City of Birmingham
A Walkable Community

MEMORANDUM

ENGINEERING DEPARTMENT

DATE: **January 15, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Brendan Cousino, Assistant City Engineer**
Paul O'Meara, City Engineer

SUBJECT: **CN RR Bridge over E. Maple Road**
Crash Attenuator Repair

In late November 2014, the existing vehicle crash attenuator on the west side of the CN Railroad Bridge over E. Maple Rd. was damaged. A photo of the damaged attenuator is attached.

The Engineering Department prepared an RFP for the repair of the vehicle crash attenuator, and sent it to several contractors who perform similar work. On January 8, 2015 the Engineering Department opened bids on the above referenced project. Attached are the bid results. Two companies submitted bids for this project. The low bidder was D.R.V. Contractors, LLC, of Shelby Township, MI, with their bid of $11,300.00. When the damage to the guard rail system occurred, the Police Dept. was called to make a report. The driver was identified and cited with careless driving. The City Attorney's office has been notified to seek restitution.

DRV Contracting has done several projects for the City of Birmingham over the past few years, including work in the N. Old Woodward, Pierce St., and Park St. Parking Structures. They have also done some smaller projects that include the 2012 bridge repairs, and the construction of the mechanical equipment screen wall at the Baldwin Library. Based on their past work for the City, we are confident that they are qualified to perform satisfactorily on this contract.

This project will include the complete repair of the vehicle crash attenuator, including replacement of the energy absorbers that were damaged, and re-using the steel components that can be salvaged. This work is expected to take approximately two working days, during which time the center lanes on E. Maple will need to be closed.

Because the bid amount exceeds the budgeted amount for the Major Streets bridge account for other contracted services, a budget amendment for that account will be required, as included below in the suggested resolution. It is recommended that the CN RR Bridge Crash Attenuator Repair project be awarded to D.R.V. Contractors, LLC, of Shelby Township, MI, in the amount of $11,300.00 to be paid out of the Major Streets Bridge fund account number 202-449.002-811.0000.

SUGGESTED RESOLUTION:

To award the CN RR Bridge Crash Attenuator Repair project contract to D.R.V. Contractors, LLC, of Shelby Township, MI, in the amount of $11,300.00 to be paid out of the Major Streets Bridge fund account number 202-449.002-811.0000. Further, to authorize the Mayor and the Clerk to sign the agreement on behalf of the City.

Further, to approve the appropriations and budget amendments as follows:

Major Street Fund

Revenues:		
Draw from fund balance #202-000.000-400.0000		$ 11,300.00
	Total Revenue Adjustments	$ 11,300.00
Expenditures:		
Other Contracted Services #202-449.002-8111.0000		$ 11,300.00
	Total Expenditure Adjustments	$ 11,300.00

CITY OF BIRMINGHAM
CN RR BRIDGE CRASH ATTENUATOR REPAIR

BID SUMMARY

January 8, 2015 - 2:00 PM

Company Name	Total Bid
DRV Contractors, LLC	$ 11,300.00
DiPonio Contracting	$ 19,275.00

AGREEMENT

For CN RR Bridge Crash Attenuator Repair

This AGREEMENT, made this 26th day of January, 2015, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and DRV Contractors, LLC, having its principal office at 51667 Oro Drive, Shelby Township, MI 48315 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Engineering Department, is desirous of having work completed to repair and replace damaged components on an existing vehicle crash attenuator system located on the west side of the CN Railroad Bridge over E. Maple Road in the City of Birmingham.

WHEREAS, the City has heretofore solicited for bids for the procurement and performance of services required to perform vehicle crash attenuator repairs, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform vehicle crash attenuator repairs

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform vehicle crash attenuator repairs and the Contractor's cost proposal dated January 8, 2015 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed $11,300.00, as set forth in the Contractor's January 8, 2015 proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor 's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or

marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. 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; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of

Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

F. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
4) If so requested, Certified Copies of all policies mentioned above will be furnished.

G. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

H. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the

Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham Attn: Paul O'Meara 151 Martin Street Birmingham, MI 48009 (248) 530-1836	CONTRACTOR DRV Contractors, LLC Attn: Ryan Vetor, President 51667 Oro Dr. Shelby Township, MI 48315 (586) 247-6480

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. <u>FAIR PROCUREMENT OPPORTUNITY:</u> Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

CONTRACTOR DRV Contractors, LLC

By: Derek Vater

Its: Vice President

CITY OF BIRMINGHAM

By: _____
Stuart Sherman
Its: Mayor

By: _____
Laura Pierce
Its: City Clerk

Approved:

Paul O'Meara, City Engineer
(Approved as to substance)

B. Sharon Ostin, Director of Finance
(Approved as to financial obligation)

Timothy J. Currier, City Attorney
(Approved as to form)

Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
For CN RR Bridge Crash Attenuator Repair

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

DEREK VETOR — 1/8/15
PREPARED BY (Print Name) — **DATE**

Vice President — 1/8/15
TITLE — **DATE**

dvetor@drvcompanies.com
AUTHORIZED SIGNATURE — **E-MAIL ADDRESS**

DRV Contractors, LLC
COMPANY

51667 ORO DR Shelby Twp MI 48315 — 586 247-6480
ADDRESS — **PHONE**

N/A
NAME OF PARENT COMPANY — **PHONE**

N/A
ADDRESS

ATTACHMENT C - COST PROPOSAL

For CN RR Bridge Crash Attenuator Repair

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

COST PROPOSAL	
ITEM	**LUMP SUM BID AMOUNT**
Vehicle Crash Attenuator Repair	$ 10,300.00
Traffic Control	$ 1,000.00
TOTAL BID AMOUNT	$ 11,300.00

Firm Name DRV Contractors, LLC

Authorized signature _____ Date 1/8/15

ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

For CN RR Bridge Crash Attenuator Repair

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

Derek Vetor — 1/8/15

PREPARED BY (Print Name) — **DATE**

Vice President — 1/8/15

TITLE — **DATE**

dvetor@drycompanies.com

AUTHORIZED SIGNATURE — **E-MAIL ADDRESS**

Dry Contractors, LLC

COMPANY

51667 Oro Dr Shelby Twp MI 48315 — 586-247-6480

ADDRESS — **PHONE**

N/A

NAME OF PARENT COMPANY — **PHONE**

N/A

ADDRESS

38-3283256

TAXPAYER I.D.#