the right to accept any proposal and price shall not be the sole determining factor.

Pursuant to MCL 129.313, before accepting any proposal, or entering into any contract for goods or services with any prospective vendor/contractor, the vendor/contractor must certify that it is not an "Iran linked business" as defined by the Iran Economic Sanctions Act, MCL 129.311, et seq. The vendor/contractor's submission of a proposal in response to this RFP constitutes a certification under the Act.

City of Dowagiac
AGREEMENT FOR ASSESSMENT SERVICES
(DRAFT)

SECTION 1. INTENT

1.1 It is the intent of this agreement to establish the terms, conditions, and responsibilities of (name) _____, of (address) _____, hereinafter referred to as the “CONTRACTOR” and the City of Dowagiac, hereinafter referred to as “CITY”, for the performance of the duties regarding Assessment Services for the City. Accordingly, the parties hereby agree as follows.

SECTION 2. CONTRACTORS RESPONSIBILITIES

Contractor agrees that it shall provide all of the services set out in this Section 2 in exchange for the payment of the annual service fee set out in Section 4 of this Agreement:

2.1 Contractor agrees to provide an Assessor (“Assessor”) at the certification level required by the State Assessors Board. If at such time the state requires an increased level of certification, contractor will provide an Assessor to meet said level within the time guidelines provided by the State of Michigan. All work hereinafter designated as to be completed by “Assessor” will be completed by the designated Assessor of Record for the City – _____ (Contractor), or, with advance approval, a Deputy Assessor.

2.2 Eight (8) hours every week to be spent in the City of Dowagiac. Additional days may be required to complete the work but these hours are designated for office hours and regularly scheduled fieldwork. In the event the Assessor or Deputy Assessor is unable to make the appointed days, additional days will be scheduled as needed to make up those days, except days which fall on legal holidays and days that the City offices are closed. Days in the office shall include the following:

2.2.1 Office Work Hours: _____ (day of week) from 8:30AM – 12:00PM.

2.2.2 Field Work Hours: _____ (day of Week) from 12:30PM – 5:00PM.

2.2.3 Days spent at the Michigan Tax Tribunal or in court, as scheduled.

2.2.4 Board of Review attendance, as scheduled.

2.2.5 During the month of March, the Assessors weekly responsibilities will be fulfilled by the Board of Review attendance.

2.3 The Assessor shall prepare the assessments for the ad valorem assessment roll and the IFT roll. The Contractor is not responsible for any other special assessment rolls, but will assist in the preparation and provide current information as requested. Per the City’s Request for Proposals, the Assessor will prepare all DDA and TIFA recapture reports as required.

2.4 Pickup new construction. This will be done through a physical review of new construction, through cooperation of the building department and through a review of building permits. A

copy of all building permits and a completed set of building plans will be provided for the Assessor's use. All building permits must have the property code number and city assigned property address entered on the permit.

- 2.5 The City shall also supply the Assessor with a copy of all fire calls involving improved properties, with property code numbers attached.
- 2.6 Eliminate across the board increases by developing new ECF's and land values and applying any future increases/decreases to the areas in which they belong.
- 2.7 Prepare sales studies using available data, file all forms and reports in a timely manner. Respond to all equalization studies.
- 2.8 Attend Board of Review meetings. The meetings will be cooperatively scheduled between the City and the Assessor.
- 2.9 July and/or December Board of Review Hearings: The Assessor shall prepare for and attend July and December Board of Review hearings, as scheduled by the Board.
- 2.10 Defend and assist the City in all appeals to the Michigan Tax Tribunal or Court. This includes all appeals which exist or which may arise from the prior assessments. Upon termination of this Agreement, the City shall assume responsibility for any upcoming or ongoing appeals. Immediately upon the termination of Contractor's services under this Agreement, Contractor shall provide the City with a written summary of all unsettled petitions and ongoing or upcoming appeals, which summary shall include the name of the taxpayer and tax/property identification numbers.
- 2.11 The City will be required to supply legal counsel at their expense for Small Claims and Full Tribunal hearings, should the need arise. The Assessor will report to the City Manager, providing a recommendation for all appeal defense strategy.
- 2.12 Establish good public relations and work with and educate property owners in an attempt to eliminate adversary situations.
- 2.13 The Contractor will provide certified personal property examiners if personal property audits are determined to be necessary and will request audits be conducted by the county if certified personnel are available.
- 2.14 Twenty percent (20%) of the all real property currently assessed by the City will be reassessed each year of this contract.
- 2.15 The Contractor shall provide all necessary personal transportation and field equipment to perform the assessing functions.
- 2.16 The Contractor shall procure and maintain the following insurance coverage:
 - 2.16.1 Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

