



Brighton City Council Meeting

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

JANUARY 28, 2025 – 6:30 p.m.

AGENDA

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

Consent Agenda Items

- a. [Approval of minutes: regular meeting of January 14, 2025](#)

Correspondence

6. Call to the public
7. Staff updates
8. Updates from Councilmember liaisons to various boards and commissions
9. Livingston County Assessors Association 2024 Property Tax Achievement Award, presented by City Assessor Colleen Barton

Discussion

10. Brighton Area Fire Authority alternate member

New Business

11. [Consider approval of the 12-month agreement with Nearmap US, Inc. in an amount of \\$6,375 and authorize the City Manager to execute the agreement](#)
12. [Consider approval of the 19 civic event applicants for 2025](#)
13. [Consider approval of resolution 2025-4, the agreement to transfer fire station #31 to the Brighton Area Fire Authority and authorize the City Mayor and Clerk to execute the same](#)
14. [Consider appointments to the Board of Review](#)
15. [Consider appointments to the Election Commission](#)
16. [Consider approval of the three-year service contract agreement with Essential Electric LLC and authorize the City Manager to execute the same](#)
17. [Consider approval to purchase a utility SWAT trailer from USA Trailer in an amount not to exceed \\$26,790, along with the necessary budget amendments](#)

Closed Session

18. Consider Entering into Closed Session to Receive a Written Attorney-Client Privileged Communication pursuant to the Michigan Open Meetings Act, 1976, § 15.268(1)(h), Michigan Compiled Laws.

Other Business

19. Call to the public

20. Adjournment



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MINUTES OF THE REGULAR MEETING OF THE BRIGHTON CITY COUNCIL HELD ON JANUARY 14, 2025

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, Gardner, Gipson, Pettengill, and Schmenk.

Staff Present: City Manager Gretchen Gomolka, City Clerk Tara Brown, Human Resources Manager Michelle Miller, Deputy DPS Director Corey Brooks, Community Development Manager Mike Caruso, Attorney Sarah Gabis, and Chief Brent Pirochta.

Motion by Councilmember Albert, seconded by Councilmember Gipson to split item 10 into two items. The two items will be 10 and 10a. **The motion carried, 7-0.**

4. Consider approval of the agenda

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

5. Consider approval of consent agenda items

Motion by Councilmember Schmenk, seconded by Councilmember Gardner to approve the consent agenda as presented. **The motion carried by roll call vote, 7-0.**

Consent Agenda Items

- a. **Approval of minutes: regular meeting of December 14, 2024**
- b. **Approval of the 2025 Policy Guidelines for Applicants Requesting Poverty Exemptions as of December 31, 2024, Resolution #2025-01**
- c. **Approval to recognize Veterans Connected as a 501(c)(3), non-profit organization for the purpose of obtaining a Charitable Gaming License, Resolution #2025-02**

Correspondence

6. Call to the public

Mayor Tobbe opened the call to the public at 6:34 p.m.

Jon Emaus stated his interest in the open position on the Downtown Development Authority and provided a letter of interest as well as resumes to City Council.

Susan Walters-Bakhaus spoke about the Brighton Area Fire Authority amended and restated Articles of Incorporation.

Hearing and seeing no further comment, the call to the public was closed.

7. Staff updates

Chief Pirochta stated the statewide tornado drill is scheduled for March 19, 2025, please be aware that sirens will be tested during this time.

Community Development Manager Mike Caruso stated that the former Lindbom site, now West Village, has been

transferred to Pulte. The developer intends to submit plans soon which necessitates the consent judgment to be updated. Mr. Caruso indicated that the developer would reduce the density and remove some elements on this for sale product.

Deputy DPS Director Corey Brooks stated that the lift stations at Pine Creek will have work done.

City Manager Gretchen Gomolka passed around an Historic Booklet that was given to her by the Brighton Historical Society.

8. Updates from Councilmember liaisons to various boards and commissions

Councilmember Pettengill provided an update on the Brighton Arts and Culture Commission. During the most recent meeting, the commission reflected on all the good work accomplished over the past year. The St. Paul Pocket Park grand opening is slated for June 20, 2025. A call to artist is planned to solicit sculptures for installation in the pocket park and various other city locations.

Councilmember Gardner stated the Planning Commission met on December 16, 2025, to elect officers and draft amendments for outdoor storage. Mrs. Gardner also provided an update on the Brighton Area Fire Authority Meeting where the authority conducted its annual organizational meeting by electing its officers. The authority also took the first steps in creating a full time firefighter staff by hiring nine full time firefighters. The authority anticipates this process will take three years to fully implement.

Councilmember Gipson stated the Downtown Development Authority met on December 17, 2025, to discuss finances, next steps for the downtown, and projects.

Mayor Tobbe stated that the next meeting of SEMCOG will be here in the City of Brighton at the police department on February 20, 2025.

Discussion

9. Alternate Brighton Area Fire Authority Board Member

City Manager Gomolka relayed that the new Brighton Area Fire Authority Articles of Incorporation allow for each municipality to appoint an alternate member. City Council asked for this come back for future discussion.

Public Hearing

~~10. Conduct a public hearing and consider adoption of the proposed 2025-2029 Recreation Plan, Resolution #2025-03~~

City Manager Gomolka briefly described the need for the recreation plan which allows the city to apply for various grants and fund dollars. Community Development Manager spoke about the process and new additions to the plan. Jill Bahm from Giffels Webster was present to discuss the merits and need for a recreation plan and the different ways the city solicited feedback from the community.

City Council discussed various additions and areas that needed revision including civic events, community features, and parks. Community Development Manager stated the corrections and additions will be included.

Mayor Tobbe opened the public hearing for the proposed 2025-2029 Recreation Plan at 7:29 p.m. Hearing and seeing no comment the public hearing was closed.

~~10a. Conduct a public hearing and Consider adoption of the proposed 2025-2029 Recreation Plan, Resolution #2025-03~~

Motion by Councilmember Gipson, seconded by Councilmember Schmenk to approve the 2025-2029 Recreation Plan, Resolution #2025-03. **The motion carried by roll call vote, 7-0.**

11. Conduct a public hearing and consider adoption of proposed Ordinance 607: Chapter 98, Amendments to the R5

Zoning Ordinance

Mayor Tobbe opened the public hearing at 7:32. Hearing and seeing no comment the public hearing was closed.

City Council discussed the various changes made to the proposed ordinance with staff, highlighting the various changes made to the ordinance.

Motion by Councilmember Gardner, seconded by Councilmember Albert to approve Ordinance 607: Chapter 98, Amendments to the R5 Zoning Ordinance. **The motion carried by roll call vote, 7-0.**

New Business

12. Consider approval of the purchase of a new Flygt sludge mixer from Kennedy Industries at a cost not to exceed \$53,415

Motion by Councilmember Pettengill, seconded by Councilmember Schmenk to approve the purchase of a new Flygt sludge mixer from Kennedy Industries at a cost not to exceed \$53,415. **The motion carried, 7-0.**

Closed Session

13. Consider Entering into Closed Session to Receive a Written Attorney-Client Privileged Communication pursuant to the Michigan Open Meetings Act, 1976, § 15.268(1)(h), Michigan Compiled Laws.

Motion by Councilmember Gardner, seconded by Councilmember Schmenk to enter into Closed Session at 7:43 p.m. to Receive a Written Attorney-Client Privileged Communication pursuant to the Michigan Open Meetings Act, 1976, § 15.268(1)(h), Michigan Compiled Laws. **The motion carried by roll call vote, 7-0.**

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

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gipson to come out of closed session at 8:19 p.m. **The motion carried, 7-0.**

14. Consider entering into a closed session to conduct a periodic personnel evaluation of a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing, pursuant to the Michigan Open Meetings Act, 1976, § 15.268(1)(a), Michigan Compiled Laws.

Motion by Councilmember Gardner, seconded by Councilmember Schmenk to enter into a closed session at 8:20 p.m. to conduct a periodic personnel evaluation of a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing, pursuant to the Michigan Open Meetings Act, 1976, § 15.268(1)(a), Michigan Compiled Laws.

Motion by Mayor Pro Tem Bohn, seconded by Councilmember Gipson to come out of closed session at 10:23 p.m. **The motion carried, 7-0.**

Other Business

15. Call to the public

Mayor Tobbe opened the call to the public at 10:24 p.m. Hearing and seeing no comment, the call the public was closed.

16. Adjournment

Motion by Councilmember Gardner, seconded by Councilmember Gipson to adjourn the meeting at 10:24 p.m. **The motion carried, 7-0.**

Tara Brown, City Clerk



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

January 28, 2025

SUBJECT: **CONSIDER APPROVAL OF A 12-MONTH SUBSCRIPTION WITH NEARMAP US, INC. FOR THEIR ADVANCED AERIAL IMAGERY SOFTWARE**

BACKGROUND

Currently, the City of Brighton relies on tools such as ArcGIS and Google Maps for mapping, data analysis, and property assessment tasks. While these tools have been helpful in many respects, they also have significant limitations that can hinder the efficiency and accuracy of assessing operations.

ArcGIS is a powerful platform for mapping and data analysis, but it often depends on external data sources that may not always be up-to-date or sufficiently detailed for certain applications. Additionally, the imagery available through ArcGIS is typically updated every five years, meaning changes to properties or land features may go unnoticed for extended periods. This can lead to inaccuracies in property assessments, delayed planning decisions, or inefficiencies in project execution.

Google Maps, while widely accessible and easy to use, is designed for general navigation rather than professional-grade applications like property assessment or urban planning. Its imagery is not consistently updated and lacks the resolution and advanced features, such as oblique views, that are critical for evaluating property boundaries, structural dimensions, and land features. Furthermore, Google Maps does not provide tools tailored for city departments, making it less effective for tasks that require precise measurements, detailed analysis, or historical data comparisons.

By investing in Nearmap, the city would address these shortcomings with high-resolution, frequently updated imagery and advanced tools designed specifically for professional use, significantly enhancing operational capabilities and decision-making.

ADMINISTRATIVE SUMMARY

Nearmap's high-resolution aerial imagery, including its advanced oblique view capabilities, would be an invaluable asset for the City of Brighton's Assessing Department and other city departments. The exceptional clarity and detail of Nearmap's imagery will allow the Assessing Department to conduct highly accurate property assessments by enabling remote inspections, detecting property changes, and verifying data without the need for time-consuming site visits. The oblique views provide unique angled perspectives, making it easier to evaluate building dimensions, rooflines, property boundaries, and land features that are difficult to assess from ground level or traditional top-down imagery. This not only enhances the accuracy of assessments but also saves valuable time and resources while ensuring equitable and fair property valuations.

An additional advantage of Nearmap is its commitment to providing regularly updated imagery, with flyovers conducted as often as four to five times a year. This ensures that all departments have access to the most current visuals, significantly reducing reliance on outdated or incomplete maps.

Other city departments would also benefit significantly from Nearmap's capabilities. The Planning and Zoning Department could use the detailed imagery to review site plans, monitor development projects, and evaluate potential impacts on neighboring properties. Public Works could leverage the platform to plan infrastructure improvements, track changes in road conditions, and manage city assets more efficiently. Emergency Services would gain an invaluable tool for coordinating emergency response efforts, assessing potential hazards, and planning evacuation routes with up-to-date geographic data.

