



Brighton City Council Meeting

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

August 17, 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 July 20, 2023](#)
- b. [Approval of AT&T Metro Right of Way Permit extension](#)

Correspondence

6. Call to the public
7. Proclamation: Eagle Scout Jake Keller
8. Staff updates
9. Updates from Councilmember liaisons to various boards and commissions

Public Hearing

10. [Conduct a public hearing, second reading, and consider adoption of Ordinance 604: amendments to Chapter 46 and Chapter 70 of the City of Brighton Code of Ordinances regarding open burning](#)

Discussion

11. Wastewater Treatment Plant funding
12. I-96 Interchange options for pedestrian walkway, traffic lights and gateway signage

New Business

13. [Consider approval of MERS Deferred Retirement Option \(DROP\) for police unions](#)
14. [Consider approval of MERS Health Care Savings Program Participation Agreements](#)
15. [Consider the approval to purchase a new replacement Flygt Sludge Mixer from Kennedy Industries in the amount of \\$53,180.00](#)
16. [Consider approval of both Residential and Commercial Cross Connection Service agreements with HydroCorp Inc for two years in annual amounts of \\$32,040 and \\$24,273, respectively](#)
17. [Consider approval to purchase the Automatic Electrical Switchgear device for the Third Street lift station from ASCO Power Technologies in an amount not to exceed \\$13,133.50](#)
18. [Consider approval of the Tetra Tech proposal for engineering services for the replacement of the automatic electrical switchgear at the Third Street lift station in an amount not to exceed \\$11,000.00](#)
19. [Consider awarding the bid for the Return Activated Sludge \(RAS\) Pump #1 Rebuild to Titus Welding Company, Inc. In an amount not to exceed \\$184,810.00](#)

20. Consider approval of the Tetra Tech Engineering Services Retainer Agreement for engineering services from July 1, 2023, through June 30, 2024, in the amount of \$15,840
21. Consider approval of appointment to the City of Brighton Planning Commission
22. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(h) of the Open Meetings Act

Other Business

23. Call to the public
24. Adjournment



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MINUTES OF THE REGULAR MEETING OF THE BRIGHTON CITY COUNCIL HELD ON JULY 20, 2023

1. Call to order

Mayor Tobbe called the regular 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, DPS Director Marcel Goch, Community Development Manager Mike Caruso, Chief Brent Pirochta, and Attorney Sarah Gabis. There were approximately fifty people in the audience.

4. Consider approval of the agenda

Motion by Councilmember Emaus, seconded by Councilmember Albert to approve the agenda, moving items b and c from the consent agenda to new business. The motion carried, 7-0.

5. Consider approval of consent agenda items

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

Consent Agenda Items

- a. Approval of Minutes: regular meeting of July 6, 2023
- ~~b. Approval of Appointments to the Downtown Development Authority moved to new business~~
- ~~c. Approval of Appointments to the Planning Commission moved to new business~~

Correspondence

6. Call to the public

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

Jim Vichich spoke regarding the promotional event starting August 6, 2023, called Deck Hunt in which the public will pick up a deck of cards starter pack at 2 Dandelions and visit participating stores for the remainder of the deck.

Tony Kassab spoke regarding the need for a parking deck in the City of Brighton and cautioned City Council that he is very familiar with other city's parking needs and solutions. Mr. Kassab also inquired about the apparent lack of workers on the Main Street during construction hours.

Ken Larscheid spoke about several highlights so far about the Believe in Brighton joint effort among downtown merchants and the great reception they have experienced with several events so far this summer.

7. Presentation of the Robertson Brothers donation

Tim Loughrin from Robertson Brothers presented a check to Chairperson Jeri Kay Thomas on behalf of the Brighton Arts and Culture Commission for \$17,000.00 which will help fund downtown a revitalization of the pocket park near St. Paul Street.

8. Proclamation: Brighton Area Historical Society

Mayor Tobbe presented a City of Brighton Proclamation to the Brighton Historical Society for their continued efforts in the Brighton Hills Cemetery and the achievement of 2023 Michigan Historic Preservation Network Community Award.

9. Staff updates

Manager Gomolka thanked all residents and concerned community members for calling the city offices regarding the Downtown Streetscape project, the city staff appreciates the opportunity to accurately inform residents of the progress and scope.

Director Goch stated the tornado alarms are slated to be replaced as soon as the contractor gets the equipment in and a big thank you to the residents who called the city about the alarms malfunctioning. Mr. Goch also provided an update on the Streetscape project and the plans for staging to possibly move to the CSX lot off Main Street.

10. Updates from Councilmember liaisons to various boards and commissions

Councilmember Gardner put out a reminder of the upcoming Brighton Arts and Culture Commission event August 8, 2023, called Lilly's Purple Plastic Purse at the AMP beginning at 11:30 a.m.

Councilmember Emaus stated the DDA met to begin discussion to consider a 90-day contract extension for Denise Murray to continue planning events and coordinate with merchants for the duration of the Downtown Streetscape Project.

Councilmember Albert listed the many opportunities that the city helped initiate to help downtown merchants throughout the Downtown Streetscape project. He further stated that the DDA and City of Brighton have continued to do everything possible to help merchants navigate and vet all options to increase business.

Councilmember Pettengill asked if the St. Paul pocket park revitalization will be an open call to artists or if an artist has already been chosen. Human Resources Manager Miller stated after the wall is prepared for painting there will be a *call to artists* for the wall painting.

Public Hearing

11. Conduct a public hearing, second reading, and consider adoption of Ordinance 602: amendments and reorganization of Chapter 66 – Signs, of the City of Brighton Code of Ordinances

Community Development Manager Caruso provided a brief description of the ordinance, highlighting the Supreme Court ruling and how it will affect residents and those who choose to display signs especially during election season.

Mayor Tobbe opened the public hearing at 7:51 p.m. Hearing and seeing no comment, the public hearing was closed.

Council discussed the impacts of the ordinance with the City Attorney and City Staff.

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to approve the adoption of Ordinance 602: amendments and reorganization of Chapter 66 – Signs, of the City of Brighton Code of Ordinances. **The motion carried by roll call vote, 5-2. Mayor Pro Tem Bohn and Councilmember Emaus voted no.**

New Business

12. Discussion and conduct a first reading for proposed ordinance 604: amendments to Chapter 46 and Chapter 70 of the City of Brighton Code of Ordinances regarding open burn and consider setting a public hearing for August 17, 2023

Community Development Manager Caruso provided a brief overview of the proposed ordinance noting that this ordinance if approved would clean up conflicting language in the existing Code of Ordinances. City Council discussed the scenarios in which a homeowner could have a fire and could not. The ordinance complies with the recommendations from the Brighton Area Fire Authority.

Motion by Councilmember Gipson, seconded by Councilmember Gardner to conduct a second reading and public hearing for proposed ordinance 604: amendments to Chapter 46 and 70 of the City of Brighton Code of Ordinances regarding open burn. **The motion carried, 7-0.**

12 a. Approval of Appointments to the Downtown Development Authority

Motion by Councilmember Emaus, seconded by Councilmember Gipson to approve the reappointment of Ashley Israel and appointment of Todd Buckley to the Downtown Development Authority. **The motion carried, 7-0.**

12 b. Approval of Appointments to the Planning Commission

Motion by Councilmember Gipson, seconded by Councilmember Emaus to approve the reappointment of Chuck Hundley to the Planning Commission. **The motion carried, 7-0.**

Discussion

13. Legal Counsel

It was announced that Attorney Gabis has moved from Foster Swift to Bodman Law. City Council discussed the benefits of continuity if they remained with Attorney Gabis and made the determination terminate services with Foster Swift if an agreement can be reached between Bodman Law and the City that meets the expectations outlined in the proposed motion.

Motion by Councilmember Gipson, seconded by Councilmember Emaus to ask Mayor Tobbe to work with staff to solicit an engagement letter and proposal from Bodman Law, reviewing same to ensure it is of an equivalent legal content to the current engagement letter and proposal with Foster Swift, appointing Attorney Gabis as attorney of record, vesting Mayor Tobbe with the authority to execute said engagement letter provided the fee schedule remains the same, and to conduct a review of the performance of Attorney Gabis and Bodman approximately 60 days after the execution of the engagement letter and proposal to ensure the quality of legal services are the same then as they are now and to terminate representation by Foster Swift as the City Attorney commencing upon the employment termination of Attorney Gabis with Foster Swift pending approval of an engagement letter with Bodman executed by the Mayor based on the recommendation by the subcommittee consisting of Mayor Tobbe, Councilmembers Emaus and Gipson. **The motion carried, 7-0**

Closed Session

14. Consider entering into closed session for strategy session connected with the negotiation of a collective bargaining agreement pursuant to MCL 15.268 (c) of the Open Meetings Act

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to enter into closed session at 9:08 p.m. for strategy session connected with the negotiation of a collective bargaining agreement pursuant to MCL 15.268 (c) 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 9:42 p.m. **The motion carried, 7-0.**

Motion by Councilmember Emaus, seconded by Councilmember Gardner to approve and authorize the City Manager and City Attorney to execute the patrol and command contracts as discussed in closed session. **The motion carried, 7-0.**

Other Business

15. Call to the public

Mayor Tobbe opened the call to the public at 9:43 p.m. Hearing and seeing no comment, the call to the public was closed.

16. Adjournment

Motion by Councilmember Emaus, seconded by Councilmember Gipson to adjourn the meeting at 9:44 p.m. **The motion carried (7-0).**

Tara Brown, City Clerk



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL AUGUST 17, 2023

SUBJECT: APPROVAL OF AT&T METRO ACT RIGHT OF WAY PERMIT EXTENSION

BACKGROUND

The METRO Act is designed to bring funds to assist in managing and maintaining public rights-of-way and reduce conflicts with telecommunications providers across jurisdictions. Permits and the associated fees are overseen by the Michigan Public Service Corporation and distributed to eligible municipalities through a formula.

ADMINISTRATIVE SUMMARY

- The current permit is set to expire on December 31, 2023, and the City has received a request from AT&T to extend their Right of Way Permit for another five (5) Years to expire on December 31, 2028.

RECOMMENDATION

Staff recommends that City Council approve AT&T's request for a five (5) year METRO Act permit extension and authorize the City Manager to execute the document.

Reviewed by: City Attorney (Required for all agreements, ordinances, etc.)
 Acceptable Form and Ready to Execute
 Other _____

Prepared By: Tara Brown, City Clerk
Reviewed & Approved by: Gretchen Gomolka, City Manager

Attachments: 1. AT&T Extension Request



AT&T Michigan
Angela Wesson
METRO Act Administrator
54 N. Mill Street
Mailbox #30
Pontiac, MI 48342

July 1, 2023

Brighton City Clerk
200 North First St
Brighton, MI 48116

METRO ACT RIGHT OF WAY PERMIT EXTENSION

Dear Brighton City Clerk,

This is a letter agreement which extends the existing METRO Act Permit issued by the Brighton City/Livingston County to Michigan Bell Telephone Company d/b/a AT&T Michigan ("AT&T") which expires on December 31, 2023. The extension is for a term to end on December 31, 2028.

If this is agreeable, please sign both copies of the extension letter agreement in the place provided below and return to AT&T Michigan at the address on this letterhead. Upon receipt AT&T will acknowledge and return one copy for your files.

Additional information regarding this renewal request may be found at <http://www.michigan.gov/mpsc>. Please click on Regulatory Information, Telecommunications, and METRO Act/Right of Way.

We would appreciate return of the signed copies within 30 days of receiving this request. Your cooperation is appreciated.

If you have any questions feel free to contact Ms. Angela Wesson via e-mail, AD3245@att.com or 248-877-9518.

Agreed to by and on behalf of the
Brighton City

**Michigan Bell Telephone Company d/b/a
AT&T** acknowledges receipt of this
Permit Extension granted by the municipality.

By: _____
Signature

By: _____
Angela Wesson

Its: _____

Its: METRO Act Administrator

Date: _____

Date: _____



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

**SUBJECT: CONDUCT A PUBLIC HEARING AND CONSIDER ADOPTION OF ORDINANCE 604.
AMENDMENTS TO CHAPTER 46 AND CHAPTER 70 REGARDING OPEN BURNING.**

BACKGROUND

- The city receives yearly complaints regarding open burning within most neighborhoods, mostly resulting from burning of yard waste (leaves, brush, etc.).
- At a recent City Council meeting, a resident complained of smoke from his neighbors open burning of leaves.
- It has been determined that the city's code of ordinance has two sections that address open burning, and that the sections contradict each other.

ADMINISTRATIVE SUMMARY

- Community Development staff reviewed the current ordinance and determined revisions were needed regarding open burning.
- City staff created draft revisions to Chapter 46, Article IV and Chapter 70, Section 70-31 as attached.
- City Council conducted a first reading of the proposed ordinance at their regular meeting held on July 20, 2023.

RECOMMENDATION

Staff recommends City Council conduct a public hearing and consider adoption of Ordinance 604 as presented.

Prepared by: Michael Caruso, Community Development Manager

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

Acceptable Form and Ready to Execute

Other _____

Reviewed

& Approved by: Gretchen Gomolka, City Manager

Attachments:

1. Ordinance 604
2. Proposed Revisions to Chapter 46
3. Proposed Revisions to Chapter 70

CITY OF BRIGHTON
ORDINANCE NO. 604

AN ORDINANCE TO AMEND ARTICLE IV, "OPEN BURNING" OF CHAPTER 46, "FIRE PREVENTION AND PROTECTION" SECTION 46-63, "PERMITTED OPEN BURNING, RESTRICTIONS, PERMITS"

THE CITY OF BRIGHTON HEREBY ORDAINS:

Section 1: Amendment of Chapter 46, Article IV, Section 46-63.

Section 46-63 is hereby amended to read in its entirety as follows:

Permitted open burning; restrictions; permits.

The following types of open burning shall be permitted within the city, subject to the following restriction:

Ceremonial Fires are fires which are normally incidental to commemorative or celebratory events, and that exceed the scope of a Domestic Fire. A person, partnership, firm, association, corporation, or any other legal entity seeking to ignite a ceremonial fire must first make application to the City in addition to application for recommendation and approval by the Brighton Area Fire Authority at least ten (10) days in advance of ignition of the fire. The application shall contain a description of the location where the ceremonial fire will occur and shall include a description of the methods and materials proposed to be used to keep the ceremonial fire contained within a specified area, not to exceed twenty-five (25) square feet. The permit shall be approved if the applicant provides evidence of permission from the owner or occupant of the property upon which the ceremonial fire is proposed to occur and unless the Brighton Area Fire Authority determines that the location, the environmental, climatic, or other site conditions pose a significant risk to the health, safety and welfare of the public if a ceremonial fire is ignited at the location, or if the methods and materials proposed for containment are insufficient according to applicable standards to protect the health safety and welfare of the public. The Fire Authority shall be notified at least 24 hours prior to the ignition of ceremonial fires. This subsection is not intended to include Domestic Fires.

Construction Fires. Fires shall be contained within a 55-gallon barrel and only used at a construction site for thawing and/or warming. Burning of construction materials such as roofing, plastics, wood composites, or any other materials that cause offensive odors or black smoke, is prohibited.

Domestic Fires. Fires around a home, place of residence, or within the curtilage of a dwelling, where the materials to be burned have been properly placed in a burner enclosure or portable fire pit constructed of metal, stone, or masonry, not exceeding nine (9) square feet. Domestic fires shall only burn seasoned, dry firewood and shall be located not less than twenty-five (25) feet away from any structure and not less than fifteen (15) feet from the adjoining property line. Domestic fires shall not be conducted on combustible decks or balconies and shall not be located under any deck or balcony structures. *No permit shall be required for domestic fires.*

Fire Department Training. Open burning is allowed for the purpose of training firefighters in firefighting practice, or for the purpose of training the public, including workers or employees, or for the purpose of demonstration by the fire official or other trained fire personnel, when such burning is done in accordance with applicable generally accepted practices and regulations.

Land Clearing Fires. Outdoor fires used to eliminate organic materials removed from a site in preparation for land development are permitted subject to the requirements of this subsection. No land clearing fires are permitted unless approved by the City after review and recommendation by Brighton Area Fire Authority prior to ignition. Land clearing shall be limited to organic materials consisting of grasses, plantings, trees, branches, tree stumps, and other vegetative waste. Land clearing shall be conducted within an open pit incinerator (trench burner), or other approved method. A person, partnership, firm, association, corporation, or any other legal entity seeking to conduct a land clearing fire, must first make application to the City, in addition to application for review and recommendation from the Brighton Area Fire Authority, at least ten (30) days in advance of any land clearing fires. Land clearing fires shall only be conducted between sunrise and sunset. The Brighton Area Fire Authority shall be notified at least 24 hours prior to ignition of land clearing fires.

Prescribed Burns. Surface fires ignited for land management purposes to eliminate or control surface vegetation, management of invasive species or to reduce combustible fuel loads. Prescribed burns shall be limited to organic materials consisting of surface grasses and other vegetation. Prescribed burns shall be conducted in accordance with the best practices as outlined by the Michigan Prescribed Fire Council. A person, partnership, firm, association, corporation, or any other legal entity seeking to conduct a prescribed burn, must first make application to the City, in addition to application for review and recommendation from the Brighton Area Fire Authority, at least thirty (30) days in advance of any prescribed burns. The application for the permit shall include proof of liability and a written burn plan. Where certain environmental or climatic conditions arise requiring short notice, the fire code official may recommend waiver of the thirty (30) day application review period. Prescribed burns shall only be conducted between sunrise and sunset. The Brighton Area Fire Authority shall be notified prior to ignition of prescribed burns.

The following additional restrictions shall be enforced by the City:

Accelerated Ignition. It shall be unlawful for any fire ignition to be accelerated by use of an ignitable liquid.

Illegal Burning. At no time shall any person, partnership, firm, association, corporation, or any other legal entity; set any fire, burn, or cause to be burned, the following materials: building debris, construction materials, human waste, refuse or trash, animal carcasses, animal waste, or other inorganic combustibles. Illegal burning shall also include the burning of approved materials on any non-residential parcel unless previously approved by the City in accordance with this Section.

Hazardous Smoke, and Foul Odors. It shall be unlawful to permit the emission of hazardous amounts of smoke or produce foul odors. Hazardous smoke is smoke that could be injurious or unreasonably annoying to persons in the affected area, obscures visibility, or is in volume enough to infiltrate fresh air make-up systems of occupied structures.

Extinguishment Authority. The Brighton Fire Authority is authorized to extinguish unapproved fires, fires that are non-compliant with this Section, or fires that pose an immediate threat to the health, safety and welfare of the public.

Burning during periods of banning unlawful. The fire code official shall be authorized to issue a ban on all open burning if, in the opinion of the fire code official, conditions are too hazardous to allow the open burning, open flame, etc. Notwithstanding the provisions of this Section, no fire, whether previously approved pursuant to this Section, may be ignited during the period covered by such ban.

Section 2: Repeal of Section 70-31.

Section 70-31 is hereby repealed.

Section 3. Repealer.

Any ordinances that conflict with this Ordinance are repealed to the extent necessary to give this Ordinance full force and effect.

Section 4. Severability.

The provisions of this Ordinance are severable. If any provision of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining provisions of this Ordinance.

Section 5. Effective Date.

This ordinance shall take effect fifteen (15) days after enactment, and after publication as provided by law and the Charter.

YEAS: Council Member(s) _____

NAYS: Council Member(s) _____

ABSTAIN: Council Member(s) _____

ABSENT: Council Member(s) _____

CERTIFICATION

As the City Clerk of City of Brighton, Livingston County, Michigan, I certify this is a true and complete copy of an ordinance adopted by the City of Brighton Council at a regular meeting held on _____, 2023.

Date: _____, 2023

City Clerk

Tara Brown

First Reading:

Brief Publication:

Second Reading:

Public Hearing:

Adoption:

Full Publication:

CHAPTER 46 - FIRE PREVENTION AND PROTECTION

ARTICLE IV. OPEN BURNING

Note

***Editor's note:** Ord. No. 442, adopted July 20, 2000, set out provisions intended for use as Art. I, §§ 46-10—46-18. At the city's instruction and for purposes of classification, these provisions have been included as Art. IV, §§ 46-60—46-68.

Sec. 46-60. Title.

This article shall be known as and may be cited as the "City of Brighton Burning Ordinance."

Sec. 46-61. Purpose.

The purpose of this article is to prohibit open burning, subject to specific exceptions within the city and to regulate and control certain limited types of open burning within the city subject to restrictions as set forth in this article.

Sec. 46-62. Prohibited open burning.

Open burning is expressly prohibited within the city except as hereinafter set forth in section 46-63.

Sec. 46-63. Permitted open burning; restrictions.

The following types of ~~limited~~ open burning shall be permitted within the city, subject to the following restriction:

~~(1) If prior written approval is obtained from the fire chief or his/her designee:~~

~~a. Open burning may be permitted for land clearing for real estate development.~~

~~b. Open burning of celebration/bonfires may be permitted. The fire chief and/or his/her designee shall determine the size and location.~~

~~c. Open burning may be permitted for the removal of brush or debris created as a result of storm damage.~~

~~(2) The following types of open burning shall be permitted without the necessity of obtaining prior written approval from the fire chief or his/her designee:~~

~~a. Small recreational fires and/or campfires used for cooking purposes.~~

~~b— Burning in a 55-gallon barrel for thawing and/or warming at construction sites. However, any construction materials such as roofing, plastics, or other materials that cause offensive odors or black smoke may not be burned.~~

~~(3) The open burning of structures and/or materials by the Brighton Area Fire Department, the fire chief, members of the Brighton Area Fire Department, and by trainees or other persons under the direct supervision and control of the Brighton Area Fire Department when such open burning is for training, educational or instructional purposes related to fire safety, fire control, fire fighting, life saving and/or fire prevention.~~

~~(4) Open burning permitted under section 46-13 shall not result in the omitting of burning sparks or burning embers upon adjoining, adjacent, neighboring or nearby properties or premises.~~

~~(5) All open burning permitted under section 46-13 shall be conducted and performed in such a manner so as not to endanger the health, safety or welfare of the public or to endanger public or private property.~~

Ceremonial Fires are fires which are normally incidental to commemorative or celebratory events, and that exceed the scope of a Domestic Fire. A person, partnership, firm, association, corporation, or any other legal entity seeking to ignite a ceremonial fire must first make application to the City in addition to application for recommendation and approval by the Brighton Area Fire Authority at least ten (10) days in advance of ignition of the fire. The application shall contain a description of the location where the ceremonial fire will occur and shall include a description of the methods and materials proposed to be used to keep the ceremonial fire contained within a specified area, not to exceed _____ square feet. The permit shall be approved if the applicant provides evidence of permission from the owner or occupant of the property upon which the ceremonial fire is proposed to occur and unless the Brighton Area Fire Authority determines that the location, the environmental, climatic, or other site conditions pose a significant risk to the health, safety and welfare of the public if a ceremonial fire is ignited at the location, or if the methods and materials proposed for containment are insufficient according to applicable standards to protect the health safety and welfare of the public. The Fire Authority shall be notified at least 24 hours prior to the ignition of ceremonial fires. This subsection is not intended to include Domestic Fires.

