



Brighton City Council Meeting

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

September 21, 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 September 7, 2023](#)

Correspondence

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

Discussion

10. Consider Entering into Closed Session to Receive a Written Attorney-Client Privileged Communication Pursuant to section 8(1)(h) of the Open Meetings Act, MCL 15.268(1)(h)
11. Discussion with MDOT on potential pedestrian pathway beneath I-96 Interchange
12. City Manager Review Committee
13. Decision Pending location discussion

New Business

14. [Discuss Consumers Energy Company gas franchise ordinance](#)
15. [Conduct a first reading and set a public hearing for October 19, 2023, for ordinance #605 to repeal Article X, "Massage Operations" of Chapter 22 "Businesses" and codified as Sections 22-301 through 22-325 of the Brighton City Code of Ordinances](#)
16. [Consider approval of Tetra Tech proposal to prepare the Fiscal Year 2025 Clean Water State Revolving Fund Project Plan in an amount not to exceed \\$65,000.](#)
17. [Consider awarding the contract for the Northstar Tower fencing installation to Justice Fence Co. in an amount not to exceed \\$18,531](#)
18. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act

Other Business

19. Call to the public
20. Adjournment



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September 7, 2023 – 6:30 p.m.

AGENDA

1. Call to order

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

2. Pledge of Allegiance

3. Roll call

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

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, DPS Director Marcel Goch, Community Development Manager Mike Caruso, Deputy Chief Craig Flood, DPW Superintendent Brad Schrader, and Attorney Sarah Gabis. There were approximately five people in the audience.

4. Consider approval of the agenda

Motion by Councilmember Gardner, seconded by Councilmember Pettengill to move item 16 from new business to the consent agenda. **The motion carried, 7-0.**

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

5. Consider approval of consent agenda items

Motion by Councilmember Gardner, seconded by Mayor Pro Tem Bohn to approve the amended consent agenda. **The motion carried, 7-0.**

Consent Agenda Items

- a. **Approval of Minutes: regular meeting of August 17, 2023**
- b. **Acceptance of quarterly investment reports**
- c. **Acceptance of quarterly financial reports**
- d. **Approval of the purchase of a portable power washer from Hotsy Midwest Cleaning Systems in the amount of \$9,274**
- e. **Approval to establish the City of Brighton City Council Chambers as the early voting site for the City of Brighton**
- f. **Consider awarding a three-year contract, with two optional one-year extensions, for HVAC services at the Wastewater Treatment Plant to Miller-Boldt Inc. (moved from New Business)**

Correspondence

6. Call to the public

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

Susan Henry informed the City Council on human trafficking within Livingston County and beyond.

Jane Horal from GoLivCo spoke in favor of the I-96 pedestrian walkway.

Alice Pashay spoke regarding the Senior Center and fees associated with membership and activities.

7. Staff updates

Clerk Brown stated that the City of Brighton tent will be at the Brighton Farmers Market this coming weekend with

new treats.

Director Goch provided updates on the Downtown Streetscape Project and the Pine Creek pressure issues.

8. Updates from Councilmember liaisons to various boards and commissions

Councilmember Pettengill thanked all who volunteered to work during the Streetwarming Party. Great job to all who volunteered and came out to celebrate the partial opening of Main Street. Councilmember Pettengill noted there was a lot of concern and talk about Decision Pending and the request that it comes back or near its place on Main Street.

City Manager Gomolka thanked Councilmember Gardner and Pettengill for supporting the merchants and helping out at the Streetwarming Party.

Councilmember Albert asked for an update on Linbom.

Community Development Manager Caruso stated that Consumers Energy has been out to disconnect service and a demolition permit is forthcoming.

Councilmember Emaus thanked those who attended the Streetwarming Party and especially the Community Engagement Committee, who organized the event. Several merchants mentioned the increase in sales.

