

ADDENDUM No. 1

ITB No. 4365

TRAVER STREET STORM SEWER

Due: Monday, March 9, 2015 at 10:00 AM

The following changes, additions, and/or deletions shall be made to the Invitation to Bid for Traver Street Storm Sewer, ITB No. 4365, on which proposals will be received on/or before Monday, March 9, 2015, by 10:00 AM.

The information contained herein shall take precedence over the original documents and all previous addenda (if any), and is appended thereto. **This Addendum includes 13 page(s) and 0 drawing(s).**

Bidder is to acknowledge receipt of this Addendum No. 1 including all attachments (if any) in its Bid by so indicating on page ITB-1 of the Invitation to Bid Form. Bids submitted without acknowledgement of receipt of this addendum will be considered nonconforming.

I. CORRECTIONS/ADDITIONS/DELETIONS

Changes to the Bid documents which are outlined below are referenced to a page or Section in which they appear conspicuously. The Bidder is to take note in its review of the documents and include these changes as they may affect work or details in other areas not specifically referenced here.

Section/Page(s)

Change

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS, page SIB-1, **replace** in its entirety (attached).

PROFESSIONAL SERVICES AGREEMENT, pages 1-12, **replace** in its entirety with CONTRACT, pages C-1 thru C-4 (attached).

BID FORM, Section 6 – Certification for Self-Performed Work, **remove** page BF-8 in its entirety.

Detailed Specifications, Division 1, SECTION 01000 GENERAL REQUIREMENTS, **revise** page 01000-1, 1.2 WORK SCHEDULE, A.

A. **Work under this contract is to be completed in 60 consecutive days.** The CONTRACTOR shall provide a work schedule. The schedule shall be complete and shall show in detail the manner in which he proposes to complete the work under this contract and approximately monthly billing of the Contract. The purpose of the schedule is to assist the OWNER in notifying the public of inconveniences and to anticipate cashflow on the job, and to determine if the CONTRACTOR is reasonably proceeding with the work to assure completion within the specified time.

Respondents are directed to take note in its review of the documents of the following questions and City responses as they affect work or details in other areas not specifically referenced here.

II. QUESTIONS AND ANSWERS

The following Questions have been received by the City. Responses are being provided in accordance with the terms of the ITB.

Question #1: Please indicate the anticipated project start date and required completion date?

Answer: The Notice to Proceed is anticipated to be issued by June 1, 2015.

Question #2: How much do you expect the lane closure permit, soil erosion permit and right-of-way permit from the City of Ann Arbor to cost?

Answer: The fees for these permits will be waived since this is a City project. It is the contractor's responsibility to obtain these permits, refer to Section 9 of the General Conditions, page GC-6.

Question #3: Is a railroad inspector required to be present during work activities? If so, please detail when inspection is required and what the anticipated fee schedule is.

Answer: Yes, a railroad inspector will be required to be present during construction activity in the Railroad right-of-way, contact John Chlipala with the Ann Arbor Railroad at 419-350-6523 at least 3 days prior to work. Permit specific questions can be directed to John Chlipala at Ann Arbor Railroad – jchlipala@watcocompanies.com.

Question #4: Is a railroad protective insurance policy required? If so, what are the required limits of coverage?

Answer: Contractor should refer to section 4 of the Railroad Permit and specifically subsection 4(b), see attached.

Question #5: Page SIB-1 is not standard for a City of Ann Arbor project in regard to the bid process. Is all of this information required WITH the bid, or only from the lowest, responsible bidder?

Answer: This information is not required with the bid, refer to the revised SIB-1.

Question #6: The standard, required EOE information that is typically required to be submitted with the bid proposal is not included in the bid package. Is this information required to be submitted with the bid?

Answer: Human Rights Contract Compliance Forms are not required to be submitted with this bid. It remains the Contractor's responsibility to comply with the requirements of the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that

applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

Question #7: Section 6 of the Bid Form is a "Certification for Self Performed Work". Is it your intent that party that submits a proposal for this project self-performs at least 50% of the work?

Answer: There will be no requirement for the level of self-performed work on this contract.

Question #8: Can quarried limestone be utilized for the scour hole aggregate, assuming it meets the specified gradation?

Answer: Yes, quarried limestone will be acceptable.

Question #9: Are silt sacks an acceptable alternative to dandy bags?

Answer: Silt Sacks are an acceptable alternative to Dandy Bags.