Construction Fires. Fires shall be contained within a 55-gallon barrel and only used at a construction site for thawing and/or warming. Burning of construction materials such as roofing, plastics, wood composites, or any other materials that cause offensive odors or black smoke, is prohibited.

Domestic Fires. Fires around a home, place of residence, or within the curtilage of a dwelling, where the materials to be burned have been properly placed in a burner enclosure or portable fire pit constructed of metal, stone, or masonry, not exceeding _____ square feet. Domestic fires shall only burn seasoned, dry firewood and shall be located not less than fifteen (15) feet away from any structure and not less than five (5) feet from the adjoining property line. Domestic fires shall not be conducted on combustible decks or balconies and shall not be located under any deck or balcony structures. *No permit shall be required for domestic fires.*

Fire Department Training. Open burning is allowed for the purpose of training firefighters in firefighting practice, or for the purpose of training the public, including workers or employees, or

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for the purpose of demonstration by the fire official or other trained fire personnel, when such burning is done in accordance with applicable generally accepted practices and regulations.

Land Clearing Fires. Outdoor fires used to eliminate organic materials removed from a site in preparation for land development are permitted subject to the requirements of this subsection. No land clearing fires are permitted unless approved by the City after review and recommendation by Brighton Area Fire Authority prior to ignition. Land clearing shall be limited to organic materials consisting of grasses, plantings, trees, branches, tree stumps, and other vegetative waste. Land clearing shall be conducted within an open pit incinerator (trench burner), or other approved method. A person, partnership, firm, association, corporation, or any other legal entity seeking to conduct a land clearing fire, must first make application to the City, in addition to application for review and recommendation from the Brighton Area Fire Authority, at least ten (30) days in advance of any land clearing fires. Land clearing fires shall only be conducted between sunrise and sunset. The Brighton Area Fire Authority shall be notified at least 24 hours prior to ignition of land clearing fires.

Prescribed Burns. Surface fires ignited for land management purposes to eliminate or control surface vegetation, management of invasive species or to reduce combustible fuel loads. Prescribed burns shall be limited to organic materials consisting of surface grasses and other vegetation. Prescribed burns shall be conducted in accordance with the best practices as outlined by the Michigan Prescribed Fire Council, available at www.firecouncil.org/mpfc-policy-best-practices. A person, partnership, firm, association, corporation, or any other legal entity seeking to conduct a prescribed burn, must first make application to the City, in addition to application for review and recommendation from the Brighton Area Fire Authority, at least thirty (30) days in advance of any prescribed burns. The application for the permit shall include proof of liability and a written burn plan. Where certain environmental or climatic conditions arise requiring short notice, the fire code official may recommend waiver of the thirty (30) day application review period. Prescribed burns shall only be conducted between sunrise and sunset. The Brighton Area Fire Authority shall be notified prior to ignition of prescribed burns.

The following additional restrictions shall be enforced by the City:

Accelerated Ignition. It shall be unlawful for any fire ignition to be accelerated by use of an ignitable liquid.

Illegal Burning. At no time shall any person, partnership, firm, association, corporation, or any other legal entity; set any fire, burn, or cause to be burned, the following materials: building debris, construction materials, human waste, refuse or trash, animal carcasses, animal waste, yard waste, or other inorganic combustibles. Illegal burning shall also include the burning of approved materials on any non-residential parcel unless previously approved by the City in accordance with this Section.

Hazardous Smoke, and Foul Odors. It shall be unlawful to permit the emission of hazardous amounts of smoke or produce foul odors. Hazardous smoke is smoke that could be injurious or unreasonably annoying to persons in the affected area, obscures visibility, or is in volume enough to infiltrate fresh air make-up systems of occupied structures.

Extinguishment Authority. The Brighton Fire Authority is authorized to extinguish unapproved fires, fires that are non-compliant with this Section, or fires that pose an immediate threat to the health, safety and welfare of the public.

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Burning during periods of banning unlawful. The fire code official shall be authorized to issue a ban on all open burning if, in the opinion of the fire code official, conditions are too hazardous to allow the open burning, open flame, etc. Notwithstanding the provisions of this Section, no fire, whether previously approved pursuant to this Section, may be ignited during the period covered by such ban.

Sec. 46-64. [Permitted open burning subject to compliance with other regulations.]

Notwithstanding anything set forth in this article, all open burning permitted under the terms and conditions of this article shall also be conducted and performed in compliance with all federal and state laws, statutes, rules, and regulations applicable thereto.

Sec. 46-65. Violations—Municipal civil infraction; authorized city officials.

Violation of any provision of this article or of any permit granted pursuant to this article, or of any lawful order of the fire chief, building inspector or other public official issued in pursuance of this article, shall be and shall constitute a municipal civil infraction.

(1) A violation of this article will subject the violator to the following:

a. Any person, individual, firm, partnership, co-partnership, corporation, company, association, club, joint venture, and any other group, entity or association acting as a unit, and the individuals constituting such group, entity or unit, who, as a result of violating any provision of this article, is responsible for a municipal civil infraction, shall pay a civil fine of \$100.00, plus costs and other sanctions as authorized and permitted by law, for each municipal civil infraction.

b. Repeat violations shall be subject to increased civil fines as set forth below. As used in this section, "repeat violation" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this article (1) committed by a violating party within any 12-month period and (2) for which the violating party admits responsibility or is determined to be responsible. The increased civil fine for a repeat violation under this article shall be as follows:

1. The civil fine for any violation which is a repeat violation shall be no less than \$250.00 plus costs and other sanctions as authorized and permitted by law.

2. The civil fine for any violation which is a second repeat violation, or any subsequent repeat violation shall be no less than \$500.00 plus costs and other sanctions as authorized and permitted by law.

c. Such person, individual firm, partnership, co-partnership, corporation, company, association, club, joint venture and any other group, entity or association, acting as a unit, and the individuals constituting such group, entity or unit, guilty of violating section 46-63 shall also be subject to civil proceedings for damages and/or injunctive

relief by the city or by any person or entity injured or damaged by such violation. Commencement of any such proceeding shall not constitute an election of remedies.

(2) The personnel of the city given authority to issue municipal civil infraction citations and municipal civil infraction violation notices as set forth in section 1-18 of chapter 1 of the Brighton City Code are hereby authorized to issue municipal civil infraction citation and municipal civil infraction violation notices for violations of this article. Furthermore, the Fire Chief for the Brighton Area Fire Department and any fire personnel of the Brighton Area Fire Department authorized by the Brighton Area Fire Chief shall also be authorized to issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this article.

Sec. 46-66. Severability.

This article and each of the various parts, sections, subsections, clauses, phrases, sentences, and portions hereof are hereby declared to be severable. If any part, section, subsection, clause, phrase, sentence or portion of this article is for any reason held or determined to be invalid, unconstitutional or unenforceable by a court of competent jurisdiction, such part, section, subsection, clause, phrase, sentence or portion shall be deemed to be a separate, distinct and independent portion of this article and such holding or determination by a court of competent jurisdiction shall not affect the validity, constitutionality or enforceability of the remaining portions of this article and the same shall remain in full force and effect.

Sec. 46-67. Repeal of ordinance in conflict herewith.

Section 46-9 of chapter 46 of the Code of the City of Brighton ~~are~~ hereby expressly repealed. In addition, thereto, all other ordinances of the city or any provisions or portions thereof, to the extent that they are contrary to or inconsistent with the provisions of the within ordinances, are hereby expressly repealed.

Sec. 46-68. Publication of ordinance.

This ordinance shall be published in accordance with and to the extent required by the laws of the State of Michigan applicable to home rule cities.

(Ord. No. 442, 7-20-00)

CHAPTER 70 - SOLID WASTE

Sec. 70-31. ~~Garbage burning prohibited.~~ Repealed

~~It shall be unlawful for any person to burn or cause to be burned garbage in the city. Burning of other substances shall be subject to the provisions of chapter 46 except that in residential areas leaves may be burned on private property in small piles under safe conditions with a responsible person in attendance. No such burning shall be permitted which through its location or due to the smoke or odor created, may annoy, injure, or endanger the safety, health, comfort, or repose of the public.~~

~~(Code 1081, § 21.31)~~

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City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: Implementation of the MERS Deferred Retirement Option Program (DROP) for Police Unions

ADMINISTRATIVE SUMMARY

- The Deferred Retirement Option Program (DROP) allows employees of the City of Brighton who qualify for normal service retirement the ability to retire for purposes of the retirement plan while remaining employed for an additional three years. While participating in the DROP, reduced retirement benefits accumulate into a DROP account and earn up to 3% interest per annum, compounded monthly. Once an employee enters DROP, they will continue employment with the City of Brighton and receive 60% of the retirement benefits they would have received if they had retired outright. These payments are credited monthly to their DROP account through MERS. When the employee exits DROP, they must end employment with the city and will begin to receive their full, unreduced retirement benefit payments going forward. The retiree must decide whether to receive the balance of the DROP account either in the form of a lump sum distribution, director rollover to another qualified plan or IRA, or elect to use 50% or 100% of the DROP balance to increase their monthly annuity for life.
- The City has hired seven new officers since 2020, during the height of COVID-19. This program gives incentive to experienced officers who are eligible for retirement to continue their employment with the City of Brighton. This will assist in the training and mentoring of less experienced staff to continue with the City's goal of succession planning.
- This program will be cost neutral and the pension amount for the DROP employee will be paid out of the assets of the police division of MERS assets. While the employee is in the DROP, they are required to continue to pay their employee contribution to their pension as they would do as an active employee.

RECOMMENDATION

Consider approval of the MERS Defined Benefit Plan Adoption Agreement for the DROP program and authorize its execution by the City Manager.

Prepared by: Michelle Miller, Human Resources Manager

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: MERS Deferred Retirement Option Program Defined Benefit Plan Adoption Agreement

Defined Benefit Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Brighton **Municipality #:** 4704

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- All prior service from date of hire
- Prior service proportional to assets transferred; all service used for vesting
- Prior service and vesting service proportional to assets transferred
- No prior service but grant vesting credit
- No prior service or vesting credit

Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

For divisions that are closing or freezing with or without conversion, the Employer must complete the *Addendum for Plan Freeze, Closure and Conversions*

B. If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 02), the effective date shall be the first day of 07/2023 (mm/yy). *Please note:* You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. If this is a **temporary benefit** (Defined Benefit division number(s) _____), select one of the following:

- This is a **temporary Benefit Window** with a duration of 2-6 months. Effective dates are from ___/01/___ through the last day of ___/20___ (mm/yy). Complete provisions as applicable under Section IV of this form.
- This is a **temporary Lump Sum Buyout Program** for terminated vested participants with a duration of 6-24 months. Effective dates are from ___/01/___ through the last day of ___/20___ (mm/yy). Payout will reflect ___% (1-100%) of the participant's present value of accrued benefit. For example, if 40% is used, the payout will be 40% of the present value of the benefit. This percentage cannot be changed once adopted.

Defined Benefit Plan Adoption Agreement

- D. If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.
- E. If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.
- F. If this is an amendment to close Defined Benefit division(s) # _____, with new hires, rehires, and transfers going into an **existing** Defined Benefit division # _____, the effective date shall be _____ (month/year).

Note: Closing this Defined Benefit division(s) will change future invoices to a flat dollar amount instead of a percentage of payroll, as provided in your most recent annual actuarial valuation.

(The amount may be adjusted for any benefit modifications that may have taken place since then).

III. Plan Eligibility

Division Title: _____

Only those employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. If an employee classification is **included** in the plan, then employees that meet this definition will receive service credit if they work the required number of hours to meet the service credit qualification defined below. All eligible employees must be reported to MERS. Please describe the specific classifications that are eligible for MERS within this division:

(For example: e.g., Full-time employees, Clerical staff, Union Employees participating in XXXX union)

This Division includes **public safety employees** (this information is used for actuarial purposes only. It does not relate to the additional tax for early distribution): Yes No

To further define eligibility (select all that apply):

Employee Classification	Included	Excluded	Not Employed
Temporary Employees: Those who will work for the municipality fewer than _____ months in total	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Part-Time Employees: Those who regularly work fewer than _____ per _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Seasonal Employees: Those who are employed for tasks that occur at specific times of the year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voter-Elected Officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appointed Officials: An official appointed to a voter-elected office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contract Employees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	
Other 2: _____	<input type="checkbox"/>	<input type="checkbox"/>	

Defined Benefit Plan Adoption Agreement

Probationary Periods (select one):

- Service will begin after the probationary period has been satisfied. Probationary periods are allowed in one-month increments, no longer than 12 months. During this probationary period, the employer will not report or provide service. Service will begin to accrue and contributions must be reported when the Probationary Period ends.

The probationary period will be _____ month(s).

Comments:

- Service will begin with the employee's date of hire (no Probationary Period). Effective with the date of hire, wages paid and any associated contributions must be submitted to MERS.

IV. Provisions

1. Service Credit Qualification

To clarify how eligible employees earn service credit, please indicate how many hours per month an eligible employee needs to work. For example, if you require 10 eight-hour days, this would be 80 hours per month. If an *hours and days* has been previously defined (like 10 seven-hour days), stating "70 hours" will be required. Employees must meet the definition of Plan Eligibility in order to earn service credit under the plan.

To receive one month of service credit, an employee shall work (or be paid for as if working) _____ hours in a month.

2. Leaves of Absence

Indicate by checking the boxes below, whether the potential for service credit will be allowed if an eligible employee is on one of the following types of leave, regardless of meeting the service credit qualification criteria.

Regardless whether an eligible employee is awarded service credit while on the selected type(s) of leave:

- MERS will skip over these months when determining the FAC amount for benefit calculations.
- Third-party wages **are not** reported for leaves of absence.
- Employers **are not** required to remit employer contributions based on leaves of absence when no wages are paid by the employer.
- For **contributory divisions**, employee contributions are required where service credit is granted and due at the time of monthly wage and contribution reporting. Employers may use the following formula to calculate employee contributions: the employee's current hourly rate (prior to leave), multiplied by service credit qualification (hours) multiplied by employee contribution. For example, if employees' hourly rate is \$20, the division requires 120 hours to obtain service credit, and employee contributions are 5%, the calculation will look like: $\$20/\text{hour} \times 120 \times .05 = \120 in employee contribution for that leave month. Employers may use another internal formula, if they choose and MERS will make note of it.

If an alternative formula is going to be used, please describe that here:

Defined Benefit Plan Adoption Agreement

Type of Leave	Service Credit Granted	Service Credit Excluded
Short-Term Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Long-Term Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Workers' Compensation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Unpaid Family Medical Leave Act (FMLA)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other: _____ For example, sick and accident, administrative, educational, sabbatical, etc.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other 2: _____ Additional leave types as above	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Leaves of absence due to military service are governed by the Federal *Uniformed Services Employment and Reemployment Rights Act* of 1994 (USERRA), IRC 414(u), effective January 1, 2007, IRC 401(a)(37). Military reporting requires historical wage and contribution reporting for Defined Benefit as applicable.

3. Definition of Compensation

The Definition of Compensation is used to calculate a participant's final average compensation and is used in determining both employer and employee contributions. Wages paid to employees, calculated using the elected definition, must be reported to MERS.

Select your Definition of Compensation:

- Base Wages
 Box 1 Wages of W-2
 Gross Wages
 Custom Definition

Click here to view details of Base, Box 1, and Gross Wages

(To customize your definition, please complete the [Custom Definition of Compensation Addendum](#).)

V. Valuation-Required Provisions

Valuation Date: April 10, 2023

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

Our MERS representative presented and explained the valuation results to the
 Organizational Relations Manager on 04/18/2023
 (Board, Finance Cmte, etc.) (mm/dd/yyyy)

As an authorized representative of this municipality, I _____ (Name)
 _____ (Title) waive the right for a presentation of the results.

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

Defined Benefit Plan Adoption Agreement

2. **Benefit Multiplier** (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

Termination Final Average Compensation (calculated over the members entire wage history)

Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. **Final Average Compensation** (Min 3 yr, increments of 1 yr) _____ years

4. **Vesting** (5 -10 yrs, increments of 1 yr) _____ years

5. **Normal Retirement Age** will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. **Required employee contribution** (Increments of 0.01 %) _____ %

7. **Unreduced Early Retirement/Service Requirements:**

Age 50 – 54 _____ Service between 25 and 30 years _____

Age 55 – 65 _____ Service between 15 and 30 years _____

Service only (must be any number from 20 – 30 years accrued service): _____

Age + Service Points (total must be from 70 – 90): _____ points

8. **Other**

Surviving Spouse will receive 50% of Straight Life benefit without a reduction to the employees' benefit (also known as an RS50)

Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)

Deferred Retirement Option Program (DROP) – If selected, complete the following:

• Credited interest rate: 3.0 % (please select either 0 or 3%)

• The employer, if selected, will delay a Cost of Living Adjustment (COLA) during the DROP period (skip if not applicable): Yes No

• Credited payment percentage will be: 60 % (enter a number from 10-100% in increments of 10%) throughout the duration of the DROP period.

Defined Benefit Plan Adoption Agreement

- Annuity Withdrawal Program (AWP)

Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:

- Interest rate for employee contributions as determined by the Retirement Board, or
- MERS' assumed rate of return as of the date of the distribution.

9. Cost-of-Living Adjustment

<input type="checkbox"/> All current retirees as of effective date <input type="checkbox"/> Retirees who retire between ___/01/___ and ___/01/___	<input type="checkbox"/> Future retirees who retire after effective date
Increase of ___% or \$___ per month	Increase of ___% or \$___ per month
Select one: <input type="checkbox"/> Annual automatic increase <input type="checkbox"/> One-time increase	<input type="checkbox"/> Annual automatic increase
Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding	Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding
Employees must be retired ___ months (6-12 months, increments of 1 month)	Employees must be retired ___ months (6-12 months, increments of 1 month)

- Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

10. Service Credit Purchase Estimates are:

- Not permitted
- Permitted

VI. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Benefit Plan Adoption Agreement, the provisions of the Plan Document control.

VII. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

Defined Benefit Plan Adoption Agreement

VIII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

IX. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by _____ on
the ____ day of _____, 20____. (Name of Approving Employer)

Authorized signature: _____

Title: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: Consider approval of MERS Health Care Savings Program Participation Agreements

ADMINISTRATIVE SUMMARY

- There are two agreements to consider for approval. One related to police command union employees and the other related to all other employees. These agreements are to implement changes that were approved by city council during the recent union negotiations.
- Employees who are not eligible for retiree healthcare are enrolled in a MERS Retiree Health Care Savings Program (RHSP). There is currently a 10-year vesting period. Recent negotiations reduced the vesting period to 5 years to match the vesting period for the 401 (a) defined contribution plan. Attached is an agreement that changes the vesting period for all employees except for those in the police command union.
- The police command union was not included in the MERS RHSP when it was originally introduced because there were no employees in that union who needed the plan as they were all eligible for traditional retiree healthcare. However, with the retirement of senior officers, there will be officers in the patrol union promoted to command. In anticipation of this, attached is an agreement establishing a MERS RHSP Agreement for the command union with a five-year vesting to match all other employees.

Prepared by: Michelle Miller, Human Resources Manager

Reviewed

& Approved by: Gretchen Gomolka, City Manager

Attachments: MERS Health Care Savings Program Participation Agreement for divisions 300802, 300803, and 301013.
MERS Health Care Savings Program Participation Agreement for Police Command (division not assigned)

MERS Health Care Savings Program Participation Agreement

IX. STATE LAW

To the extent not preempted by federal law, this agreement shall be interpreted in accordance with Michigan law.

X. TERMINATION OF THE PARTICIPATION AGREEMENT

This Participation Agreement may be terminated only in accordance with the Trust Agreement.

XI. EXECUTION BY GOVERNING BODY OF MUNICIPALITY

The foregoing Participation Agreement is hereby adopted and approved on the 17 day of August, 2023 at the official meeting held by City of Brighton.
(Name of approving employer)

Authorized Signature: _____

Name: City of Brighton

Title: Human Resources Manager

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____

(Authorized MERS signatory)

MERS Health Care Savings Program Participation Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.2308 | Fax 517.703.9707

www.mersofmich.com

I. PARTICIPATING EMPLOYER

Employer Name: City of Brighton
(Name of municipality or court)

Municipality Number: 4704 Division Number: _____

II. EFFECTIVE DATE

1. If this is the initial Participation Agreement relating to the MERS Health Care Savings Program for this covered group, the effective date of the program here adopted shall be:
July 1, 2023
(Date)
2. If this is an amendment and restatement of an existing Participation Agreement relating to the MERS Health Care Savings Program for this covered group, the effective date of this amendment and restatement shall be effective: _____
(Date)

Note: You only need to mark *changes* to your plan throughout the remainder of this Agreement.

III. COVERED EMPLOYEE GROUPS

A participating Employer may cover all of its employee groups, bargaining units, or personnel/employee classifications ("Covered Group") in the same Health Care Savings Program plan. **Contributions shall be made on the same basis within each Covered Group according to the associated [HCSP Contribution Addendum](#), remitted as directed by the Program Administrator.** This agreement encompasses the following group(s):

Police on/after 7/1/2011
(Name/s of HCSP covered group/s)

Note: To maintain the tax-favored status of the employer's Health Care Savings Program and to comply with federal law, the Employer may not provide coverage or benefit levels to highly-compensated employees that are not provided to non highly-compensated employees.

IV. ELIGIBLE EMPLOYEES

Only Employees of a "municipality" may be covered by the Health Care Savings Program Participation Agreement. Independent contractors may not participate in the Health Care Savings Program.

The Employer shall provide MERS with the name, address, Social Security Number, and date of birth for each Eligible Employee, as defined by the Participation Agreement.

V. EMPLOYER CONTRIBUTIONS TO THE HEALTH CARE SAVINGS PROGRAM

The Participating Employer hereby elects to make contributions to the Trust. Contributions shall be made on the same basis within each Covered Group specified in this agreement, and remitted to MERS as directed by the employer, to be credited to the individual accounts of Eligible Employees according to the associated [Contribution Addendum](#).