Councilmember Gardner and the BACC will meet on September 11, 2023, to discuss the placement of various art including Decision Pending. Regarding the calls to public, Councilmember Gardner asked if Deputy Chief Flood had any statistics and numbers for the rate of human trafficking in the City of Brighton and recalls that the Brighton Area Schools funds the Senior Center and that very few city residents took advantage of the Senior Center. Manager Gomolka will bring back more information on membership costs and fees.

Mayor Pro Tem Bohn recalls the Senior Center discussion and similar to SELCRA, the City of Brighton was the last municipality contributing. Mayor Pro Tem Bohn asks that more information about the fee structure for the Senior Center be presented for future discussion.

Mayor Tobbe praised the dedication of the City of Brighton employees and community members on the Streetwarming Event; the innovative and inspiring work is to be commended.

Appointments

9. Approval of an appointment to the Zoning Board of Appeals

Motion by Councilmember Emaus, seconded by Councilmember Pettengill to approve the appointment of Noreen Mollon to the Zoning Board of Appeals. **The motion carried, 7-0.**

Discussion

10. MDOT I-96 Interchange – pedestrian pathway and mast arm discussion

Motion by Councilmember Albert, seconded by Councilmember Emaus to approve black painted mast arms on both sides for the new I-96 interchange. **The motion carried, 5-2. Mayor Tobbe and Mayor Pro Tem Bohn voted no.**

Motion by Councilmember Gipson, seconded by Councilmember Emaus to table the pedestrian pathway discussion. **The motion carried, 7-0.**

11. Consider entering into closed session to consult with its attorney regarding trial or settlement strategy in connection with pending litigation, being Rohrkemper v 1023 Holding LLC, et al, Livingston County Circuit Court Case No. 23-31810-CH, because an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body pursuant to MCL 15.268(1)(e) of the Open Meetings Act

Motion by Councilmember Gardner, seconded by Councilmember Gipson to enter into closed session at 8:15 p.m. to consult with its attorney regarding trial or settlement strategy in connection with pending litigation, being Rohrkemper v 1023 Holding LLC, et al, Livingston County Circuit Court Case No. 23-31810-CH, because an open

meeting would have a detrimental financial effect on the litigating or settlement position of the public body pursuant to MCL 15.268(1)(e) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gipson to come out of closed session at 8:28 p.m. **The motion carried, 7-0.**

Motion by Councilmember Gipson, seconded by Councilmember Emaus to direct the City Attorney to proceed as discussed in closed session. **The motion carried, 7-0.**

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

Motion by Councilmember Gardner, seconded by Councilmember Albert to enter into closed session at 8:29 p.m. to receive a written attorney-client privileged communication pursuant to MCL 15.268(1)(h) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Councilmember Gipson, seconded by Councilmember Pettengill to come out of closed session at 8:42 p.m. **The motion carried, 7-0.**

New Business

13. Consider approval of traffic equipment purchase and installation by Severence Electric Company for a cost of \$191,729.

Motion by Councilmember Emaus, seconded by Councilmember Pettengill to approve of traffic equipment purchase and installation by Severence Electric Company for a cost of \$191,179. **The motion carried, 7-0.**

14. Consider approval to award the Washington and Appian Way Asphalt Repair contract to Allied Construction for an amount not to exceed \$76,000

Motion by Councilmember Emaus, seconded by Councilmember Gipson to award the Washington and Appian Way asphalt repair contract to Allied Construction for an amount not to exceed \$76,000. **The motion carried, 7-0.**

15. Consider approval to award the contract for roof replacement to SAS Home Services in an amount not to exceed \$58,400

Motion by Councilmember Albert, seconded by Councilmember Gardner to award the contract for roof replacement to SAS Home Services in an amount not to exceed \$58,400. **The motion carried, 7-0.**

~~16. Consider awarding a three-year contract, with two optional one-year extensions, for HVAC services at the Wastewater Treatment Plant to Miller Boldt Inc. (Moved to the Consent Agenda)~~

17. Consider entering into closed session to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act

Motion by Councilmember Gardner, seconded by Councilmember Gipson to enter into closed session at 8:57 p.m. to consider the purchase or lease of real property pursuant to MCL 15.268 (1)(d) of the Open Meetings Act. **The motion carried by roll call vote, 7-0.**

Motion by Councilmember Emaus, seconded by Councilmember Gardner to come out of closed session at 10:06 p.m. **The motion carried, 7-0.**

Other Business

18. Call to the public

Mayor Tobbe opened the call to the public at 10:07 p.m. Hearing and seeing no comment, the call to the public was closed.