Bidders are responsible for any conclusions that they may draw from the information contained in the Addendum.

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

Bidders may be requested to submit the following safety information prior to contract award. If the City of Ann Arbor makes a request, the information must be provided within three (3) business days:

1. Bidder shall submit a formal/written safety program.
2. Bidder shall describe the job site safety program for this project and specific safety policies in which employees must be in compliance.
3. Bidder shall provide the organizations most current OSHA 300 logs or reasons why this organization is exempt from OSHA 300 reporting.
4. Bidder shall provide the organization's most recent OSHA recordable incident rate, DART rate, and lost workday rate.
5. If applicable, bidder shall provide the organization's excavation and trench safety program. Within this program, please identify the organization's Qualified Person for excavation and trench safety that will be on-site daily.
6. Bidder shall identify the project safety team, their qualifications, duties and city(s) of residence.
7. Bidder shall identify any major accidents or incidents that resulted in major injury or deaths that have occurred on a project site controlled by the firm, or any subcontractor(s) (at any contractual level), that had any major injury or death on a project site? If so, describe how the organization has revised the program.

CONTRACT

THIS AGREEMENT is made on the _____ day of _____, 201_, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 301 E. Huron Street, Ann Arbor, Michigan 48104 ("City") and _____ ("Contractor") _____ (An individual/partnership/corporation, include state of incorporation) _____ (Address)

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the project titled Traver Street Storm Sewer in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

Human Rights Division Contract	General Conditions
Compliance Forms	Standard Specifications
Living Wage Declaration of	Detailed Specifications
Compliance Forms	Plans
(if applicable)	Addenda
Conflict of Interest	
Bid Forms	
Contract and Exhibits	
Bonds	

ARTICLE II - Definitions

Administering Service Area/Unit means _____

Supervising Professional means City Engineer acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Project means Traver Street Storm Sewer, ITB #4365.

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin immediately on the date specified in the Notice to Proceed issued by the City.
- (B) The entire work for this Contract shall be completed within sixty (60) days.

- (C) Failure to complete all the work within the time specified above, including any extension granted in writing by the Supervising Professional, shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, an amount specified in Detailed Specification for Project Schedule and Payment shown on Page DS-1. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to deduct these unpaid liquidated damages from the monies due the Contractor.

As an independent requirement, where the Detailed Specifications identify certain portions of the work to be completed within a shorter period of time and the Contractor fails to complete each portion within the shorter period specified for each portion, including any extension granted in writing by the Project Supervisor, the City is entitled to deduct from the monies due the Contractor, as liquidated damages and not as a penalty, the amount identified in the Detailed Specifications for each portion of the work not timely completed for each calendar day of delay in completion of each portion of the work.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

Liquidated damages under this section are in addition to any liquidated damages due under Section 5 of the General Conditions.

ARTICLE IV - The Contract Sum

- (A) The City shall pay to the Contractor for the performance of the Contract, the unit prices as given in the Bid Forms for the estimated total of:

_____ Dollars (\$_____)

- (B) The amount paid shall be equitably adjusted to cover changes in the work ordered by the Supervising Professional but not required by the contract documents.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted without the written consent of the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience.

Whenever possible, each provision of the contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

ARTICLE VIII - Notice

All notices given under this contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the contract documents or other address the Contractor may specify in writing.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this contract, by the Contractor or anyone acting on the Contractor's behalf under this contract. Contractor shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

FOR CONTRACTOR

By _____

Its: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Steven D. Powers, City Administrator

By _____
Craig Hupy
Public Services Area Administrator

Approved as to form and content

Stephen K. Postema, City Attorney



JUST A REMINDER:

Please contact John Chipala at the Ann Arbor Railroad. He can be reached at 1-419-350-6523 at least 3 days prior to beginning work so that John can furnish a flagman.

If you have any questions or concerns, please feel free to contact me.

Thank you.

Watco Companies, L.L.C.
Ann Arbor Railroad
Barbara Crawford
Real Estate Department
620-231-2230, Ext. 364
bcrawford@watcocompanies.com

UNDERGROUND FACILITY

MEMORANDUM OF LICENSE AND AGREEMENT, effective the 5th day of September, 2014, by and between the ANN ARBOR RAILROAD, INC., a Delaware Corporation, 315 W. 3rd St., Pittsburg, KS 66762, hereinafter called the "Licensor" of the first part, and, CITY OF ANN ARBOR, a Michigan municipal corporation, whose address is 300 East Huron Street, Ann Arbor, MI 48104, hereinafter called "Licensee" of the second part.

