



Brighton City Council Meeting

200 N First St • City Hall Council Chambers • Brighton, Michigan 48116
(810) 227-1911 • www.brightoncity.org

Regular Meeting
February 2, 2023 – 6:30 p.m.

AGENDA

1. Call to order
2. Pledge of Allegiance
3. Roll call
4. Consider approval of the agenda
5. Consider approval of consent agenda items

Consent Agenda Items

- a. Approval of Minutes: [regular meeting of January 19, 2023](#)

Correspondence

6. Call to the public
7. Staff updates
8. Swearing in of new Brighton City Police Officer Ashely Esposito
9. Announcement of Snowplow fleet winning names
10. Updates from Councilmember liaisons to various boards and commissions

Discussion

11. Downtown Streetscape – Bids and Funding
12. City Council and Planning Commission Recommended Device

New Business

13. [Consider approval of revised City vision and goals](#)
14. [Consider approval of a contract to revise and upgrade the City's website](#)
15. [Consider approval of an additional \\$42,000 funding request from Tetra Tech Engineering Services to complete construction phase engineering of the Northwest Neighborhood Project](#)
16. [Consider awarding the bid for the installation of a new Gorman Rupp Sewer Pump Station at the Brighton Cove Apartments to Comprehensive Contracting in an amount not to exceed \\$397,270](#)
17. [Approval of a Resolution #2023-01 to Enter into a Facility Encroachment Agreement with CSX Transportation, Inc. for the Crossing on Main Street](#)
18. [Consider authorizing the development of a City of Brighton GoGov Application](#)

Other Business

19. Call to the public
20. Adjournment



Brighton City Council Meeting

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MINUTES OF THE REGULAR MEETING OF THE BRIGHTON CITY COUNCIL HELD ON JANUARY 19, 2023

1. Call to order

Mayor Tobbe called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

3. Roll call

Present were Mayor Tobbe, Mayor Pro Tem Bohn, Councilmembers: Albert, Emaus, Gardner, Gipson, and Pettengill.

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, Community Development Manager Mike Caruso, Attorney Sarah Gabis (electronically), and Chief Brent Pirochta. There were twenty-four people in the audience.

4. Consider approval of the agenda

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to move item 6 from Correspondence to New Business as item 13a. **The motion carried, 7-0.**

Motion by Councilmember Emaus, seconded by Councilmember Gipson to approve the agenda as amended. **The motion carried, 7-0.**

5. Consider approval of consent agenda items

Motion by Councilmember Gardner, seconded by Councilmember Emaus to approve the consent agenda as amended. **The motion carried, 7-0.**

Consent Agenda Items

- a. **Approval of Minutes: regular meeting of January 5, 2023**

Correspondence

~~6. Mayoral Proclamation: Eagle Scout Conner Prah (moved to New Business)~~

7. Call to the public

Mayor Tobbe opened the call to the public at 6:33 p.m.

Katy Michalski introduced herself as Representative Elissa Slotkin's new district liaison.

Hearing and seeing no further comment, the call to the public was closed at 6:35 p.m.

8. Staff updates

DPW Director Marcel Goch provided an update on the Main Street watermain replacement and expressed his appreciation for everyone's patience as the contractor conducts their work.

Chief Pirochta asked that travel east into the city do not attempt to drive east on the close portion of Main Street.

Manager Gomolka provided an announcement with the location, dates and times, for the City Council Retreat on January 21st and 22nd.

9. Updates from Councilmember liaisons to various boards and commissions

Councilmember Gardner noted the Brighton Arts and Culture Commission meeting has been rescheduled to January 23, 2023.

Councilmember Emaus reported that the the DDA met and re-elected its officers and noted that a special meeting will be held to provide updates on the Streetscape project bid on February 2, 2023.

Councilmember Gipson has had preliminary discussions with merchants about the City's civic events and has been brainstorming ideas to lessen the pressures from the closure of Main Street while continuing to host civic events.

New Business

10. Consider approval of site plan #22-12, building for LOC Credit Union branch office, as part of a new commercial development located at 1025 E. Grand River

Motion by Councilmember Emaus, seconded by Councilmember Gipson to approve of site plan #22-12, building for LOC Credit Union branch office, as part of a new commercial development located at 1025 E. Grand River. **The motion carried, 7-0.**

11. Consider approval of an appointment to the Planning Commission

Motion by Councilmember Emaus, seconded by Pettengill to reappoint Susan Gardner to the Planning Commission. **The motion carried, 6-1. Councilmember Gardner abstained.**

12. Conduct a first read for rezoning of parcels #22-01, proposed rezoning of 8251 and 8265 Cross Street from C1 – Community Shopping Center, to C2 – General Business

Motion by Councilmember Emaus, seconded by Councilmember Albert to set a public hearing for February 16, 2023 for the rezoning of 8251 and 8265 Cross Street from C1-Community Shopping Center, to C2-General Business. **The motion carried, 7-0.**

13. Conduct a first reading and set a public hearing of February 16, 2023, for proposed Ordinance 601: Amendment to the Downtown Development Plan and Tax Increment Financing of the Downtown Development Authority

Motion by Councilmember Albert, seconded by Councilmember Emaus to set a public hearing for February 16, 2023, for proposed Ordinance 601: Amendment to the Downtown Development Plan and Tax Increment Financing of the Downtown Development Authority. **The motion carried, 7-0.**

13a. Mayoral Proclamation: Eagle Scout Conner Prah

Mayor Tobbe presented Eagle Scout Conner Prah with a City of Brighton Proclamation.