MERS Health Care Savings Program Participation Agreement

IX. STATE LAW

To the extent not preempted by federal law, this agreement shall be interpreted in accordance with Michigan law.

X. TERMINATION OF THE PARTICIPATION AGREEMENT

This Participation Agreement may be terminated only in accordance with the Trust Agreement.

XI. EXECUTION BY GOVERNING BODY OF MUNICIPALITY

The foregoing Participation Agreement is hereby adopted and approved on the 17 day of August, 2023 at the official meeting held by City of Brighton.
(Name of approving employer)

Authorized Signature: _____

Name: Michelle R. Miller

Title: Human Resources Manager

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____

(Authorized MERS signatory)



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

AUGUST 17, 2023

SUBJECT: CONSIDER APPROVAL OF THE PURCHASE OF A NEW FLYGT SLUDGE MIXER FROM KENNEDY INDUSTRIES IN THE AMOUNT OF \$53,180.00

BACKGROUND

- The Sludge Storage Tank, also known as the Biosolids Storage Tank, has a capacity to store 1,400,000 gallons of Biosolids. There are six sludge mixers in the tank that work in conjunction with a coarse bubble aeration system to mix the tank so the material is uniform and can be pumped into trucks at the sludge loading station.
- In the 2022/23 CIP Budget, DPS Staff began a three -year program of rebuilding sludge mixers. In the first year, two mixers were completed, one that was 35 years old and one that was 20 years old.
- In the 2023/24 CIP Budget \$60,000 was approved by City Council for sludge mixer repairs. The #3 Sludge Mixer was identified as the next one that needed to be repaired.

ADMINISTRATIVE SUMMARY

- Wastewater Staff removed the #3 Sludge Mixer from the storage tank and delivered it to Kennedy Industries in Wixom Michigan. This piece of equipment is one of the original mixers that are now 35 years old.
- After disassembly and evaluation, Kennedy determined that some of the major components within the mixer were beyond repair and are no longer available.
- They recommended a new replacement mixer that will fit the existing mounting and lifting system.
- Kennedy Industries is the sole representative of Flygt in the State of Michigan. This brand is compatible with our system and will fit the existing mounts.

BUDGET INFORMATION

- City Council approved \$60,000 in the 2023/2024 CIP Budget for the purpose of rebuilding sludge mixers at the Wastewater Treatment Plant. This is more than sufficient to replace Sludge Mixer #3

RECOMMENDATION

Consider the approval of the purchase a new replacement Flygt Sludge Mixer from Kennedy Industries in the amount of \$53,180.00

Prepared by: Corey Brooks, Deputy DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

Within Budget

Budget Amendment Necessary and In Proper Form

Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: Quote from Kennedy Industries



QUOTATION		
DATE	NUMBER	PAGE
7/11/2023	0052711	1 of 1

B BRI150
I
L CITY OF BRIGHTON WWTP
L INVOICES@BRIGHTONCITY.ORG
T 200 N. FIRST STREET
O BRIGHTON, MI 48116

Accepted By: _____
Date: _____
PO#: _____
Ship To: _____

ATTENTION:
COREY BROOKS 810-227-9479 brooksc@brightoncity.org

WE ARE PLEASED TO PROPOSE THE FOLLOWING FOR YOUR CONSIDERATION:

CUSTOMER REF/PO#	JOB TITLE	SLP	SHIPPING TYPE
	SLUDGE TANK, REPLACEMENT FLYGT MIXER, WASTE WATER	TJC/JAR	FREIGHT ALLOWED
QTY	DESCRIPTION		

(1) FLYGT EXPLOSION PROOF, SUBMERSIBLE 304SS MIXER, MODEL 4670.492-167705 WITH 316SS PROPELLER. RATED FOR 20 HP, 3 PHASE, 460 VOLT WITH 50 FT. MOTOR CABLE.

(1) FLYGT MINI-CAS

NET PRICE INCLUDING FREIGHT, BUT NO TAXES: --- \$53,180.00

** PRICING AND LEAD TIME ARE BASED ON CURRENT MARKET PRICE AND AVAILABILITY AND ARE SUBJECT TO CHANGE. PLEASE NOTE QUOTE IS VALID FOR 30 DAYS **

DELIVERY: APPROXIMATELY 14-18 WEEKS AFTER RECEIPT OF ORDER.

WE DO NOT INCLUDE: INSTALLATION, SITE WORK, CONCRETE, ANCHOR BOLTS, PIPING, VALVES, COVER, STARTERS, CONTROLS, CONDUIT, WIRING, JUNCTION BOXES OR START-UP UNLESS LISTED ABOVE.

WE APPRECIATE THIS OPPORTUNITY TO QUOTE AND LOOK FORWARD TO BEING OF FUTURE SERVICE.

SINCERELY - JESSICA RIVARD

This quote is subject to and incorporates by reference Kennedy Industries, Inc.'s ("Kennedy") Terms & Conditions (Rev'd 6/2023) and Customer Warranty available at www.kennedyind.com which will be provided by email upon written request. Kennedy reserves the right to change the Terms & Conditions and Customer Warranty for future orders. By accepting this quote and/or issuing a purchase order relative to this quote, buyer expressly agrees to the provisions set forth in the Terms & Conditions and Customer Warranty posted on Kennedy's website.

QUOTE VALID FOR 30 DAYS. CREDIT CARD PAYMENTS ARE SUBJECT TO AN ADDITIONAL 3% CHARGE NO TAXES OF ANY KIND ARE INCLUDED IN THIS PROPOSAL. PAYMENT TERMS: NET 30



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: CONSIDER APPROVAL FOR BOTH RESIDENTIAL AND COMMERCIAL CROSS CONNECTION SERVICE AGREEMENTS WITH HYDROCORP INC FOR TWO YEARS IN ANNUAL AMOUNTS OF \$32,040 AND \$24,273, RESPECTIVELY

BACKGROUND

- The City of Brighton participates in both Commercial and Residential Cross Connection Control Programs as required by the State of Michigan Department of Environment, Great Lakes, and Energy (EGLE). Currently, HydroCorp monitors both commercial and residential users of the water system, including customers in the surrounding townships served by the city. The State has mandated communities to have both commercial and residential cross connection programs in place to ensure the health and safety of the drinking water provided to customers.

ADMINISTRATIVE SUMMARY

- Due to the lack of available staff required for the inspection and testing portion of this program, the decision was made several years ago to use HydroCorp to provide these services. HydroCorp, Inc. was recruited in 2010 (Commercial) and again in 2021 (Residential) to carry out all inspections and administrative tasks of these programs. Since HydroCorp is a sole source provider and has helped establish the City's current Cross Connection Program, staff feels comfortable in recommending HydroCorp to continue performing cross connection services.
- HydroCorp will be responsible for inspecting the exterior of residential properties to identify lawn irrigation systems, unprotected hose connections, pools, spas, and other potentially hazardous water connections. As with the prior residential contract, HydroCorp does not enter any homes; they only perform the inspections on the exterior of houses.
- HydroCorp will also be responsible for inspecting both the interior and exterior of commercial properties to identify any potential hazards and ensure that proper testing of backflow devices has been completed. Commercial site inspections are necessary to determine if backflow devices are required, installed, in good working condition, and in compliance with City and State regulations. Backflow devices are also required to be tested on a regular basis, depending on the level of hazard they pose to the community's water system.
- Under these contracts, HydroCorp will perform the following:
 - Perform a minimum of 563 residential initial inspections, compliance inspections, and re-inspections each year.
 - Perform a minimum of 175 commercial initial inspections, compliance inspections, and re-inspections each year.
 - Generate backflow testing and inspection notices.
 - Document the required program data for each home.
 - Submit quarterly management reports.
 - Provide approved hose bib vacuum breakers to place a property in immediate compliance.
 - Hold annual review meetings with Staff to discuss program status.
 - Help prepare the annual State of Michigan Cross Connection Report.
 - Assist the City with a community-wide public relations program, including content resources for brochures, website, and social media postings.
- The terms and conditions for both contracts were reviewed by the City's attorney. If approved by City Council, Staff will return a signed copy to HydroCorp to continue these services.

BUDGET INFORMATION

- The proposed cost of the Residential Cross Connection contract is \$2,670.00 per month for an annual cost of \$32,040.00, and a total two-year contractual cost of \$64,080.00.
- The proposed cost of the Commercial Cross Connection contract is \$2,022.75 per month for an annual cost of \$24,273.00 and a total two-year contractual cost of \$48,546.00.
- The annual total cost of both programs is \$56,313.00.
- Council approved \$55,500 for these services in the 23/24 Utility System Services Fund. The overage of \$813 will be transferred from budgeted dollars in the contractual services account to make up the difference.
- Staff will be requesting council's approval for \$56,313.00 to be budgeted in the Utility System Services Fund for the 24/25 Fiscal Year to cover the second year of the contract.

RECOMMENDATION

Approve both the Residential and Commercial Cross Connection Service agreements with HydroCorp Inc for two years in annual amounts of \$32,040 and \$24,273 respectively and authorize the Water Plant Superintendent to execute the agreements.

Prepared by: Josh Bradley, Water Plant Superintendent and Regulatory Compliance Superintendent

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget, with transfer from Contractual Services account
- Budget Amendment Necessary and In Proper Form
- Other _____

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

- Acceptable Form and Ready to Execute
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: Residential and Commercial Contract from HydroCorp.

PROPOSAL

DEVELOPED FOR

Joshua Bradley
Water Plant Superintendent
City of Brighton

200 North First Street
Brighton, MI 48116

July 11, 2023

KEEPING DRINKING WATER SAFE FOR INDUSTRIES AND MUNICIPALITIES

For over 30 years, HydroCorp™ has been dedicated to safe drinking water for companies and communities across North America. Fortune 500 firms, metropolitan centers, utilities, small towns and businesses – all rely on HydroCorp to protect their water systems, averting backflow contamination and the acute health risks and financial liabilities it incurs.

HYDR CORP.
THE SAFE WATER AUTHORITY.

CROSS-CONNECTION
CONTROL / BACKFLOW
PREVENTION

WATER SYSTEM
SURVEYS / AUDITS

PIPE SYSTEM MAPPING
AND LABELING

WATER SAMPLING
AND ANALYSIS / RISK
ASSESSMENTS

PROGRAM
AND PROJECT
MANAGEMENT

COMPLIANCE
ASSISTANCE /
DOCUMENTATION



MICHIGAN CORPORATE OFFICE
5700 Crooks Road, Suite 100
Troy, MI 48098
800.690.6651 TOLL FREE
248.250.5000 PHONE
248.786.1788 FAX GENERAL
info@hydrocorpinc.com EMAIL



SCOPE OF WORK3

PROFESSIONAL SERVICE AGREEMENT..... 4-10

QUALIFICATIONS 11



SCOPE OF WORK

Based on our current program, HydroCorp™ will provide the following services to the City of Brighton. This project is a continued effort for an ongoing Cross-Connection Control Program and will provide the City with the necessary data and information to maintain compliance with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Water Bureau Cross Connection Control Regulations. Once this project has been approved and accepted by the City and HydroCorp, you may expect completion of the following elements within a two (2) year period. The components of the project include:

1. Annually, perform a minimum of **563** initial inspections, compliance inspections, and re-inspections at individual residential and multi-family residential homes served by the public water supply for cross-connections. Inspections will be conducted of the property's exterior only.
2. Generate all backflow prevention assembly test notices, non-compliance notices and coordinate/monitor backflow prevention assembly testing compliance for all backflow prevention assemblies.
3. Perform administrative functions including: answering water user telephone calls, scheduling of inspections, mailing of all notices, verification of backflow prevention assembly tester credentials & proper testing results and general customer service and program education inquiries.
4. Generate and document the required program data for the facilities using the HydroCorp Software Data Management Program.
5. Submit comprehensive management reports on a quarterly basis.
6. Conduct an annual review meeting to discuss overall program status and recommendations.
7. Provide up to four- (4) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers, (i.e. combination) per facility as required, in order to place a facility into immediate compliance at the time of inspection.
8. Prepare the annual State of Michigan, EGLE Water Bureau Cross Connection Report.
9. Assist the City with a community wide public relations program including general awareness brochures and customized web site cross connection control program overview content and resources.
10. Provide ongoing support via phone, fax, internet, text or email.

The above services will be provided for:

Monthly Amount: \$ 2,670.00

Annual Amount: \$ 32,040.00

Contract Total: \$ 64,080.00

Contract Amount is based upon a 24-month period. HydroCorp will invoice in 24 equal amounts of \$ 2,670.00.

PROFESSIONAL SERVICE AGREEMENT

This agreement, made and entered into this INSERT DATE by and between the City of Brighton, organized and existing under the laws of the State of Michigan, referred to as “Utility” or “City”, and HydroCorp™ a Michigan Corporation, referred to as “HydroCorp”.

WHEREAS, the Utility supplies potable water throughout its corporate boundary to property owners; and desires to enter into a professional services contract for cross connection control program inspection, reporting and management services.

WHEREAS, HydroCorp is experienced in and capable of supplying professional inspection of potable water distribution systems and cross connection control program management to the Utility and the Utility desires to engage HydroCorp to act as its independent contractor in its cross connection control program.

WHEREAS, the Utility has the authority under the laws of the State of Michigan and its local governing body to enter into this professional services contract.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE I. Purpose

During the term of this Agreement, the Utility agrees to engage HydroCorp as an independent contractor to inspect and document its findings on its potable water distribution system in residential dwellings within the community. Each party to this Agreement agrees that it will cooperate in good faith with the other, its agents, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement. Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete and accurate, yet due to the inaccessible nature of water piping or due to access constraints within water users’ facilities, complete and accurate data is not always available.

ARTICLE II. Scope of Services

The scope of services to be provided by HydroCorp under this Agreement will include the inspections/surveys, program administration, answering telephone call inquires, scheduling of inspections, program compliance review, public education materials, preparation of quarterly management reports, and annual cross connection reports with respect to the facilities to the extent specifically set forth in this Article II (hereinafter the “Scope of Services”). Should other reports/services be included within the Scope of Services, the same shall be appended to this Agreement as Exhibit 1.

2.1 PROGRAM REVIEW/PROGRAM START UP MEETING. HydroCorp will conduct a Program Startup Meeting for the Cross-Connection Control/Backflow Prevention Program. Items for discussion/review will include the following:

- Review state & local regulations
- Review and/or provide assistance in establishing local Cross-Connection Control Ordinance
- Review/establish wording and timeliness for program notifications including:
 - Inspection Notice
 - Compliance Notice
 - Non-Compliance Notices 1-2, Penalty Notices
- Special Program Notices
- Electronic use of notices/program information
- Obtain updated facility listing, address information and existing program data from Utility.
- Prioritize Inspections (Utility owned buildings, schools, high hazard facilities, special circumstances.)
- Review/establish procedure for vacant facilities.



- Establish facility inspection schedule.
- Review/establish procedures and protocol for addressing specific hazards.
- Review/establish high hazard, complex facilities and large industrial facility inspection/containment procedures including supplemental information/notification that may be requested from these types of facilities in order to achieve program compliance.
- Review/establish program reporting procedures including electronic reporting tools.
- Review/establish educational and public awareness brochures.

2.2 INSPECTIONS. HydroCorp will perform initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the utility served by the public water supply for cross-connections. Inspections will be conducted in accordance with the Department of Environment, Great Lakes and Energy Cross Connection Control Rules, and the City's Code of Ordinances.

- *Initial Inspection* – the first time a HydroCorp representative inspects a facility for cross connections. Degree of Hazard will be assigned and/or verified during this facility visit. The Degree of Hazard will dictate future re-inspection frequency/schedule of facility, (facility will be either compliant or non-compliant after this inspection).
- *Compliance Inspection* – subsequent visit by a HydroCorp representative to a facility that was non-compliant during the *Initial Inspection* to verify that corrective action was completed and meets the program requirements.
- *Re-Inspection* – Revisit by a HydroCorp representative to a facility that was previously inspected. The re-inspection frequency/schedule is based on the degree of hazard assigned to the facility during the initial inspection (one or five year re-inspection cycle, as agreed to by the parties).

2.3 INSPECTION SCHEDULE. HydroCorp shall determine and coordinate the inspection schedule. Inspection personnel will check in/out on a daily basis with the Utility's designated contact person. The initial check in will include a list of inspections scheduled. An exit interview will include a list of inspections completed.

2.4 PROGRAM DATA. HydroCorp will generate and document the required program data for the Facility Types listed in the Scope of Services using the HydroCorp Software Data Management Program. Program Data shall remain property of the Utility; however, the HydroCorp Software Data Management program shall remain the property of HydroCorp and can be purchased for an additional fee. Data services will include:

- Prioritize and schedule inspections.
- Notify users of inspections, backflow device installation and testing requirements if applicable.
- Monitor inspection compliance using the HydroCorp online software management program.
- Maintain program to comply with all EGLE regulations, and the City's Code of Ordinances.

2.5 MANAGEMENT REPORTS. HydroCorp will submit comprehensive management reports in electronic, downloadable format on a quarterly & annual basis to the Utility. Reports to include the following information:

- Name, location and date of inspections
- Number of facilities inspected/surveyed
- Number of facilities compliant/non-compliant

2.6 REVIEW OF CROSS-CONNECTION CONTROL ORDINANCE. HydroCorp will review or assist in the development of a cross-connection control ordinance. Items for review include:

- Code adoption references, standard operational procedures, program notice documentation, reporting procedures and preference standards.
- Penalties for noncompliance.



- 2.7 VACUUM BREAKERS.** HydroCorp will provide up to six (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers per facility as required, in order to place a facility into immediate compliance at the time of inspection if no other cross-connections are identified.
- 2.8 PUBLIC RELATIONS PROGRAM.** HydroCorp will assist the Utility with a community-wide public relations program including general awareness brochures and website cross connection control program content.
- 2.9 SUPPORT.** HydroCorp will provide ongoing support via phone, fax, text, website or email for the contract period.
- 2.10 FACILITY TYPES.** The facility types included in the program are as follows:
- Residential
- Complex Facilities.** Large industrial and high hazard complexes or facilities may require inspection/survey services outside the scope of this Agreement. (HydroCorp typically allows a maximum of up to three (3) hours of inspection time per facility.) An independent cross connection control survey (at the business owner's expense) may be required at these larger/complex facilities and the results submitted to the Utility to help verify program compliance.
- 2.11 INSPECTION TERMS.** HydroCorp will perform a minimum of 1,126 inspections over a two-year period. The total inspections include all initial inspections, compliance, and re-inspections. *Vacant facilities that have been provided to HydroCorp, scheduled no show or refusal of inspection will count as an inspection/site visit for purposes of the contract, so long as HydroCorp has followed proper notice procedures in EGLE Regulations and City Code of Ordinances.*
- 2.12 COMPLIANCE WITH DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE).** HydroCorp will assist in compliance with EGLE and Michigan Plumbing Code cross-connection control program requirements for all commercial, industrial, institutional, residential, multifamily, and public authority facilities.
- 2.13 POLICY MANUAL.** HydroCorp will review and/or develop a comprehensive cross-connection control policy manual/plan and submit to the appropriate regulatory agency for approval on behalf of the Utility.
- 2.14 INVENTORY.** HydroCorp shall inventory all accessible (ground level) backflow prevention assemblies and devices. Documentation will include: location, size, make, model, and serial number if applicable.
- 2.15 DATA MANAGEMENT.** HydroCorp shall provide data management and program notices for all inspection services throughout the contract period.
- 2.16 ANNUAL YEAR END REVIEW.** HydroCorp will conduct an on-site annual year-end review meeting to discuss overall program status and specific program recommendations.
- 2.17 CROSS CONNECTION CONTROL BROCHURES.** HydroCorp will provide approximately 1,126 cross-connection control educational brochures for the duration of the Agreement.
- 2.18 INSURANCE.** HydroCorp will provide all required copies of general liability, workers' compensation and errors and omissions insurance naming the Utility as an additional insured if required.



ARTICLE III. Responsibilities of the Utility

- 3.1 UTILITY'S REPRESENTATIVE.** On or before the date services are to commence under this Agreement, the Utility shall designate an authorized representative ("Authorized Representative") to administer this Agreement.
- 3.2 COMPLIANCE WITH LAWS.** The Utility, with the technical and professional assistance of HydroCorp, shall comply with all applicable local, state, and federal laws, codes, ordinances, and regulations as they pertain to the water inspection and testing, and shall evaluate any capital improvements needed to bring the water treatment and delivery system into compliance with the aforementioned laws.
- 3.3 NOTICE OF LITIGATION.** In the event that the Utility or HydroCorp has or receives notice of or undertakes the prosecution of any actions, claims, suits, administrative proceedings, investigations or other proceedings in connection with this Agreement, the party receiving such notice or undertaking of such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.
- 3.4 FACILITY LISTING.** The Utility must provide HydroCorp a complete list of facilities to be inspected, including facility name, type of service connection, address, contact person, and phone number, (if available). *Electronic file format such as Microsoft Excel, etc. is required. An additional one-time fee to manually enter facility listing will be charged at the rate of \$80.00 per hour. Incorrect facility addresses will be returned to the Utility contact and corrected address will be requested.*
- 3.5 LETTERHEAD/LOGO.** The Utility will provide HydroCorp with an electronic file copy of the utility logo or utility letterhead and all envelopes for the mailing of all official program correspondence only. (300 dpi in either .eps, or other high quality image format for printing). HydroCorp's use of such logo or letterhead is subject to Authorized Representative's approval on all proposed correspondence.

ARTICLE IV. Term, Compensation and Changes in Scope of Services

- 4.1 TERM AND TERMINATION TERM.** Services by HydroCorp under this Agreement shall commence on (INSERT DATE: _____), and end two- (2) years from such date, unless this Agreement is renewed or terminated as provided herein. The terms of this Agreement shall be valid only upon the execution of this Agreement within ninety (90) days of its receipt. Failure to execute this Agreement within the ninety (90) day period shall deem the proposed terms void.
- 4.2 RENEWAL.** Upon the expiration of this two-year agreement, unless either party provides written notice of termination not less than 60 days prior to the expiration of the initial term (or any such renewal term) this agreement will automatically renew in (1) year term increments. Inflationary adjustments to each renewal term will be equal to the annual Consumer Price Index as measured in the Utility's local/regional area at the time of renewal.
- 4.3 TERMINATION.** The Utility or HydroCorp may terminate this Agreement at any time and on any date in the initial and renewal terms of this Agreement, with or without any cause, by giving written notice of such intent to terminate to the other party at least thirty (30) days prior to the effective date of termination. Notice of the intent to terminate shall be given in writing by personal service, by an authorized agent, or by certified mail, return receipt requested. The Utility shall pay the balance of any outstanding accounts for work performed by HydroCorp.
- 4.4 BASE COMPENSATION.** The Utility shall pay HydroCorp as compensation ("Base Compensation") for labor, equipment, material, supplies, and utilities provided and the services performed pursuant to this Agreement, **\$2,670.00 per month, \$32,040.00 annually, for a two-year contract total of \$64,080.00.** Completed inspections shall consist of all initial inspections, re-inspections and compliance inspections as defined in section 2.2.