Nearmap’s user-friendly platform makes it easy for staff to access and analyze data, fostering better collaboration across departments. By investing in Nearmap, the City of Brighton would not only improve the efficiency and effectiveness of its operations but also enhance its ability to provide high-quality services to its residents.

BUDGET INFORMATION

This has not been budgeted for, however, there are sufficient savings in the General Fund and a budget amendment is not necessary.

RECOMMENDATION

It is the recommendation of staff to approve a 12-month agreement with Nearmap US, Inc. in the amount of \$6,375.00 and authorize the City Manager to execute the agreement

Prepared by: Colleen Barton, City Assessor and Ben Pouch, Assistant Assessor

Reviewed by: Elizabeth Gaines, Finance Director

- Within Budget
- Budget Amendment Necessary and In Proper Form
- Other __Utilizing savings in General Fund_____

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

- Acceptable Form and Ready to Execute
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachment: Quote from Nearmap US, Inc.

Nearmap US, Inc.
 1850 W Ashton Blvd, Suite 500
 Lehi, UT 84043, USA
Phone: +1 (801) 609 7250

Customer Name	City of Brighton, MI	Quote Number	Q106978
Contract Commencement	Contract commences upon signing of quote.	Quote Expiry	12/31/2024
Subscription Term	12 Month	Account Rep	Jake Tully jake.tully@nearmap.com
Subscription Start Date	12/13/2024	Payment Term	Net 30
		Payment Method	Invoice
Bill To	City of Brighton, MI Ben Pouch 200 North 1st Street, Brighton, Michigan, 48116 8102279006 pouchb@brightoncity.org	Ship To	City of Brighton, MI Ben Pouch 200 North 1st Street, Brighton, Michigan, 48116 8102279006 pouchb@brightoncity.org

PRODUCT	ALLOWANCE	COVERAGE	SEATS
ArcGIS Integration	NA	NA	NA
Nearmap Oblique for Government	NA	Nationwide	Unlimited
Subtotal			\$6,375.00
*Estimated Tax			\$0.00
Total			USD \$6,375.00

*The Total includes applicable sales tax for the state which the Licensee is located. If an exemption from sales tax is applicable to the Licensee, the Licensee shall provide to Nearmap, in accordance with state law, relevant tax-exemption documentation. It will be the responsibility of the Licensee to ensure proof of tax-exempt status remains current for subsequent renewals of the Agreement.

ACCEPTANCE OF Q106978 will constitute an Agreement with Nearmap

By selecting "Yes" or signing below, you acknowledge that (a) you have read, understood and agree to the Products Agreement attached to this Quote, (b) the Product-Specific Terms which can be found at <https://www.nearmap.com/us/en/legal/product-agreements>, (c) you have the authority to agree to this New Subscription Quote and (d) you agree to pay the fees set forth herein. This New Subscription Quote constitutes a binding commitment for the Contract Term stated above. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: orders.us@nearmap.com

Schedule 1

Additional Terms and Conditions

PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial imagery and location data and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "**Agreement**").

Definitions of capitalized words are set out in section B.1717 of the Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products only for the Permitted Purpose (the "**License**").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Unless otherwise notified by the Licensee in writing at least thirty (30) days prior to the expiry of the Term of its intention not to renew this Agreement and subject to any amendments to this Agreement required by Nearmap, the Term will automatically be renewed for successive renewal terms of twelve (12) months each (each a "**Renewal Term**").
- 1.4 **Product Updates** Nearmap may from time to time supply the Licensee with a Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the new Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies, or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term). The following conditions also apply to the Licensee's use of Government Products:
 - (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
 - (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products licensed to the Licensee may be subject to additional Allowance, Periodic Allowance, or Periodic Data Allowance terms that are published in the Product-Specific Terms, and if applicable, the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of three (3) consecutive days, the Term will be extended by the period of such unavailability.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease, or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.2 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighboring local government).
- 2.3 **Employees** Subject to sections 1.1 and 1.2, the Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. These employees are deemed to be Authorized Users. The Licensee is responsible and liable for all Authorized Users who use the Licensee's account access details or use Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.
- 2.4 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement on any Products, which includes but is not limited to running any:
 - (a) machine learning models (including the model form and model parameters);
 - (b) outputs of machine learning models;

- (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
- (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.5 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
 - (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sublicense, or other commercial purposes, or for mass downloads or bulk feeds of any imagery; and
 - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.6 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorized by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.7 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
 - (a) provide a link to another URL;
 - (b) upload content or other information to the Website (except as necessary to use the Products);
 - (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
 - (d) use the Website in any way to send any unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
 - (e) publish, post, distribute, disseminate, or otherwise transmit, defamatory, offensive, infringing, obscene, indecent, or other unlawful or objectionable confidential material or information;
 - (f) make available, upload, or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms", or any other harmful software;
 - (g) remove any content or information from the Website, other than that permitted under the terms of this License;
 - (h) falsify the true ownership of a Product or other material or information made available via the Website;
 - (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
 - (j) use the Website other than in accordance with this Agreement;
 - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
 - (l) provide or allow access to the Website which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.8 **Breach** If the Licensee breaches any of sections 2.1 to 2.7 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.
- 3. **THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES**
- 3.1 **Authorized Users** Any password issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User who is not the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
 - (a) cancel that user's access;
 - (b) immediately cease the Licensee's access to the Product;
 - (c) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or
 - (d) exercise any other right available to Nearmap under the terms of this Agreement or at law.

3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website and APIs remain available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:

- (a) allocate such resources as may be necessary to remedy the Fault; and
- (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.

3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.

3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.

3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its usual record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.

3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:

- (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
- (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
- (c) terminate this Agreement in accordance with section 6.1. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.

4. FEES

4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.

4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.

4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in this Agreement.

4.4 **Refund of Fees** If the Licensee is not in breach of this Agreement, and Nearmap elects to terminate this Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.

4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if so invoiced.

4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days' notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may immediately limit or terminate access to the Products provided under this License.

4.7 **Amendments** Subject to section 1.3, Nearmap may, at its absolute discretion, increase the price, for the Products at the end of the Term by an amount which reflects up to the current rate of Inflation plus 2.5%.

5. THE LICENSEE'S WARRANTIES

5.1 **Warranty** The Licensee warrants that:

- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
- (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
- (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
- (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - (i) License;
 - (ii) Products; and
 - (iii) Website.

6. TERMINATION AND EXPIRY

6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with the terms of this Agreement or renewed under section 1.3.

6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.

6.3 **Termination by Nearmap** Notwithstanding anything else in this Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate this Agreement.

6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:

- (a) the Licensee immediately terminates and the Products will no longer be available to the Licensee;
- (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.

6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.

6.6 **Continuing obligations** After expiry or termination of this Agreement, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.

7. INTELLECTUAL PROPERTY

7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, APIs, any Product, or Content will pass or be licensed to the Licensee.

7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in this Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under this Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.

7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for the Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.

8. THIRD PARTY PROVIDERS

8.1 The Licensee acknowledges and accepts that Nearmap engages with Third Party Providers in order to provide the Products under this Agreement. The provision of the Products is contingent upon adequate delivery of products and services by those Third Party Providers and are subject to those Third Party Provider terms and conditions (as updated from time to time). By entering into this Agreement, the Licensee agrees that where applicable they must comply with those terms and conditions which are applicable to the use of those Third Party Providers products, where incorporated into Nearmap's Products. Nearmap have set out the type of Third Party product or services incorporated into Nearmap's Products and the relevant Third Party Providers terms and conditions below for reference.

- (a) **Google** – https://maps.google.com/help/terms_maps.html in connection with the use of Google Street Maps;
- (b) **NASA/NCAS** – <https://www.nearmap.com/au/en/legal/copyright> in connection with viewing satellite imagery on the Website; and
- (c) **Precisely** – <https://www.precisely.com/legal/licensing/software-and-data-end-user-license-agreement> in connection with viewing property datasets on the Website and/or through an API.

9. WARRANTY AND LIABILITY

9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.

9.2 **DISCLAIMER OF WARRANTIES OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, THIRD PARTY PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL**

- REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.
- 9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS, AND THE WEBSITE, NEARMAP AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE AND/OR OBTAINED THROUGH AN API. THE PRODUCTS, THE WEBSITE AND APIS MAY BE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES, AND DISTORTIONS, AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS, THE WEBSITE OR APIS.
- 9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.
- 9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE OR APIS, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR, OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.
- 9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT, THE WEBSITE OR THE APIS, EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE TWELVE (12) MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH, OR EVENT GIVING RISE TO THE LIABILITY.
- 9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider except to the extent it was caused or contributed by the acts, defaults or omissions of Nearmap.
- 9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries, and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees and costs) arising from or out of:
- (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
 - (b) the Licensee's use of the Product for any purpose; and
 - (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.
- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.
- 10. COPYRIGHT COMPLAINTS**
- 10.1 If any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products, in accordance with this License, infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.
- 10.2 The Licensee must:
- (a) promptly notify Nearmap of any such Infringement Claim;
 - (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
 - (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
- (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim: that arises from any:
- (i) use of the Product in violation of this Agreement;
 - (ii) modification of the Product by anyone other than Nearmap, or a party authorized by Nearmap, in writing to modify the portion of the Product applicable to the Infringement Claim; or
 - (iii) third-party products, services, hardware, software, or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
- (b) if the Licensee fails to comply with section 10.2.
- 10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.
- 11. PRIVACY POLICY**
- 11.1 Nearmap will collect, use, and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses, and disclosures.
- 11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products, or anything related to the usage of the product from Nearmap, but prior written consent is required to receive by email direct marketing communications from Nearmap.
- 11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products.
- 12. FORCE MAJEURE**
- 12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"): that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
- (a) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
 - (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
- 12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:
- (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
 - (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
 - (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.
- 13. CONFIDENTIALITY**
- 13.1 Subject to any other written agreements between the parties in connection with this Agreement, any information provided in writing or orally or data provided by either party under this Agreement ("**Discloser**") to the other party ("**Recipient**") and marked or identified as proprietary or Confidential Information shall not be disclosed for a period of three (3) years from termination or expiry of this Agreement, unless mutually agreed in writing by the parties. The parties will disclose Confidential Information only to their employees who have a need to know for the purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect their own confidential or proprietary information of similar nature and with no less than reasonable care.
- 13.2 The confidentiality obligations do not apply to the Recipient if:
- (a) the Discloser has first agreed in writing to the particular disclosure, use, or copying;
 - (b) the Confidential Information was generally known by or available to the public through no wrongful act of the Recipient or otherwise than as a consequence of a breach of this Agreement;
 - (c) the Confidential Information was received by the Recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the Confidential Information; or
 - (d) the disclosure of Confidential Information is legally compelled due to compliance with federal and state laws or an order by a court.
- 13.3 Immediately upon termination or expiry of this Agreement, the Recipient must (at its expense):
- (a) cease all use of the materials and Confidential Information;
 - (b) destroy or return (at the Discloser's discretion) the Confidential Information to the Discloser together with all copies, reproductions and summaries of the same;
 - (c) destroy all of its notes, memoranda and records (in whatever form) containing,

- referring to or based on the Confidential Information;
- (d) ensure that any person who receives the Confidential Information by the Recipient's authority returns the Confidential Information to the Discloser in any form in which it is held or destroys it and gives evidence of its destruction to the Discloser; and
- (e) provide to the Discloser a written certificate confirming compliance with the requirements under this section.