19. Adjournment

Motion by Councilmember Gipson, seconded by Councilmember Albert to adjourn the meeting at 10:07 p.m. **The motion carried (7-0).**

Tara Brown, City Clerk



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

SEPTEMBER 21, 2023

SUBJECT: DISCUSS CONSUMERS ENERGY COMPANY GAS FRANCHISE ORDINANCE

BACKGROUND

- At the January 6, 1994 City of Brighton City Council meeting, a Consumers Power Gas Company Franchise Ordinance was approved. This ordinance is set to expire on January 21, 2024.
- Consumers is requesting the city to adopt a new 30-year ordinance. (See attached)
- This proposed ordinance allows Consumers Energy Company, its successors and assigns to maintain and commercially operate gas lines and conduct local gas business in the City of Brighton.

ADMINISTRATIVE SUMMARY

- Attorney Gabis reviewed the draft ordinance and section 14-2 of the Charter and advised that a franchise must be non-exclusive, not longer than 30 years and must be granted by ordinance, not a vote.
- Review of the proposed ordinances meets both of these requirements.
- If adopted, this ordinance would repeal the expiring ordinance.

RECOMMENDATION

Recommend that staff brings back the ordinance for a first read at the October 5, 2023 City Council meeting.

Prepared by: Gretchen Gomolka, City Manger

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

Acceptable Form and Ready to Execute

Other _____

ORDINANCE NO. _____

CONSUMERS ENERGY COMPANY GAS FRANCHISE ORDINANCE

AN ORDINANCE, granting to CONSUMERS ENERGY COMPANY, its successors and assigns, the right and authority to lay, maintain and commercially operate gas lines and facilities including but not limited to mains, pipes, services and on, under, along, and across public places including but not limited to highways, streets, alleys, bridges, and waterways, and to conduct a local gas business in the CITY OF BRIGHTON, LIVINGSTON COUNTY, MICHIGAN, for a period of thirty years.

THE CITY OF BRIGHTON ORDAINS:

SECTION 1. GRANT and TERM. The CITY OF BRIGHTON, LIVINGSTON COUNTY, MICHIGAN, hereby grants to Consumers Energy Company, its successors and assigns, hereinafter called "Consumers" the right and authority to lay, maintain and commercially operate gas lines and facilities including but not limited to mains, pipes, services and valves on, under, along, and across public places including but not limited to highways, streets, alleys, bridges, and waterways, and to conduct a local gas business in the CITY OF BRIGHTON, LIVINGSTON COUNTY, MICHIGAN, for a period of thirty years.

SECTION 2. CONDITIONS. No public place used by Consumers shall be obstructed longer than necessary during construction or repair, and shall be restored to the same order and condition as when work was commenced. All of Consumers' gas lines and related facilities shall be placed as not to unnecessarily interfere with the public's use of public places. Consumers shall have the right to trim or remove trees if necessary in the conducting of such business.

SECTION 3. HOLD HARMLESS. Consumers shall save the City free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the lines and related facilities hereby authorized. In case any action is commenced against the City on account of the permission herein given, Consumers shall, upon notice, defend the City and its representatives and hold them harmless from all loss, costs and damage arising out of such negligent construction and maintenance.

SECTION 4. EXTENSIONS. Consumers shall construct and extend its gas distribution system within said City, and shall furnish gas service to applicants residing therein in accordance with applicable laws, rules and regulations.

SECTION 5. FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted, are not exclusive.