- 4.5 PAYMENT OF INVOICES.** Upon presentation of invoices by HydroCorp, all payments including base and other compensation shall be due and payable on the first day of each month (due date) after the month for which services have been rendered. All such payments shall be made no later than thirty (30) days after the due date. Failure to pay shall be deemed a default under this Agreement. For any payment to HydroCorp which is not made within thirty (30) calendar days after the due date, HydroCorp, shall receive interest at one and one-half (1½) percent per month on the unpaid balance.
- 4.6 CHANGES IN SCOPE OF SERVICES.** In the event that the Utility requests and HydroCorp consents to perform additional work or services involving the consulting, management, operation, maintenance, and repair of the Utility's water delivery system where such services or work exceeds or changes the Scope of Services contemplated under this Agreement, HydroCorp shall be provided additional compensation. Within thirty (30) calendar days from the date of notice of such additional work or services, the parties shall mutually agree upon an equitable sum for additional compensation. This amount shall be added to the monthly sum effective at the time of change in scope. Changes in the Scope of Service include, but are not limited to, requests for additional service by the Utility or additional costs incurred in meeting new or changed government regulations or reporting requirements.
- 4.7 CLIENT CONFIDENTIALITY.** Disclosure of all communications between HydroCorp and the Utility regarding business practices and other methods and forms of doing business is subject to the provisions of Michigan Freedom of Information Act. HydroCorp agrees to make available for inspection and copying all records in its possession created, produced, collected, or otherwise related to this Agreement to the same extent as if the records were maintained by the Utility. HydroCorp expressly acknowledges and agrees that its obligations concerning Freedom of Information Act and compliance regarding records related to this Agreement should not be limited by copyright, license, privacy and/or confidentiality except as authorized under the Freedom of Information Act.
- 4.8 ACCESSIBILITY.** Backflow prevention device information will be completed in full only when the identifying information (i.e. data plate, brass tag, etc.) is accessible and visible from ground level or from a fixed platform/mezzanine.
- 4.9 CONFINED SPACES.** – HydroCorp personnel will not enter confined spaces.

ARTICLE V. Risk Management and General Provisions

- 5.1 INFORMATION.** Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete to the best of their knowledge, yet due to the inaccessible nature of water piping or lack of access provided by property owner/water user, complete accurate data is not always available. Cross-connection control inspection and results are documented as of a specific date. The property owner and/or water user may make modifications to the potable water system after the inspection date that may impact compliance with the program.
- 5.2 LIMITATION OF LIABILITY.** HydroCorp's liability to the Utility for any loss, damage, claim, or expense of any kind or nature caused directly or indirectly by the performance or non-performance of obligations pursuant to this Agreement shall be limited to general money damages in an amount not to exceed or within the limits of the insurance coverage provided hereunder. HydroCorp shall in no event be liable for indirect or consequential damages, including but not limited to, loss of profits, loss of revenue, or loss of facilities, based upon contract, negligence, or any other cause of action.



5.3 HYDROCORP INSURANCE. HydroCorp currently maintains the following insurance coverage's and limits:

	<u>Occurrence</u>	<u>Aggregate</u>
Comprehensive General Liability	\$1 Million	\$2 Million
Excess Umbrella Liability	\$5 Million	\$5 Million
Automobile Liability (Combined Single Limit)	\$1 Million	
Worker's Compensation/ Employer's Liability	\$1 Million	
Errors and Omissions	\$2 Million	\$2 Million

Within thirty (30) calendar days of the start of the project, HydroCorp shall furnish the Utility with satisfactory proof of such insurance, and each policy will require a 30-day notice of cancellation to be given to the Utility while this Agreement is in effect. The Utility shall be named as an additional insured according to its interest under the general liability policy during the term of this Agreement.

5.4 UTILITY INSURANCE. The Utility will maintain liability insurance on an all-risk basis and including extended coverage for matters set forth in this Agreement.

5.5 RELATIONSHIP. The relationship of HydroCorp to the Utility is that of independent contractor and not one of employment. None of the employees or agents of HydroCorp shall be considered employees of the Utility. For the purposes of all state, local, and federal laws and regulations, the Utility shall exercise primary management, and operational and financial decision-making authority.

5.6 ENTIRE AGREEMENT AMENDMENTS. This Agreement contains the entire Agreement between the Utility and HydroCorp, and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties.

5.7 HEADINGS, ATTACHMENTS, AND EXHIBITS. The heading contained in this Agreement is for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as integral parts of this Agreement.

5.8 WAIVER. The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

5.9 ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written consent of the other unless such assignment shall be to the affiliate or successor of either party.

5.10 FORCE MAJEURE. A party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of actions due to causes beyond its reasonable control such as, but not limited to, Acts of God, the acts of civil or military authority, loss of potable water sources, water system contamination, floods, quarantine restrictions, riot, strikes, commercial impossibility, fires, explosions, bombing, and all such interruptions of business, casualties, events, or circumstances reasonably beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing. In the event of any such force majeure, the party unable to perform shall promptly notify the other party of the existence of such force majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned force majeure.

5.11 AUTHORITY TO CONTRACT. Each party warrants and represents that it has authority to enter into this Agreement and to perform the obligations, including any payment obligations, under this Agreement.

5.12 GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, regardless of the fact that any of the parties hereto may be or may become a



resident of a different state or jurisdiction. Any dispute between the parties, with both parties' consent, may be settled by arbitration in accordance with the applicable rules of the American Arbitration Association, Any arbitration award or determination shall be final and binding and any court of competent jurisdiction may enter a judgment on such award which shall be enforceable in the same manner as any other judgment of the such court. Any suit or action arising shall be filed in a court of competent jurisdiction within the State of Michigan, venue by the presiding County. The parties hereby consent to the personal jurisdiction of said court within the State of Michigan.

5.13 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

5.14 NOTICES. All notices, requests, demands, payments and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight carrier, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

If to HydroCorp:

HydroCorp
c/o Mark Martin
5700 Crooks Road, Ste. 100
Troy, MI 48337
(248) 250-5005

If to Utility:

City of Brighton
c/o Joshua Bradley
200 North First St.
Brighton, MI 48116
(810) 227-7635

5.15 SEVERABILITY. Should any part of this Agreement for any reason, be declared invalid or void, such declaration will not affect the remaining portion, which will remain in full force and effect as if the Agreement has been executed with the invalid portion eliminated.

SIGNATURES

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written.

City of Brighton

By: Joshua Bradley
Title: Water Plant Superintendent

HydroCorp



By: Paul M. Patterson



Appendix

Specific Qualifications & Experience

HydroCorp™ is a professional service organization that specializes in Cross Connection Control Programs. Cross Connection Control Program Management & Training is the main core and focus of our business. We are committed to providing water utilities and local communities with a cost effective and professionally managed cross connection control program in order to assist in protecting the public water supply.

- HydroCorp conducts over 70,000 Cross Connection Control Inspections **annually**.
- HydroCorp tracks and manages over 135,000+ backflow prevention assemblies for our Municipal client base.
- Our highly trained staff works in an efficient manner in order to achieve maximum productivity and keep program costs affordable. We have a detailed **system** and **process** that each of our field inspectors follow in order to meet productivity and quality assurance goals.
- Our municipal inspection team is committed to providing outstanding customer service to the water users in each of the communities we serve. We teach and train customer service skills in addition to the technical skills since our team members act as representatives of the community that we service.
- Our municipal inspection team has attended training classes and received certification from the following recognized Cross Connection Control Programs: UF TREEO, UW-Madison, and USC – Foundation for Cross Connection Control and Hydraulic Research, American Backflow Prevention Association (ABPA), American Society for Sanitary Engineering (ASSE). HydroCorp recognizes the importance of Professional Development and Learning. We invest heavily in internal and external training with our team members to ensure that each Field Service and Administrative team member has the skills and abilities to meet the needs of our clients.
- We have a trained administrative staff to handle client needs, water user questions and answer telephone calls in a professional, timely and courtesy manner. Our administrative staff can answer most technical calls related to the cross-connection control program and have attended basic cross connection control training classes.
- HydroCorp currently serves over 370 communities in Michigan, Wisconsin, Maryland, Delaware, Virginia & Florida. We still have our first customer!
- HydroCorp and its' staff are active members in many water industry associations including: National Rural Water Association, State Rural Water Associations, National AWWA, State AWWA Groups, HydroCorp is committed to assisting these organizations by providing training classes, seminars and assistance in the area of Cross Connection Control.
- Several Fortune 500 companies have relied on HydroCorp to provide Cross Connection Control Surveys, Program Management & Reporting to assist in meeting state/local regulations as well as internal company guidelines.



PROPOSAL

DEVELOPED FOR
Joshua Bradley
Water Plant Superintendent
City of Brighton

200 North First St.
Brighton MI, 48116

July 11, 2023

KEEPING DRINKING WATER SAFE FOR INDUSTRIES AND MUNICIPALITIES

For over 30 years, HydroCorp™ has been dedicated to safe drinking water for companies and communities across North America. Fortune 500 firms, metropolitan centers, utilities, small towns and businesses – all rely on HydroCorp to protect their water systems, averting backflow contamination and the acute health risks and financial liabilities it incurs.



CROSS-CONNECTION
CONTROL / BACKFLOW
PREVENTION

WATER SYSTEM
SURVEYS / AUDITS

PIPE SYSTEM MAPPING
AND LABELING

WATER SAMPLING
AND ANALYSIS / RISK
ASSESSMENTS

PROGRAM
AND PROJECT
MANAGEMENT

COMPLIANCE
ASSISTANCE /
DOCUMENTATION



MICHIGAN CORPORATE OFFICE

5700 Crooks Road, Suite 100
Troy, MI 48098

800.690.6651 TOLL FREE

248.250.5000 PHONE

248.786.1788 FAX GENERAL

info@hydrocorpinc.com EMAIL



SCOPE OF WORK3

PROFESSIONAL SERVICE AGREEMENT..... 4-10

QUALIFICATIONS 11



SCOPE OF WORK

Based on our conversations, HydroCorp™ will provide the following services to the City of Brighton. This project is a continued effort for an ongoing Cross-Connection Control Program and will provide the City with the necessary data and information to maintain compliance with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Water Bureau Cross Connection Control Regulations. Once this project has been approved and accepted by the City and HydroCorp, you may expect completion of the following elements within a two (2) year period. The components of the project include:

1. Annually, perform a minimum of 175 initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the City served by the public water supply for cross-connections. Inspections will be conducted in accordance with the EGLE Water Bureau Cross Connection Control regulations.
2. Generate all backflow prevention assembly test notices, non-compliance notices and coordinate/monitor backflow prevention assembly testing compliance for all backflow prevention assemblies.
3. Perform administrative functions including: answering water user telephone calls, scheduling of inspections, mailing of all notices, verification of backflow prevention assembly tester credentials & proper testing results and general customer service and program education inquiries.
4. Generate and document the required program data for the facilities using the HydroCorp Software Data Management Program.
5. Submit comprehensive management reports on a quarterly basis.
6. Conduct an annual review meeting to discuss overall program status and recommendations.
7. Provide up to six- (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers, (i.e. combination) per facility as required, in order to place a facility into immediate compliance at the time of inspection.
8. Prepare the annual State of Michigan, EGLE Water Bureau Cross Connection Report.
9. Assist the City with a community wide public relations program including general awareness brochures and customized web site cross connection control program overview content and resources.
10. Provide ongoing support via phone, fax, internet, text or email.

The above services will be provided for:

Monthly Amount: \$ 2,022.75

Annual Amount: \$ 24,273.00

Contract Total: \$ 48,546.00

Contract Amount is based upon a 24-month period. HydroCorp will invoice in 24 equal amounts of \$ 2,022.75.

PROFESSIONAL SERVICE AGREEMENT

This agreement, made and entered into this INSERT DATE by and between City of Brighton, organized and existing under the laws of the State of Michigan, referred to as “Utility”, and HydroCorp™ a Michigan Corporation, referred to as “HydroCorp”.

WHEREAS, the Utility supplies potable water throughout its corporate boundary to property owners; and desires to enter into a professional services contract for cross connection control program inspection, reporting and management services.

WHEREAS, HydroCorp is experienced in and capable of supplying professional inspection of potable water distribution systems and cross connection control program management to the Utility and the Utility desires to engage HydroCorp to act as its independent contractor in its cross connection control program.

WHEREAS, the Utility has the authority under the laws of the State of Michigan and its local governing body to enter into this professional services contract.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE I. Purpose

During the term of this Agreement, the Utility agrees to engage HydroCorp as an independent contractor to inspect and document its findings on its potable water distribution system in public, commercial and industrial facilities within the community. Each party to this Agreement agrees that it will cooperate in good faith with the other, its agents, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement. Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete and accurate, yet due to the inaccessible nature of water piping or due to access constraints within water users’ facilities, complete and accurate data is not always available.

ARTICLE II. Scope of Services

The scope of services to be provided by HydroCorp under this Agreement will include the inspections/surveys, program administration, answering telephone call inquires, scheduling of inspections, program compliance review, public education materials, preparation of quarterly management reports, and annual cross connection reports with respect to the facilities to the extent specifically set forth in this Article II (hereinafter the “Scope of Services”). Should other reports/services be included within the Scope of Services, the same shall be appended to this Agreement as Exhibit 1.

2.1 PROGRAM REVIEW/PROGRAM START UP MEETING. HydroCorp will conduct a Program Startup Meeting for the Cross-Connection Control/Backflow Prevention Program. Items for discussion/review will include the following:

- Review state & local regulations
- Review and/or provide assistance in establishing local Cross-Connection Control Ordinance
- Review/establish wording and timeliness for program notifications including:
 - Inspection Notice
 - Compliance Notice
 - Non-Compliance Notices 1-2, Penalty Notices
- Special Program Notices
- Electronic use of notices/program information
- Obtain updated facility listing, address information and existing program data from Utility.
- Prioritize Inspections (Utility owned buildings, schools, high hazard facilities, special circumstances.)
- Review/establish procedure for vacant facilities.



- Establish facility inspection schedule.
- Review/establish procedures and protocol for addressing specific hazards.
- Review/establish high hazard, complex facilities and large industrial facility inspection/containment procedures including supplemental information/notification that may be requested from these types of facilities in order to achieve program compliance.
- Review/establish program reporting procedures including electronic reporting tools.
- Review/establish educational and public awareness brochures.

2.2 INSPECTIONS. HydroCorp will perform initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the utility served by the public water supply for cross-connections. Inspections will be conducted in accordance with the Department of Environment, Great Lakes and Energy Cross Connection Control Rules, and the City's Code of Ordinances.

- *Initial Inspection* – the first time a HydroCorp representative inspects a facility for cross connections. Degree of Hazard will be assigned and/or verified during this facility visit. The Degree of Hazard will dictate future re-inspection frequency/schedule of facility, (facility will be either compliant or non-compliant after this inspection).
- *Compliance Inspection* – subsequent visit by a HydroCorp representative to a facility that was non-compliant during the *Initial Inspection* to verify that corrective action was completed and meets the program requirements.
- *Re-Inspection* – Revisit by a HydroCorp representative to a facility that was previously inspected. The re-inspection frequency/schedule is based on the degree of hazard assigned to the facility during the initial inspection (one or five year re-inspection cycle, as agreed to by the parties).

2.3 INSPECTION SCHEDULE. HydroCorp shall determine and coordinate the inspection schedule. Inspection personnel will check in/out on a daily basis with the Utility's designated contact person. The initial check in will include a list of inspections scheduled. An exit interview will include a list of inspections completed.

2.4 PROGRAM DATA. HydroCorp will generate and document the required program data for the Facility Types listed in the Scope of Services using the HydroCorp Software Data Management Program. Program Data shall remain property of the Utility; however, the HydroCorp Software Data Management program shall remain the property of HydroCorp and can be purchased for an additional fee. Data services will include:

- Prioritize and schedule inspections.
- Notify users of inspections, backflow device installation and testing requirements if applicable.
- Monitor inspection compliance using the HydroCorp online software management program.
- Maintain program to comply with all EGLE regulations, and the City's Code of Ordinances.

2.5 MANAGEMENT REPORTS. HydroCorp will submit comprehensive management reports in electronic, downloadable format on a quarterly & annual basis to the Utility. Reports to include the following information:

- Name, location and date of inspections
- Number of facilities inspected/surveyed
- Number of facilities compliant/non-compliant

2.6 REVIEW OF CROSS-CONNECTION CONTROL ORDINANCE. HydroCorp will review or assist in the development of a cross-connection control ordinance. Items for review include:

- Code adoption references, standard operational procedures, program notice documentation, reporting procedures and preference standards.
- Penalties for noncompliance.



- 2.7 VACUUM BREAKERS.** HydroCorp will provide up to six (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers per facility as required, in order to place a facility into immediate compliance at the time of inspection if no other cross-connections are identified.
- 2.8 PUBLIC RELATIONS PROGRAM.** HydroCorp will assist the Utility with a community-wide public relations program including general awareness brochures and website cross connection control program content.
- 2.9 SUPPORT.** HydroCorp will provide ongoing support via phone, fax, text, website or email for the contract period.
- 2.10 FACILITY TYPES.** The facility types included in the program are as follows:
- Industrial
 - Institutional
 - Commercial
 - Miscellaneous Water users
 - Multifamily
- Complex Facilities.** Large industrial and high hazard complexes or facilities may require inspection/survey services outside the scope of this Agreement. (HydroCorp typically allows a maximum of up to three (3) hours of inspection time per facility.) An independent cross connection control survey (at the business owner's expense) may be required at these larger/complex facilities and the results submitted to the Utility to help verify program compliance.
- 2.11 INSPECTION TERMS.** HydroCorp will perform a minimum of 350 inspections over a two-year period. The total inspections include all initial inspections, compliance, and re-inspections. *Vacant facilities that have been provided to HydroCorp, scheduled no show or refusal of inspection will count as an inspection/site visit for purposes of the contract, so long as HydroCorp has followed proper notice procedures in EGLE regulations and the City's Code of Ordinances.*
- 2.12 COMPLIANCE WITH DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE).** HydroCorp will assist in compliance with EGLE and Michigan Plumbing Code cross-connection control program requirements for all commercial, industrial, institutional, residential, multifamily, and public authority facilities.
- 2.13 POLICY MANUAL.** HydroCorp will review and/or develop a comprehensive cross-connection control policy manual/plan and submit to the appropriate regulatory agency for approval on behalf of the Utility.
- 2.14 INVENTORY.** HydroCorp shall inventory all accessible (ground level) backflow prevention assemblies and devices. Documentation will include: location, size, make, model, and serial number if applicable.
- 2.15 DATA MANAGEMENT.** HydroCorp shall provide data management and program notices for all inspection services throughout the contract period.
- 2.16 ANNUAL YEAR END REVIEW.** HydroCorp will conduct an on-site annual year-end review meeting to discuss overall program status and specific program recommendations.
- 2.17 CROSS CONNECTION CONTROL BROCHURES.** HydroCorp will provide approximately 720 cross-connection control educational brochures for the duration of the Agreement.
- 2.18 INSURANCE.** HydroCorp will provide all required copies of general liability, workers' compensation and errors and omissions insurance naming the Utility as an additional insured if required.



ARTICLE III. Responsibilities of the Utility

- 3.1 UTILITY'S REPRESENTATIVE.** On or before the date services are to commence under this Agreement, the Utility shall designate an authorized representative ("Authorized Representative") to administer this Agreement.
- 3.2 COMPLIANCE WITH LAWS.** The Utility, with the technical and professional assistance of HydroCorp, shall comply with all applicable local, state, and federal laws, codes, ordinances, and regulations as they pertain to the water inspection and testing, and shall evaluate any capital improvements needed to bring the water treatment and delivery system into compliance with the aforementioned laws.
- 3.3 NOTICE OF LITIGATION.** In the event that the Utility or HydroCorp has or receives notice of or undertakes the prosecution of any actions, claims, suits, administrative proceedings, investigations or other proceedings in connection with this Agreement, the party receiving such notice or undertaking of such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.
- 3.4 FACILITY LISTING.** The Utility must provide HydroCorp a complete list of facilities to be inspected, including facility name, type of service connection, address, contact person, and phone number, (if available). *Electronic file format such as Microsoft Excel, etc. is required. An additional one-time fee to manually enter facility listing will be charged at the rate of \$80.00 per hour. Incorrect facility addresses will be returned to the Utility contact and corrected address will be requested.*
- 3.5 LETTERHEAD/LOGO.** The Utility will provide HydroCorp with an electronic file copy of the utility logo or utility letterhead and all envelopes for the mailing of all official program correspondence only. (300 dpi in either .eps, or other high quality image format for printing). HydroCorp's use of such logo or letterhead is subject to Authorized Representative's approval on all proposed correspondence.

ARTICLE IV. Term, Compensation and Changes in Scope of Services

- 4.1 TERM AND TERMINATION TERM.** Services by HydroCorp under this Agreement shall commence on (INSERT DATE) and end two- (2) years from such date, unless this Agreement is renewed or terminated as provided herein. The terms of this Agreement shall be valid only upon the execution of this Agreement within ninety (90) days of its receipt. Failure to execute this Agreement within the ninety (90) day period shall deem the proposed terms void.
- 4.2 RENEWAL.** Upon the expiration of this two-year agreement, unless either party provides written notice of termination not less than 60 days prior to the expiration of the initial term (or any such renewal term) this agreement will automatically renew in (1) year term increments. Inflationary adjustments to each renewal term will be equal to the annual Consumer Price Index as measured in the Utility's local/regional area at the time of renewal.
- 4.3 TERMINATION.** The Utility or HydroCorp may terminate this Agreement at any time and on any date in the initial and renewal terms of this Agreement, with or without any cause, by giving written notice of such intent to terminate to the other party at least thirty (30) days prior to the effective date of termination. Notice of the intent to terminate shall be given in writing by personal service, by an authorized agent, or by certified mail, return receipt requested. The Utility shall pay the balance of any outstanding accounts for work performed by HydroCorp.
- 4.4 BASE COMPENSATION.** The Utility shall pay HydroCorp as compensation ("Base Compensation") for labor, equipment, material, supplies, and utilities provided and the services performed pursuant to this Agreement, **\$2,022.75 per month, \$24,273.03 annually, for a two-year contract total of \$48,546.06.** Completed inspections shall consist of all initial inspections, re-inspections, and compliance inspections as defined in section 2.2.