14. NOTICES

- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when:
- (a) personally delivered;
- (b) sent by registered or certified mail (postage prepaid, return receipt requested);
- (c) sent by nationally recognized private courier (with signature required and all fees prepaid); or
- (d) sent by email with confirmation of transmission.
- 14.2 Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap, or otherwise remove it from the United States or Canada, except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

16. MISCELLANEOUS TERMS

- 16.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with Nearmap's existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to Nearmap from time to time.
- 16.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 16.3 **Precedence of Documents** This Agreement is comprised of:
- (a) the Additional Terms and Conditions under Schedule 1;
- (b) the Quote and attached Schedules;
- (c) any Product-Specific Terms; and
- (d) this products agreement.
- If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. If the Licensee purchases the Products through a reseller, the terms and conditions under this Agreement will apply. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's and/or reseller's purchase order.
- 16.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.
- 16.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.
- 16.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 16.7 **Severability** If one or more of the terms of this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.
- 16.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 16.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 16.10 **Entire Agreement** This Agreement:
- (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 16.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, Nearmap and the Licensee.
- 16.12 **Language** The parties have expressly agreed that this Agreement, and all

ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.

- 16.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee conducts business (without giving effect to the conflicts of laws provisions thereof).

17. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.

Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

Allowance means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified the Quote.

API means application programming interface.

Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product through the Website or API.

Business Days means any day other than a Saturday, a Sunday or a recognized public holiday in the State of Utah, USA.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

Commercial Purpose means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of a party or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise.

Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

Derivative Work means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.

Discloser has the meaning given in section 13.1.

Fair Use Policy means the policy as attached to the Quote.

Fault means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.

Fees means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.

Force Majeure Event has the meaning given in section 12.1.

Government Products means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.

Infringement Claim has the same meaning given in section 10.1.

Intellectual Property Rights includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.

License means the license granted in section 1.1.

Licensee means the person or entity specified in the "Customer Name" section of the Quote.

Nearmap means Nearmap US, Inc.

Non-Government Products means all Products specified in the Quote that do not fall under the definition of Government Products.

Operational Hours means 9am to 5pm MT.

Periodic Allowance or Periodic Data Allowance means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Periodic Allowance Section means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

Permitted Purpose means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;

- (c) Integration, or attempt to integrate, the Products in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, or photographs, or making such files, images, or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

Products means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

Product-Specific Terms means additional terms and conditions that apply to certain Products, currently located [here](#).

Quote the document produced after the Licensee places an initial order for the Product(s), requests any changes to its License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

Recipient has the meaning given in section 13.1.

Renewal Term has the meaning given in section 1.3.

Schedule means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

Subscription Period means the period stated in the "Subscription Period" column of the Quote.

Subscription Start Date means the date specified in the "Subscription Start Date" section of the Quote.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

Third Party Providers means third party providers of products and services to Nearmap.

Unlawful Purpose means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

URL means a Uniform Resource Locator.

Website means all pages and sub-sites available within the nearmap.com domain.

FAIR USE POLICY

General

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.

2. In this Fair Use Policy:

- a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
- b. **Fair Use Policy** means this policy;
- c. **Nearmap, we, us or our** means Nearmap US, Inc.;
- d. **Products** has the meaning given to that term in Your Nearmap Agreement;
- e. **Services** has the meaning given to that term in Your Nearmap Agreement;
- f. **You or Your** means any customer of Nearmap;
- g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
- h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.

3. We reserve the right to vary the terms of this Fair Use Policy from time to time.

4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

Unreasonable Use

5. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.

6. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

Excessive Use

7. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

Nearmap's Rights

8. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).

9. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:

- a. restrict Your access to low resolution imagery for the remainder of the month; and/or
- b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
- c. restrict Your access for the remainder of the month; and/or
- d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next month (if applicable); and/or
- e. immediately cease Your access to Nearmap; and/or
- f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

January 28, 2025

SUBJECT: CONSIDER APPROVAL OF 19 CIVIC EVENT APPLICATIONS

ADMINISTRATIVE SUMMARY

The City received 19 civic event applications for 2025. This is not an exhaustive list of all events that are anticipated to occur this year, but these are the applications received to date. When additional applications are received, they will be brought before City Council for review.

The Civic Event Committee, which includes members of the Brighton Area Fire Authority, Police, DPW, and Councilmember Renee Pettengill, reviewed all the applications.

Please see the attached list of events, which includes event name, days and dates, applicant, and if a road closure or city assistance is needed.

The Committee does not have concerns for any event; however, we would like to point out the following information regarding certain events:

- The Pound! will not be holding their Weekends on West event this year. They have requested a one-day event called "Happy Dad Promotional Party," which is a Father's Day promotional event for Happy Dad Seltzer. There will be a concert, giveaways, and games.
- The Destination Stars Hollow event is being held again this year and will be expanded to occur from Friday evening, September 19 through Sunday evening, September 21. The Committee met with the applicant to discuss issues that arose at last year's event and plans for this year's event. The Committee feels that this event can be successful and will continue to work with the applicant on details and how the city can assist them.
- The Smokin' Jazz & BBQ Blues Festival has changed. It will now be Brighton's Rock N Blues Festival and there will not be an alcohol tent or large stage in the City Hall and municipal parking lots. All the music will occur on Main Street and at the AMP. They are also requesting to extend the event to occur from 12 noon on Friday and to last through 11 pm both Friday and Saturday. The event was traditionally held from 5 pm to 10 pm on Friday and from 12 pm to 10 pm on Saturday.
- The Chamber of Commerce is proposing a new event this year, Brighton's Country Boots & Beats. This is a one-day event to be held on Saturday, June 21 from 2 pm to 11 pm. It will include live music at the AMP and vendors on Main Street.

Any outstanding items (such as insurance, signatures needed, route maps, event details, etc.) that are required from each applicant will be obtained prior to the start of the event.

BUDGET INFORMATION

All civic event organizers are required to pay 50 percent of the total cost of the city to assist with events.

RECOMMENDATION

The Civic Event Committee is requesting that City Council review the proposed events and recommend which to approve. Staff is available to answer any questions.

Prepared by: Patty Thomas, Asst. to the DPS Director

Reviewed by: Craig Flood, Deputy Police Chief

Elizabeth Gaines, Finance Director

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

Reviewed &

Approved by: Gretchen Gomolka, City Manager

Attachments: 2025 Civic Event Detail List

2025 Events

Event Title	Date(s)	Applicant	Street Closure Requested	City Assistance Required
Farmers Market	Saturdays, May 3 through October 25; 8am-1pm	Aimee Zak / Greater Brighton Area Chamber of Commerce	N	N
Cinco de Mayo	Monday, May 5; 11am-9pm	Steve Pilon / El Arbol	Y	Y
Memorial Day Parade	Monday, May 26; 10am-12pm	Steve Conaway / American Legion Post 235	Y	Y
Swing at the AMP!	Mondays, May 26 through September 1; 7pm-10pm	Gabrielle Bannon / The Dance Project	N	N
Free Fishing Derby for Kids	Saturday, June 7; 5am-1pm	Mike Bonk / Brighton Optimist Club	N	N
Turn Up the AMP!	Wednesdays, June 11, July 9, August 13 & September 10; 5:30pm-9pm	Cal Stone / 2 Stones Events	N	Y
Happy Dad Promotional Party	Saturday, June 14; 2pm-10pm	Nick Hegle / The Pound Bar & Grill	Y	Y
Brighton's County Boots & Beats	Saturday, June 21; 2pm-11pm	Monee Phipps / Greater Brighton Area Chamber of Commerce	Y	Y
Annual Hungry Duck Run	Friday, July 4; 6am to 9:30am	Ken Larscheid / Livingston Sunrise Rotaray	Y	Y
July 4th Parade	Friday, July 4; 10:00am-12Noon	Michael O'Brian / Brighton Area Fire Authority	Y	Y
Kiwanis Terrific Tuesdays	Tuesdays, July 8 through August 19; 10:30am-11:30am	Dennis Dimoff / Kiwanis Club of Brighton	N	N
A Taste of Brighton	Friday, July 11; 12pm-11pm & Saturday, July 12; 10am-11pm	Ken Larscheid / Believe in Brighton	Y	Y
Main Street Mile & Farmers Market	Saturday, July 19; 6am-1pm	Ken Larscheid / The Running Lab	Y	Y
Brighton Street Art Fair	Friday, August 22, 5pm-8pm; Saturday, August 23, 10am-8pm; Sunday August 24, 10am-4pm	Karen Delhey / The Guild of Artists & Artisans	Y	Y
Brighton's Rock N Blues Festival	Friday, September 5, 12pm-11pm & September 6, 12pm-11pm	Monee Phipps / Greater Brighton Area Chamber of Commerce	Y	Y
Destination Stars Hollow	Friday, September 19; 5pm-9pm; Saturday, September 20; 9:30am-9pm; Sunday, September 21; 9:30am-6pm	Laura Boote & Kathleen London / Destination Stars Hollow, LLC	Y	Y
BHS Homecoming Parade	Friday, October 17; 6pm-7pm	Matt Evans / Brighton High School	Y	Y
Veterans Day Parade	Saturday, November 8; 11am-12:30 pm	Steve Conaway / American Legion Post 235	Y	Y
Brighton Ladies Night	Thursday, December 4; 5pm-10pm	Michelle Roy / Believe in Brighton	N	Y



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JANUARY 28, 2025

SUBJECT: CONSIDER APPROVAL OF RESOLUTION #2025-04, THE AGREEMENT TO TRANSFER FIRE STATION #31 TO THE BRIGHTON AREA FIRE AUTHORITY

BACKGROUND

In October of 2016, City Council, under Article 3B of the Fire Station Lease to the Brighton Area Fire Authority, (BAFA) approved the option to extend the lease for additional five (5) year period following the ending date of September 30, 2015. This resulted in a new expiration date of September 30, 2020,

The existing lease only had an option for one-year renewal. As that was exercised already, we need to enter into a new lease.

Beginning in early 2023, Chief O'Brian reached out to request the establishment of a new lease. Due to the pandemic and subsequent changes in the City's administration, it seems the lease expiration was unintentionally overlooked.

As a result, in February of 2023 and after discussions with Chief O'Brian, Attorney Gabis, and Manager Gomolka, a lease agreement was put together to start the discussion with City Council.

Out of these discussions we landed on the idea of transferring the station to BAFA with a reverter clause should it cease to be an operating fire station. This transfer represents a mutually beneficial solution and mirrors the approach taken by Genoa Township with its Dorr Rd. fire station. The transfer will enable BAFA to invest both Authority and Federal grant funds into essential upgrades for the fire station. Furthermore, it will relieve the City of the liability associated with building maintenance.