2.16.2 Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included.

2.16.3 Automobile Liability including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

2.16.4 Professional Liability covering negligent acts, errors and omissions in the performance of the assessor services, with policy limits of not less than \$1,000,000 per occurrence.

2.16.5 Commercial General Liability, Professional Liability, and Automobile Liability as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Dowagiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Dowagiac as additional insured, coverage afforded is considered to be primary and any other insurance the City of Dowagiac may have in effect shall be considered secondary and/or excess.

2.16.6 All policies, as described above, shall include an endorsement stating that it is understood and agreed that Thirty (30) days advance written notice of cancellation, non-renewal, coverage reduction, and/or material change shall be sent to: City of Dowagiac, attention Kevin Anderson, City Manager, 241 South Front Street, PO Box 430, Dowagiac, Michigan 49047.

2.16.7 The Contractor shall provide the City of Dowagiac certificates of insurance as well as the required endorsements for all coverage set out in this Subsection 2.16. Contractor shall provide written notification of any insurance coverage termination/cancellation immediately upon Contractor's receipt of notice of said actions.

2.16.8 If any of the above coverages expire or are subject to change of carrier during the term of this Agreement, the Contractor shall deliver new or renewal certificates and endorsements to the City at least ten (10) days prior to the expiration date or effective date of change of carrier.

SECTION 3. TIME FRAME

3.1 This Agreement shall be effective as of October 1, 2017 and terminate September 30, 2020, unless terminated earlier pursuant to Section 3.2 of this Agreement. Contractor shall commence its provision of services under this Agreement on October 1, 2017 and continues until the effective date of termination of this Agreement or termination of services as provided in Section 4.2.3 of this Agreement.

3.2 The City and the Contractor each have the unilateral right to terminate this Agreement and the provision of services under this Agreement at will and without cause or reason upon service of

thirty (30) days written notice on the other party to this Agreement. Upon termination of this Agreement or the services under this Agreement, Contractor shall immediately:

3.2.1 Provide the City with a written summary of all unsettled tax petitions/appeals and the ongoing or upcoming appeals, which summary shall include the name of the taxpayer and tax/property identification numbers.

3.2.2 Surrender to the City all City property in its possession or the possession of Contractor's employees and agents, including but not limited to keys, computer or building access codes, computer hardware and software, City files and records, assessment documents and all notes, records, papers whether in electronic or written form, draft form, complete or incomplete ("Documents"). All Documents developed, obtained or produced on behalf of the City in the course of the Contractor's performance under this Agreement shall be delivered to the City and shall be the sole property of the City.

3.2.3 The obligations and duties of Contractor under this Subsection 3.2 shall survive the termination of services under this Agreement or termination of this Agreement and shall be enforceable against Contractor regardless of the existence of any disputes arising under this Agreement.

3.3 Both parties may renegotiate this agreement 60 days prior to its termination date.

3.4 The Contractor/Assessor will be required to perform the assessing duties under the laws, rules, and guidelines in existence as of the signing of this Agreement and as amended during the term of this Agreement. Should the laws, rules, and or guidelines change during the term of this Agreement in a manner that materially affects the performance of services under this Agreement, then the Contractor and City shall be afforded the opportunity to renegotiate this Agreement.