- 4.5 PAYMENT OF INVOICES.** Upon presentation of invoices by HydroCorp, all payments including base and other compensation shall be due and payable on the first day of each month (due date) after the month for which services have been rendered. All such payments shall be made no later than thirty (30) days after the due date. Failure to pay shall be deemed a default under this Agreement. For any payment to HydroCorp which is not made within thirty (30) calendar days after the due date, HydroCorp, shall receive interest at one and one-half (1½) percent per month on the unpaid balance.
- 4.6 CHANGES IN SCOPE OF SERVICES.** In the event that the Utility requests and HydroCorp consents to perform additional work or services involving the consulting, management, operation, maintenance, and repair of the Utility's water delivery system where such services or work exceeds or changes the Scope of Services contemplated under this Agreement, HydroCorp shall be provided additional compensation. Within thirty (30) calendar days from the date of notice of such additional work or services, the parties shall mutually agree upon an equitable sum for additional compensation. This amount shall be added to the monthly sum effective at the time of change in scope. Changes in the Scope of Service include, but are not limited to, requests for additional service by the Utility or additional costs incurred in meeting new or changed government regulations or reporting requirements.
- 4.7 CLIENT CONFIDENTIALITY.** Disclosure of all communications between HydroCorp and the Utility regarding business practices and other methods and forms of doing business is subject to the provisions of Michigan Freedom of Information Act. HydroCorp agrees to make available for inspection and copying all records in its possession created, produced, collected, or otherwise related to this Agreement to the same extent as if the records were maintained by the Utility. HydroCorp expressly acknowledges and agrees that its obligations concerning Freedom of Information Act and compliance regarding records related to this Agreement should not be limited by copyright, license, privacy and/or confidentiality except as authorized under the Freedom of Information Act.
- 4.8 ACCESSIBILITY.** Backflow prevention device information will be completed in full only when the identifying information (i.e. data plate, brass tag, etc.) is accessible and visible from ground level or from a fixed platform/mezzanine.
- 4.9 CONFINED SPACES.** – HydroCorp personnel will not enter confined spaces.

ARTICLE V. Risk Management and General Provisions

- 5.1 INFORMATION.** Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete to the best of their knowledge, yet due to the inaccessible nature of water piping or lack of access provided by property owner/water user, complete accurate data is not always available. Cross-connection control inspection and results are documented as of a specific date. The property owner and/or water user may make modifications to the potable water system after the inspection date that may impact compliance with the program.
- 5.2 LIMITATION OF LIABILITY.** HydroCorp's liability to the Utility for any loss, damage, claim, or expense of any kind or nature caused directly or indirectly by the performance or non-performance of obligations pursuant to this Agreement shall be limited to general money damages in an amount not to exceed or within the limits of the insurance coverage provided hereunder. HydroCorp shall in no event be liable for indirect or consequential damages, including but not limited to, loss of profits, loss of revenue, or loss of facilities, based upon contract, negligence, or any other cause of action.



5.3 HYDROCORP INSURANCE. HydroCorp currently maintains the following insurance coverage's and limits:

	<u>Occurrence</u>	<u>Aggregate</u>
Comprehensive General Liability	\$1 Million	\$2 Million
Excess Umbrella Liability	\$5 Million	\$5 Million
Automobile Liability (Combined Single Limit)	\$1 Million	
Worker's Compensation/ Employer's Liability	\$1 Million	
Errors and Omissions	\$2 Million	\$2 Million

Within thirty (30) calendar days of the start of the project, HydroCorp shall furnish the Utility with satisfactory proof of such insurance, and each policy will require a 30-day notice of cancellation to be given to the Utility while this Agreement is in effect. The Utility shall be named as an additional insured according to its interest under the general liability policy during the term of this Agreement.

5.4 UTILITY INSURANCE. The Utility will maintain liability insurance on an all-risk basis and including extended coverage for matters set forth in this Agreement.

5.5 RELATIONSHIP. The relationship of HydroCorp to the Utility is that of independent contractor and not one of employment. None of the employees or agents of HydroCorp shall be considered employees of the Utility. For the purposes of all state, local, and federal laws and regulations, the Utility shall exercise primary management, and operational and financial decision-making authority.

5.6 ENTIRE AGREEMENT AMENDMENTS. This Agreement contains the entire Agreement between the Utility and HydroCorp, and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties.

5.7 HEADINGS, ATTACHMENTS, AND EXHIBITS. The heading contained in this Agreement is for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as integral parts of this Agreement.

5.8 WAIVER. The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

5.9 ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written consent of the other unless such assignment shall be to the affiliate or successor of either party.

5.10 FORCE MAJEURE. A party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of actions due to causes beyond its reasonable control such as, but not limited to, Acts of God, the acts of civil or military authority, loss of potable water sources, water system contamination, floods, quarantine restrictions, riot, strikes, commercial impossibility, fires, explosions, bombing, and all such interruptions of business, casualties, events, or circumstances reasonably beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing. In the event of any such force majeure, the party unable to perform shall promptly notify the other party of the existence of such force majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned force majeure.

5.11 AUTHORITY TO CONTRACT. Each party warrants and represents that it has authority to enter into this Agreement and to perform the obligations, including any payment obligations, under this Agreement.

5.12 GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, regardless of the fact that any of the parties hereto may be or may become a



resident of a different state or jurisdiction. Any dispute between the parties, with both parties' consent, may be settled by arbitration in accordance with the applicable rules of the American Arbitration Association, Any arbitration award or determination shall be final and binding and any court of competent jurisdiction may enter a judgment on such award which shall be enforceable in the same manner as any other judgment of the such court. Any suit or action arising shall be filed in a court of competent jurisdiction within the State of Michigan, venue by the presiding County. The parties hereby consent to the personal jurisdiction of said court within the State of Michigan.

5.13 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

5.14 NOTICES. All notices, requests, demands, payments and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight carrier, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

If to HydroCorp:

HydroCorp
c/o Mark Martin
5700 Crooks Road, Ste. 100
Troy, MI 48337
(248) 250-5005

If to Utility:

City of Brighton
c/o Joshua Bradley
200 North First Street
Brighton, MI 48116
(517) 545-0427

5.15 SEVERABILITY. Should any part of this Agreement for any reason, be declared invalid or void, such declaration will not affect the remaining portion, which will remain in full force and effect as if the Agreement has been executed with the invalid portion eliminated.

SIGNATURES

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written.

City of Brighton

By: Joshua Bradley
Title: Water Plant Superintendent

HydroCorp



Appendix

Specific Qualifications & Experience

HydroCorp™ is a professional service organization that specializes in Cross Connection Control Programs. Cross Connection Control Program Management & Training is the main core and focus of our business. We are committed to providing water utilities and local communities with a cost effective and professionally managed cross connection control program in order to assist in protecting the public water supply.

- HydroCorp conducts over 70,000 Cross Connection Control Inspections *annually*.
- HydroCorp tracks and manages over 135,000+ backflow prevention assemblies for our Municipal client base.
- Our highly trained staff works in an efficient manner in order to achieve maximum productivity and keep program costs affordable. We have a detailed **system** and **process** that each of our field inspectors follow in order to meet productivity and quality assurance goals.
- Our municipal inspection team is committed to providing outstanding customer service to the water users in each of the communities we serve. We teach and train customer service skills in addition to the technical skills since our team members act as representatives of the community that we service.
- Our municipal inspection team has attended training classes and received certification from the following recognized Cross Connection Control Programs: UF TREEO, UW-Madison, and USC – Foundation for Cross Connection Control and Hydraulic Research, American Backflow Prevention Association (ABPA), American Society for Sanitary Engineering (ASSE). HydroCorp recognizes the importance of Professional Development and Learning. We invest heavily in internal and external training with our team members to ensure that each Field Service and Administrative team member has the skills and abilities to meet the needs of our clients.
- We have a trained administrative staff to handle client needs, water user questions and answer telephone calls in a professional, timely and courtesy manner. Our administrative staff can answer most technical calls related to the cross-connection control program and have attended basic cross connection control training classes.
- HydroCorp currently serves over 370 communities in Michigan, Wisconsin, Maryland, Delaware, Virginia & Florida. We still have our first customer!
- HydroCorp and its' staff are active members in many water industry associations including: National Rural Water Association, State Rural Water Associations, National AWWA, State AWWA Groups, HydroCorp is committed to assisting these organizations by providing training classes, seminars and assistance in the area of Cross Connection Control.
- Several Fortune 500 companies have relied on HydroCorp to provide Cross Connection Control Surveys, Program Management & Reporting to assist in meeting state/local regulations as well as internal company guidelines.





City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: CONSIDER APPROVAL OF THE PURCHASE OF THE AUTOMATIC ELECTRICAL SWITCHGEAR DEVICE FOR THE THIRD STREET LIFT STATION IN AN AMOUNT NOT TO EXCEED \$13,133.50

BACKGROUND

- The original electrical switchgear for the generator at the Third Street Lift Station was installed in 1988 and is due for replacement.
- The switchgear is the device that senses when there is a DTE power outage and activates a switch that enables power to be supplied to the lift station by the standby generator instead of from DTE.
- When power returns to normal, the switch activates and switches back to its normal position to allow for DTE to power the lift station. After a short cool down period, the generator shuts off and goes back into stand-by mode.

ADMINISTRATIVE SUMMARY

- Tetra Tech worked with city staff to evaluate the electrical switchgear at the Third Street Lift Station and recommended replacing the device with an ASCO Power Technologies transfer switch.
- ASCO is a division of a larger company, Schneider Electric. ASCO designs and builds this equipment and is the sole supplier of the device.
- The electrical contractor that we work with on projects in the wastewater department also recommended this electrical switchgear manufacturer.
- Once approved to purchase, it will take 7-9 weeks for the switchgear device to be delivered.

BUDGET INFORMATION

- In the 2022/2023 Capital Improvement Budget, City Council approved \$60,000 for a new switchgear at the Wastewater Treatment Plant and \$30,000 for one at the Third Street Lift Station. This budgeted amount will be carried over the 2023/2024 fiscal year as we were unable to get it completed during the last fiscal year.
- As we have seen recently, costs for equipment have increased, and this is the case with the switchgear.
- Additionally, with the recent Wastewater Plant Evaluation, it was suggested that the replacement of the switchgear at the plant occur as part of a larger project that would include the replacement of the plant generator and power substation.
- Staff is proposing to utilize a portion of the \$60,000 budgeted for the switchgear at the WWTP to cover the costs of the engineering (see separate CMR), equipment purchase, and installation of the one at the Third Street Lift Station as the original \$30,000 budgeted is not expected to cover the total cost.

Remaining funds will stay in the Capital Improvement Fund for future projects.

RECOMMENDATION

Approval of the purchase of the Automatic Electrical Switchgear device for the Third Street lift Station from ASCO Power Technologies in an amount not to exceed \$13,133.50

Prepared by: Corey Brooks, Deputy DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget once the carryover amendment is made
- Budget Amendment Necessary and In Proper Form
- Other _____

Reviewed &
Approved by: Gretchen Gomolka, City Manager

Attachment: ASCO Power Technologies Quotation

JOB NAME & QUOTATION # Brighton City & SD-23-584596-1-1

To

Date: 6/30/2023

Corey Brooks
Brighton City
6570 Hamburg Rd.
Brighton, MI 48116

Proposa No	SD-23-584596-1-1
Reference	8869053

SUBJECT: Quotation for Brighton City

We are pleased to offer you our quotation **SD-23-584596-1-1** in response to your inquiry 8869053.

Prices are provided for ASCO Products. Quoted prices will be valid for 30 days from the date of quotation.

PRICES QUOTED ARE NOT APPLICABLE FOR WORK SUBJECT TO ANY STATE OR FEDERAL PREVAILING WAGE REQUIREMENTS. PLEASE CONTACT YOUR ASCO SALES REPRESENTATIVE IF PREVAILING WAGE APPLIES.

#1	ATS	AMPS: 0400	QTY: 1
Product	: 7000 Series Transfer Switches	Catalog Number	: J7ADTSA30400N5XL,44G
Service Voltage / Hz	: 480V/60Hz	Optional Accessories	: 44G
Bypass Isolation	: Not Applicable	Product Description	: 7000 Series, Automatic Delayed Transition Transfer Switch
No. of Switched Poles	: 3	Neutral Configuration	: Solid [A]
Withstand Rating:	: See WCR Table Below	No. of Cabinets & Lug Size	: 1, #4 AWG to 600 MCM or (2) 1/0 AWG to 250 MCM
Frame = J, Switch Rating = 0400, Series = 7000		Service	: Three Phase, 4-wire
Enclosure	: 12(L)-UL Type 12 Enclosure	Markings	:
Extended Warranty	: Not Included	Shipping to Zip Code	: 48116
Start Up Price to Zip Code	: 48116	Price	: \$ 179.50
Estimated Shipment Period:	:	Start Up Price to Zip Code	: 48116
		Incuded	
		7 - 9 Week(s) (after final approval and release to Manufacturer)	

JOB NAME & QUOTATION # Brighton City & SD-23-584596-1-1

#	ACCESSORY DESCRIPTIONS	
	Accessory Code	Description
1	44G	208-240VAC and or 440-480VAC Accessory 44 Strip heaters designed to keep humidity and or temperature within the ATS enclosure at acceptable levels. This accessory consists of a mounting bracket with strip heater, thermostat and terminal block.

Sub Total - Product Net Price (Excludes Shipping & Handling, Warranty and Start Up)	\$ 11,256.50
Shipping and Handling (Standard Ground) to Zip Code: 48116	\$ 179.50
Start up Price to zip code : 48116	\$ 1,697.50
Extended Warranty	Not Included
Estimated Shipment Period	7 - 9 Week(s) (after final approval and release to Manufacturer)
Total Net Price	\$ 13,133.50

JOB NAME & QUOTATION # Brighton City & SD-23-584596-1-1

Notes:

ASCO Power Technology reserves the right to amend, withdraw or otherwise alter this submission without penalty or charge as a result of any event beyond its control arising from or due to the current Covid-19 epidemic or events subsequent to this epidemic / pandemic including changes in laws, regulations, by laws or direction from a competent authority.

PLEASE VERIFY THE AMPERAGE, VOLTAGE AND NEUTRAL CONFIGURATION AS QUOTED ABOVE MATCHES THE SITE REQUIREMENTS. ALSO, PLEASE REFER TO THE OUTLINE DRAWING ATTACHED FOR DIMENSIONS AS WELL AS LUG / CABLE ACCOMMODATIONS. IF ANY CHANGES ARE REQUIRED A REVISED PROPOSAL WILL BE PROVIDED.

GROUND FREIGHT (FOB FACTORY) AND ONE TRIP FOR FACTORY START-UP SERVICES (24X6) ARE INCLUDED IN THIS PROPOSAL. START-UP IS CALCULATED BASED UPON THE ZIP CODE OF 48116. IF THE INSTALLATION ADDRESS IS IN A DIFFERENT ZIP CODE, THE COST FOR START-UP SERVICES MAY NEED TO BE REQUESTED. THE INSTALLATION ADDRESS IS TO BE CONFIRMED AT THE TIME OF ORDER ENTRY IF STARTUP SERVICES ARE REQUIRED.

INSTALLATION AND WIRING IS NOT INCLUDED AND IS BY OTHERS. CUSTOMER HAS ADVISED THAT ANY WORK DETAILED HEREIN IS NOT SUBJECT TO PREVAILING WAGE RATES.

PLEASE REFER TO PROPOSAL #SD-23-584596-1-1 / REFERENCE #8869053 ON YOUR PURCHASE ORDER

Schneider Electric believes in enforcing strong, safe working practices and in protecting our Field Service Representatives. We schedule our Field Service Representatives in accordance with our Human Factors Policy, which can be provided upon request.

Attached ASCO Terms and Conditions of Sale apply. ASCO Power and Services TCs Rev May 2022.pdf.

This quotation does not include applicable sales tax. If tax exempt, please provide a copy of your tax exemption certificate. Otherwise sales tax will be added.

This quotation supersedes any other discussions on quotations you may have received from ASCO pertaining to subject Brighton City.

We thank you for the opportunity to work with you on this project. Should you require any additional information, please feel free to contact us.

Best Regards,

Austin Orme
Account Representative
Austin.Orme@se.com
Tel No : (513) 859-9179

Disclaimers

1. This proposal is based on information supplied to ASCO which may or may not have been correct or complete. The customer is responsible for reviewing this proposal for compliance with the complete and final drawings and specifications.
2. Shipping & Handling charges are estimates only. Actual charges may vary based on final shipment to address of item.
3. ASCO Power remains committed to supplying our customers. In doing so, ASCO Power operates strictly within the law applicable to our activities anywhere in the world. As such, we are monitoring the situation in Ukraine closely and adhering to all applicable sanctions and laws. Please see the updated Export Control Obligations in Section 17 of our attached Terms and Conditions of Sale.

**ASCO UL1008 Withstand and Closing Ratings ^{1,2,7}
(RMS Symmetrical Amps)**

Frame	Switch Rating (Amps)		300, 4000 & 7000 Series				4000 & 7000 Series				7000 Series																	
			Current Limiting Fuses				Specific Breaker			Time Based			Short Time Ratings ³ (sec)															
	Transfer Switches	Bypass Switches	480V Max.	600V Max.	Max Size, A	Class	240V Max.	480V Max.	600V Max.	Time (sec)	240V Max.	480V Max.	600V Max.	480V Max.		600V Max.												
														.13	.2	.3	.5	.1	.13	.3	.5							
D	30	-	100kA	-	300	J	22kA	22kA	10kA	0.025	10kA	10kA	10kA	-				-										
			200kA	35kA	200	J																						
			35kA	35kA	200	RK1																						
D	70, 100	-	35kA	35kA	200	RK1	150kA	85kA	25kA	0.025	10kA	10kA	10kA	-				-										
			200kA	35kA	200	J																						
D	150	-	35kA	35kA	200	RK1	150kA	85kA	25kA	0.025	10kA	10kA	10kA	-				-										
			200kA	35kA	200	J																						
D	200	-	200kA	35kA	200	J	200kA	85kA	14kA	0.025	10kA	10kA	10kA	-				-										
			35kA	35kA	200	RK1																						
D	230	-	100kA	-	300	J	200kA	85kA	14kA	0.025	10kA	10kA	-	-				-										
E	260, 400	-	200kA	-	600	J	65kA	42kA	22kA	0.05	35kA	35kA	22kA	-				-										
J	150, 200, 260	150, 200, 230, 260	200kA	200kA	600	J	200kA	200kA	42kA	0.05	65kA	42kA ⁵	35kA	7.5kA	-		-		-									
					800	L																						
J	400	400	200kA	200kA	600	J	65kA	50kA	42kA	0.05	65kA	42kA ⁵	35kA	7.5kA	-		-		-									
					800	L																						
J	600	600	200kA	200kA	800	L	65kA	85kA	42kA	0.05	65kA	42kA ⁵	35kA	7.5kA ⁹	-		-		-									
			200kA	200kA	600	J																						
H ⁸	600	600	200kA	200kA	1600	L	65kA	150kA	65kA	0.05	50kA	50kA	50kA	36kA		-		36kA		-								
P ⁸	600	600	200kA	200kA	1600	L	65kA	150kA	65kA	0.05	50kA	50kA	50kA	36kA		30kA		36kA		-								
P ⁸	800	800 - 1200	200kA	200kA	1600	L	65kA	150kA	65kA	0.05	50kA	50kA	50kA	36kA		30kA		36kA		-								
H	800 - 1200	800 - 1200	200kA	200kA	1600 ⁴	L	65kA	150kA	65kA	0.05	50kA	50kA	50kA	36kA		-		36kA		-								
Q ⁸	600-1600	600-1600	200kA	200kA	2000	L	65kA	65kA	65kA	0.05	65kA	65kA	65kA	50kA				50kA										
S ⁸	800 - 1200	800 - 1200	200kA	200kA	2500	L	100kA	100kA	65kA	0.05	100kA	100kA	65kA	65kA				65kA										
G ⁸	1000 - 1200	1000 - 1200	200kA	200kA	2000	L	85kA	85kA	85kA	0.05	85kA	85kA	85kA	-				-										
G	1600 - 2000 (Front Connected TS Only)		200kA	200kA	2500	L	85kA	85kA	85kA	0.05	85kA	85kA	85kA	42kA		36kA		-										
G ⁸	1600 - 2000	1600 - 2000	200kA	200kA	3000	L	200kA	200kA	100kA	0.05	100kA	100kA	100kA	42kA		36kA		42kA		-								
S ⁸	1600 - 2000	1600 - 2000	200kA	200kA	2500	L	100kA	100kA	85kA	0.05	100kA	100kA	85kA	85kA		65kA		85kA		65kA								
G	2600 - 3000	2600 - 3000	200kA	200kA	4000	L	125kA ⁶	125kA ⁶	100kA	0.05	100kA	100kA	100kA	42kA		36kA		42kA		-								
G ⁸	3200	-	200kA	-	4000	L	100kA	100kA	-	0.05	100kA	100kA	-	-				-										
G	4000	4000	200kA	200kA	5000	L	100kA	100kA	100kA	0.05	100kA	100kA	100kA	85kA		65kA		65kA										
U ⁸	2600 - 4000	2600 - 4000	200kA	200kA	5000	L	125kA	125kA	125kA	0.05	125kA	125kA	125kA	100kA				100kA										

- Notes:
- 1) All WCR values indicated are tested in accordance with the requirements of UL 1008, 7th Edition. See ASCO Pub. 1128 for more WCR information
 - 2) Application requirements may permit higher WCR for certain switch sizes.
 - 3) Short Time ratings are provided for applications involving circuit breakers that utilize trip delay settings for system selective coordination
 - 4) Max fuse rating is 1200A on front connected H frame switches
 - 5) Switches utilizing overlapping neutral (code "C") have 35kA, 0.050 Sec time based rating at 480V Max
 - 6) Rating shown is for Bypass switches only, Transfer Switch rating is 100kA
 - 7) See ASCO for Service Entrance Switch ratings
 - 8) These frames are only available on the 7000 Series product
 - 9) Short Time Rating applies to 600A Bypass switch only, the 600A Transfer Switch does not have a Short Time Rating

ASCO Power Technologies, L.P. and ASCO Power Services, Inc. Standard Terms and Conditions of Sale

1. Contract Terms. These Standard Terms and Conditions of Sale ("Conditions of Sale") shall apply to any purchase or procurement of Products or Services by the legal entity procuring such Products or Services ("Purchaser") from the legal entity (ASCO Power Technologies, L.P. or ASCO Power Services, Inc.) that provided the proposal or is selling the Products and Services ("Seller"). To the extent that there is a conflict between these Conditions of Sale and a valid signed master agreement between the Purchaser and Seller, the specific conflicting terms of the master agreement shall prevail. To the extent that there is a conflict between these Conditions of Sale and another set of Seller terms and conditions issued to the Purchaser as part of the proposal or quotation process, the specific conflicting terms of the proposal or quotation document shall prevail. Any other variation from these Conditions of Sale shall require the signed consent of an authorized Seller representative and these terms and conditions supersede any prior or contemporaneous agreements or correspondence between the parties except as provided above. Seller's acceptance of Purchaser's purchase order is expressly conditional on Purchaser's assent to all of Seller's Conditions of Sale, and Purchaser specifically acknowledges and agrees that any purchase order issued by Purchaser shall operate only to establish payment authority for Purchaser's internal accounting purposes. Any such purchase order issued by Purchaser shall not be considered as a counteroffer, addition, amendment, modification or other revision these Conditions of Sale, and any terms or conditions contained in Purchaser's purchase order shall be of no force and effect. Purchaser's acceptance of the Products or Services will manifest Purchaser's assent to these Conditions of Sale.