After determining to move forward with the transfer, it became evident that the BAFA Articles of Incorporation were long overdue for an update. After many months of BAFA, City of Brighton, Brighton Township, and Genoa Township staff and legal counsel collaboration, the new Articles of Incorporation were adopted by all entities in November of 2024.

With the completion of the updated by laws, the city is now in a place to approve the transfer of Fire Station #31 to BAFA.

ADMINISTRATIVE SUMMARY

The attached Resolution and Agreement have been drafted and reviewed by legal counsel of both BAFA and the City of Brighton. Highlights of the attached agreement and resolution are:

- In consideration of BAFA providing services to the residents of the City, the City will transfer the property via quit claim deed
- BAFA to grant City of Brighton an easement for access to the public pedestrian pathway located behind the fire station
- A reverter clause returning the property, building and any improvements made by BAFA to the City of Brighton should the Authority no longer provide emergency services to the City, or cease to utilize the station as a fully operational, open, and active fire station.
- BAFA will accept the property "AS IS"

RECOMMENDATION

Staff recommends City Council approve Resolution #2025-04 and the Agreement to Transfer Fire Station #31 to the Brighton Area Fire Authority and authorize the Mayor and City Clerk to execute the agreement.

Prepared by: Gretchen Gomolka, City Manager

Attachment: Agreement to Transfer Fire Station #31 to the Brighton Area Fire Authority
Resolution #2025-04

Agreement for Transfer of Fire Station 31

THIS AGREEMENT is made and entered into as of _____, by and between the BRIGHTON AREA FIRE AUTHORITY (the "Authority"), a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended ("Act 57"), and the CITY OF BRIGHTON (the "City"), a Michigan Home Rule City.

WHEREAS, the Authority has been created by the adoption of articles of incorporation (the "Articles") by the legislative body of each incorporating municipality thereto, including the City, for the purpose of providing fire protection and other emergency health and safety services ("emergency services") as set forth in the Articles; and

WHEREAS, the parties hereto desire to have the Authority provide such emergency services to the City as provided herein and in the Articles.

NOW THEREFORE, in consideration of the premises and the covenants of each other, and subject to the limitations set forth below, the parties hereto agree as follows:

1. In consideration of the Authority providing services to the residents of the City as described in the Articles of Incorporation, the City shall convey to the Authority, certain property described on Exhibit A attached hereto and incorporated herein (the "Property"), via a quit claim deed in the form attached as Exhibit B hereto (the "Deed") and a quit claim bill of sale in the form attached as Exhibit C hereto (the "Bill of Sale").

2. In consideration of the conveyance of the Property and in recognition of the existence of a public pathway and related boardwalk improvements currently existing on the Property, the Authority desires to grant to the City permanent easements for public

pedestrian use of the pathway and for the operation, maintenance, repair and/or replacement of the boardwalk improvements located within the pathway by the City, over the Property in the form of the Pathway Easement attached as Exhibit D hereto.

3. This Agreement may not be amended, modified or assigned without the written consent of the City and the Authority.

4. The execution of this Agreement extinguishes any other occupancy interests the Authority currently has in the Property, whether by lease or otherwise.

5. The effective date of this Agreement shall be the date set forth in the first paragraph hereof.

6. In the event the Authority no longer provides emergency services to the City or ceases to utilize the facility as a fully operational, open and active fire station used by the Authority for the housing of fire department apparatus and personnel and from where fire safety vehicles and apparatus are dispatched, full title and the right of reentry to the property and building including any and all improvements made to the property and building subsequent to this Agreement, shall immediately revert and return to the City without further compensation from the City to the Authority. The deed executed to that effect and attached as Exhibit B hereto includes such clauses as are necessary to affect this full right of reversion and reentry so that all rights, title, and interest in the Property and building reverts to the City in the above described circumstance.

7. Upon execution of the Deed, Bill of Sale and Easement, City shall convey to the Authority and the Authority shall accept the Property "AS IS," and "WHERE IS," with all faults, and with no adjustments for physical, functional or economic conditions and

there are no oral agreements, warranties or representations by City collateral to or affecting any of the Property. City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the Property. Without limiting the foregoing, the Authority expressly acknowledges and agrees that the City makes no representations or warranties of any kind or nature with respect to any prior information or documents for the Property furnished by the City to the Authority. The provisions of this Section shall survive the conveyance of the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers, all as of the day and year first above written.

BRIGHTON AREA FIRE AUTHORITY

Date signed: _____

By: Jim Muzzin
Its: Chairperson

Date signed: _____

By: Mike Corrigan
Its: Secretary

CITY OF BRIGHTON

Date signed: _____

By: Kristoffer Tobbe
Its: Mayor

Date signed: _____

By: Tara Brown
Its: Clerk

**EXHIBIT A TO AGREEMENT FOR TRANSFER OF FIRE STATION 31
LEGAL DESCRIPTION OF PROPERTY**

Land located in the City of Brighton, County of Livingston, State of Michigan, described as follows:

Commencing at a point on the West Right-of-Way line of Grand River Avenue, West 255.45 feet, North 20° 02' 05" West along traveled centerline of Grand River Avenue, 1,742.65 feet, South 69° 37' 37" West 50 feet from the South 1/4 Post of Section 30, Town 2 North, Range 6 East, Michigan, for a POINT OF BEGINNING;

Thence South 69° 37' 37" West 357.32 feet to the Fast bank of Brighton Mill Pond;

Thence North 46° 11' 05" West along said bank 108.01 feet;

Thence North 10° 43' 50" West along said bank 75.41 feet;

Thence North 69° 37' 37" East 392.72 feet to the West Right-of-Way line of Grand River Avenue;

Thence South 20° 02' 05" East along said Right-of-Way line 171.60 feet to the Point of Beginning;

This parcel contains approximately 1.53 acres of land.

Commonly known as: 615 W Grand River Ave, Brighton, Mi 48116

Property Tax Identification No. 18-30-304-076

**EXHIBIT B TO AGREEMENT FOR TRANSFER OF FIRE STATION 31
FORM QUIT CLAIM DEED**

QUIT CLAIM DEED

City of Brighton, a Michigan Home Rule City, as grantor (“Grantor”), whose address is 200 N. 1st Street, Brighton, Michigan 48116, QUIT CLAIMS to Brighton Area Fire Authority, as grantee (“Grantee”), whose address is 615 W. Grand River Avenue, Brighton, Michigan 48116, the property described on Exhibit A attached hereto (“Property”), for the full consideration of less than One Hundred Dollars (\$100).

The Grantor grants to the Grantee the right to make zero divisions under section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

Grantee, by its receipt and acceptance of this Quit Claim Deed, agrees, and acknowledges that it takes title to the Property subject to following right of reverter, effective from the date hereof, which shall run with the land, and shall be enforceable against Grantee, and shall inure to the benefit of, and be enforceable by, Grantor as more particularly described below:

RIGHT OF REVERTER. If at any point from the date hereof, the Property shall cease to be used and occupied for any purpose other than for Grantee (and no other party or entity) to provide emergency services to the City of Brighton, including, but not limited to, fire, safety and health, or ceases to utilize the Property as a fully operational, open and active fire station used by the Grantee for the housing of fire department apparatus and personnel and from where fire safety vehicles and apparatus are dispatched for emergency services, and such use is discontinued for longer than thirty (30) consecutive days (a “Trigger Event”), Grantor shall be entitled to exercise the right of reverter described herein (“Right of Reverter”). Grantor may within thirty (30) days thereafter exercise the Right of Reverter by delivery of written notice thereof to Grantee (the “Exercise Notice”). Upon delivery of a valid Exercise Notice, Grantee shall, within thirty (30) business days of Grantor’s sending of the Exercise Notice deliver to Grantor an executed quit claim deed from Grantee to Grantor in recordable format for Livingston County, conveying fee simple title in the Property to Grantor, for the full consideration of less than One Hundred Dollars (\$100).

This Deed is exempt from county and state transfer taxes under MCL 207.505(a) and MCL 207.526(a) respectively.

IN WITNESS WHEREOF, the grantor has executed and delivered this Quit Claim Deed as of the ____ day
of _____, 2025.

[signature on following page]

GRANTOR:

CITY OF BRIGHTON, a Michigan Home Rule City

By: _____
Kristoffer Tobbe, Mayor

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) SS
COUNTY OF LIVINGSTON)

The foregoing instrument was acknowledged before me on _____, 2025, by Kristoffer Tobbe, the Mayor of the City of Brighton, a Michigan Home Rule City, on behalf of the City.

Notary Public, _____ County, Michigan
Acting In _____ County, Michigan
My commission expires: _____

Parcel Identification No(s): See Exhibit A attached

Send Subsequent Tax Bills To: grantee

State Transfer Tax: Exempt

County Transfer Tax: Exempt

**PREPARED BY AND
WHEN RECORDED RETURN TO:**

Sarah J. Gabis
Bodman PLC
201 S. Division Street, Suite 400
Ann Arbor, Michigan 48103

Exhibit A to Quit Claim Deed
Legal Description of Property

Land located in the City of Brighton, County of Livingston, State of Michigan, described as follows:

Commencing at a point on the West Right-of-Way line of Grand River Avenue, West 255.45 feet, North 20° 02' 05" West along traveled centerline of Grand River Avenue, 1,742.65 feet, South 69° 37' 37" West 50 feet from the South 1/4 Post of Section 30, Town 2 North, Range 6 East, Michigan, for a POINT OF BEGINNING;

Thence South 69° 37' 37" West 357.32 feet to the East bank of Brighton Mill Pond;

Thence North 46° 11' 05" West along said bank 108.01 feet;

Thence North 10° 43' 50" West along said bank 75.41 feet;

Thence North 69° 37' 37" East 392.72 feet to the West Right-of-Way line of Grand River Avenue;

Thence South 20° 02' 05" East along said Right-of-Way line 171.60 feet to the Point of Beginning;

This parcel contains approximately 1.53 acres of land.

Commonly known as: 615 W Grand River Ave, Brighton, Mi 48116

Property Tax Identification No. 18-30-304-076

**EXHIBIT C TO AGREEMENT FOR TRANSFER OF FIRE STATION 31
FORM BILL OF SALE**

QUIT CLAIM BILL OF SALE

For good and valuable consideration, the receipt of which is hereby acknowledged, City of Brighton, a Michigan Home Rule City (“City”), does hereby transfer, and convey to Brighton Area Fire Authority, a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended (“Authority”), any and all personal property owned by City and used in connection with and/or located on the real property commonly known as 615 W. Grand River Avenue, Brighton, Michigan 48116, as more particularly described on Exhibit A attached hereto.

Buyer accepts such personal property in its “AS-IS” condition and “WITH ALL FAULTS”. Seller specifically disclaims all express or implied warranties regarding the existence or condition of, or title to, such personal property, including without limitation the implied warranties of merchantability, fitness and suitability for a particular purpose.