WITNESSETH

WHEREAS, the Licensee proposes to install, maintain, operate and remove, a 12 inch diameter, DR11, high density polyethylene (HDPE) Storm Sewer, at a minimum depth of 10 feet below base of rail, under, across and along the right of way or property and any tracks of the Licensor, located at Mainline Station 2369+00 +/-, Milepost 46.76, in the City of Ann Arbor, County of Washtenaw, State of Michigan, to be located with any ancillary appurtenances as shown on print of Drawing Number 2075090900-G-01 Sheet 4 of 4 marked Exhibit A, attached hereto and made a part hereof (hereinafter called "Facilities")

NOW, THEREFORE, for and in consideration of the premises of this Agreement, and of the covenants hereinafter made, Licensor hereby permits and grants licensee, insofar as licensor has the right to do, without warranty and subject to all encumbrances, covenants and easements to which Licensor's title may be subject, the right to use and to occupy so much of the Licensor's right of way or property as may be necessary for the Facilities, upon the following terms and conditions.

1. Licensee will construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of Licensor or endanger persons or property of Licensor, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Licensor, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railway Engineering-Association-when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.
2. To the extent allowed by law, Licensee agrees to indemnify and save harmless Licensor, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorney's fees) or cost for personal injuries (including death) and/or property damage (including, without limitation, damage to the environment) to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, unless such losses, damages or injuries shall be caused solely by the negligence of Licensor. To the extent allowed by law, Licensee agrees that in case claim is made or suit is instituted against Licensor for such loss, injury or damage, Licensee will, upon notice from Licensor, settle, adjust or defend the same at its sole cost and expense and without expense to the Licensor, and will pay any judgment rendered therein holding Licensee liable together with applicable costs of court and attorney fees. Licensee also reserves its right to assert all defenses it may have and nothing in this Agreement shall be construed as a waiver of Licensee's governmental immunity. The insurance Licensee is required to have under this Agreement shall not limit Licensee's liability.
3. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from Licensee's permitted operations or uses of licensor's property pursuant to this Agreement. In addition Licensee shall obtain any necessary permits to install the Facilities. To the extent allowed by law, Licensee agrees to indemnify and hold harmless Licensor from and against any and all liability, fines, penalties, claims, demands, costs (including attorney's fees) losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air, or groundwater due to the use or presence of the facilities. It is agreed that this indemnity provision extends to any cleanup costs related to Licensee's activities upon Licensor's property and to any

costs related to cleanup of the Facilities or to other property caused by the use of the Facilities. Licensee also reserves its right to assert all defenses it may have and nothing in this Agreement shall be construed as a waiver of Licensee's governmental immunity.

4. Prior to commencement of the Licensee's Activities,

- a. Licensee shall maintain a policy of general liability insurance in the minimum amount of TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence for bodily injury and property damage naming the Licensor as an additional insured, providing coverage to the Licensor for all claims of loss and damage to any property whatsoever (including property of the parties hereto and of all other persons whomsoever), and for all claims of loss and damage on account of injury to or death of any person whomsoever (including employees and patrons of the parties hereto and all other persons whomsoever), and for all claims and liability for such loss and damage and cost and expenses thereof, caused by or growing out of the operation of this Agreement, or the presence, construction, maintenance, use or existence of said Facilities, whether caused by the fault, failure or negligence of the Licensor or otherwise (unless caused solely by the negligence of Licensor), up to the limits of the aforementioned policy. The insurance required herein shall be of such form and content as may be acceptable to the Licensor. Evidence of such insurance (certificate of insurance for the general liability insurance policy) must be furnished to and approved by Licensor's Property Manager, or his designee, prior to the effective date of this Agreement, and every year thereafter, so long as the Facilities shall remain in existence. Any such policy of insurance shall also provide that the Licensor be given 30 days notice prior to any cancellation of the policy. The exclusion for work done within 50 feet of railroad right of way must be deleted. Unless prohibited by law, such insurance shall waive subrogation against Licensor.
 - b. In addition to the above-described general liability insurance, if Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall, or require its contractor(s) performing such operations, to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of TWO MILLION AND 00/100 U.S. DOLLARS (\$2,000,000.00) per occurrence for bodily injury and property damage, with at least SIX MILLION AND 00/100 U.S. DOLLARS (\$6,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition.
 - c. Licensee shall also carry, for the benefit of Licensee and its employees, Worker's Compensation Insurance as required by the state in which the Work is to be performed, naming Licensee as insured. This policy shall include Employers' Liability Insurance with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) each accident/disease policy limit. Unless prohibited by law, such insurance shall waive subrogation against Licensor.
 - d. Licensee shall also maintain Automobile Liability Insurance in an amount not less than combined single limit ONE MILLION DOLLARS (\$1,000,000) each accident covering all owned, non-owned and hired vehicles.
 - e. The insurance required herein shall be of such form and content as may be acceptable to the Licensor. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to and approved by Licensor's Property Manager, or his designee, Ann Arbor Railroad, Inc., 315 West 3rd St., Pittsburg, KS 66762, prior to commencement of installation or maintenance of the Licensee's Activities or entry on Licensor's property.
5. The details of the Facilities to be installed and maintained shall be at the option of the Licensee, and subject to the approval of the Licensor's Property Manager, or his designee. In case of failure of Licensee