SECTION 6. RATES and CONDITIONS. Consumers shall be entitled to provide gas service to the inhabitants of the City at the rates and pursuant to the conditions as approved by the Michigan Public Service Commission. Such rates and conditions shall be subject to review and change upon petition to the Michigan Public Service Commission.

SECTION 7. REVOCATION. The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by either party. Upon revocation this ordinance shall be considered repealed and of no effect past, present or future.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL SEPTEMBER 21, 2023

SUBJECT: CONDUCT A FIRST READING AND SET A PUBLIC HEARING FOR OCTOBER 19, 2023, FOR ORDINANCE #605 TO REPEAL ARTICLE X, "MASSAGE OPERATIONS" OF CHAPTER 22 "BUSINESSES" AND CODIFIED AS SECTIONS 22-301 THROUGH 22-325 OF THE BRIGHTON CITY CODE OF ORDINANCES

ADMINISTRATIVE SUMMARY

The City Clerk, in conjunction with the Community Development team and Police Department, issue permits to massage business (myomassologists) throughout the city. These myomassologists must register with the State of Michigan. When initially adopted by the city, the permitting was put in place to regulate and ensure the safety of those who patronized massage businesses. The proliferation of the number of myomassologists throughout the city across many different business types, ie. chiropractors, salons, health food stores, etc. has made it difficult to identify where those services are offered. As the State requires registration the need for a local ordinance is redundant.

RECOMMENDATION

Staff recommends City council conduct a first reading and set a public hearing for October 19, 2023, for ordinance #605 to repeal Article X, "Massage Operations" of Chapter 22 "Businesses" and codified as Sections 22-301 through 22-325 of the Brighton City Code of Ordinances.

Prepared by: Tara Brown, City Clerk

Approved by: Gretchen Gomolka, City Manager

Attachment: Ordinance 605, Proposed Repeal

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

Acceptable Form and Ready to Execute

Other _____

CITY OF BRIGHTON
ORDINANCE NO. 605

AN ORDINANCE TO REPEAL ARTICLE X, "MESSAGE OPERATIONS" SECTIONS
22-301 THROUGH 22-325 OF THE BRIGHTON CITY CODE

THE CITY OF BRIGHTON HEREBY ORDAINS:

Section 1. Repeal of Article X, Section 22-301 through Section 22-325.

Article X, "Message Operations" of Chapter 22 "Businesses" and codified as Sections 22-301 through 22-325, is hereby repealed.

Section 2. Repealer.

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

Section 3. 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 4. 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) _____



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

SEPTEMBER 21, 2023

SUBJECT: **CONSIDER APPROVAL OF TETRA TECH PROPOSAL TO PREPARE THE FISCAL YEAR 2025 CLEAN WATER STATE REVOLVING FUND PROJECT PLAN IN AN AMOUNT NOT TO EXCEED \$65,000.**

BACKGROUND

- The city is looking at a multi-million-dollar investment to upgrade and maintain the existing wastewater treatment plant.
- Tetra Tech met with staff to discuss the opportunity of seeking a low interest lending opportunity through the State of Michigan Department of Environment, Great Lakes, and Energy's (EGLE) Clean Water State Revolving Fund.
- This lending opportunity is awarded annually by EGLE on a competitive basis. Tetra Tech believes that our project would be competitive with a good chance of funding.
- The application and required plan are quite labor intensive. The good news, a large part of the required work for the application is already completed with the recent study we completed at the wastewater plant. In order to seek award funding for 2025 the application process must be started in November of this year.

ADMINISTRATIVE SUMMARY

- Tetra Tech completed the recent wastewater treatment plant study and staff recommends they continue in the process by completing the work plan for the application to the State.
- Tetra Tech is proposing to create the CWSRF project plan and to perform and assessment of the force main for a cost not to exceed \$65,000

BUDGET INFORMATION

- This project was not expressly budgeted for, however, there is sufficient funding available in the in the Utility Fund to cover this cost.