2. Prices. Unless otherwise stated in an applicable quotation or proposal from Seller, the price quoted or specified by Seller for the Products or Services shall remain in effect for thirty (30) days after the date of Seller's quotation provided Seller receives and accepts from Purchaser a purchase order and an unconditional release to manufacture the Product and/or perform the Services within such time period. If such purchase order and release is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Products and/or Services to Seller's price for the Products and/or Services then in effect at the time of shipment of the Product and/or performance of the Services. All clerical errors are subject to correction. Services Terms: Additional charges will be billed to Purchaser at Seller's then prevailing labor rates for any of the following: (a) any Services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; (b) any Services performed at times other than Seller's normal service hours; (c) if timely and reasonable site and/or equipment access is denied the Seller service representative; (d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller Service personnel will provide supervision only and the cost of such union or contract labor will be charged to Purchaser; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Purchaser's failure to comply with its obligations herein; or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry, or technical training. Seller is under no obligation to remove or dispose of parts or equipment unless specifically agreed upon in Seller's scope of work. Seller removed parts become the property of Seller. Purchaser shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Services are being provided to Purchaser and for a period of one (1) year after the last provision of Services.

3. Taxes. Unless otherwise set out in Seller's proposal or quotation, prices do not include taxes, duties or any other governmental levies, all of which are payable by Purchaser. Except as may be otherwise provided in the relevant Purchase Order, the price excludes all present or future sales taxes, revenue or excise taxes, value-added taxes, import and export duties and any other taxes, surcharges or duties now existing or hereafter imposed by governmental authorities upon equipment and/or services quoted by Seller. The Purchaser shall be responsible for all such taxes, duties and charges resulting from these Conditions of Sale or any associated purchase. Seller is required to impose taxes on orders and shall invoice the Purchaser for such taxes and/or fees according to applicable law, statutes, or regulations, unless Purchaser furnishes the Seller at the time of order with a properly completed exemption certificate(s) acceptable to the authorities imposing the tax or fees. Any changes in foreign exchange rates, sales taxes, customs tariffs or other taxes shall be chargeable to the Purchaser.

4. Terms of Payment. Terms are net 30 days from date of invoice. Late payments will be subject to interest charges at the rate of two percent (2%) per month. If at Purchaser's request, shipments are delayed beyond the scheduled date, payments for the Products and Services completed to date will be invoiced to the Purchaser, as a percentage of the total Purchase Order price when Seller was originally prepared to ship. Products held for the Purchaser shall be at the risk and expense of the Purchaser. If shipment of Products and/or completion of Services is delayed more than 30 days after originally scheduled delivery date and not caused solely by Seller, Seller reserves the right to ship all Products to the Purchaser who will accept responsibility for Products including payment. Failure to pay any applicable payment on its due date shall automatically cause all installment amounts to become payable and in addition to Seller's other lawful remedies, Seller reserves the right to suspend or cancel the PO. If Purchaser fails to pay Seller for the Products and Services, Seller reserves the right to file in its sole discretion any liens, charges, security interests, or similar encumbrances against the applicable property, building, land, or Products and Services and Purchaser consents to such filings and registrations. Purchaser shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts.

5. Delivery and Schedule. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed.

6. Risk of loss. Unless otherwise specifically agreed by the Parties, the Products are delivered FCA Seller's shipping point (Incoterms 2010) with Purchaser responsible for all official export formalities, authorizations, risks and expenses as may be applicable for export from the country of shipment, and title and risk of loss or damage shall pass to the Purchaser upon collection of the Products by the first carrier at Seller's premises, plants or warehouses. Delivery of Products by Seller will be deemed to be made to the Purchaser upon obtaining a signed receipt from the carrier showing receipt of the Products in good order.

7. Substitutions. Seller may furnish suitable substitutes for Products unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, provided such substitutions do not adversely affect the technical soundness of the Products. Seller assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the Products.

8. Shortage. Claims for shortages or errors must be submitted to Seller within 30 days after invoice date, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Purchaser.

9. Installments. Seller reserves the right to make shipments in installments, unless otherwise expressly stipulated in a specific Purchase Order; and all such installments when separately invoiced shall be paid for when due per invoice without regard to subsequent shipments. Delay in shipment of any installment shall not relieve Purchaser of its obligation to accept remaining shipments.

10. Force Majeure. Seller will be excused from and not be liable for any non-performance of a Purchase Order if such delay or non-performance is due to any cause beyond the reasonable control of Seller, or which Seller could not reasonably foresee or reasonably provide against, and which prevents Seller from carrying out the terms of the Purchase Order. This includes but is not limited to the following: war, revolution, insurrection or hostilities (whether declared or not), riot, economic upheaval, civil commotion or uprising, flood, earthquake, tempest, hurricane, lightning or other natural disaster; fire or explosion; strike, lockout or other industrial disturbance whether at Seller or one of its suppliers; sabotage, accident, embargo, car shortage, wrecks or delays in transportation, non-delivery of materials or order or action of government authority. Any delay resulting from such cause shall extend the date of delivery accordingly. Seller reserves the right to cancel a Purchase Order, if in its opinion such circumstances threaten or cause extended delay in the performance thereof.

11. Standard Warranty. Seller warrants: (a) Products manufactured by Seller under its own brands and supplied by Seller as part of the Purchase Order, are subject to Seller's standard warranty that is applicable to the specific product at the time of purchase, and its terms, conditions and limitations are incorporated by reference herein (a "Standard Warranty"). (b) Services performed by Seller's personnel as part of the Purchase Order, if any, will be

performed by qualified personnel with care, skill and diligence, in accordance with the applicable generally accepted standards recognized by the industry, and shall be free from faulty workmanship for a period of thirty (30) days from completion of the Services. For Services that include a Modification, the warranty for such Modification shall be one (1) year from the date of shipment of such by Seller. A "Modification" is integrating new controls and/or switchgear components into existing switchgear or upgrading an automatic transfer switch with new components or accessories. Exclusive Warranty Remedies: In the event of any warranty covered defects or deficiencies in Products in subsections (a) above, or Services in subs. (b) above, the sole and exclusive obligation of Seller shall be to re-perform the Services, or repair or replace the defective Products or part of the Products, at Seller's sole discretion. Such warranty coverage is contingent on Purchaser providing prompt notification to Seller once such defect or deficiency is reasonably apparent to Purchaser. Exclusions & Limitations: This warranty shall not apply (a) to Products not manufactured by Seller, (b) Services not provided directly by Seller, (c) to Products or Services that has been repaired or altered by anyone other than Seller so as, in Seller's judgment, affects the same adversely, (d) Seller's conformance with Buyer's design of the Products or Software; or (e) to Products or Services that appear to be subjected to negligence, accident, or damage by circumstances beyond Seller's control, or improper any non-Seller operation, maintenance or storage, or to other than normal use or service. Unless specifically covered in a Standard Warranty, the foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, temporary power, or any other expenses that may be incurred in connection with repair or replacement. THESE WARRANTIES, CONDITIONS, AND EXCLUSIONS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED, TO IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS MAY BE PROVIDED IN WRITING BY SELLER, SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER THAN AS STATED ABOVE WITH REGARD TO PRODUCTS AND SERVICES SOLD BY SELLER TO PURCHASER. Non-Seller Products or Services: With respect to Products not manufactured by Seller, or Services provided by non-Seller providers, the warranty obligations of Seller shall in all respects conform and be limited to the warranty actually extended to Seller by such non-Seller supplier.

12. Return of Products. No Products may be returned without first obtaining Seller's written permission and a returned material identification tag. Returned Products must be of current manufacture, in the original packaging, unused, undamaged and in saleable condition. Returned Products must be securely packed to reach Seller without damage and labeled with the return authorization number. For any returns, Seller will be pay the carrier and deduct the freight charges from the credit unless if returns result from Seller error, freight charges will be paid by Seller. Any cost incurred by Seller to put Products in first class condition will be charged to the Purchaser. Returns must originate from the original Purchaser account number. Returns will be credited at the original price paid as indicated on the invoice or Purchase Order associated to the Products being returned as provided by the Purchaser. If no invoice number or Purchase Order number is provided, then credit will be issued based on the into stock price in effect 12 months prior to date of return authorization and will also have an additional 25% processing fee applied. Seller Products, which are listed in the current product list as returnable and which are accepted for credit, not involving a Seller error, shall be assessed a restocking fee of 25% of the invoice price.

13. Intellectual Property. Seller retains ownership of all right, title and interest (including copyright and patent rights) in and to the intellectual property relating to Products and Services and work product relating to thereto, including, but not limited to, documentation, prints, and drawings. Nothing in these Conditions of Sale constitutes a transfer or conveyance of any right, title or interest in such intellectual property, including without limitation any software or firmware contained in those, except the limited right to use it as provided in the documentation. As to Products proposed and furnished by Seller, Seller shall defend any suit or proceeding brought against Purchaser so far as based on a claim that such Products constitute an infringement of any copyright, trademark or patent in the United States or Canada. This obligation shall be effective only if Purchaser shall have made all payments then due hereunder and if Seller is notified promptly in writing and given authority, information, and assistance at Seller's expense for the defense of the same. In the event the use of such Products by Purchaser is enjoined in such a suit, Seller shall, at its expense, and at its sole option, either (a) procure for the Purchaser the right to continue using such Products, (b) modify such Products to render them non-infringing, or (c) replace such Products with non-infringing Products. Seller will not be responsible for any compromise or settlement made without its written consent. The foregoing states the entire liability of Seller for patent, trademark or copyright infringement, and in no event shall Seller be liable if any infringement charge is based on the use of Seller Products for a purpose other than that for which it was sold by Seller. As to any Products or Services furnished by Seller to Purchaser and manufactured or provided in accordance with designs proposed by Purchaser, the Purchaser shall indemnify Seller against any award made against Seller for patent, trademark, or copyright infringements.

14. Software. Any software or computer information, in whatever form that is provided with Products manufactured by Seller or as part of Services, is licensed to Purchaser solely pursuant to standard licenses of Seller or its supplier of such software or computer information which licenses are hereby incorporated by reference and are available upon request. Seller does not warrant that such software or computer information will operate error-free or without interruption, and warrants only that during the warranty period applicable to the Products that the software will perform its essential functions. If such software or computer information fails to conform to such warranty, Seller will, at its option, provide an update to correct the non-conformance or replace the software or computer information with the latest available version containing a correction. Seller shall have no other obligation to provide updates or revisions.

15. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF PRODUCT, LOSS OF REVENUE, PROFITS OR LOSS OF DATA DAMAGES WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF SELLER FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY THE PURCHASER TO SELLER FOR THE PRODUCTS AND/OR SERVICES GIVING RISE TO A CLAIM. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF PURCHASER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE.

16. Insurance. Seller shall maintain reasonable insurance coverage (e.g., commercial general liability, worker's compensation, automobile) in such amounts as Seller deems appropriate in accordance with industry practice. Certificate of insurance evidencing this may be provided on request.

17. Import and Export. Purchaser (i) acknowledges and agrees that Products are subject to U.S., EU and other export control laws, and remain subject to such controls following delivery, and may not exported, re-exported or transferred (in-country) to any other territory, end-use or end-user except as authorized by U.S., EU laws and regulations, in addition to the export control laws of any other applicable jurisdiction; (ii) represents, warrants and covenants that it shall not directly or indirectly take any action to engage in or facilitate the export, re-export or transfer (in-country) of these items, any part thereof, or to the extent applicable any direct product thereof, without the required authorization under U.S., EU and other applicable laws to any of the following: (a) any territory subject to Embargoes and Other Special Controls under EU or U.S. Export Administration Regulations (including as of the date hereof, Russia, Belarus, Crimea and other Covered Regions of Ukraine including Donetsk and Luhansk, Cuba, Iran, Syria, and North Korea); (b) any other country or territory to which such export or re-export is restricted or prohibited under EU, U.S. laws and, to the extent applicable, the laws of any other jurisdiction; (c) any individual or entity that is (x) included on any lists of sanctioned individuals or entities maintained by the United Nations, the United Kingdom, the United States, or the European Union, and any other relevant jurisdiction including but not limited to the following lists: the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, the Sectoral Sanctions Identifications List, the Non-SDN Communist Chinese Military-Industrial Complex Companies List, any other lists administered by OFAC, as amended from time to time; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the consolidated list of Persons, Groups and Entities Subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy; and similar lists of

restricted parties maintained by other relevant governmental authorities; (y) any person owned or controlled by, or acting on behalf of, any of the foregoing; or (z) any other person who is the target of sanctions and export control restrictions; or (d) any military end-use or military end-user (including army, navy, marine, air force, coast guard, national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses), any proliferation related end-use, or any other prohibited end-use under EU, U.S. and other applicable export control laws; and (iii) represents, warrants and covenants that it shall maintain reasonable compliance policies, procedures and controls designed to ensure compliance with the laws, regulations and undertakings set forth above, and shall not otherwise undertake any action that violates or would cause the Seller to violate EU, U.S. export control laws or the export control laws of any other applicable jurisdiction. Purchaser shall promptly (and any event within two business days) notify the Seller upon obtaining knowledge or reason to know that any of the representations, warranties and covenants above may no longer be accurate in relation to any item received from Seller.

18. Health and Safety; Compliance. Seller employees shall not perform Services that, in their sole opinion, are not free of reasonably foreseeable harm. This includes working on any equipment, whether provided by Seller, Purchaser or otherwise, that in such Seller employees' sole opinion has not been placed in an electrically safe working condition. Purchaser warrants that site and working conditions shall meet or exceed those specified by applicable Occupational Health and Safety Act and Regulations. Purchaser shall inform Seller of: (a) Known hazards, or reasonably foreseeable hazards, that are related to Seller's scope of Services and the site where the Services will be performed; and (b) Information about the worksite necessary to identify hazards and assess risk for the protection of the health and safety of Seller personnel. This information might include, but is not limited to: (i) Providing an accurate up-to-date single line diagram of the electrical distribution system; (ii) Providing relevant Workplace Hazardous Materials Information System (WHMIS) information such as Material Safety Data Sheets (MSDS) and floor plans indicating areas where hazardous materials are located and emergency exits for service rooms and other areas of operation; and (iii) Other site specific information relative to the Purchaser's operation, process and safety systems. Any hazardous materials requiring remediation in Seller's sole opinion will be separately chargeable to Purchaser and will be a condition precedent to Seller's performance of such Services. If the Purchaser has concerns related to ethics, compliance or ASCO Power/Schneider Electric's Principles of Responsibility, and/or any potential violations of these policies, Purchaser is welcome to make use of Schneider Electric's GreenLine. The GreenLine is Schneider Electric's global helpline for external stakeholders. It is a confidential channel through which Purchasers can ask questions and raise concerns. Reports can be made using the following link: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>

19. Witness of Tests & Factory Inspections. Normal production schedules do not provide the opportunity for Purchaser to witness routine factory tests on Products or make factory inspections. Witnessing of tests or factory inspections by the Purchaser may result in delays of production for which Seller will not be responsible and which may result in additional charges and delayed scheduling to Purchaser. Witness testing and factory inspections must be requested at time of quotation, are subject to additional costs and must be confirmed at Purchase Order entry. Standard Seller factory testing and inspection will apply. Seller will notify Purchaser fourteen (14) calendar days prior to scheduled witness testing or inspection. In the event Purchaser is unable to attend, the Parties may mutually agree on a rescheduled date. However, Seller, at its sole option, may consider the witness tests or inspection waived, and ship and invoice the Products and the witness testing charges. Purchaser will be responsible for paying for all scheduled witness testing, whether or not Purchaser attends.

20. Patterns and Tools. Notice will be given if special patterns or tools are required to complete any Purchase Order. Charges for such patterns or tools do not convey title thereto or the right to remove them from Seller's plant. If patterns or tools are not used for a period of two years, Seller shall have the right to scrap them without notice.

21. Nuclear Applications. Unless otherwise agreed in writing by a duly authorized representative of Seller, Products sold hereunder are not intended for use in or in connection with any nuclear facility or activity. Purchaser hereby represents and warrants that such Products shall not be used in or in connection with any nuclear facility or activity. If so used, Seller disclaims all liability for any damage, injury or contamination; and Purchaser agrees and indemnifies Seller against any such liability, whether arising as a result of breach of contract, warranty or tort (including negligence) or otherwise.

22. Nature of Relationship. Purchaser agrees that Seller is an independent contractor and nothing in these Conditions of Sale creates between Seller and Purchaser a relationship of partners, joint venturers, or agents of each other, and no Party may so represent itself any of these manners.

23. Termination. Any Purchase Order may be terminated by the Purchaser only upon 30 days' notice to Seller and upon payment of reasonable and proper termination charges based on the price of the terminated Purchase Order and reimbursement of all costs and expenses associated with the order caused by such termination and shall include a reasonable profit. Special or custom ordered Products is not cancelable after final acceptance or approval of drawings for the commencement of manufacturing.

24. Cancellation. Seller shall have the right to cancel any Purchase Order at any time by written notice for any material breach of these Conditions of Sale by the Purchaser, including material delays by Purchaser or its authorized representatives in releasing Products for manufacture or approval drawings and excessive changes to specifications or drawings.

25. Amendments. No amendment, supplement, modification, waiver or termination of the Purchase Order or these Conditions of Sale is binding unless executed in writing by both parties.

26. Applicable Laws. All matters arising out of or relating to the execution, construction, interpretation or breach thereof, are to be governed by the laws of the state of New Jersey, excluding (i) such jurisdiction's rules regarding conflicts of laws, and (ii) the provisions of the *United Nations Convention on Contracts for the International Sale of Goods*. Seller agrees to bring any action claims or legal proceedings in any way pertaining to this Purchase Order, or the execution, construction, interpretation or breach thereof in the courts of the jurisdiction specified above and in no other court or tribunal whatsoever. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued.

27. Indemnity. Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: (i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; (ii) given all reasonable information and assistance by the other party; (iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

DISCLAIMER: The Purchaser acknowledges that the products or part thereof are produced in, or otherwise sourced from, or will be installed areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Seller's (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by the Seller (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Seller's (or its subcontractors') employees. The Purchaser therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing the Seller to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: **CONSIDER APPROVAL OF A TETRA TECH PROPOSAL FOR ENGINEERING SERVICES FOR THE REPLACEMENT OF THE AUTOMATIC ELECTRICAL SWITCHGEAR AT THE THIRD STREET LIFT STATION IN AN AMOUNT NOT TO EXCEED \$11,000.00**

BACKGROUND

- With the electrical needs of the Third Street Lift Station being of high importance, having dependable power for its operation is a necessity. The lift station is a collection point of over a million gallons of effluent per day, the generator and its components, like the switch gear, help maintain consistent operation and reduce the chances of overflow at the station and the collection system. Having experienced occasions when DTE power was unavailable, making sure the system is correctly sized and constructed is paramount to reducing issues for our customers. The switchgear at the Third Street lift station is 35 years old and many advancements have taken place in the electrical field. It is prudent for our engineer to review shop drawings and provide recommendations for our equipment with our electrician will be necessary for the project's completion.

ADMINISTRATIVE SUMMARY

- Recently city staff met with Tetra Tech staff at the Third Street Lift Station to discuss the replacement of the station's electrical switchgear and requested a proposal for engineering services to design for the removal and installation of a new one. The proposal also includes Tetra Tech to act as the city's representative and monitor the installation of the equipment during the project. As part of the design, a system will need to be put in place to allow city staff to use one of our 100KW portable generators to power the station on a short-term basis during the project.
- Tetra Tech recommend a switchgear device for the city to purchase and if the contract is awarded will supply drawings that can be utilized by the electrical contractor who will be performing the installation.
- Once the switchgear device has been acquired, we will schedule its installation which should take approximately a week to ten days to complete.

BUDGET INFORMATION

- In the Fiscal Year 2022/2023 Capital Improvement Budget, City Council approved \$60,000 for a new switchgear at the Wastewater Treatment Plant and \$30,000 for one at the Third Street Lift Station. With cost increases that we have experienced in the last few years, the need to use both budgeted amounts for the Third Street Lift station is necessary. While the \$30,000 budgeted for Third Street will allow for the cost of the engineering and the switchgear itself, the electrical installation may require more than the \$5,866.50 that remains. Utilizing a portion of the additional \$60,000 that was budgeted for the treatment plant will cover those costs. Once the Third Street switch gear is complete, staff will revisit the Wastewater Plant switch gear project. The project was not completed in 2022/2023 so the budget will be carried forward to the 2023/2024 budget.

RECOMMENDATION

Approval the Tetra Tech proposal for engineering services for the replacement of the automatic electrical switchgear at the Third Street lift Station in an amount not to exceed \$11,000.00 and authorize the City Manager to execute the agreement

Prepared by: Corey Brooks, Deputy DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget after carry forward amendment
- Budget Amendment Necessary and In Proper Form
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: Tetra Tech Proposal



July 14, 2023

Mr. Marcel Goch
Department of Public Services Director
City of Brighton
200 North First Street
Brighton, MI 48116

**Re: Third Street Sanitary Pump Station Switchgear Upgrades
Professional Services Proposal**

Dear Mr. Goch:

Pursuant to our recent discussion, Tetra Tech is pleased to present this letter proposal to prepare the electrical distribution upgrades for the Third Street sanitary pump station. This facility is immediately east of the existing police station, south of Main Street and adjacent to Ore Creek. Last month, our staff met on site with City staff to identify key upgrade requirements to prepare a scope of work.