14. Consider Entering into Closed Session to Receive a Written Attorney-Client Privileged Communications Pursuant to MCL 15.268(1)(h) of the Open Meetings Act

Motion by Councilmember Emaus, seconded by Councilmember Gipson to enter into closed session at 7:09 p.m. to receive a written attorney-client privileged communication pursuant to MCL 15.268(1)(h) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to come out of closed session at 7:38. p.m. **The motion carried, 7-0.**

15. Consider approval of a three-year contract with BioTech Agronomics for biosolids hauling services

Motion by Councilmember Gardner, seconded by Councilmember Gipson to approve of a three-year contract with BioTech Agronomics for biosolids hauling services pending City Attorney review. **The motion carried, 7-0.**

Other Business

16. Call to the public

Mayor Tobbe opened the call to the public at 7:56 p.m. Hearing and seeing no comment, the call to the public was closed.

17. Adjournment

Motion by Councilmember Albert, seconded by Councilmember Emaus to adjourn the meeting at 7:56 p.m. **The motion carried (7-0).**

Tara Brown, City Clerk



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

FEBRUARY 2, 2023

SUBJECT: CONSIDER APPROVAL OF REVISED CITY VISION AND GOALS

BACKGROUND

Since the City's vision and goals were last adopted there are two new City Council members, a new City Manager and other changes in the management team. A workshop was held at the City Council retreat on January 21, 2023, to develop updated vision and goals.

ADMINISTRATIVE SUMMARY

During the retreat workshop after much brainstorming and productive discussion a new vision was realized – *A welcoming small town community valuing innovation, growth, and collaboration.*

Additionally, a list of 5 overarching goals were determined as follows:

Fiscal Responsibility

Public Safety

Welcoming

Environmental Stewardship

Service-Minded

It was discussed that all of these goals hold equal value and weight, and it was determined to express them in a circular wheel format rather than a numbered list. Staff was tasked with bringing fully fleshed out goals statements to support each of the five goals identified by council. Attached you will a copy of the new "Goals Wheel" and our initial stab at the goals statement. We would like to discuss these statements and incorporate any changes agreed upon by City Council at the meeting.

RECOMMENDATION

After making any agreed upon changes to the goals statement, staff recommends that City Council approve the Vision and Goals as presented along with any changes as discussed.

Prepared by: Gretchen Gomolka, City Manager

Reviewed by: Tara Brown, City Clerk

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: Vision and Goals Statements

City of Brighton Vision

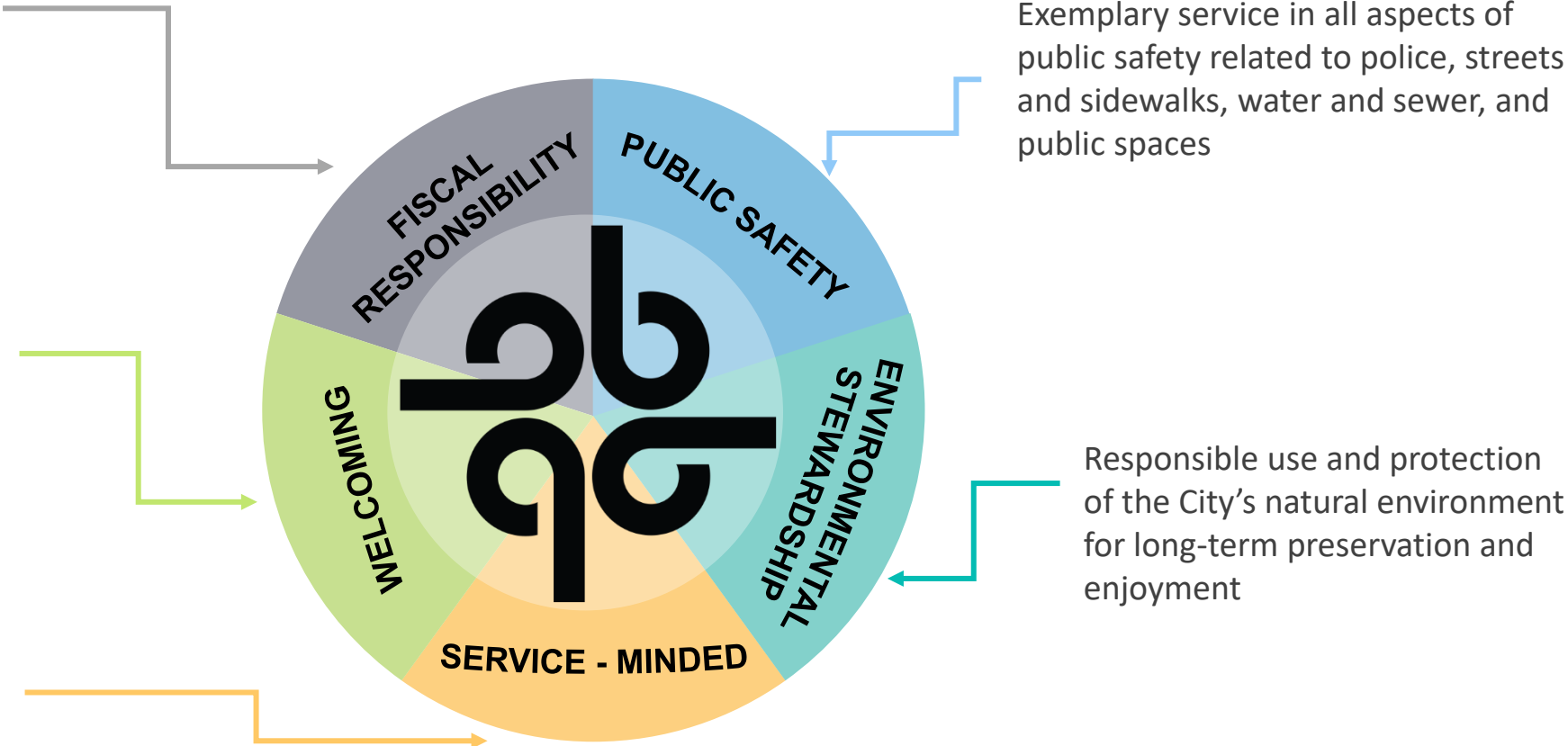
A welcoming small town community valuing innovation, growth, and collaboration

Strategic management of City finances for a sustainable community with a balanced budget, smart spending and investment in the future

Investment in the City's future and reputation resulting in a community with a sense of belonging that is desirable to residents, business owners, and visitors

Commitment of City Council and staff to be responsive, professional, and collaborative while balancing community priorities

City Council Goals





City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

FEBRUARY 2, 2023

SUBJECT: CONSIDER APPROVAL OF A CONTRACT TO REVISE AND UPGRADE THE CITY'S WEBSITE

BACKGROUND

From time to time, it is necessary to revise and refresh websites based on look, function, and how people access and utilize the information provided. The City first entered into contract with Revize in 2017, with great reviews on the new feel and function; however, after five years, a refresh addition of a few new features is necessary.