RECOMMENDATION

Approve Tetra Tech's proposed Fiscal Year 2025 Clean Water State Revolving Fund Project Plan in an amount not to exceed \$65,000.

Prepared by: Gretchen Gomolka, City Manager

Reviewed by: Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Sufficient funding available in Utility Fund



August 31, 2023

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

Re: FY 2025 Clean Water State Revolving Fund Project Plan

Dear Ms. Gomolka:

As we discussed during our July 20, 2023, meeting, we are submitting this proposal to provide Consulting Engineering Services to the City of Brighton to prepare a FY 2025 Clean Water State Revolving Fund (CWSRF) Project Plan for Wastewater System Improvements for the City of Brighton.

BACKGROUND

The City of Brighton intends to apply for low interest funding for wastewater system improvements through the Michigan Department of Environment, Great Lakes, and Energy (EGLE)'s CWSRF program. The potential improvements were described in the Wastewater Treatment Plant Evaluation Report dated February 2023, prepared by Tetra Tech.

In addition, a preliminary condition assessment will be performed to determine the extent of localized repairs, rehabilitation, or replacement of two (2) parallel, ductile iron (cement-lined) twelve-inch (12") sanitary force mains, each approximately 2.5 miles in length. Sanitary sewage is collected by gravity at the Third Street Pumping Station located immediately north of Ore Creek, is then pumped through the 12-inch parallel force mains, extends through Brighton High School property and Pine Creek's subdivision (Genoa Township), and received within the City of Brighton's wastewater treatment facility located at 6750 Hamburg Road. Three (3) intermediate pumping stations within the parallel force mains would also be evaluated as part of the condition assessment.

SCOPE OF SERVICES

Tetra Tech's scope of work will include the following tasks:

Task No. 1 – CWSRF Project Plan

Attend a virtual meeting with the EGLE Project Manager and City staff after the City's submittal of an Intent to Apply (ITA) form to EGLE. The CWSRF Project Plan will include the following sections as per current EGLE requirements:

- 1.1 Delineation of the Study Area
- 1.2 Existing Facilities
- 1.3 Fiscal Sustainability Plan
- 1.4 Analysis of Alternatives

- 1.5 Analysis of Principal Alternatives
- 1.6 Monetary Evaluation
- 1.7 User Cost (all alternatives)
- 1.8 Environmental Evaluation
- 1.9 Contamination at the Project Site
- 1.10 Selected Alternative
- 1.11 Project Maps
- 1.12 Controlling Factors
- 1.13 Sensitive Features
- 1.14 Cost Summary
- 1.15 User Cost of the Selected Alternative
- 1.16 Useful Life
- 1.17 General Construction
- 1.18 Public Meeting Support
- 1.19 Responses to EGLE Comments, post submittal

Task No. 2 – Force Main Assessment

Originally constructed in 1987, the primary objective would be to gain a better understanding of the force main condition. It is our understanding the existing interior force main pipe surfaces have not been inspected since the original construction. Tetra Tech will prepare a Summary of Findings Report as to the condition of the existing parallel force main lines.

In cooperation with wastewater treatment plant staff, selected areas will be evaluated for the presence of hydrogen sulfide gases (H₂S), which has the potential to cause deterioration of cement linings within ductile iron force mains.

The proposed investigation would likely require temporary shutdowns of each respective sanitary force main pipe, scheduled separately at different operating times for a visual inspection; to allow continuous sanitary service flow for residents. Tetra Tech will provide the following recommendations: 1. No action, 2. Localized repairs, 3. Rehabilitation of segments, or 4. Complete replacement of the force main system.

Depending upon what is determined through the investigation, a preliminary opinion of cost for funding of the recommended improvements would be included within the CWSRF Project Plan.

ITEMS NOT INCLUDED

1. Cost to place the advertisement for the Public Meeting.
2. Cost to evaluate and include wastewater system projects not included in the February 2023 Wastewater Treatment Plant Evaluation Report.
3. Design drawing preparation.