Date: _____, 2025

CITY:

City of Brighton, a Michigan Home Rule City

By: _____
Kristoffer Tobbe, Mayor

AUTHORITY:

Brighton Area Fire Authority, a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended

By: _____
Jim Muzzin, Chair

Exhibit A to Quit Claim Bill of Sale
Legal Description of Property

Land located in the City of Brighton, County of Livingston, State of Michigan, described as follows:

Commencing at a point on the West Right-of-Way line of Grand River Avenue, West 255.45 feet, North 20° 02' 05" West along traveled centerline of Grand River Avenue, 1,742.65 feet, South 69° 37' 37" West 50 feet from the South 1/4 Post of Section 30, Town 2 North, Range 6 East, Michigan, for a POINT OF BEGINNING;

Thence South 69° 37' 37" West 357.32 feet to the East bank of Brighton Mill Pond;

Thence North 46° 11' 05" West along said bank 108.01 feet;

Thence North 10° 43' 50" West along said bank 75.41 feet;

Thence North 69° 37' 37" East 392.72 feet to the West Right-of-Way line of Grand River Avenue;

Thence South 20° 02' 05" East along said Right-of-Way line 171.60 feet to the Point of Beginning;

This parcel contains approximately 1.53 acres of land.

Commonly known as: 615 W Grand River Ave, Brighton, Mi 48116

Property Tax Identification No. 18-30-304-076

EXHIBIT D TO AGREEMENT FOR TRANSFER OF FIRE STATION 31

FORM OF EASEMENT

PEDESTRIAN PATHWAY EASEMENT

Brighton Area Fire Authority, a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended, whose address 615 W. Grand River Avenue, Brighton, Michigan 48116 (“Authority”), grants to the CITY of Brighton, a Michigan Home Rule City, whose address is 200 N. 1st Street, Brighton, Michigan 48116 (“City”), an easement for the operation, maintenance, repair, replacement, and future improvement (including widening and improvements) of an existing public pedestrian pathway (“Pathway”) and related boardwalk improvements (“Improvements”), public use of the Pathway and Improvements, and vehicular and pedestrian access to and from the Pathway and Improvements, over, on, through and across land more particularly described as (the “Easement”):

Parcel ID #: 4718-30-304-076
See Attached Exhibit A

In connection with the grant of Easement, Grantor waives and relinquishes any right, title or interest in the Pathway and Improvements, or the facilities incidental thereto, which may be located in the Easement. Grantor shall have no rights to repair, restore, or otherwise undertake any work or replacement related to the Pathway and Improvements.

All property disturbed or altered, now or in the future, by reason of the construction, operation, maintenance, repair and/ or replacement of the Pathway and Improvements shall be restored by the City to its immediately prior condition, except to the extent permanent improvements or alterations necessary to the use and exercise of Easement rights granted hereunder are made.

Authority and City (each an “Indemnitor”), shall indemnify, defend and hold the other (the “Indemnitees”) harmless from and against any and all losses, damages, liabilities, claims, actions, costs or expenses (including without limitation reasonable attorneys’ fees and costs of suit) which any of the Indemnitees may suffer, sustain or incur arising out of any willful misconduct or gross negligence of Indemnitor, its agents, employees, contractors or subcontractors in connection with the exercise of any rights or performance of any obligations under this Pedestrian Pathway Easement and Easement.

The Easement shall be permanent, irrevocable and non-exclusive.

Exempt from Transfer Taxes under MCL 207.505(a) and 207.526(a).

[signatures on following page]

IN WITNESS HEREOF, the undersigned have hereunto affixed their signatures on this _____ day of _____, 2025.

Brighton Area Fire Authority, a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended

Signature: _____
Jim Muzzin, Chair

STATE OF MICHIGAN
COUNTY OF LIVINGSTON

The foregoing instrument was acknowledged before me this _____ day of _____, 2025,

by Jim Muzzin, the Chair of the Brighton Area Fire Authority, a body corporate existing under provisions of Act 57, Public Acts of Michigan, 1988, as amended, on behalf of the Authority.

Notary Public, _____ County, Michigan
Acting In _____ County, Michigan
My commission expires: _____

DRAFTED BY AND RETURN TO:
Sarah J. Gabis
Bodman PLC
201 S. Division Street, Suite 400
Ann Arbor, MI 48104

**Exhibit A to Pedestrian Pathway Easement
Legal Description of Property**

Land located in the City of Brighton, County of Livingston, State of Michigan, described as follows:

Commencing at a point on the West Right-of-Way line of Grand River Avenue, West 255.45 feet, North 20° 02' 05" West along traveled centerline of Grand River Avenue, 1,742.65 feet, South 69° 37' 37" West 50 feet from the South 1/4 Post of Section 30, Town 2 North, Range 6 East, Michigan, for a POINT OF BEGINNING;

Thence South 69° 37' 37" West 357.32 feet to the East bank of Brighton Mill Pond;

Thence North 46° 11' 05" West along said bank 108.01 feet;

Thence North 10° 43' 50" West along said bank 75.41 feet;

Thence North 69° 37' 37" East 392.72 feet to the West Right-of-Way line of Grand River Avenue;

Thence South 20° 02' 05" East along said Right-of-Way line 171.60 feet to the Point of Beginning;

This parcel contains approximately 1.53 acres of land.

Commonly known as: 615 W Grand River Ave, Brighton, Mi 48116

Property Tax Identification No. 18-30-304-076

**CITY OF BRIGHTON
TRANSFER OF FIRE STATION TO BAFA
RESOLUTION NO # 2025-04**

A RESOLUTION TO APPROVE THE TRANSFER OF THE FIRE STATION PROPERTY AT 615 W. GRAND RIVER AVENUE, CITY OF BRIGHTON TO THE BRIGHTON AREA FIRE AUTHORITY

At a regular meeting of the City Council of the City of Brighton, Livingston County, Michigan, held in the City Council Chambers at 200 N. First Street, in said City, on Tuesday January 28, 2025, at 6:30 pm.

PRESENT:

ABSENT:

The following preamble and resolution were offered by Council Member _____ and supported by Council Member _____

WHEREAS, pursuant to section 4e of the Michigan Home Rule City Act, MCL 117.4e, the City may in its charter provide for the sale or other disposition of its property; and

WHEREAS, Section 12.1 of the Charter provides that the City shall not dispose of real estate without the affirmative vote of four or more members of Council; and

WHEREAS, Michigan law permits the transfer of public property for a public purpose; and

WHEREAS, the property located at 615 W. Grand River Avenue has been and is currently occupied by the Brighton Area Fire Authority, of which the City is an incorporating member, for the purposes of operating a fire station; and

WHEREAS, the transfer of the property located at 615 W. Grand River Avenue to the Brighton Area Fire Authority will result in significant cost savings to the City and will more efficiently accomplish desired improvements to the property; and

WHEREAS, the transfer of the property is subject to reversion of the property to the City of Brighton in the event the property is no longer used as a fire station serving the residents of the City of Brighton; and

WHEREAS, the transfer of the property is subject to an easement for the benefit of the City to continue to maintain the pedestrian pathway located on the property; and

WHEREAS, the City Council has determined that it is in the best interests of the health, safety and welfare of the City and its residents to transfer the real estate and fire station located at 615 W. Grand River to the Brighton Area Fire Authority.

NOW THEREFORE BE IT RESOLVED THAT, the City of Brighton hereby accepts and approves the transfer documents attached as attached as Exhibit A and authorizes the Mayor and the Clerk to execute the same and to take any other action necessary to affect the transfer of the property at 615 W. Grand River Avenue to the Brighton Area Fire Authority.

PRESENT:

NAYS:

ABSENT:

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

As the City Clerk of the City of Brighton, Livingston County, Michigan, I certify this is a true and complete copy of a resolution adopted by the City of Brighton Council at a regular meeting held on _____, 2025.

Date: _____, 2025

City Clerk _____

Tara Brown



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL
JANUARY 28, 2025

SUBJECT: CONSIDER APPOINTMENTS TO THE BRIGHTON CITY BOARD OF REVIEW

ADMINISTRATIVE SUMMARY

The Board of Review for the City of Brighton consists of three members and one alternate. Due to recent resignations, all three positions are currently vacant, the alternate has been vacant for some time. The City has received two applications for consideration.

- Andrea Spalding McFate – Seeking first-time appointment.
- Brian Abbey – Seeking first-time appointment.

Both applicants meet the City of Brighton Charter requirements according to Section 5.1 Eligibility for Office and will take the necessary training to be certified by the State Tax Commission for the Board of Review. This position will remain open until all three positions are filled. However, only two members are necessary to meet a quorum.

Prepared by: Joe Gaikema, Management Assistant

Reviewed &

Approved by: Gretchen Gomolka, City Manager



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL
JANUARY 28, 2025

SUBJECT: CONSIDER APPOINTMENTS TO THE BRIGHTON CITY ELECTION COMMISSION

ADMINISTRATIVE SUMMARY

The Election Commission for the City of Brighton consists of two members. One full-time position is currently vacant, as Dianne Hamm’s position expired at the beginning of the year. The City has received one application for consideration, and the applicant meets the City of Brighton Charter requirements according to Section 5.1 Eligibility for Office. We will keep the position open until both seats are filled.

- Paul Sebastian – Seeking first-time appointment.

Prepared by: Joe Gaikema, Management Assistant

Reviewed &

Approved by: Gretchen Gomolka, City Manager



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JANUARY 28, 2025

SUBJECT: CONSIDER APPROVAL OF A THREE-YEAR SERVICE AGREEMENT CONTRACT BETWEEN THE CITY OF BRIGHTON AND ESSENTIAL ELECTRIC LLC.

BACKGROUND

In 2017, the City of Brighton and the City of Brighton Police Department began installing security cameras throughout the city and its facilities, including the Police Department, City Hall, Department of Public Works, Water, and Wastewater buildings. Absolute Sales International, along with staff member Tom Kent, played a key role in the initial installation, as well as in the upgrades and maintenance of the camera systems.

During the COVID-19 pandemic, Absolute Sales International had a few remaining projects to complete. As a result, the service agreement contract was extended to allow for the completion of these projects. At present, all projects have been finalized, with the exception of ongoing maintenance and system upgrades.

Following the completion of the city projects, Tom Kent transitioned to a new role at Essential Electronics LLC. Tom was instrumental in the success of the city's camera system, contributing significantly to its initial installation, continued maintenance, and upgrades. His extensive historical knowledge of the current system and the city's fiber network remains invaluable.

ADMINISTRATIVE SUMMARY

The City of Brighton Police Department has requested a service agreement from Essential Electric LLC that outlines the scope of work, including general maintenance and upgrades to existing cameras, as well as the installation of new cameras at locations specified by the City of Brighton. Essential Electric LLC can also provide additional services as needed, such as the installation of keyless entry systems like the one currently installed at the Police Department, cloud-based storage solutions, and server upgrades and installations.

Essential Electric LLC is a Michigan-based company that is fully insured and bonded. The company complies with all CJIS and FIPS requirements.

The service agreement from Essential Electric LLC includes a flat labor rate of \$125.00 per hour, per worker, along with a 20% discount on deliverables. Projects valued at \$50,000 or higher qualify for an additional manufacturer discount. The 20% discount on deliverables is below state bid pricing.