ADMINISTRATIVE SUMMARY

City staff has worked closely with the team at Revize to review the current city website and looked a metrics to determine how best to shape the website. End users need information to be easy to find, and the proposed new features and refreshed look will offer more information on the home screen. The current process of having to drill down into data will be minimized. An addition we are looking to add keeps up with newer websites, that have removed email addresses, replacing them with fillable forms that are sent directly to the staff member. Additionally, we would like to add a new curated search that is more dynamic and intuitive for users.

Revision of the site can take from 3-6 months depending on the amount of change requests.

Under our previous contract we paid \$2,400 per year for 5 years. The fee covered the annual software subscription, tech support, CMS updates, web hosting, storage, bandwidth, and an SSL certificate. This renewal bumps that annual fee to \$2,640 per year, a 10% increase after 5 years of no increase. Additionally, the changes we are requesting for fillable forms and curated search will cost and additional \$1,000 per year, for an annual cost of \$3,640. Year one does have some additional implementation costs totaling \$3,150 for a total year one cost of \$6,790.

BUDGET INFORMATION

As we work on the budget for 2023/24 and the six year forecast these costs will be built in to future years. The cost for the current year can be absorbed by existing savings within the General Fund IT budget.

RECOMMENDATION

Authorize the City Manager to execute the Revize contract to revise and upgrade the City's website.

Prepared by: Tara Brown, City Clerk

Reviewed by: City Attorney (Required for all agreements, ordinances, etc.)

Acceptable Form and Ready to Execute

Other _____

Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other – Can be accommodated in the current budget

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: Revize Agreement

The Following Applications & Features will be integrated into Your Website Project

- ▶ **Citizen's Communication Center Apps**
- ▶ **Citizen's Engagement Center Apps**
- ▶ **Staff Productivity Apps**
- ▶ **Site Administration and Security Features**
- ▶ **Mobile Device and Accessibility Features**

Citizen's Communication Center Apps:

- ✓ Notification Center with Text/Email Alerts
- ✓ Bid Posting
- ✓ Document Center
- ✓ Email Notify
- ✓ FAQs
- ✓ Job Posting
- ✓ Multi use Business Directory
- ✓ News Center with Facebook/Twitter Integration
- ✓ Online Forms
- ✓ Photo Gallery
- ✓ Quick Link Buttons
- ✓ Revize Web Calendar
- ✓ "Share This" Social Media Flyout App
- ✓ Sliding Feature Bar
- ✓ Language Translator

Citizen's Engagement Center Apps:

- ✓ Citizen Request Center with Captcha
- ✓ Citizen Connect (Community Blog)
- ✓ Online Bill Pay
- ✓ RSS Feed

Staff Productivity Apps:

- ✓ Agenda Posting Center
- ✓ Job Posting App
- ✓ Image Manager
- ✓ Link Checker
- ✓ Menu Manager
- ✓ Online Form Builder
- ✓ Staff Directory
- ✓ Website Content Archiving

- ✓ Website Content Scheduling
- ✓ Newsletter App

Site Administration and Security Features:

- ✓ Audit Trail
- ✓ Auto Site Map Generator
- ✓ History Log
- ✓ URL Redirect Setup
- ✓ Roles and Permission-based Security Mode
- ✓ Secure Site Gateway
- ✓ Unique Login/Password for each Content Editor
- ✓ Web Statistics and Analytics
- ✓ Workflows by Department

Mobile Device and Accessibility Features

- Font Size Adjustment
- **ADA Accessibility Button**
- Alt-Tags
- Responsive Website Design (RWD)

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made this _____ day of _____ by and between the City of Brighton, whose address is 200 North First Street, Brighton, Michigan ("City") and Revize LLC ("Contractor"), whose address is 150 Kirts Blvd, Troy, MI 48084. All of the parties to this Agreement may be collectively referred to herein as the "Parties".

WHEREAS the parties entered into a Professional Services Agreement dated May 29, 2018, which expires on May 29, 2023; and

WHEREAS, the parties which to enter into another 5 year agreement upon the terms and conditions stated herein.

NOW, THEREFORE, for the good and valuable consideration set forth below, the Parties agree as follows:

1. PROJECT DESCRIPTION AND COMPENSATION.

a. The work and pricing of the work to be provided under this Agreement (the "Work") shall be as follows:

Quantity	Description	Set-up Price	Annual
1	Discovery & Design from Scratch: <ul style="list-style-type: none"> • 1 mockup with up to 3 rounds of changes • Home page template and inner page design and layout. • Includes Responsive Web Design • 	Included	-
1	Revize Template Development: <ul style="list-style-type: none"> • Set-up all CMS modules listed in this agreement • Integration with all 3rd party web applications • New Calendar 	Included	-
1	Curated Search*	\$1,200	
1	Interactive Fillable Forms* <ul style="list-style-type: none"> • Set up • Training • Support and Hosting (Annual) 	\$1,950	\$1,000
1	Revize Annual Software Subscription, Tech Support, CMS Updates, Website Hosting, 50GB website storage, 100GB/Month Bandwidth, SSL Certificate pre-paid annual fee, 5-year agreement, free redesign year 5, locked in rate:		\$2,640
1	GRAND TOTAL (Including Add On Features)	\$3,150	\$3,640