The project includes the replacement of the Automatic Transfer Switch (ATS) and maintaining the ability for a portable generator to be connected to the system. The issues presented in the on-site meeting will be addressed in our design of the improvements. We will prepare an opinion of cost for City review and further discussion.

We propose the following scope of services for this important improvement to the Third Street Pump Station. Our scope is based on the site visit with Mr. Corey Brooks earlier this year, and discussions to replace while maintaining operation:

- Design installation of an ATS and manual transfer switch (MTS). Replacement ATS will be mounted in same location as existing. MTS will be located on west wall where existing generator plug is located.
- Design interconnecting power conduit/wire between ATS and MTS to allow for maintaining operation during replacement along with ability to power system via portable generator if permanent unit were to fail.

PROJECT APPROACH

Our proposed approach includes the following:

Engineering Design

- Prepare sketches for City electrician to install ATS, manual transfer switch, and interconnecting conduit/wire.
- Prepare an Opinion of Probable Construction Cost for City review.
- Address comments and questions through one (1) review cycle.
- Finalize electrical drawing for City electrical contractor coordination.

Tetra Tech

7927 Nemco Way, Suite 100, Brighton, MI 48116
Tel 810.220.2112 Fax 810.220.0094 www.tetrattech.com

Construction Phase Scope of Work (As-Needed, Time and Materials Only at City's Request)

- Act as Owner's representative during the construction of the improvements.
- Organize and attend a preconstruction meeting with the City's electrician to discuss the project schedule, budget, and execution of the work.
- Make visits to the site at intervals appropriate to the various stages of construction to observe, as an experienced and qualified professional, the progress of the executed work of Contractor. Since all of the work is visible after installation, the RPR services will be provided on a part-time basis. Our proposal anticipates an equivalent 20 working days on-site construction period. Our proposal assumes an average of 1/2 day per week of the construction period for time on site. (Total budgeted field observation time: 12 hours)
- Review shop drawings, samples, the results of tests and inspections, and other data which the Contractor is required to submit, for conformance with the design concept of the Project. Discuss with Owner submittals that are critical to the progress of the work for approval of recommendations and material used for the construction
- Consult with Owner and City electrician for necessary interpretations and clarifications of the sketches and in connection therewith, prepare change orders as required and act as initial interpreter of the requirements of the project and judge of the acceptability of the work thereunder.
- Prepare applications for payment and recommend payments to Contractor.
- Upon notification from City electrician that the entire Work is complete, Engineer will make a final inspection with Owner and City electrician to determine if the work has been completed in accordance with the sketches prepared. Upon review of Contractor application for final payment, Engineer may recommend, in writing, final payment to the Contractor and may provide written notice to Owner and the Contractor that the work is acceptable.
- Prepare for Owner record drawings showing those changes made during the construction process based on the marked-up prints, drawings, tracings, and other data furnished by Contractor and Engineer.

ASSUMPTIONS

The following assumptions include:

- No sanitary sewer permit application through the State of Michigan is required for this assignment.
- Sketches will be prepared for City's use to request a quotation from a licensed electrical contractor, retained by City staff.
- Bidding is not included in this Scope of Services.
- Application and issuance of electrical permits will be the responsibility of the contractor.

PROJECT SCHEDULE

We can begin immediately upon authorization to proceed from the City. We anticipate a project start date of August 18, 2023. We propose the following schedule, but contractor performance and equipment supply chain conditions may impact the schedule:

Engineering Design
Construction/Installation
Project Completion

August 18, 2023 – December 31, 2023
To be coordinated with City staff.
December 2023

Tetra Tech will work with City staff as necessary to adjust the proposed project schedule to meet the requirements for this project.

Mr. Marcel Goch
Third Street Pump Station Switchgear Upgrades
Professional Services Proposal
July 14, 2023
Page 3

COMPENSATION

Compensation for our personnel directly engaged in the work of this proposal will be based on our hourly billable rates plus in-house reimbursable expenses. We propose the following not-to-exceed budget for the above-mentioned scope of work.

Engineering Design	\$7,500
Bidding Services	N/A
Construction Services (As-Needed Services Only Upon City's Request)	\$3,500
TOTAL	\$11,000

If you concur with our proposal, please sign in the space provided below and return one original signed copy of this proposal to indicate your authorization to proceed. The agreement for this project is comprised of this proposal and the attached Tetra Tech Standard Terms and Conditions.

We appreciate the opportunity to provide continued service for the City of Brighton. Please call if you have any questions or would like to discuss any details of this proposal further.

Sincerely,



Steven J. Magnan, P.E.
Senior Project Manager

Copy: Gretchen Golmolka, City Manager

Attachment: Tetra Tech Standard Terms and Conditions

Proposal Accepted by City of Brighton:

By: _____

Title: _____

Date: _____

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Client.

Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no other warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability (E&O) - \$5,000,000 each claim and in the aggregate

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards,

they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all known potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. To the extent permitted by law, the Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Neither party shall be liable for any damages caused by any delay that is beyond the reasonable control of either party, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, reasonable attorney fees, costs, and disbursements may be recovered only as permitted by law.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

August 17, 2023

SUBJECT: CONSIDER AWARDING BID FOR RETURN ACTIVATED SLUDGE (RAS) PUMP #1 REBUILD TO TITUS WELDING COMPANY, INC. IN AN AMOUNT NOT TO EXCEED \$184,810

BACKGROUND

- The #1 Return Activated Sludge (RAS) Pump was installed in 1988 as part of the construction of the Wastewater Treatment Plant. This pump is an internal lift pump that “lifts” the return activated sludge that flows from the bottom of Secondary Clarifier #1 to a higher chamber where it can then flow by gravity to Oxidation Ditch #1.
- The RAS Pump is one of the pieces of equipment at the Wastewater Plant that operates 24 hours a day, 7 days a week except for about eight hours per year when an oil change and other maintenance is performed.
- With RAS Pump #1 removed for service, adjustments will be made so that the RAS Pump #2 can pump the return flow from both Secondary Clarifiers #1 and #2.

ADMINISTRATIVE SUMMARY

- On June 23, 2023, an Invitation to Bid (ITB) was published on the Michigan Intergovernmental Trade Network (MITN) website using documents approved by the City Attorney. On June 28, 2023, a pre bid meeting was held at the Wastewater Treatment Plant. Two contractors attended the meeting while another arranged to look at the pump separately on July 6, 2023.
- Sealed bids were opened on July 26th, 2023, and two bids were received. See bid results below.

Return Activated Sludge (RAS) Pump #1 Rebuild					
#ITB-WW-23-02					
	RAS Pump Rebuild	Upper Bearing Assembly	Upper Bearing Roller Assembly	Machining and Remanufacturing of Bearing Assembly	TOTAL
Titus Welding Company Inc.	\$122,310	\$40,000	\$19,500	\$3,000	\$184,810.00
The Progress Group, Inc.	\$114,915	\$59,335	\$50,253	\$84,461	\$308,964.00

- Titus Welding Company Inc. was the low bidder.
- The Progress Group, Inc. had lower pricing for the RAS Pump Rebuild portion of the bid, but they were much higher in the other pricing segments, making their overall price much higher than the bid from Titus Welding Company, Inc.
- Titus Welding Company was part of the original installation of this pump in 1988 and rebuilt it approximately ten years ago. They have also rebuilt two other pumps for the city with excellent results.

BUDGET INFORMATION

City Council approved \$200,000 in the 2023/2024 Fiscal Year CIP Budget for the purpose of rebuilding this pump.

RECOMMENDATION

Award bid for the Return Activated Sludge (RAS) Pump #1 Rebuild to Titus Welding Company, Inc. In an amount not to exceed \$184,810 and authorize the DPS Director to send a Notice to Proceed.

Prepared by: Corey Brooks, Deputy DPS Director

Reviewed by: Marcel Goch, DPS Director

Elizabeth Gaines, Finance Director

- Within Budget
- 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

August 17, 2023

SUBJECT: CONSIDER APPROVAL OF TETRA TECH ENGINEERING SERVICES RETAINER AGREEMENT FOR ENGINEERING SERVICES FROM JULY 1, 2023, THROUGH JUNE 30, 2024, IN THE AMOUNT OF \$15,840

ADMINISTRATIVE SUMMARY

- Over the past several years the City has asked Tetra Tech Engineering Services to provide a proposal for unexpected engineering needs that were not covered under a current engineering contract to be covered under a retainer. As the City's engineer of record, Tetra Tech provides services for site plan reviews, coordination meetings, utility service requests, or preparing cost opinions for infrastructure projects for budgeting purposes and those get charged against the monthly retainer.
- Each fiscal year staff brings a new agreement to Council for approval, but after reviewing the past year's hourly usage, the city requested to change how the contract was structured. In the past, the city was billed for eight hours of service per month at an agreed upon rate. Additional hours needed would be charged at that same rate. If the previous month's eight hours were not used, the full retainer cost would still be charged and the unused hours would not carry forward. While there are times when additional hours are needed, there were months when hours were not used, and were lost.
- After reviewing the last several years' usage, a new retainer agreement was agreed upon which outlines paying up front for 96 hours (average of 8 hours per month) and using these hours before being charged for additional hours. Due to the economy, a change was expected in the hourly rate and after discussions with the City Manager, Tetra Tech has agreed to a lower percentage increase than originally proposed. Last year's hourly rate was \$160, and with the 3.1 percent increase, the new rate will be \$165 per hour. Should the original 96 hours be used up before the end of the year, additional service hours would be invoiced at Tetra Tech's current rate schedule, which has been provided within the proposal. With the number of projects that the city has had and will continue to have, Staff is requiring more engineering proposals instead of using the engineering retainer. This makes it easier to budget projects and utilizes the retainer as intended for one-off issues rather than larger projects. As the year progresses, staff will work with Tetra Tech to monitor the stored retainer hours to keep them close to the contract amount.
- The terms and conditions of the Agreement were previously reviewed and approved by the City's General Counsel. There are no changes to terms or conditions in this retainer.

RECOMMENDATION

Approve Tetra Tech Engineering Services Retainer Agreement for engineering services from July 1, 2023, through June 30, 2024, in the amount of \$15,840 and authorize the City Manager to execute the agreement.

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

Attachment: Tetra Tech Proposal



July 22, 2023

Ms. Gretchen Golmolka, City Manager
City of Brighton
200 North First Street
Brighton, MI 48116

Re: Retainer Services July 2023 to June 2024 Period

Dear Ms. Golmolka:

For a number of years, we have provided general engineering services to the City through our retainer agreement. This arrangement has provided the City with a discounted rate for a set number of service hours per month to assist City staff in daily tasks where engineering input is requested. Our current retainer contract with the City expires on June 30, 2023. It is our understanding the City would like to extend the term of this agreement to the end of June 2024. Unlike prior years, for the upcoming City of Brighton fiscal year, we propose hourly rates based on an established hourly rate for a fixed total number of hours within the city's fiscal year. Expended hours beyond the total number of established budgetary hours would be billed at Tetra Tech's staff hourly billable rate schedule (attached). Tetra Tech will perform services, and manage targeted monthly budgets based on the information described below.

BUDGET AMOUNT FOR RETAINER SERVICES

For the referenced period of service, we propose an annual retainer service fee of \$15,840, which will target an average of \$1,320 per month.

BILLING PROCESS and COORDINATION

Invoices will be generated based on an hourly billable rate of \$165.0 per hour for a total of 96 hours for Tetra Tech staff. Reporting of hours will be included in the monthly invoicing and project communications will detail services performed through each monthly billing cycle. As an example, if no hours are used within a given billing cycle, no invoice will be submitted. Services performed during each monthly billing cycle will be invoiced at the hourly rate (above) of our staff until the specified total number of hours (96 hrs) have been expended. Subsequent hours that exceed 96 hours shall be billed on an hourly, time and materials basis using actual Tetra Tech staff billing rates.

Throughout the duration of services performed under this Agreement, Tetra Tech's Project Manager will coordinate with the City DPS Director to determine if a separate assignment is warranted to address

additional work that would otherwise accelerate depletion of the retainer services budget. Sub-consulting services will not be performed under the Agreement derived from this proposal.

Scope of work performed through retainer services include, but are not limited to, attendance at City Council meetings, Traffic Safety Advisory Board meetings, specialty consulting services such as electrical, structural, mechanical, architectural, or SCADA communications systems for existing facilities that may require limited effort by our representative team member(s). In the Spring of 2024, our Project Manager will review budgetary funds that may remain and provide an update Status Communication Report for the Director’s review. Services performed after the base budget of \$15,840 is expended would be based on Tetra Tech’s hourly billable rate of each respective Tetra Tech staff member.

RETAINER SERVICES TIMELINE

Engineering services for retainer services would commence on July 1, 2023, and expire on the 30th day of June 2024. This agreement shall continue to be enforced thereafter monthly until a written sixty (60) day notice of termination or an acceptable renewal is received by the Engineer. Our standard terms and conditions are attached and considered a part of this proposal.

If this proposal is acceptable, please sign in the space provided below and return a copy to our office.

We appreciate the opportunity to provide continuing professional services to the City of Brighton.

Sincerely,



Steven J. Magnan, P.E.
Senior Project Manager

cc: Marcel Goch, DPS Director

Attachment: Tetra Tech 2023 Hourly Rates Schedule
Tetra Tech Standard Terms and Conditions

PROPOSAL ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Client.

Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no other warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability (E&O) - \$5,000,000 each claim and in the aggregate

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards,

they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all known potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. To the extent permitted by law, the Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Neither party shall be liable for any damages caused by any delay that is beyond the reasonable control of either party, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, reasonable attorney fees, costs, and disbursements may be recovered only as permitted by law.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

Last Name	First Name	2023 Bill Rate *	Job Title	Billing Title
Albert	Darryl	145.00	GIS.GIS Analyst VII.	Sr GIS Application Developer
Barber	John	175.00	Eng.Civil Engineer VI.	Sr Engineer 1
Bickley	Ana	155.00	Eng.Transportation Engineer IV.	Project Engineer 1
Blackman	Donald	100.00	Eng.Transportation Engineer II.	Engineer 2
Bode	Brent	220.00	Eng.Proj Mgr II Civil S.	Project Manager 2
Boehmke	Brett	150.00	Eng.Structural Engineer III.	Engineer 3
Buchholz	Scott	265.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Burkett	Jason	240.00	Eng.Management IV.	Sr Engineer 1
Butterfield	Arvin	110.00	Survey.Survey Party Chief.	Survey Crew Chief
Byrne	Shelby	130.00	Eng.Environmental Engineer III.	Engineer 3
Cece	Trevor	115.00	Construction.Construction Tech III.	Construction Project Rep 2
Charville	David	265.00	Eng.Management V.	Sr Engineer 2
Christian	Daniel	265.00	Eng.Management V.	Sr Engineer 2
Christian	Patricia	110.00	Admin.Project Assistant IV.	Project Administrator
Coats	Andrew	210.00	Eng.Management III.	Project Engineer 2
Coleman	Christopher	275.00	Eng.Management VI.	Sr Engineer 2
Cooperwasser	Victor	240.00	Eng.Proj Mgr Sr Civil PM.	Sr Project Manager
Covington	James	120.00	Eng.Transportation Engineer III.	Engineer 3
Daavettila	Robert	275.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Daukss	Peteris	275.00	Eng.Management V.	Sr Engineer 2
Dombrowski	Theodore	190.00	Eng.Transportation Engineer V.	Project Engineer 2
Escutia-Guzman	David	115.00	Construction.Construction Tech IV.	Construction Project Rep 2
Ewer	Ashley	135.00	Eng.Transportation Engineer III.	Engineer 3
Fisher	Eric	130.00	Survey.Survey Party Chief.	Survey Crew Chief
Flak	Alan	210.00	Eng.Transportation Engineer V.	Project Engineer 2
Folk	Matthew	80.00	Construction.Construction Tech II.	Technician 1
Friend	Benjamin	95.00	Survey.Surveyor III.	Survey Tech III
Gotha	Steven	150.00	Cadd.Cadd Manager.	Sr CAD Designer 2
Grupido	Dan	220.00	Construction.Construction Manager.	Construction Manager 1
Heise	Andrew	130.00	Construction.Construction Manager.	Construction Manager 1
Hill	Brandon	110.00	Survey.Survey Technician III.	Survey Tech 2
Hoeffner	Ella	110.00	Eng.Environmental Engineer I.	Engineer 2
Holbrook	Molly	80.00	Construction.Construction Tech III.	Construction Project Rep 2
Hollenbeck	Todd	145.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
Hopkins	Melissa	140.00	Eng.Environmental Engineer IV.	Engineer 4
Horney	David	110.00	Sci.Environmental Scientist V.	Sr Scientist 2
Johnston	Jeffrey	135.00	Eng.Mechanical Engineer III.	Engineer 3
Jones	Gene	245.00	Eng.Electrical Engineer VI.	Sr Engineer 1
Jones	Michael	255.00	Eng.Proj Mgr Sr Electrical PM.	Sr Project Manager
Kammerer	Adam	120.00	Construction.Construction Tech V.	Sr Constr Project Rep 1
Kangas	Robert	170.00	Prof.Engineering Prof V.	Sr Eng Designer 2
Knight	Shawn	125.00	Construction.Construction Tech Spvsr I.	Sr Construction Project Rep 1
Lehto	Kyle	100.00	Eng.Civil Engineer II.	Engineer 2
Lingo	Andrew	140.00	Eng.Transportation Engineer IV.	Project Engineer 1
Lozen	Stephen	195.00	IT.Programmer Analyst IV.	Sr Sys Analyst / Programmer 1
Magnan	Steven	185.00	Eng.Proj Mgr I Civil PM.	Sr. Project Manager
Markstrom	Gary	275.00	Eng.Proj Mgr Sr Civil S.	Sr Project Manager
Maxwell	Erin	195.00	IT.Programmer Analyst IV.	Sr Sys Analyst / Programmer 1
Mazurek	Kenneth	225.00	Eng.Proj Mgr II Transport S.	Project Manager 2
Melling	Vickie	105.00	Cadd.Cadd Designer III.	CAD Technician 3
Michailuk	Alexander	95.00	Construction.Construction Tech III.	Construction Project Rep 2
Nault	Jayson	275.00	Management.Oper Management VI.	Program Manager
Nolta	Michael	110.00	Admin.Admin Support III.	Project Administrator

Last Name	First Name	2023 Bill Rate *	Job Title	Billing Title
Olsen	Michael	210.00	Eng.Proj Mgr I Civil S.	Project Manager 1
Paison	William	250.00	Eng.Management IV.	Sr Engineer 1
Pietila	Kirk	275.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Ramaker	Kyle	220.00	Eng.Proj Mgr I Transportation PM.	Project Manager 1
Reinhard	Robert	250.00	Eng.Management IV.	Sr Engineer 1
Reschke	Steven	240.00	Eng.Proj Mgr Sr Transport PM.	Sr Project Manager
Ritter	Thomas	100.00	Eng.Transportation Engineer II.	Engineer 2
Roberts	Lauryn	115.00	Eng.Environmental Engineer I.	Engineer 2
Rubel	Brian	275.00	Management.Oper Management VI.	Program Manager
Shank	Jason	115.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Sidorski	Beverly	150.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
Sissoko	Moussa	210.00	Eng.Structural Engineer VI.	Project Engineer 2
Snable	Madison	125.00	Eng.Electrical Engineer I.	Engineer 1
Sopoliga	Joseph	170.00	Eng.Transportation Engineer V.	Project Engineer 2
Spencer	Jeanine	80.00	Admin.Administrative Assistant II.	Project Assistant 2
Strassburg	Russ	265.00	Eng.Electrical Engineer VI.	Sr Engineer 1
Teitsma	Marc	200.00	Eng.Proj Mgr II Civil PM.	Project Manager 2
Tripp	Austin	95.00	Survey.Survey Technician III.	Survey Tech 2
Troppman	Jenna	125.00	Eng.Environmental Engineer IV.	Project Engineer 1
Turney	William	110.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Voss	Amanda	80.00	Admin.Administrative Assistant II.	Project Assistant 2
Voss	Justin	230.00	Eng.Management II.	Project Engineer 1
Warren	Daniel	160.00	Eng.Environmental Engineer V.	Project Engineer 2
Watt	Robert	105.00	Eng.Environmental Engineer I.	Engineer 1
Weiss	David	120.00	Construction.Construction Tech V.	Sr Constr Project Rep 1
Weston	Cynthia	105.00	Admin.Administrative Assistant IV.	Project Administrator
Whitehead	Benjamin	220.00	Eng.Civil Engineer VI.	Project Manager 1
White	Kahmari	120.00	Construction.Construction Tech IV.	Sr Constr Project Rep 1
Yoerg	Frederick	200.00	Survey.Survey Manager.	Sr Land Surveyor
Biagi	James	240.00	Arch.Proj Mgr II Architect S.	Architectural Program Manager
Bushaw	Richard	140.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
D'Agnolo	Alysha	150.00	Eng.Proj Mgr I Mechanical PM.	Project Manager 1
Dykman	Avery	105.00	Eng.Environmental Engineer I.	Engineer 1
Galante	David	175.00	Arch.Architect V.	Architect 2
Graf	Mitchell	230.00	Eng.Proj Mgr II Mechanical PM.	Project Manager 2
Hoover	Joseph	160.00	Eng.Electrical Engineer IV.	Project Engineer 1
Hourigan	Tricia	130.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Hunsucker	Jason	165.00	Arch.Architect III.	Architectural Designer 3
Jozwik	Kari	175.00	Eng.Civil Engineer V.	Project Engineer 2
Kositz	Kyle	165.00	Eng.Proj Mgr I Engineer PM.	Sr Constr Project Rep
Moser	Joan	100.00	Admin.Project Assistant IV.	Project Administrator
Turbett	Andy	220.00	Arch.Proj Mgr II Architect PM.	Project Manager 2
Zalubas	Grace	115.00	Eng.Structural Engineer I.	Engineer 1



July 22, 2023

Ms. Gretchen Golmolka, City Manager
City of Brighton
200 North First Street
Brighton, MI 48116

Re: Retainer Services July 2023 to June 2024 Period

Dear Ms. Golmolka:

For a number of years, we have provided general engineering services to the City through our retainer agreement. This arrangement has provided the City with a discounted rate for a set number of service hours per month to assist City staff in daily tasks where engineering input is requested. Our current retainer contract with the City expires on June 30, 2023. It is our understanding the City would like to extend the term of this agreement to the end of June 2024. Unlike prior years, for the upcoming City of Brighton fiscal year, we propose hourly rates based on an established hourly rate for a fixed total number of hours within the city's fiscal year. Expended hours beyond the total number of established budgetary hours would be billed at Tetra Tech's staff hourly billable rate schedule (attached). Tetra Tech will perform services, and manage targeted monthly budgets based on the information described below.