Deliverable pricing will remain consistent with the rates previously provided by Absolute Sales International. However, the man-hour labor rate has been updated to account for time and inflation since 2017. Absolute Sales International had a tiered hourly rate structure, which consisted of \$95 per man-hour Monday through Friday, \$135 per hour for overtime on Saturdays, and \$175 per hour for overtime on Sundays and holidays.

In contrast, Essential Electric LLC offers a flat labor rate of \$125 per hour per worker, applicable Monday through Sunday.

RECOMMENDATION

Staff recommends the approval of a three-year service agreement contract with Essential Electric LLC. and authorize the City Manger to execute the same.

Prepared by: Brent Pirochta, Chief of Police

Reviewed by: Gretchen Gomolka, City Manager
Sarah Gabis, Attorney

Reviewed by: Elizabeth Gaines, Finance Director

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

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

- Acceptable Form and Ready to Execute
- Other _____

Reviewed &

Approved by: Gretchen Gomolka, City Manager

ESSENTIAL ELECTRIC LLC

Rev. II 01-22-2025

• ELECTRICAL • INTRUSION • ACCESS CONTROL • CCTV • VIRTUAL PRESENCE SECURITY •

CITY OF BRIGHTON, MI PURCHASING CONTRACT NUMBER _____ 01/01/2025

CONTRACT between the CITY Effective Date: _____ Expiration Date: _____

OF BRIGHTON, MI and
CONTRACTOR Not to Exceed
Amount: \$ City Department
Budgeted Amount

Contract Description:

Contractor Information:

Essential Electric LLC

3511 Aquarina St.,

Waterford, MI 48329 Vendor No: _____

City Camera and Access Control Systems

Contract Administrator:

Bobby Wells

810-730-6934

bwells@essentialelecllc.com

Compliance Purchasing Office Information:

Tara Brown

CITY OF BRIGHTON, MI

200 N 1st Street, Brighton MI 48116

Brighton MI 48116

810-227-1911

BrownT@BrightonCity.org

City Contract Administrator

and Using Department:

CITY OF BRIGHTON POLICE DEPARTMENT

440 S 3rd St, Brighton, MI 48116

810-227-2700

PirochtaB@BrightonCityPolice.org – Chief

FloodC@BrightonCityPolice.org – Deputy

Chief

The Parties agree to the attached terms and conditions:

FOR THE CONTRACTOR:

SIGN:

FOR THE City:

SIGN:

Contract Administrator

SIGN:

Purchasing Administrator

This Contract is organized and divided into the following Sections for the convenience of the Parties.

Section 1. Contract Definitions

Section 2. Contract Term and Renewal

3511 Aquarina St. Waterford, MI 48329

• 810-730-6934 • SALES@ESSENTIALELECLLC.COM •

Section 3. Contract Administration and Amendments

Section 4. Contract Termination

Section 5. Scope of Deliverables and Financial/Payment Obligations

Section 6. Contractor's Warranties and Assurances

Section 7. Liability

Section 8. Contractor Provided Insurance

Section 9. Intellectual Property

Section 10. Confidential Information

Section 11. City Data

Section 12. Information Technology Standards

Section 13. General Terms and Conditions

§1. CONTRACT DEFINITIONS

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 1.1. "Amendment" means any change, clarification, or modification to this Contract.
- 1.2. "Business Day" means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding City designated holidays.
- 1.3. "Claims" means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the City or for which the City may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.
- 1.4. "Confidential Information" means all information and data that the City is required or permitted by law to keep confidential, which includes computer software, cybersecurity assessments and plans and measures to protect the City's security.
- 1.5. "Contract" means this document and any other documents expressly incorporated herein.
- 1.6. "Contractor" means the entity or person listed under "Contractor" on the first page of this Contract.
- 1.7. "Contractor Employee" means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.8. "Contract Documents" mean the following documents, which this Contract

includes and incorporates:

Exhibits (Applicable if Checked)

- 1.8.1. **Exhibit I: Contractor Insurance Requirements**
 - 1.8.2. **Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)**
 - 1.8.3. **Exhibit III: Requirements for Contractors with Access to City PII (Personally Identifiable Information)**
 - 1.8.4. **Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information**
 - 1.8.5. **Exhibit V: Federally Funded Contract Requirements**
 - 1.8.6. **Exhibit VI: Software License(s)**
 - 1.8.7. **Exhibit VII: License for Use of City Servicemark**
 - 1.8.8. **Exhibit VIII: Acknowledgement of Independent Employment Status**
 - 1.8.9. **Exhibit IX: Scope of Contractor Deliverables/Financial Obligations**
- 1.9. “City” means the City of Brighton, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “City Agents” as defined below.
- 1.10. “City Agent” means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the City; whether acting in their personal, representative, or official capacities. “City Agent” shall also include any person who was a “City Agent” anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.
- 1.11. “City Data” means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the City, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability Act (HIPPA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. City Data includes Confidential Information as defined in this Contract.
- 1.12. “City Network” means City owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of City hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.
- 1.13. “Day” means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 1.14. “Deliverables” mean goods and/or services provided under this Contract, whether tangible or intangible, and may be more specifically described in the Exhibits.
- 1.15. “Effective Date” means midnight on the date listed on the first page of this Contract.

1.16. “Expiration Date” means 11:59.59 p.m. on the date listed on the first page of this Contract.

1.17. “E-Verify” means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.

1.18. “Intellectual Property” means any developments, improvements, designs, innovation, and materials that may be the subject of a trademark/servicemark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.

1.19. “Iran-Linked Business” is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.

1.20. “Not to Exceed Amount” means the dollar amount listed on the first page of this Contract, unless amended. The “Not to Exceed Amount” is not the City’s financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.

1.21. “Proposal” means Contractor’s response or bid to the City’s Request for Proposal, Request for Qualifications, or Request for Quotes.

1.22. “Purchase Order” means the City’s written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.

1.23. “Purchasing” means the Purchasing Unit of the City of Brighton Compliance Office.

§2. CONTRACT TERM AND RENEWAL

2.1. Contract Term. This Contract shall begin on the Effective Date and shall end on the Expiration Date.

2.2. Contract Renewal. Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.

2.3. Legal Effect. This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized City Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

§3. CONTRACT ADMINISTRATION AND AMENDMENTS

3.1. Contract and Purchase Order Issuance. Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the City regarding all procurement and contractual matters relating to this Contract

and any Purchase Orders. Purchasing is the only City office/department authorized to make any Amendments to this Contract or Purchase Orders.

3.2. Purchase Orders. Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.

3.3. Project Managers. Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit IX. Unless otherwise stated in Exhibit IX, the City's Project Manager has no authority to amend this Contract.

3.4. Contract Administrators. The City shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The City's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The City's Contract Administrator(s) have no authority to amend this Contract.

3.5. Contract Amendments. All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized City Agent.

3.6. Unauthorized Changes. Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the City, undo any out-of-scope work that the City believes would adversely affect the City.

3.7. Precedence of Contract Documents. In the event of a conflict, the terms and conditions contained in Sections 1 through 13 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.

§4. CONTRACT TERMINATION

4.1. City Termination. In addition to any other legal rights the City may have to

terminate or cancel this Contract, the City may terminate the Contract as follows:

4.1.1. Immediate Termination. The City may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur:

(a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense; or (b) if any third-party funding for this Contract is reduced or terminated.

4.1.2. Termination for Convenience. The City may terminate or cancel this Contract, in whole or in part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.

4.2. Contractor Termination. Contractor may terminate or cancel this Contract, in whole or in part, upon one hundred and eighty (180) Days' notice to the City, if the City breaches any duty or obligation contained herein and within such notice period has failed or has not attempted to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the City.

City's Obligations Upon Termination. The City's sole obligation in the event of termination or cancellation of this Contract is for payment of the actual Deliverables provided to the City before the effective date of termination. Under no circumstances shall the City be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The City shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the City chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.

4.3. Contractor's Obligations Upon Termination. If the City terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the City may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials and property provided to Contractor by the City; (d) unless otherwise directed by the City, transfer title in and deliver to the City all Deliverables in the possession of Contractor or Contractor Employees (which Deliverables are transferred to the City "As-Is", except to the extent the amounts paid by the City for these Deliverables include warranties or warranty services and, in that situation, the Deliverables will be transferred with the warranty or warranty services and not "As-Is"); and (e) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.

4.4. Assumption of Subcontracts. If Contractor is in breach of this Contract and the City terminates this Contract, then the City may assume, at its option, any

subcontracts and agreements for Deliverables provided under the Contract and may pursue completion of the Deliverables by replacement Contract or otherwise as the City, in its sole judgment, deems expedient.

§5. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS

5.1. Performance of Deliverables. Contractor shall provide all Deliverables identified in and as set forth in Exhibit IX, any Purchase Orders, or any Amendments to this Contract.

5.2. Software License(s). If this Contract includes a Software License(s) as described in Exhibit VI, then the Parties shall follow the terms and conditions therein. Any applicable third-party Software License(s) are also provided in Exhibit VI. Unless specifically agreed to by City, if City Agents are required to accept click through license terms to access any of the Deliverables in this Contract, the terms and conditions of those click through licenses are without force and effect.

5.3. Financial Obligations. Except as otherwise set forth in this Contract, the City's sole financial obligation under this Contract shall be set forth in Exhibit IX. The amount and manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order.

5.4. Payment Obligations. Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the City's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice. Invoices shall contain the following information: (a) City Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information requested by Purchasing. The City shall have no obligation to make a payment under this Contract until an invoice is submitted in the form set forth herein and shall have no obligation to pay for Deliverables, which have not been invoiced (as required herein) within sixty (60) Days of Contractor's performance. Unless otherwise set forth in the Exhibits, the City shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.

5.5. Not to Exceed Amount. The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact at least ten (30) Days before this event.

5.6. No Obligation for Penalties/Costs/Fines. The City shall not be responsible for any cost, fee, fine, penalty; or direct, indirect, special, incidental, or consequential damages incurred or suffered by Contractor in connection with or resulting from the performance of this Contract under any circumstances.

5.7. Set-Off of City Costs. If the City incurs any costs associated with the duties or obligations of Contractor under this Contract, then the City has the right to set-off those costs from any amounts due and owing Contractor. This set-off includes withholding payment in an amount equal to the cost of any City-provided equipment,

supplies, or badges that are not returned by Contractor upon completion, termination, or cancellation of this Contract.

5.8. In-Kind Services. Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.

56. CONTRACTOR'S WARRANTIES AND ASSURANCES

6.1. Full Knowledge of Contract Expectations. Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all City requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.

6.2. Complete and Accurate Representations. Contractor certifies that all statements, assurances, records, and materials submitted to the City in connection with seeking and obtaining this Contract have been truthful, complete, and accurate.

6.3. Access to Contractor Policies. If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the City, if requested.

6.4. Grant Compliance. If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the City, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the City shall provide Contractor with a copy of the applicable grant requirements.