- b. The Two Thousand, Six Hundred Forty Dollar (\$2,640.00) fee for the annual subscription, technical support, CMS updates, website hosting, unlimited users, unlimited GB website storage shall be paid for each year, in advance, by the month and date this Agreement was executed.
- c. By its signature hereon, Contractor acknowledges receipt of the first Six Thousand, Seven Hundred Ninety Dollars (\$6,790.00) payable under this Agreement to commence work ("First Payment"). Work performed will be credited against the First Payment until such time as it is exhausted. Subsequent work will be invoiced to the City, in writing, at the address set forth above, and such invoices are due within 30 days of receipt.
- d. In year five of this Agreement, and in addition to the work set forth above in paragraph 1.a., Contractor agrees to provide, free of charge, a complete website redesign repeating all work, with the exception of any features no longer supported by Contractor.³
- e. Contractor agrees to incorporate applications and features into the City's website and the Downtown Development Authority's ("DDA") website which will include, but not be limited to, those set forth on Exhibit A, attached hereto.
- f. The parties shall hold a "kickoff meeting" within ___ days of the execution of this Agreement. The annual services to be provided under this Agreement shall commence at the kickoff meeting.
- g. The "round of changes" set forth above shall be defined as a single list of design request changes to the mockup provided by Contractor. The list of changes may contain as many mockup changes as City wishes. Contractor agrees to make all reasonable mockup changes requested, which shall not include a complete redesign of the mockup.
- h. Contractor anticipates that small changes may be necessary and these are incorporated in the price set forth above.
- i. The technical support to be provided under this Agreement includes unlimited technical support to all authorized users for regular support issues. Authorized users are editors of the website that have previously participated in a Contractor training session. Regular support issues include, but is not limited to, issues that deny usability of the City's existing system, failure of a feature, password resets, retraining on the site, or workflow approval setup/tweaks. For issues

beyond regular support, including, but not limited to, subsequent redesign of sections of the website or creation of a new function, Contractor will provide a written estimate of costs and time before performing work.

- j. As a part of the consideration for the compensation set forth above, Contractor will provide the City with one (1) full Enterprise Revize CMS Software license (the "License"). The City agrees that the License shall be used only to maintain the websites which are the subject of this Agreement, and shall not be assignable to or usable by any other entity. Upon the termination of this Agreement by any means, Contractor will provide the latest version of the Revize CMS to the City for their use for any period desired. Contractor will provide the technical support necessary to establish the Revize CMS on the City's hosting architecture.

2. TERM OF AGREEMENT. The term of this Agreement shall be for five (5) years, commencing on the date of execution of this Agreement.

3. TERMINATION OF AGREEMENT. During the term of this Agreement, any Party shall have the right to terminate this Agreement upon thirty (30) days written notice.

4. STANDARD OF CARE. All services performed by Contractor will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances at the same time and in the locality.

5. INSURANCE. Contractor, or any of their subcontractors, 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 Brighton. 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:

- a. Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- b. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 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.

- c. Automobile Liability including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000.00 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.
- d. Professional liability, with limits of liability of not less than \$1,000,000.00 per occurrence and aggregate. Contractor's professional liability insurance shall cover claims if and to the extent that the insured causes damage to others, including but not limited to the City, in the rendering of its professional services.
- e. Additional Insured: Commercial General Liability and Automobile Liability, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Brighton, 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 Brighton as additional insured, coverage afforded is considered to be primary and any other insurance The City of Brighton may have in effect shall be considered secondary and/or excess.
- f. 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 Brighton, Attention Finance Director, 200 North First Street, Brighton, MI, 48116.
- g. Proof of Insurance Coverage: The Contractor shall provide The City of Brighton, 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. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.
- h. If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and endorsements to

The City of Brighton at least ten (10) days prior to the expiration date.

6. INFRINGEMENTS AND INDEMNIFICATIONS. Contractor agrees to protect, defend, and save the City, its officials, employees, departments and agents harmless against; any demand for payment for the use of any patented material, process, or device that may enter into the manufacture, construction, or from a part of the work covered by either order or contract; and from suits or a charge of every nature and description brought against if for, or on account of, any injuries or damages received or sustained by the parties by or from any of the facts of the contractor, the contractor's employees, or agents; from all liability claims, demands, judgments and expenses to persons or property occasioned, wholly, or in part, by the acts or omissions of the respondent, contractor, agents or employee. The Contractor shall release, indemnify and hold the City, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

7. DEFAULT AND REMEDIES. Any of the following events shall constitute cause for the City of Brighton to declare Contractor in default of the contract:

- a. Nonperformance of contractual requirements;
- b.. A material breach of any term or condition of this contract;

Please note, The City of Brighton shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, the City of Brighton may do one or more of the following:

- a. Exercise any remedy provided by law;
- b. Terminate this contract and any related contracts or portions thereof;
or
- c. Suspend contractor from receiving future proposal solicitations.

8. LAWS AND REGULATIONS. Any and all supplies, services and equipment offered shall comply fully with all applicable Federal, State and local laws and regulations, including, but not limited to, compliance with the Americans with Disabilities Act.

9. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. Venue for any claim, dispute or action concerning this Agreement shall be in Livingston County Circuit Court.

10. ASSIGNMENT/SUBCONTRACT. Contractor shall not assign, sell, transfer,

subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the City of Brighton.

11. OWNERSHIP OF ALL MATERIALS All digital and print materials created as a result of this Agreement are the property of the City, including any and all intellectual property rights to those materials and/or their designs including, but not limited to, any and all trademark, copyright and patent rights.

12. NONDISCRIMINATION. The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000c), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting agencies, upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual agency's certification requirements, if any as stated in the additional terms and conditions listed in the solicitation. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the agencies to insure that subcontractors and contractors are bound by this provision.

13. SEVERABILITY. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

14. FORCE MAJEURE. Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The City of Brighton may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

15. INDEPENDENT CONTRACTOR. The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the City of Brighton or the respective agencies to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the City of Brighton or participating agencies, except as expressly set forth herein.