SUBCONSULTANT/S

We have included a budget of \$4,300 within our fee to retain a subconsultant to address item 1.13 Sensitive Features. This includes a threatened species review and investigation of above ground and historic archaeological site files located at the offices of the Michigan State Historic Preservation.

SCHEDULE

The following table presents a preliminary milestone schedule:

Task	Completed by
Virtual Meeting with EGLE Project Manager	November 30, 2023
Complete Field Investigation of Force Main Assessment	November 10, 2023
Submit Parallel Force Main Condition Assessment	December 15, 2023
Draft Project Plan Delivered to City	January 31, 2024
Public Meeting	April 2024
City Council Resolution of Adoption Prepared	April 2024
Final Project Plan Submitted to EGLE	May 1, 2024

COMPENSATION

Compensation for our time will be billed on a time and materials basis. The maximum amount to be invoiced will be \$65,000. This amount will not be exceeded without the City’s written authorization. Our standard terms and conditions are attached and considered a part of this proposal. If the proposal is acceptable, please sign in the space provided and return a signed copy for our notice to proceed.

We look forward to our continued working relationship. If you need additional information, please call me at (810) 355-6526.

Sincerely,



Steven J. Magnan, P.E.
Project Manager

Enclosure: Standard Terms & Conditions

ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____

Brighton FY2025 Clean Water State Revolving Fund Project Plan

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

SEPTEMBER 21, 2023

SUBJECT: CONSIDER AWARDDING THE CONTRACT FOR THE NORTHSTAR TOWER FENCING INSTALLATION TO JUSTICE FENCE CO. IN AN AMOUNT NOT TO EXCEED \$18,531

BACKGROUND

- In the fall of 2022, we completed the rehabilitation of the Northstar Water Tower. Now that the project is complete city staff recommends installing a fence to secure the water tower property. A fence will help prevent vandalism and unlawful entry. The installation is recommended by the Environmental Protection Agency's (EPA) America Water Infrastructure Act of 2018 (AWIA) for security and will increase the Risk and Resilience Assessment score of our water system.
- The Summit Water Tower, which was rehabilitated in Spring 2023, already has a fence for security.

ADMINISTRATIVE SUMMARY

- An Invitation to Bid (ITB) was published on the Michigan Intergovernmental Trade Network (MITN) website on August 10, 2023, using the bidding documents previously approved by the City Attorney.
- Sealed bids were opened on September 6, 2023, and three bids were received. See bid results below.
- The low bidder, Motor City Fence Company, was rejected, as they did not attend the mandatory pre-bid meeting on August 16, 2023.

Vendor	Base Bid Swing Gates	Alternate Roll Gate
Justice Fence Co.	\$15,065	\$18,531
Nationwide Construction Group	\$16,255	\$21,942
Motor City Fence Company	\$12,145	\$14,635

- With the elimination of Motor City Fence, Justice Fence Co. was the low bidder.
- All references who responded to our inquiries were satisfied with Justice Fence's quality of work and timeliness to complete projects.
- Justice Fence Co. will be responsible for providing all fencing, materials, posts, hardware, and labor needed to install a six-foot-high chain link fence around the base of the tower. The fence perimeter is approximately 300 hundred feet and includes the installation of a manual roll gate.
- A roll gate was determined to be the best fit for this location to allow equipment easier access for entry. In the future, the roll gate can be connected to a power source so staff can operate entry with a remote or keypad, however, this is not part of the scope of this project.

BUDGET INFORMATION

- There is \$25,000 approved in the 2023/2024 Capital Improvement Budget for the installation of a fence at the Northstar Water Tower.

RECOMMENDATION

Award the contract for the Northstar Tower fencing installation to Justice Fence Co. in an amount not to exceed \$18,531.

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

Reviewed by: Marcel Goch, Director of Public Services

Elizabeth Gaines, Finance Director

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

Reviewed &

Approved by: Gretchen Gomolka, City Manager