6.5. Contractor Incidental Expenses. Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.

6.6. Equipment and Supplies. Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the City.

6.7. Contractor Employees.

6.7.1. Number and Qualifications of Contractor Employees. Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.

6.7.2. Control and Supervision of Contractor Employees. Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.

6.7.3. Removal or Reassignment of Personnel at the City's Request. Contractor shall remove a Contractor Employee performing work under this Contract at the City's request provided that the City's request is based on legitimate, good-faith reasons.

Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the City, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.

6.7.4. Contractor Employee Identification. If requested by the City, Contractor Employees shall wear and display a City-provided identification badge at all times while working on City premises. In order to receive a City identification badge, a Contractor Employee shall sign the “Acknowledgement of Independent Contractor Status” form, Exhibit VIII to this Contract. Contractor shall return all City-provided identification(s) upon completion of Contractor’s obligations under this Contract.

6.7.5. Background Checks. At the City’s request, Contractor Employees performing work under this Contract shall be subject to a background check by the City. The scope of the background check is at the discretion of the City and the results will be used to determine Contractor Employee’s eligibility to perform work under this Contract. Any request for background checks will be initiated by the City and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.

6.7.6. Contractor Employee Expenses. All Contractor Employees shall be employed at the Contractor’s sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees’ federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify and hold the City harmless for all Claims against the City by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker’s Compensation, disability pay, or other insurance of any kind.

6.7.7. Contractor’s Compliance with the Patient Protection and Affordable Care Act. If Contractor is subject to the Patient Protection and Affordable Care Act (“ACA”), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the City, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the City.

6.8. Acknowledgment of Independent Contractor Status.

6.8.1. Independent Contractor. Nothing in this Contract is intended to establish an employer-employee relationship between the City and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the City. Contractor shall ensure that Contractor Employees are apprised of their status and the limitations independent contractors have of this status.

6.8.2. Contractor/Contractor Employee Representations. Contractor and/or Contractor Employees shall not represent themselves as City employees. Contractor shall ensure that Contractor Employees do not represent themselves as City employees.

6.8.3. City Benefits and Plans. Contractor and Contractor Employees shall not be entitled to participate in any City employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan.

6.8.4. City Reliance. The City entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.

6.9. Permits and Licenses. Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the City, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.

6.10. E-Verify. In accordance with Miscellaneous Resolution No.09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the City to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.

6.11. Iran-Linked Business Certification. Contractor certifies that it is not an Iran-

Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the City, if Contractor becomes an Iran-Linked Business at any time during this Contract.

6.12. Foreign Adversary Certification. If Contractor supplies technology or equipment to City, Contractor certifies that the technology and/or equipment was not produced, assembled or manufactured by a foreign adversary, as defined, and as prohibited by the federal government.

6.13. Taxes.

6.13.1. Contractor Taxes. Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The City shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.

6.13.2. City Tax-Exempt. The City is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the City is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.

6.14. Warranty for Services. Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, and professional standards.

6.15. Warranty for Goods. All Deliverables that are goods shall be subject to the following warranties: **6.15.1. Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall: (a) be merchantable; (b) be of good quality; (c) be fit for their ordinary purpose; (d) be adequately contained and packaged; and (e) conform to the specifications and descriptions contained in this Contract.

6.15.2. Warranty of Fitness for a Particular Purpose. If Contractor knows or has reason to know that the goods will be used for a particular purpose and the City is relying on Contractor's skill or judgment to select or furnish the goods, then there is a warranty that the goods are fit for a particular purpose.

6.15.3. Warranty of Title. All goods conveyed to the City shall be conveyed and transferred: (a) with good title; (b) free from any security interest, lien, or encumbrance that the City did not have knowledge of when the Contract was executed; and (c) free of any rightful claim of infringement or similar claim by a third-party.

6.16. ADA and Section 508 Compliance. If Contractor is providing a Deliverable that requires City Agents or the public to use a software application or to access a website, Contractor warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables

Exhibit IX.**§7. LIABILITY**

7.1. Contractor Indemnification. Contractor shall indemnify, defend, and hold the City harmless from all Claims, incurred by or asserted against the City by any person or entity, which are alleged to have been caused directly or indirectly from the acts or omissions of Contractor or Contractor's Employees. The City's right to indemnification is in excess and above any insurance rights/policies required by this Contract.

7.2. No Indemnification from the City. Contractor shall have no rights against the City for indemnification, contribution, subrogation, or any other right to be reimbursed by the City, except as expressly provided herein.

§8. CONTRACTOR PROVIDED INSURANCE. At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.

§9. INTELLECTUAL PROPERTY

9.1. Contractor Use of City Licensed Software. In order for Contractor to perform this Contract, the City may permit Contractor or Contractor Employees to access certain Software licensed to the City. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the City and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.

9.2. Contractor License to Use City Servicemarks. If this Contract involves the use of City servicemarks, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VII. Contractor shall only use the servicemarks as directed by the City in Exhibit VII.

9.3. Assignment of Rights. In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in City Intellectual Property; (b) any and all programs, inventions, and other work or authorship developed by Contractor while providing Deliverables to the City are works made for hire, created for, and owned exclusively by the City, unless otherwise specified in the Contract; (c) Contractor assigns to the City all rights and interest in City Intellectual Property, which Contractor has made or conceived or may make and conceive, either solely or jointly with others, either on or off City premises while performing this

Contract or with the use of the time, material, or facilities of the City; and (d) Contractor and its applicable Contractor Employees shall sign any documents necessary for the City to register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure Contractor Employees assign their rights and interests in City Intellectual Property to the City.

9.4. Infringement Remedies. If, in either Party's opinion, any of the services or Deliverables supplied by Contractor or Contractor Employees is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor shall at its own expense: (a) procure for the City the right to continue using the services or Deliverables, or if this option is not reasonably available to Contractor; (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by City with appropriate credits to the City and reimburse the City for any losses or costs incurred as a consequence of the City ceasing its use and returning it.

§10. CONFIDENTIAL INFORMATION

10.1. Contractor Use of Confidential Information. Contractor and Contractor Employees shall use appropriate safeguards to protect the confidentiality and integrity of Confidential Information. Contractor shall not reproduce, provide, disclose, or give access of Confidential Information to any Contractor Employee or third-party not having a legitimate need to know. Contractor and Contractor Employees shall only use the Confidential Information for performance of this Contract. Notwithstanding the foregoing, Contractor may disclose the Confidential Information, if required by law, statute, or other legal process; provided that Contractor: (a) gives the City prompt written notice of the impending disclosure; (b) provides reasonable assistance to the City in opposing or limiting the disclosure; and (c) makes only such disclosure as is compelled or required. This Contract imposes no obligation upon Contractor with respect to any Confidential Information which Contractor can establish by legally sufficient evidence: (a) was in possession of or was known by Contractor, prior to its receipt from the City, without any obligation to maintain its confidentiality; or (b) is obtained by Contractor from a third-party having the right to disclose it, without an obligation to keep such information confidential.

§11. CITY DATA. If Contractor uses or possesses City Data in the performance of this Contract, then the following provisions contained in this section apply:

11.1. Use of City Data. Contractor and Contractor Employees shall have a limited license to City Data, including a license to collect, process, store, generate and display City Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available the City Data for Contractor's own purposes or for the benefit of anyone other than the City, without the City's prior written consent, unless otherwise provided for within an Exhibit to this Contract.

11.2. Unauthorized Access/Disclosure or Theft of City Data. Contractor or Contractor

Employees shall notify the City's Chief Information Officer as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of City Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees or should have been known by exercising reasonable diligence. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure City Data; (b) cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the City; and (c) comply with all applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise directed by the City. If Contractor uses or possesses City Data described in Exhibit II (HIPPA), Exhibit III (PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of City Data.

11.3. Storage of City Data. Contractor shall only store and process City Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store City Data on portable devices, including personal computers, except for portable devices that encrypt data at rest and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access City Data remotely only as required to provide technical support.

11.4. Requirements for PCI Data. If Contractor possesses, stores, processes, or transmits City Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall provide the City with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard. Contractor warrants that it will keep its Certification of Compliance with PCI Data Security Standard current.

11.5. Response to Legal Request for City Data. If the City receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide City Data held by Contractor, then Contractor shall provide City Data to the City, in a format directed by the City, within the time frame required by law.

11.6. Obligations upon Expiration, Termination or Cancellation of Contract. At the City's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return City Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of City Data as directed by City.

§12. INFORMATION TECHNOLOGY STANDARDS. If Contractor provides a technology application or requires

12.1. City Standards. If Contractor and Contractor Employees that will be given access to the City Network, Contractor and Contractor Employees shall comply with the City Electronic Communications and Use of Technology Policy.

12.2. Implementation of Security Measures. Contractor shall implement and maintain

appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the City Network and City Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.

12.3. Completion of City Security Questionnaire. Contractor warrants it has completed the City's security questionnaire. Each year, prior to the anniversary date of this Contract, and the use of the Internet to access a Deliverable, the following sections apply: upon receipt of the City's security questionnaire, Contractor shall provide the City with the answers to the City's security questionnaire.

§13. GENERAL TERMS AND CONDITIONS

13.1. Access to City Property or Facilities. As set forth in this Contract, Contractor has access to and the right to use City property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the City's Director responsible for the department requiring access outside of Business Days, Contractor may only access and use City property and facilities for performance of this Contract on Business Days.

13.2. Signs on City Property or Facilities. Contractor shall not place any signs or advertisements on City property or facilities without the prior written permission of the City's Director of Facilities Management or successor.

13.3. Use of City Property or Facilities. While performing this Contract, Contractor shall keep City property or facilities, and anything stored thereon in a clean, safe, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the City's performance of its functions.

13.4. Removal of Contractor's Personal Property. At the expiration or termination of this Contract, Contractor shall leave City property or facilities in the same condition that Contractor found them and clean of all rubbish. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the City shall dispose of it and bill Contractor for any costs associated with the removal and disposal.

13.5. Damage to City Property or Facilities. Contractor shall be responsible for any damage to any City property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the City shall make the necessary repairs and/or replacements or cause a third-party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the City for all costs associated with repairing and/or replacing the damaged property or facilities.

13.6. Damage to Contractor's Property. Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at City property or facilities during performance of this Contract.

13.7. City's Right to Suspend Contract Performance. Upon written notice, the City may

require Contractor to suspend performance of this Contract if Contractor has failed to comply with federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the City's right to terminate and/or cancel this Contract. The City shall incur no penalty, expense, or liability to Contractor if the City suspends performance of this Contract under this Section.

13.8. Discrimination. Contractor, and its subcontractors under this Contract, shall not discriminate against an employee or an applicant for employment in hiring, any terms and conditions of employment or matters related to employment regardless of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, genetic information, height, weight, disability, veteran status, familial status, marital status or any other reason, that is unrelated to the person's ability to perform the duties of a particular job or position, in accordance with applicable federal and state laws.