16. AMENDMENT. This Agreement may not be modified, replaced or amended without prior written approval of the City of Brighton City Council and Contractor.

17. ENTIRE AGREEMENT. This Agreement supersedes any and all

understandings and agreements and constitutes the entire agreement between the parties and no oral representations or statements shall be considered a part hereof.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Date of Execution first written above.

CITY OF BRIGHTON

By: _____
Its: _____

REVIZE, LLC

By: _____
Its: _____



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

February 2, 2023

SUBJECT: CONSIDER APPROVAL OF AN ADDITIONAL \$42,000 FUNDING REQUEST FROM TETRA TECH ENGINEERING SERVICES TO COMPLETE CONSTRUCTION PHASE ENGINEERING OF THE NORTHWEST NEIGHBORHOOD PROJECT

BACKGROUND

- During the summer of 2022, Phases 2 and 3 of the Northwest Neighborhood Local Street Improvement (NWN) Project were underway. During that time, it was discovered that there was a collapse of a sanitary sewer main on Grand River Avenue adjacent to the Ore Creek River crossing. With the Grand River Mill and Overlay Project scheduled to begin in the fall, the repair needed to be completed prior to construction. Along with the sewer repair, additional water and sewer needed to be installed so as not to encroach into the Grand River Mill and Overlay Project footprint.

ADMINISTRATIVE SUMMARY

- With the progress of the NWN Project being ahead of schedule and the time constraints faced on the Grand River Mill and Overlay Project, the decision was made to have the NWN project's contractor, Dunigan Bros., perform the sewer repair and the additional utility work. With City Council's approval, the Grand River utility work was placed under the existing NWN Project contract to save money and streamline the administrative process. Because Tetra Tech was being used on both the NWN Project and the Grand River Mill and Overlay Project, they were the logical choice for the construction phase engineering of the Grand River utility work as well. Similar to the construction project, the construction phase engineering for the Grand River utility work was also invoiced under the existing Tetra Tech contract for the NWN Project.
- While the Grand River utility construction phase engineering was outside of the original scope of work of the NWN construction engineering contract, with the shortened timeline of the NWN project funds were still available under that contract. Staff anticipated the additional five weeks of work and remaining NWN work would leave limited reserves to see the project through to its completion, and that more funds would be needed. The decision was made to wait until the Grand River utility project was finished and the NWN Project was closer to its completion before adjusting the contract. After discussions with the engineer, a Request to Change Authorization (RCA) was submitted in the amount of \$42,000. Staff knew that additional funds would be necessary to close out the remainder of the NWN Project in the spring of 2023.

BUDGET

- The current construction engineering contract with Tetra Tech is \$987,700 and is being paid from the Local Streets Fund by millage funds along with the cost of the NWN Project itself. When the NWN Project received Council approval, a 15 percent contingency was added to the accepted bid. As the project moved forward, stayed within budget, and the Grand River utility work was added, Staff knew that contingency funds would be sufficient to pay for both projects. Furthermore, the final cost of the Grand River utility work was approximately \$75,000 under budget. With limited work and costs to be incurred in the spring, Staff is requesting to add \$42,000 to the existing construction phase engineering contract to complete the NWN Project.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL February 2, 2023

RECOMMENDATION

Approval of an additional \$42,000 funding request from Tetra Tech Engineering Services to complete construction phase engineering of the Northwest Neighborhood Project.

Prepared by: Marcel Goch, DPS Director

Reviewed by: Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: Request to Change Authorization (RCA)



REQUEST TO CHANGE AUTHORIZATION (RCA)

PROJECT NAME: Northwest Neighborhood Residential Street Improvements **DATE:** 12-16-2022
Project – Ph.4 Grand River Emergency Repairs/Utilities Const.

PROJECT NUMBER: 200-12766-16002 **RCA NO.:** 1

PROJECT MANAGER: Steven Magnan, PE

PERSON INITIATING REQUEST: Andy Heise

DESCRIPTION OF ADDITIONAL WORK ITEM

The following necessary work was completed by Tetra Tech occurring outside the scope of services described within Tetra Tech’s city-authorized letter proposal for the Northwest Neighborhood Street Improvements Project, dated March 10, 2021. Consultant services took place between mid-July to August 31, 2022. Additional Services performed include construction field representation field recordation, materials testing of subsurface soil conditions, environmental compliance for groundwater conditions and validation of discharge into city sanitary sewer system, exploratory utility assessment, on-site progress meetings, field coordination with contractor and staging of work for vehicular/pedestrian traffic safety control measures. Tetra Tech is requesting the city’s authorization for additional compensation relating to these additional, out of scope services. Accompanying RCA No. 1 is Appendix A which describes primary tasks, staff members and hours expended during initiation through completion of the field work performed by the contractor.

Reason(s) For Additional Services

1. Emergency repair of an existing sanitary sewer collapse beneath Grand River Avenue and adjacent to the existing Ore Creek River crossing.
2. Emergency repair of an existing utility connection to nearby business along Grand River (easterly side).
3. Following exploratory utilities work performed by the contractor, install water main replacement and several valve replacements for water utility crossing beneath Grand River Avenue, at East Liberty Street. Work was completed prior to the Grand River Mill and Overlay project, now expected to be completed by June 1, 2023, as well as to minimize impacts to future pavement.
4. Utility replacement and extension connection along East Grand River at the easterly side of the Spencer Street intersection. Work was completed prior to the Grand River Mill and Overlay project, now under contract to be completed by June 1, 2023, as well as to minimize impacts to future pavement.