SECTION 4. SERVICE FEES

4.1 For the work performed as a Contractor that does not fall under an employee designation by the IRS, Contractor will provide a W-9 with all required information for those services.

4.2 The City shall pay a fee for Contracted Services as follows:

4.2.1 Year 1 – October 1, 2017 through September 30, 2018 - \$ _____ per month.

4.2.2 Year 2 – October 1, 2018 through September 30, 2019 - \$ _____ per month.

4.2.3 Year 3 – October 1, 2019 through September 30, 2020 - \$ _____ per month.

4.3 Parcel splits will be processed at no additional charge if the assessor is provided accurate surveys, sketches, legal descriptions, and the approval of the split by the City Planning Commission. The assessor will assist the planning commission if requested to provide existing parcel information necessary for the decision.

- 4.4 If the Contractor believes that the City is requesting services beyond the services covered by this Agreement (“Additional Services”) it shall submit a written request to the City Manager describing the Additional Services and the exact amount to be charged for the Additional Services. Contractor shall not perform any Additional Services without prior approval in a dated writing signed by the City Manager.

SECTION 5. CITY RESPONSIBILITIES

- 5.1 The City shall provide property description cards containing needed initial information such as property number, legal description, owner, and address information, as well as all the present existing data and measurements.
- 5.2 The City shall provide appropriate tax maps, land value maps, and ECF maps as required by the State Tax Commission. Also, the city will provide office space, furniture, and telephone during the duration of the Agreement as well as a copying machine, office supplies, postage, and mailing service if necessary to comply with P.A. 206 and the State Tax Commission.
- 5.3 The City shall supply computer hardware and software to perform the pricing function. The City must maintain the hardware and software through a regular maintenance program. The City must back up the system on a regular basis with alternate tapes or disks. Any data loss as a result of hardware or software problems must be replaced at the City’s expense. The City will maintain remote login capabilities for the Assessor to access the Assessors computer at City Hall.
- 5.4 The City shall provide clerical support for customary correspondence, filing & servicing simple inquiries.

SECTION 6. MISCELLANEOUS PROVISIONS

- 6.1 The Contractor represents, warrants and agrees that neither it nor any of its shareholders, officers, directors, employees, or any of their family members, have or shall have any interest, direct or indirect, in any other contractual relationship with the City or as a sub-consultant to another party with a contractual relationship with the City in connection with the services to be performed under this Agreement, without full disclosure to, and the written approval of the City. The Contractor agrees that it will execute such further certificates or disclosures as the City may require, in such form as the City may require, confirming the absence of any conflicts of interest, or, in the event that a conflict arises, in order to fully describe the nature of the conflict to the City. Notwithstanding anything contained herein to the contrary, the Contractor acknowledges and agrees that neither Contractor nor any of its officers, directors, employees or shareholders, or any of their family members, has or will have any interest, direct or indirect, in any way involved with or relating to the services performed under this Agreement.
- 6.2 The Contractor agrees that neither it nor its employees or agents will discriminate against any contractor, subcontractor, person, employee, consultant or applicant for employment with respect to his or her hire, tenure, terms, condition, or privileges of employment or hire because of his or her religion, race, color, national origin, age, gender, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position in violation of the United States Constitution and all federal legislation

and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VI of the Civil Rights Act of 1965 (P.L. 88-352, 78 Stat. 252), and United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to Title VI, and in accordance with the Michigan Constitution and all State laws and regulations governing fair employment practices and equal opportunity, including, but not limited to the Michigan Elliott Larsen Civil Rights Act (1976 P.A. No. 453) and the Michigan Persons With Disabilities Civil Rights Act (1976 P.A. No. 220). The failure of the Contractor to comply with the requirements of this Subsection shall constitute a material default under this Agreement, entitling the City to exercise its remedies hereunder, including, without limitation, the right to withhold payments under this Agreement.