to do the work as herein specified, Licensor reserves the right to remove the Facilities from Licensor's premises at the expense of the licensee, and to terminate this Agreement upon ten (10) days' written notice.

6. If Licensor shall make any changes, alterations in or additions to the line, grade, tracks, structures, roadbed, installations or works of Licensor at or near the Facilities, Licensee shall, at its own cost and expense, upon thirty (30) days' notice in writing from Licensor, make such changes in the location and character of the Facilities as, in the opinion of the Licensor's Property Manager, or his designee, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions to Licensor.
7. If Licensee fails to take any corrective measures requested by Licensor in a timely manner or if an emergency situation is presented which, in the Licensor's judgment, requires immediate repairs to the Facilities, Licensor, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.
8. Notwithstanding any other provision of this Agreement, it is understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described caused by any defects therein or business conducted thereon, whether caused by the negligence of Licensor, its officers, agents or employees, or otherwise, and to the extent allowed by law, Licensee hereby indemnifies Licensor, its officers, agents, and employees, from and against any such liability for said damage. Licensee also reserves its right to assert all defenses it may have and nothing in this Agreement shall be construed as a waiver of Licensee's governmental immunity.
9. Licensor shall furnish, at the cost of the Licensee, labor and materials to support its tracks and to protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.
10. It is further agreed between the parties that the premises shall be used by Licensee only for the Facilities and for no other purpose without the written permission of the Licensor's Property Manager, or his designee.
11. For the License herein described the Licensee agrees to pay the Licensor, a one-time fee in advance, the sum of SIX THOUSAND FIVE HUNDRED (\$6,500.00) DOLLARS, for the preparation and license fee.
12. Licensee shall give Licensor seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed within the limits of the right of way of Licensor. Licensee agrees to pay any costs incurred by Licensor for the purpose of protection and inspection considered necessary by Licensor during installation, maintenance, operation, modification, replacement and/or removal of the Facilities.
13. Licensee shall not assign this Agreement without the written consent of Licensor.
14. The word "Licensor" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Licensor. Said term also shall include Licensor's officers, agents and employees, and any parent company, subsidiary or affiliate of Licensor and their officers, agents and employees.
15. Licensee may terminate this Agreement upon sixty (60) days' written notice to the Licensor. During said sixty-day period, Licensee shall remove the Facilities from Licensor's premises and restore said premises to a condition satisfactory to Licensor's Property Manager, or his designee. If Licensee fails to remove the Facilities within the aforesaid sixty-day period, Licensor may elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises

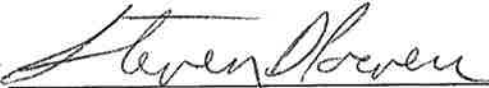
of Licensor at the expense of Licensee. Licensee agrees to reimburse Licensor for any and all costs of such removal. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the day and year first above written


ANN ARBOR RAILROAD, INC.
- a Delaware Corporation

BY 
Its - Director of Real Estate

CITY OF ANN ARBOR
a Michigan Municipal Corporation

BY 
Steven D. Powers, City Administrator

Approved as to form:


Craig Hupy, Public Services Area Administrator

Approved as to form:


Stephen K. Postema, City Attorney