ENGINEERING FEE SUMMARY

Current Authorized Amount	\$ 987,700
RCA No. 1 – NWN Ph. 4 / Grand River Utilities and Emergency Repairs	<u>\$ 42,000</u>
Total Contract Amount Following Authorization of RCA No. 1	\$ 1,029,700

Authorized Tetra Tech Unit Officer

Date

Customer Authorization Signature

Date



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

FEBRUARY 2, 2023

SUBJECT: CONSIDER AWARDING THE BID FOR THE INSTALLATION OF A NEW GORMAN RUPP SEWER PUMP STATION AT THE BRIGHTON COVE APARTMENTS TO COMPREHENSIVE CONTRACTING IN AN AMOUNT NOT TO EXCEED \$397,270

BACKGROUND

The Brighton Cove Apartments lift station has been serving the apartment complex since the early 1970's and is due for replacement. Initially Staff and the City's Engineer believed that the current pump station could be rehabilitated; however, after further investigation, we learned that it needed to be replaced. City Council approved the purchase of a new Gorman Rupp pump station package from Dubois Cooper Associates at the May 19, 2022, City Council meeting. The order was placed with an estimated delivery date of January/February 2023; however, due to a shortage of Programmable Logic Controllers (PLC's), the station is now scheduled for delivery in mid-June.

ADMINISTRATIVE SUMMARY

The current lift station is configured as a dry pit with pumps and controls inside. There is an adjacent wet well that the sanitary sewer flows into. This project will convert the existing station into a suction style pump station. The new station will be mounted at ground level on a concrete pad, which eliminates the need to enter a confined space to work on the pumps and controls at the station.

The existing dry pit station will be cut off below ground level and filled with pea stone and abandoned. The existing wet well is in good condition so it will be rebuilt to have a new larger diameter top section installed to allow for the suction piping and level controls to be placed inside of the wet well.

The electrical equipment will be replaced to feed power to the new station and a new connection for auxiliary power will be installed closer to the station to enable staff to attach a portable generator from the parking lot area. An upgrade to the Supervisory Control and Data Acquisition or SCADA equipment will also be part of this project.

While the project is under construction, a temporary pumping system with a back-up alarm will be installed to handle the wastewater flow for the apartment complex. This will allow for the work inside of the wet well to take place free of incoming wastewater flow.

Due to there being a long lead time to receive the station, the decision was made to install a new High-Density Polyethylene (HDPE) plastic sanitary sewer force main this past fall. The new force main is now located adjacent to the site of the new lift station and ready for connection once the new station has been installed.

The final stage of this project is to hire a contractor to install the station once it is received. An Invitation to Bid (ITB) was published on the Michigan Infrastructure & Transportation Association (MITA) and Michigan Intergovernmental Trade Network (MITN) websites on November 18, 2022, using the bidding documents previously approved by the City Attorney.

Sealed bids were opened on Friday, January 13, 2023, with three bids being received. See bid results below.

Bidder	Total Bid Amount	With 15% Contingency
Comprehensive Contracting, Brighton MI	\$345,455	\$397,273
Lawrence M. Clark, Inc., Bellville, MI	\$472,000	\$542,800
CSM Mechanical, LLC, Clarkston	\$437,000	\$502,550

As seen above, Comprehensive Contracting provided the lowest bid. They were also the contractor chosen for the force main installation performed last fall for this project. While we have only had experience with this company on one occasion, staff was very satisfied with their work, we checked all references provided and they were all found to be favorable.

BUDGET INFORMATION

In fiscal year 2021/22, \$200,000 was budgeted using bond funds for engineering and purchase of the pump station. Because of increased industry costs an additional \$125,000 was added to the project by Council approval using American Rescue Plan Act (ARPA) funds. After the purchase of the lift station, the new force main, and related engineering \$79,270 of the budgeted \$325,000 remains.

The following is an excerpt from the May 19, 2022, CMR:

Staff will be returning to Council in the future after pricing for the replacement of the force main and the installation of the station have been received. It is our plan currently to postpone other planned projects in order to be able to complete this extremely important upgrade to the City's wastewater system infrastructure.

We need an additional \$318,000 to pay for the installation of the pump station when it arrives, for a project total request of \$397,273 (low bid plus 15% contingency). As rising costs became apparent, Staff knew additional funds would be needed for this pumps station, so we identified savings on other capital projects and postponed other approved projects to a later date as discussed at the May 19, 2022, meeting.

RECOMMENDATION

Award the bid for the installation of a new Gorman Rupp Sewer Pump Station at the Brighton Cove Apartments to Comprehensive Contracting in an amount not to exceed \$397,270.

Prepared by: Corey Brooks, Deputy DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget when using savings from other projects and postponing other projects
- Budget Amendment Necessary and In Proper Form

Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL February 2, 2022

SUBJECT: CONSIDER APPROVAL OF A RESOLUTION TO ENTER INTO A FACILITY ENCROACHMENT AGREEMENT WITH CSX TRANSPORTATION, INC. FOR THE CROSSING ON MAIN STREET FOR THE MAIN STREET STREETScape PROJECT

ADMINISTRATIVE SUMMARY

- The Main Street Streetscape Project includes the need for underground utility and road reconstruction work to occur within CSX Transportation, Inc.'s right-of-way property on Main Street.
- To perform this work, the city is required to enter into a Facility Encroachment Agreement with CSX.
- The City's general council has reviewed and approved the Agreement.

BUDGET INFORMATION

- The cost to enter into this Agreement is \$500 and will be paid with Main Street Streetscape Project funds.

RECOMMENDATION

Approval of a Resolution #2023-01 to Enter into a Facility Encroachment Agreement with CSX Transportation, Inc. for the Crossing on Main Street.