- 6.3 Contractor agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, City Council, City Council members, employees and agents, from and against any and all claims, damages, demands, losses, suits, liabilities or expenses, including court costs and actual attorney fees, of any nature whatsoever, including damage to the property of Contractor, or injury to or the death of officers, employees or agents of Contractor or of third parties to the extent arising out of the Contractor's performance under this Agreement or the negligent act or omission or willful misconduct of the Contractor, its officers, directors, employees, agents or subcontractors related to the performance of this Agreement.

- 6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

- 6.5 This Agreement, together with any exhibits attached hereto, supersedes all prior or contemporaneous negotiations, representations or agreements, either written or oral. This Agreement may only be modified in a writing signed and dated by the parties.

- 6.6 All written notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement shall be personally delivered with receipt obtained, or mailed by overnight mail or registered or certified first-class mail, return receipt requested, addressed as follows:

If to the City of Dowagiac
241 South Front Street
Dowagiac, MI 49047
Facsimile: (269) 782-9744

ATTN: City Manager

If to the Contractor to: _____

Facsimile: _____

ATTN: _____

All Notices shall be deemed given on the day when hand delivered or, if mailed, on the day following the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving Notice to the other party as provided in this Subsection.

- 6.7 Contractor shall not assign or otherwise transfer any of its duties, obligations, or performance under this Agreement or interest in this Agreement, or enter into any subcontract for the provision of any of the services to be performed under this Agreement, without the prior dated and signed written consent of the City.
- 6.8 The relationship of Contractor to the City is and shall continue to be that of an independent contractor and no liability or benefits, such as worker's compensation, pension rights or liabilities, arising out of or related to a contract for hire or an employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Agreement. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating an agency relationship, or a partnership or joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than an independent contractor relationship.
- 6.9 Neither the City nor Contractor shall be deemed to have waived any of its rights under this Agreement unless such waiver is in a dated writing and signed by such party. No delay or omission on the part of any party hereto in exercising any of its rights shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion. No failure by any party hereto to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach, covenant, agreement, term or condition.
- 6.10 If any one or more provisions of this Agreement or of any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstances shall to any extent be declared or determined to be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 6.11 The headings of the Articles, Sections and other subdivisions, in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.
- 6.12 The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity. Contractor agrees, consents and submits to the personal jurisdiction of any court of competent jurisdiction in Cass County, Michigan for any action brought against it arising out of this Agreement. The Contractor agrees that service of process at the address and in the manner specified in Subsection 6.6 shall be sufficient to put Contractor on notice. Contractor also agrees that it will not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction, interpretation or enforcement of this Agreement in any courts other than those in the County of Cass, State of Michigan. The Contractor agrees to obtain a similar covenant from any subcontractor with respect to any Services rendered pursuant to this Agreement.

- 6.13 Force Majeure. In the event of any forced delay in the performance by either party of its obligations under this Agreement due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, or severe weather, the time for performance of such obligations shall be extended for the period of the forced delays, provided that the party seeking the benefit of the provisions of this Subsection shall within ten (10) days after the beginning of such forced delay, have first notified the other party in writing of the causes thereof and requested an extension. The written request shall be accompanied by supporting documentation with respect to any additional costs associated with the delay. Payment of any additional costs shall be subject to the terms of Subsection 4.4.
- 6.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original document, but together shall constitute one instrument.
- 6.15 As used herein, the singular includes the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- 6.16 The City and Contractor waive claims against each other for consequential, special and exemplary damages caused by, related to or arising out of this Agreement or the failure to perform properly any obligation arising out of or relating to this Agreement. This mutual waiver includes, but is not limited to:
- 6.16.1 Damages incurred by the City for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 6.16.2 Damages incurred by the Project Manager for losses of income, profit, financing, business and reputation, business or business advantage, and for loss of profit arising directly or indirectly under this Agreement.
- 6.17 Persons and entities that are not a party to this Agreement shall have no rights, interest or claims arising out of this Agreement or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

 Donald D. Lyons, Mayor
 City of Dowagiac

 Contractor

 Jane P. Wilson, Clerk
 City of Dowagiac

 YES NO
 Record of City Approval

 Date

 Date