BUDGET AMOUNT FOR RETAINER SERVICES

For the referenced period of service, we propose an annual retainer service fee of \$15,840, which will target an average of \$1,320 per month.

BILLING PROCESS and COORDINATION

Invoices will be generated based on an hourly billable rate of \$165.0 per hour for a total of 96 hours for Tetra Tech staff. Reporting of hours will be included in the monthly invoicing and project communications will detail services performed through each monthly billing cycle. As an example, if no hours are used within a given billing cycle, no invoice will be submitted. Services performed during each monthly billing cycle will be invoiced at the hourly rate (above) of our staff until the specified total number of hours (96 hrs) have been expended. Subsequent hours that exceed 96 hours shall be billed on an hourly, time and materials basis using actual Tetra Tech staff billing rates.

Throughout the duration of services performed under this Agreement, Tetra Tech's Project Manager will coordinate with the City DPS Director to determine if a separate assignment is warranted to address

additional work that would otherwise accelerate depletion of the retainer services budget. Sub-consulting services will not be performed under the Agreement derived from this proposal.

Scope of work performed through retainer services include, but are not limited to, attendance at City Council meetings, Traffic Safety Advisory Board meetings, specialty consulting services such as electrical, structural, mechanical, architectural, or SCADA communications systems for existing facilities that may require limited effort by our representative team member(s). In the Spring of 2024, our Project Manager will review budgetary funds that may remain and provide an update Status Communication Report for the Director’s review. Services performed after the base budget of \$15,840 is expended would be based on Tetra Tech’s hourly billable rate of each respective Tetra Tech staff member.

RETAINER SERVICES TIMELINE

Engineering services for retainer services would commence on July 1, 2023, and expire on the 30th day of June 2024. This agreement shall continue to be enforced thereafter monthly until a written sixty (60) day notice of termination or an acceptable renewal is received by the Engineer. Our standard terms and conditions are attached and considered a part of this proposal.

If this proposal is acceptable, please sign in the space provided below and return a copy to our office.

We appreciate the opportunity to provide continuing professional services to the City of Brighton.

Sincerely,



Steven J. Magnan, P.E.
Senior Project Manager

cc: Marcel Goch, DPS Director

Attachment: Tetra Tech 2023 Hourly Rates Schedule
Tetra Tech Standard Terms and Conditions

PROPOSAL ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____

Last Name	First Name	2023 Bill Rate *	Job Title	Billing Title
Albert	Darryl	145.00	GIS.GIS Analyst VII.	Sr GIS Application Developer
Barber	John	175.00	Eng.Civil Engineer VI.	Sr Engineer 1
Bickley	Ana	155.00	Eng.Transportation Engineer IV.	Project Engineer 1
Blackman	Donald	100.00	Eng.Transportation Engineer II.	Engineer 2
Bode	Brent	220.00	Eng.Proj Mgr II Civil S.	Project Manager 2
Boehmke	Brett	150.00	Eng.Structural Engineer III.	Engineer 3
Buchholz	Scott	265.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Burkett	Jason	240.00	Eng.Management IV.	Sr Engineer 1
Butterfield	Arvin	110.00	Survey.Survey Party Chief.	Survey Crew Chief
Byrne	Shelby	130.00	Eng.Environmental Engineer III.	Engineer 3
Cece	Trevor	115.00	Construction.Construction Tech III.	Construction Project Rep 2
Charville	David	265.00	Eng.Management V.	Sr Engineer 2
Christian	Daniel	265.00	Eng.Management V.	Sr Engineer 2
Christian	Patricia	110.00	Admin.Project Assistant IV.	Project Administrator
Coats	Andrew	210.00	Eng.Management III.	Project Engineer 2
Coleman	Christopher	275.00	Eng.Management VI.	Sr Engineer 2
Cooperwasser	Victor	240.00	Eng.Proj Mgr Sr Civil PM.	Sr Project Manager
Covington	James	120.00	Eng.Transportation Engineer III.	Engineer 3
Daavettila	Robert	275.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Daukss	Peteris	275.00	Eng.Management V.	Sr Engineer 2
Dombrowski	Theodore	190.00	Eng.Transportation Engineer V.	Project Engineer 2
Escutia-Guzman	David	115.00	Construction.Construction Tech IV.	Construction Project Rep 2
Ewer	Ashley	135.00	Eng.Transportation Engineer III.	Engineer 3
Fisher	Eric	130.00	Survey.Survey Party Chief.	Survey Crew Chief
Flak	Alan	210.00	Eng.Transportation Engineer V.	Project Engineer 2
Folk	Matthew	80.00	Construction.Construction Tech II.	Technician 1
Friend	Benjamin	95.00	Survey.Surveyor III.	Survey Tech III
Gotha	Steven	150.00	Cadd.Cadd Manager.	Sr CAD Designer 2
Grupido	Dan	220.00	Construction.Construction Manager.	Construction Manager 1
Heise	Andrew	130.00	Construction.Construction Manager.	Construction Manager 1
Hill	Brandon	110.00	Survey.Survey Technician III.	Survey Tech 2
Hoeffner	Ella	110.00	Eng.Environmental Engineer I.	Engineer 2
Holbrook	Molly	80.00	Construction.Construction Tech III.	Construction Project Rep 2
Hollenbeck	Todd	145.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
Hopkins	Melissa	140.00	Eng.Environmental Engineer IV.	Engineer 4
Horney	David	110.00	Sci.Environmental Scientist V.	Sr Scientist 2
Johnston	Jeffrey	135.00	Eng.Mechanical Engineer III.	Engineer 3
Jones	Gene	245.00	Eng.Electrical Engineer VI.	Sr Engineer 1
Jones	Michael	255.00	Eng.Proj Mgr Sr Electrical PM.	Sr Project Manager
Kammerer	Adam	120.00	Construction.Construction Tech V.	Sr Constr Project Rep 1
Kangas	Robert	170.00	Prof.Engineering Prof V.	Sr Eng Designer 2
Knight	Shawn	125.00	Construction.Construction Tech Spvsr I.	Sr Construction Project Rep 1
Lehto	Kyle	100.00	Eng.Civil Engineer II.	Engineer 2
Lingo	Andrew	140.00	Eng.Transportation Engineer IV.	Project Engineer 1
Lozen	Stephen	195.00	IT.Programmer Analyst IV.	Sr Sys Analyst / Programmer 1
Magnan	Steven	185.00	Eng.Proj Mgr I Civil PM.	Sr. Project Manager
Markstrom	Gary	275.00	Eng.Proj Mgr Sr Civil S.	Sr Project Manager
Maxwell	Erin	195.00	IT.Programmer Analyst IV.	Sr Sys Analyst / Programmer 1
Mazurek	Kenneth	225.00	Eng.Proj Mgr II Transport S.	Project Manager 2
Melling	Vickie	105.00	Cadd.Cadd Designer III.	CAD Technician 3
Michailuk	Alexander	95.00	Construction.Construction Tech III.	Construction Project Rep 2
Nault	Jayson	275.00	Management.Oper Management VI.	Program Manager
Nolta	Michael	110.00	Admin.Admin Support III.	Project Administrator

Last Name	First Name	2023 Bill Rate *	Job Title	Billing Title
Olsen	Michael	210.00	Eng.Proj Mgr I Civil S.	Project Manager 1
Paison	William	250.00	Eng.Management IV.	Sr Engineer 1
Pietila	Kirk	275.00	Eng.Proj Mgr Sr Transport S.	Sr Project Manager
Ramaker	Kyle	220.00	Eng.Proj Mgr I Transportation PM.	Project Manager 1
Reinhard	Robert	250.00	Eng.Management IV.	Sr Engineer 1
Reschke	Steven	240.00	Eng.Proj Mgr Sr Transport PM.	Sr Project Manager
Ritter	Thomas	100.00	Eng.Transportation Engineer II.	Engineer 2
Roberts	Lauryn	115.00	Eng.Environmental Engineer I.	Engineer 2
Rubel	Brian	275.00	Management.Oper Management VI.	Program Manager
Shank	Jason	115.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Sidorski	Beverly	150.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
Sissoko	Moussa	210.00	Eng.Structural Engineer VI.	Project Engineer 2
Snable	Madison	125.00	Eng.Electrical Engineer I.	Engineer 1
Sopoliga	Joseph	170.00	Eng.Transportation Engineer V.	Project Engineer 2
Spencer	Jeanine	80.00	Admin.Administrative Assistant II.	Project Assistant 2
Strassburg	Russ	265.00	Eng.Electrical Engineer VI.	Sr Engineer 1
Teitsma	Marc	200.00	Eng.Proj Mgr II Civil PM.	Project Manager 2
Tripp	Austin	95.00	Survey.Survey Technician III.	Survey Tech 2
Troppman	Jenna	125.00	Eng.Environmental Engineer IV.	Project Engineer 1
Turney	William	110.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Voss	Amanda	80.00	Admin.Administrative Assistant II.	Project Assistant 2
Voss	Justin	230.00	Eng.Management II.	Project Engineer 1
Warren	Daniel	160.00	Eng.Environmental Engineer V.	Project Engineer 2
Watt	Robert	105.00	Eng.Environmental Engineer I.	Engineer 1
Weiss	David	120.00	Construction.Construction Tech V.	Sr Constr Project Rep 1
Weston	Cynthia	105.00	Admin.Administrative Assistant IV.	Project Administrator
Whitehead	Benjamin	220.00	Eng.Civil Engineer VI.	Project Manager 1
White	Kahmari	120.00	Construction.Construction Tech IV.	Sr Constr Project Rep 1
Yoerg	Frederick	200.00	Survey.Survey Manager.	Sr Land Surveyor
Biagi	James	240.00	Arch.Proj Mgr II Architect S.	Architectural Program Manager
Bushaw	Richard	140.00	Cadd.Cadd Designer VI.	Sr CAD Designer 1
D'Agnolo	Alysha	150.00	Eng.Proj Mgr I Mechanical PM.	Project Manager 1
Dykman	Avery	105.00	Eng.Environmental Engineer I.	Engineer 1
Galante	David	175.00	Arch.Architect V.	Architect 2
Graf	Mitchell	230.00	Eng.Proj Mgr II Mechanical PM.	Project Manager 2
Hoover	Joseph	160.00	Eng.Electrical Engineer IV.	Project Engineer 1
Hourigan	Tricia	130.00	Cadd.Cadd Designer V.	Sr CAD Designer 1
Hunsucker	Jason	165.00	Arch.Architect III.	Architectural Designer 3
Jozwik	Kari	175.00	Eng.Civil Engineer V.	Project Engineer 2
Kositz	Kyle	165.00	Eng.Proj Mgr I Engineer PM.	Sr Constr Project Rep
Moser	Joan	100.00	Admin.Project Assistant IV.	Project Administrator
Turbett	Andy	220.00	Arch.Proj Mgr II Architect PM.	Project Manager 2
Zalubas	Grace	115.00	Eng.Structural Engineer I.	Engineer 1

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Client.

Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no other warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability (E&O) - \$5,000,000 each claim and in the aggregate

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards,

they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all known potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. To the extent permitted by law, the Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Neither party shall be liable for any damages caused by any delay that is beyond the reasonable control of either party, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, reasonable attorney fees, costs, and disbursements may be recovered only as permitted by law.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.



July 22, 2023

Ms. Gretchen Golmolka, City Manager
City of Brighton
200 North First Street
Brighton, MI 48116

Re: Retainer Services July 2023 to June 2024 Period

Dear Ms. Golmolka:

For a number of years, we have provided general engineering services to the City through our retainer agreement. This arrangement has provided the City with a discounted rate for a set number of service hours per month to assist City staff in daily tasks where engineering input is requested. Our current retainer contract with the City expires on June 30, 2023. It is our understanding the City would like to extend the term of this agreement to the end of June 2024. Unlike prior years, for the upcoming City of Brighton fiscal year, we propose hourly rates based on an established hourly rate for a fixed total number of hours within the city's fiscal year. Expended hours beyond the total number of established budgetary hours would be billed at Tetra Tech's staff hourly billable rate schedule (attached). Tetra Tech will perform services, and manage targeted monthly budgets based on the information described below.

BUDGET AMOUNT FOR RETAINER SERVICES

For the referenced period of service, we propose an annual retainer service fee of \$15,840, which will target an average of \$1,320 per month.

BILLING PROCESS and COORDINATION

Invoices will be generated based on an hourly billable rate of \$165.0 per hour for a total of 96 hours for Tetra Tech staff. Reporting of hours will be included in the monthly invoicing and project communications will detail services performed through each monthly billing cycle. As an example, if no hours are used within a given billing cycle, no invoice will be submitted. Services performed during each monthly billing cycle will be invoiced at the hourly rate (above) of our staff until the specified total number of hours (96 hrs) have been expended. Subsequent hours that exceed 96 hours shall be billed on an hourly, time and materials basis using actual Tetra Tech staff billing rates.

Throughout the duration of services performed under this Agreement, Tetra Tech's Project Manager will coordinate with the City DPS Director to determine if a separate assignment is warranted to address

Tetra Tech

3497 Coolidge Road, East Lansing, MI 48823
Tel 517.316.3930 Fax 517.484.8140 www.tetrattech.com

additional work that would otherwise accelerate depletion of the retainer services budget. Sub-consulting services will not be performed under the Agreement derived from this proposal.

Scope of work performed through retainer services include, but are not limited to, attendance at City Council meetings, Traffic Safety Advisory Board meetings, specialty consulting services such as electrical, structural, mechanical, architectural, or SCADA communications systems for existing facilities that may require limited effort by our representative team member(s). In the Spring of 2024, our Project Manager will review budgetary funds that may remain and provide an update Status Communication Report for the Director's review. Services performed after the base budget of \$15,840 is expended would be based on Tetra Tech's hourly billable rate of each respective Tetra Tech staff member.

RETAINER SERVICES TIMELINE

Engineering services for retainer services would commence on July 1, 2023, and expire on the 30th day of June 2024. This agreement shall continue to be enforced thereafter monthly until a written sixty (60) day notice of termination or an acceptable renewal is received by the Engineer. Our standard terms and conditions are attached and considered a part of this proposal.

If this proposal is acceptable, please sign in the space provided below and return a copy to our office.

We appreciate the opportunity to provide continuing professional services to the City of Brighton.

Sincerely,



Steven J. Magnan, P.E.
Senior Project Manager

cc: Marcel Goch, DPS Director

Attachment: Tetra Tech 2023 Hourly Rates Schedule
Tetra Tech Standard Terms and Conditions

PROPOSAL ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

AUGUST 17, 2023

SUBJECT: CONSIDER APPROVAL OF APPOINTMENT TO THE PLANNING COMMISSION

ADMINISTRATIVE SUMMARY

- The Planning Commission consists of nine members. The city has a current vacancy and received one applicant by the due date. The applicant, James Johnston, has not served on this commission in the past and is seeking the vacancy left by Mike Schutz. Please see the application and resume attached.

Prepared by: Gretchen Gomolka, City Manager

Attachments: Application
Resume



APPLICATION FOR APPOINTMENT CITY BOARD OR COMMISSION

Applicant:

Name: James R. Johnston Email: (a) [REDACTED]

Address: 946 Oak Ridge Circle, Brighton, MI 481 Phone: (a) [REDACTED]

Attached Resume Yes: No: Registered Voter in the City of Brighton Yes: No:

In debt to the City of Brighton Yes: No:

Board/Commission: Please check all that you would be willing to serve (see attached descriptions):

- Board of Review
- Brighton Arts & Culture Commission
- Downtown Development Authority
- Election Commission
- Planning Commission
- Zoning Board of Appeals

Years as City Resident: 12

Identify any potential conflicts (relatives that work for the City, financial agreements with City, etc.):
No.

Why would you like to be on the Board(s)/Commission(s) you have selected (attach pages, if needed)?
See Attached.

Experiences that are relevant to request: See Attached.

I hereby certify that I do not have any outstanding debts with the City of Brighton and all the statements made in this application are true, complete, and correct, to the best of my knowledge and belief and are made in good faith.

Signature: [Handwritten Signature] Date: 6.29.2023
Please only submit this page.

For Office Use Only	
Received By: _____	Date: _____

Why would you like to be on the City of Brighton Planning Commission?

I have lived in Brighton for over 10 years now and lived in Livingston County for a collective 20 plus years. My family's home is within the City of Brighton, and I work in the Brighton & Howell area. I care deeply about this community and wish to assist our appointed officials in the thoughtful and conscientious improvement of such a great city.

Having spent over 10 years in finance industry as a commercial banker. I know the importance of solid development proposals, as well as how crucial it is that a project be properly vetted to ensure it is in alignment with the overall city vision. Having worked with developers that have executed their development projects seamlessly, and then those that have not, I have a great appreciation and desire to be a part of our planning commission process. I have high regard for collective bodies that objectively review and recommend planning recommendations, as this is ultimately what assists in the long-term success of any community.

Being a part of the City of Brighton Planning Commission would allow me to give back to a community I love and have benefited from. I view it as a responsibility to use my skills to assist our governing bodies in a capacity that improves the economic development and quality of life that we all want for Brighton.

Experiences that are relevant to request:

- Over 10 years in commercial banking and 15 years of experience in financial consulting.
 - I am currently an Officer and Vice President of a local community bank.
- Was Chairperson for the Livingston County Community Investments Council, which functions as stewards of Livingston County's local donors to the various not-for-profit organizations in our community.
 - Required leadership, planning, and delegation of a committee of 12 plus members.
 - Responsible for regularly reviewing organization plans, as well as monitoring that objectives were met.
- Current Vice President of the Board of Livingston County United Way
- Regularly work in committees and as a team with groups to accomplish a common goal.
- Have functioned in leadership roles in many other local organizations, as well as volunteered in many community related functions.

James R. Johnston

946 Oak Ridge Cir. Brighton, MI 48116 (a)

Key Skills

*Sales/Business Development ~ Lead Generation/Conversion ~ Management ~ Client Base Development
Closing ~ Effective Negotiation ~ Strong Customer Service*

CAREER HIGHLIGHTS

- National Achiever
- Consistently increase bottom-line profits
- Nationally recognized in multiple positions for excellence
- Trainer

PROFESSIONAL EXPERIENCE

BANK OF ANN ARBOR

Commercial Lender, Vice President - Southeast Michigan December 2021 - Present

- **Manage** a business banking portfolio that exceeds over \$45 million in loans and \$15 million in deposits.
- On track to close approximately \$18+ million dollars in loans for 2022

FIRST NATIONAL BANK IN HOWELL

Commercial Lender, Vice President - Southeast Michigan November 2018 - November 2021

- **Grew** commercial portfolio from \$7 million in loans to over \$35 million prior to Bank of Ann Arbor's acquisition of the bank.
- With a team of four other individuals, **developed** Payment Protection Plan internal processes for booking, documenting and forgiving loans.
- **Planned and coordinated** Bank's joint marketing and prospecting efforts between commercial and retail divisions on a quarterly basis.

JPMORGAN CHASE & Co.

Relationship Manager - Greater Lansing Area, MI April 2012 - Present

- Left bank ranked **#1 for Mid-West Community Markets** in production and overall customer satisfaction.
- **Manage** a business banking portfolio that exceeds over \$40 million in deposits, \$35 million in loans.
- **Provide support** to eight branches and their staff on knowledge of business, finance, banking, and credit solutions to identify solutions that best serve the client.
- **Train & supervise thirteen bankers** on proper profiling of clientele for effective lead generation, as well as to ensure protection of the firm by following sound risk management protocols and adhering to regulatory requirements.
- **Assess credit worthiness** of clientele through analysis of business contracts, tax documents, quarterly financials, and business models.
- **Develop and manage** a disciplined marketing process by identifying steps/strategies necessary to effectively maintain and build relationships with clients and prospects. Regularly review processes and strategies with supervisor, making adjustments as needed.

Small Business Specialist - Ann Arbor, MI Region January 2011 - March 2012

- **Ranked "National Achiever"** within the **top three percent** of 23,000 bankers nationwide for 2012.
- **Improved revenue** for bank on overall deposit balances made by business customers by **20%** in 2011.

- **Analyze** customers' financial situation, along with their profitability for the bank, and then present and sell appropriate investments, merchant services, commercial banking products, and lending solutions to **deepen relationship and increase profit margins.**
- Two time national "**Most Valuable Person**" award winner for sharing and implementing proven successful sales techniques.
- **Proactively manage** and **network** existing business clientele book to **identify needs** and gain referrals necessary for acquiring new business.

REYNOLDS & REYNOLDS COMPANY

Sales Specialist – Integrated Document Solutions – *Kentucky Area* June 2010 - January 2011

- **Consistently exceed quota** through sales of key focus products, promotional items, apparel, LAW compliance forms, and market branding solutions.
- Developed trusting relationships with my top ten grossing dealerships, resulting in an **18% increase in sales over my predecessor.**
- **Awarded national recognition** for developing a new marketing plan for this year's key focus advertising product.

Sales Specialist – Integrated Document Solutions – *New England Area* August 2007 - May 2010

This was a temporary challenge assignment and in 11 months I was able to accomplish the following:

- **Consistently achieved over 100% quota**, securing **first-place ranking** within my region.
- **Rescued seven top-grossing sales accounts** from converting over to competitor, and signed these accounts onto contracts that **ensured exclusivity as vendor.**
- Submitted proposal that **resolved high employee turnover and customer service issues within region** (reduced geography needing to be travelled by sales representative, which resulted in more customer attention and focused sales opportunities).
- **Successfully trained a new sales associate** for one of the newly split territories.

SPORTS FAN MARKETING, INC. – *Travel Nationally*

November 2006 – August 2007

Retail Manager – Special Events Sales

- Consistently ranked as **top sales performer** throughout employment.
- **Managed** and set appropriate individual performance goals for employees to meet or exceed company standards.

EDUCATION

Bachelor of Arts in Sociology, Michigan State University, East Lansing, 2001

TRAINING / LICENSES / CERTIFICATIONS

- **Series 6** Investment License, 2011
- **Series 63** Investment License, 2011
- **Life & Annuities** Insurance License, 2011