Prepared by: Patty Thomas, Asst to the DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other _____

Reviewed by: City Attorney

- Acceptable Form and Ready to Execute
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: CSX Agreement
Resolution #2023-01

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of September 30, 2022, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF BRIGHTON, a municipal corporation, political subdivision or state agency, under the laws of the State of Michigan, whose mailing address is 200 North First Street, Brighton, Michigan 48116, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) twelve inch (12") diameter sub-grade pipeline crossing, miscellaneous, located at or near Brighton, Livingston County, Michigan, Chicago Division, Plymouth Subdivision, Milepost CH-45.12, Latitude N42:31:46., Longitude W83:47:08.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including but not limited to Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto ("Licensor's Facilities") and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

1.4 The term Licensor's Facilities, as used herein shall include Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus, other property, or any appurtenances thereto and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees that it shall not assess Licensor any stormwater fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater fees assessed by any County or State agency managing such systems.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's

particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting on or adjacent to Licensor's property without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 To the extent permitted by law and without waiving immunities provided by law, Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the

completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall commence to make changes in the Facilities or Encroachment to accommodate such track(s) or operations, and shall complete any such necessary changes in the Facilities or Encroachment within 30 days after commencement, subject to any reasonable extensions agreed to by Licensor in its sole discretion.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor's Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), and without waiving immunities as provided by law Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, and without waiving immunities provided by law, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage; and (d) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any drainage or runoff on or off the Encroachment area as a result of the Facilities/Encroachment herein permitted.

9.4 Notwithstanding Section 9.1, and without waiving immunities provided by law, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each. Nothing in this Agreement shall be construed as a waiver of Licensee's immunities provided by law.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit

for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.

- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensor may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event 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: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

- i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.

(B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; PROTECTION SERVICES:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor's Facilities shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 810-225-8001.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 To the extent permitted by law, Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Licensee Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within one hundred twenty (120) days of Licensor's verification of such overpayment.

18.10 This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto, each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF BRIGHTON

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____,

Dated _____.

**RESOLUTION APPROVING ENTERING INTO A FACILITY ENCROACHMENT AGREEMENT
WITH CSX TRANSPORTATION, INC.
AGREEMENT #CSX963504
CITY OF BRIGHTON
COUNTY OF LIVINGSTON, STATE OF MICHIGAN**

WHEREAS, The City of Brighton will be completing the Main Street Streetscape Project in the spring of 2023.

WHEREAS, part of the project will include the installation of One (1) twelve-inch (12") diameter sub-grade pipeline crossing, miscellaneous, located at or near Brighton, Livingston County, Michigan, Chicago Division, Plymouth Subdivision, Milepost CH-45.12, Latitude N42:31:46., Longitude W83:47:08.

WHEREAS, The City must enter into a Facility Encroachment Agreement with CSX Transportation, Inc. to perform this work within their Right-of-Way.

NOW, THEREFORE, the City Council of the City of Brighton, Livingston County, Michigan, resolves to enter into Facility Encroachment Agreement #CSX963504 with CSX Transportation, Inc.

BE IT FURTHER RESOLVED, to authorize the City Manager to sign all contract documents between the City of Brighton and CSX Transportation, Inc.

IT IS HEREBY CERTIFIED that the City Council of the City of Brighton adopted the foregoing resolution at its regular meeting held on the 2nd day of February 2023 by roll call vote:

PRESENT:

NAYS:

ABSENT:

RESOLUTION DECLARED ADOPTED.

Dated: _____

CERTIFICATION

I, Tara Brown, City Clerk for the City of Brighton, do hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council at its regular meeting held on February 2, 2023.

Tara Brown, City Clerk
City of Brighton
200 N. First Street
Brighton, MI 48116



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

FEBRUARY 2, 2023

SUBJECT: CONSIDER AUTHORIZING THE DEVELOPMENT OF A CITY OF BRIGHTON GOGOV APPLICATION

BACKGROUND

More and more people are using cell phones to access information. City staff has been investigating the usefulness of a cell phone application that puts the city's website content in an easier to read format than the mobile view of our website. City of Howell has introduced the "My Howell MI" app to great reception and a high adoption rate.

ADMINISTRATIVE SUMMARY

City staff has downloaded the Howell app and were impressed with the simplicity of the app and its ability to convey important information in a timely manner. City staff went through a live demonstration of the product and were pleased to learn that in the long run the functionality would be able to replace existing services already used by the city, such as Rave texting and mail chimp.

They City can send push alerts out to those who have downloaded the app. We can also send out the E-Newsletter using email blasts through the app. Another nice function are important notices that you can post on the home screen of the application, such as notices of upcoming billing due dates, construction.

City staff would plan to use this tool as an integral part of the Downtown Streetscape messaging, including traffic and parking updates.

Development of this app can take from 3-6 weeks to go live. City Council can choose its own name for the Application, and based on discussions at the annual retreat it sounds like keeping a naming convention similar to Howell's app will make it easier for those already using Howell's app to find the City of Brighton's app.

The City's IT provider has looked into the app and its developer and is not concerned with any risks outside of the normal risks associated with having a city website, to which all links on the app are linked.

BUDGET INFORMATION

GoGov has provided a quote for and subscription service totaling \$4,260 for one year, subject to a 3% annual increase. (See section 8 of the Terms and Conditions). They have indicated that even with that clause they have only increases fees 3 times in the past 15 years.

RECOMMENDATION

Authorize the City Manager to execute the GoGov agreement in the amount of \$4,260 for a 12-month subscription to the GoNotify application and to name the application "My Brighton MI" in the app store.

Prepared by: Gretchen Gomolka, City Manager

Reviewed by: Tara Brown, City Clerk

Reviewed by: City Attorney (Required for all agreements, ordinances, etc.)

Acceptable Form and Ready to Execute

Other _____

Elizabeth Gaines, Finance Director

Within Budget

Budget Amendment Necessary and In Proper Form

Other – Can be accommodated in the current budget

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: GoGov Agreement

City of Brighton, MI

Citizen Notifications & Alerts

January 25, 2023

Prepared By:

Kevin Strauss, Director of Sales

(631) 861-5812

Kevin@GoGovApps.com

Prepared For:

Tara Brown

City Clerk

brownt@brightoncity.org

Subscriptions & Services

Description	Amount
GONotify Citizen Notifications & Alerts (Notify) - Unlimited Subscription	\$4,260 /year
Services: \$0 Annually: \$4,260	

Order Details

Primary Contact			
Contact Name:		Phone:	
Title:		Email:	

Billing Information			
Contact Name:		Phone:	
Quote Month:		Email:	
PO #: (Optional)		Cycle:	Annual Billing

Billing Practices: GOGov will send renewal quotes for budgeting purposes at the beginning of the *Quote Month* specified. Invoices are sent 45 to 60 days prior to subscription renewal and are due prior to the start of the Subscription Period. To align billing with budget cycles, extend *Initial Subscription Period* to include extra months and we will send an initial invoice for the extra prorated months and then a second invoice for the remainder of the Initial Subscription Period.

Contract Information	
Initial Subscription Period:	12 months starting:
Replacing Contracts:	If replacing existing agreement provide contract # or description & date.
Contract #: (Internal)	

Terms & Conditions

The following terms are the latest version of the GOGov Master Terms & Conditions that is maintained and updated. No part of these terms may be modified other than the “Special Terms & Exceptions” section.

1. **IMPORTANT NOTICE TO USER:** GOGov, Inc. (dba “GOGov”) owns all intellectual property in the software products listed in the Products and Services section (collectively “Software” or “Subscription Services”) in the Order Form. Customer shall not modify, adapt, translate, rent, lease or otherwise attempt to discover the Software source code. The following terms and conditions (this “Agreement”) will be effective as of the date of last signature of the Order Form (“Effective Date”) and will be governed by the laws in force in the State of New York.
2. **Software License.** The Software subscription services and the accompanying files, software updates, lists and documentation are licensed, not sold, to you. You may use a copy of the Software on your compatible computer for the purpose of connecting to the hosted service provided by GOGov as long as you are a current subscriber and maintain your annual continued services for the applicable licenses. Except as expressly set forth herein, GOGov disclaims any and all express and implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose.
3. **Continued Services**
 - 3.1 *Hosting.* GOGov agrees to maintain Customer data in a secure datacenter and is committed to providing 99.5% uptime and availability. GOGov will perform nightly backups of your hosted data to an alternate physical location.
 - 3.2 *Ownership of Data.* All hosted data specific to Customer is owned by the Customer. Within thirty (30) calendar days following termination of this Agreement, the Customer can request and GOGov will provide a complete copy of Customer’s data without additional charge through a downloadable zip file provided the customer is current on payments.
4. **Payment Terms & Fees**
 - 4.1 *Subscription Term and Termination.* The initial Subscription Term of this Agreement begins on Effective Date (last signature) and will continue to the end of the Initial Subscription Period listed in the Order Form. At the end of the initial Subscription Term, Customer’s subscription and this Agreement will renew for an additional twelve (12) month term and for subsequent twelve (12) month periods thereafter. To stop the auto-renewal listed in the foregoing sentence, Customer must submit written notice to GOGov at Billing@GOGovApps.com not less than sixty (60) calendar days prior to the end of the then-current Term. GOGov reserves the right to increase the annual fees by 7% on the anniversary date of each annual term.
 - 4.2 *Payment Terms.* Initial payment is due at the beginning of the subscription term. Each subsequent annual billing will be due on the anniversary date of the initial term. Payment Terms are NET 30 Days from the invoice date.
 - 4.3 *Taxes & Obligations.* In exchange for its use of the Subscribed Services, Customer will pay to GOGov the amounts indicated in the Order. Said amounts are based on services purchased and not actual usage; payment obligations are non-cancelable and fees paid are non-refundable, except as otherwise specifically-provided herein. Unless otherwise stated, such fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (“Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If GOGov has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless GOGov is provided with a valid tax exemption certificate authorized by the appropriate taxing authority. GOGov is solely responsible for taxes assessable against it based on its income, property and employees.
 - 4.4 *Convenience Fees.* For GOGov products that manage credit card processing, GOGov will add a Convenience Fee of \$3.00 plus 3% per transaction to offset the costs of online processing.
5. **Limitation of Liability.** GOGov will, at all times during the Agreement, maintain appropriate insurance coverage. In no event will GOGov’s cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to GOGov by Customer during the six (6) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if GOGov or its agents have been advised of the possibility of such damages.

6. **Updating of Terms.** Upon each renewal of this Agreement, the latest Master Terms & Conditions that GOGov has published within the software ninety (90) days prior to the renewal date shall replace these terms. Any Special Terms & Exceptions listed in the original document shall carryover to the renewal terms. We reserve the right to change our Master Terms & Conditions at any time. If the changes are material, GOGov will advise the Customer by email or posting a notice on the site before changes go into effect. If the Customer does not agree to the new terms, Customer may contact Support@GOGovApps.com to have objections considered.
7. **Other Provisions**
 - 7.1 *Other Public Agency Orders.* Other public agencies may utilize the terms and conditions established by this Agreement if agreeable to all parties. Customer does not accept any responsibility or involvement in the purchase orders or contracts issues by other public agencies.
 - 7.2 *Alternate Terms Disclaimed.* The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
8. **Special Terms & Exceptions.** The last sentence of section 4.1 is amended to read “GOGov reserves the right to increase the annual fees by up to 3% on the anniversary date of each annual term.”

This Order Form is entered into between Customer and GOGov. Customer accepts and agrees to adhere to the Terms and Conditions with this order form, will be referenced as the “Agreement.” This Agreement between Customer and GOGov, which Customer hereby acknowledges and accepts, constitutes the entire agreement between GOGov and Customer governing the Services referenced above. Customer represents that its signatory below has the authority to bind Customer to the terms of this Agreement.

GOGov, Inc.**City of Brighton, MI****Sign:**
_____**Sign:**
_____**Name:** Daryl Blowes
_____**Name:**
_____**Title:** CEO
_____**Title:**
_____**Date:**
_____**Date:**

Additional Customer Signatures (Optional)

Sign:
_____**Sign:**
_____**Name:**
_____**Name:**
_____**Title:**
_____**Title:**
_____**Date:**
_____**Date:**