13.9. Conflict of Interest. Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, *et seq.* and MCL 15.321, *et seq.*), no contracts shall be entered into between the City and any City Agent. To avoid any real or perceived conflict of interest, Contractor shall disclose to the City the identity of all Contractor Employees and all relatives of Contractor Employees who: a) are employed by the City on the date the Contract is executed; and b) become employed by the City during the term of the Contract. Contractor shall also disclose to the City the identity of all City Agents and all relatives of City Agents who: a) are employed by Contractor on the date the Contract is executed; and b) become employed by Contractor during the term of the Contract.

13.10. Access and Records. Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the City with reasonable access to such books and records, upon request.

13.11. Audit. The City or an independent auditor hired by the City may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the City within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report.

13.12. Assignments/Delegations/Subcontracts.

13.12.1. Prior Written Consent Required. Except by operation of law, neither Party may assign, delegate, or subcontract any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign, delegate, or subcontract this Contract to an affiliate or

subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the City that the affiliate or subsidiary can perform this Contract. The City may withhold consent, if the City determines that the assignment, delegation, or subcontract would impair performance of this Contract or the City's ability to recover damages under this Contract. Contractor shall also provide the City with adequate information to allow the City to make a determination regarding the assignment, delegation, or subcontract.

13.12.2. Flow Down Clause Required. Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the terms and conditions of this Contract. The assignment, delegation, or subcontract shall in no way diminish or impair performance of any term or condition of this Contract.

13.12.3. Contractor Responsibility for Assigns/Delegates/Subcontractors. If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.

13.12.4. Performance Required. If an assignee, delegee, or subcontractor fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.

13.13. Non-Exclusive Contract. This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the City may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.

13.14. No Third-Party Beneficiaries. Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.

13.14.1. Survival of Terms and Conditions. The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Section 1. Contract Definitions, Section 5. Scope of Deliverables and Financial/Payment Obligations, Section 6. Contractor's Warranties and Assurances, Section 7. Liability, Section 8. Contractor Provided Insurance, Section 9. Intellectual Property, Section 10. Confidential Information, Section 11. City Data, Section 13. General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to City PII (Personally Identifiable Information) and Exhibit IV: Requirements

for Contractors with Access to CJIS Data (Criminal Justice Information Security).

13.15. Reservation of Rights. This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the City.

13.16. Compliance with Laws. Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.

13.17. Force Majeure. Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations caused by events beyond their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.

13.18. Notices.

13.18.1. Written Notice. All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a receipt of confirmation, if sent by e-mail or fax.

13.18.2. Notice to Contractor. Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.

13.18.3. Notice to City. Unless otherwise specified herein, Notice to the City shall be addressed to Purchasing, the City Project Manager (if applicable), and the City Contract Administrator(s) listed on the first page of this Contract.

13.19. Captions. Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.

13.20. Waiver. Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

13.21. Cumulative Remedies. A Party's exercise of any remedy shall not preclude the

exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.

13.22. Severability. If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the City harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the City.

13.23. Dispute Resolution. All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.

13.24. Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the ____ District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.

13.25. Entire Contract. This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

EXHIBIT I

CONTRACTOR INSURANCE REQUIREMENTS

During this Contract, the Contractor shall provide and maintain, at their own expense, all insurance as set forth and marked below, protecting the City against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified. Limits of insurance required in no way limit the liability of the Contractor.

Primary Coverages

Commercial General Liability Occurrence Form including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Broad Form Contractual including coverage for obligations assumed in this Contract; \$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

Workers' Compensation Insurance with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

1. Fully Insured or State approved self-insurer.
2. Sole Proprietors must submit a signed Sole Proprietor form.
3. Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Commercial Automobile Liability Insurance covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

Commercial Umbrella/Excess Liability Insurance with minimum limits of \$2,000,000 each occurrence. Umbrella or Excess Liability coverage shall be no less than following form of primary coverages or broader. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

General Insurance Conditions

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the City;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the City for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the City;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on City property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the City of Brighton and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. If the Contractor's insurance policies have higher limits than the minimum

• ELECTRICAL • INTRUSION • ACCESS CONTROL • CCTV • VIRTUAL PRESENCE SECURITY •

coverage requirements stated in this document the higher limits shall apply and in no way shall limit the overall liability assumed by the Contractor under contract.

7. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;

8. Certificates of insurance must be provided no less than ten (10) Business Days prior to the City's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and provide 30 days' notice of cancellation/material change endorsement.

9. All insurance carriers must be licensed and approved to do business in the State of Michigan along with the Contractor's state of domicile and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the City Risk Management Department.

EXHIBIT IV REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO CJIS DATA (Criminal Justice Information Security)

Exhibit IV governs the requirements for Contractors with Access to Criminal Justice Information governed by the CJI Security Policy of the FBI.

1. Definitions 1.1 Criminal Justice Information (CJI) means data or information governed by the CJIS Security Policy.

1.2 Criminal Justice Information Services (CJIS) means the Criminal Justice Information Services, a division in the Federal Bureau of Investigation (FBI) that sets a minimum standard of security requirements to protect and safeguard CJI.

1.3 CJIS Security Policy means the Policy that governs the security of CJI. The CJIS Security Policy provides guidance for the creation, viewing, modification, transmission, dissemination, storage, and destruction of CJI. This Policy applies to every individual—contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity—with access to, or who operate in support of, criminal justice services and information.

2. Obligations

The contractor shall comply with the current version of the CJIS Security Policy, which may be amended from time to time by the CJIS Advisory Policy Board of the FBI. A link to the current FBI standards is available: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

EXHIBIT VIII

3511 Aquarina St. Waterford, MI 48329

• 810-730-6934 • SALES@ESSENTIALELEC.LLC.COM •

ACKNOWLEDGEMENT OF INDEPENDENT EMPLOYMENT STATUS

I, _____, acknowledge that I am an employee or subcontractor of
(Name of Contractor's Company): (hereinafter "Company") under Contract #: (if applicable)
, and

- At all times during my assignment at the City of Brighton, I will remain an employee or subcontractor of the Company
- I am not an employee of the City of Brighton; and,
- I may not represent myself as an employee of the City of Brighton.

I understand that:

- Company is responsible for establishing the conditions of my assignment to the City of Brighton; and
- Company is solely responsible for compensating me for my services; and
- I understand and agree that as an employee or subcontractor of Company, I am not eligible to participate in or accrue any benefits under any of the City of Brighton employee benefits or benefit plans, including retirement, deferred compensation, insurance (including without limitation: health, disability dental and life insurance), vacation pay, and any other similar plans and programs. However, if I am a retired City employee, I may receive vested post-employment benefits such as retiree healthcare and pension benefits from the City of Brighton. I understand that the post-retirement benefits I receive from the City cannot be enhanced by my work for the above Contractor.

I acknowledge that:

- I have no copyright, patent, trademark or trade secret rights to any City of Brighton Intellectual Property or any work developed by me while providing services to the City of Brighton and,
- If I will be given access to the City Network, I will comply with the City of Brighton's Electronic Communications and Use of Technology Policy.
- I will comply with and sign the FBI Criminal Justice Information Services Security Addendum if I will have access to CJIS Data.

Signed: _____ **Date:** _____

Print Name: _____

Witness: _____ **Date:** _____

Print Name: _____

**Contractor or Contractor Employee must provide a copy of completed form to the Police Department -to receive a City Identification badge.*

EXHIBIT IX

SCOPE OF CONTRACTOR DELIVERABLES/FINANCIAL OBLIGATIONS

Contractor (also referred to herein as “Essential Electric LLC”) shall provide and perform the following Deliverables for the City under this Contract:

1. Essential Electric LLC is responsible for the installation, supply, repair, and replacement of, cameras, recorders, access control hardware, wireless communications equipment and associated mounting hardware and cabling in the city. Essential Electric LLC shall perform installation and service work on backend systems, ancillary support equipment, off and on-premises equipment, City Properties and buildings.
2. The Deliverables/services described above will be performed by Essential Electric LLC on-site at the Police Department, Public Departments, Cities Buildings, City Properties, and DPW Properties.
3. Essential Electric LLC’s workmanship and performance shall be of the highest standards and meet or exceed those of original equipment manufacturers, and industry standards. Essential Electric LLC is responsible for meeting with operations and City managers, IT staff and project managers of various agencies and performing work according to the policies and procedures set forth by those agencies. Essential Electric LLC’s installers MUST have advanced experience with installation and standards.
5. Pricing. Essential Electric LLC will perform the Deliverables/services/maintenance/repairs described in this exhibit at the rates/pricing provided below:

Labor flat rate of: \$125.00 an hour per man

Deliverables at: 20% off, with additional Manufacture discounts on projects at \$50,000 and higher.

The City of Brighton requires all Deliverables/services/maintenance/repairs totaling more than \$5,000.00 be approved by the City Council by formal written quotation, before supply of deliverables/services/maintenance/repairs can begin.

6. Invoicing and Payment. Essential Electric LLC will invoice the City for the work Essential Electric LLC performed under this Contract. The City will pay all undisputed invoices within thirty (30) days after receiving the invoice. Essential Electric LLC shall deliver its invoices to Tara Brown, The City of Brighton City Hall, 200 N 1st Street, Brighton MI 48116. The City may change the person that the invoices shall be delivered to by providing notice of the change to Essential Electric LLC.



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JANUARY 28, 2025

SUBJECT: CONSIDER APPROVAL TO PURCHASE OF A NEW UTILITY SWAT TRAILER FROM USA TRAILER IN AN AMMOUNT NOT TO EXCEED \$26,790 AND NECESSARY BUDGET AMENDMENTS.

BACKGROUND

The City of Brighton Officers who are members of the Livingston Regional SWAT team are responsible for mission-critical equipment and tools. This includes not only individual operator equipment but also a side-by-side vehicle utilized during SWAT-specific operations.

Currently, this equipment is being stored and transported using two separate modes of transportation. SWAT and training equipment are stored and transported in a 2003 box van, that has reached the end of its service life and needs to be retired. The side-by-side vehicle is stored and transported in a trailer that is insufficient in size.

Acquiring a trailer that is adequately sized and equipped with the necessary features to house all essential SWAT equipment would significantly enhance response times, create a safer working environment for SWAT officers, and better serve our community.

ADMINISTRATIVE SUMMARY

To fund the purchase of a new SWAT trailer, the City of Brighton Police Department auctioned a 1999 Ford F-350 van via Biddergy. This van, originally acquired about 10 years ago at no cost through the military's 10-33 program, sold for \$26,790 in the auction.

BUDGET

The City of Brighton Police Department obtained three quotes for the same type of trailer from three different vendors. After reviewing the quotes, it was determined that USA Trailer offered the lowest price at \$20,414, which includes all upfitting costs.

Trailer Quotes	
Vendor:	Price:
USA Trailer	\$20,414.00
Fenton Trading Post	\$26,375.00
Becks	\$27,267.45

The purchase of a new SWAT trailer was not included in the 2024/2025 fiscal budget. However, the expenditure will be covered by the proceeds from the sale of the 1999 Ford van. Budget amendments to both revenue and expense in the Police Capital Millage Fund will be required to facilitate this purchase.

RECOMMENDATION

Staff recommends the approval of the purchase of a new utility SWAT Trailer from USA Trailer in an amount not to exceed \$26,790, along with necessary budget amendments.

Prepared by: Brent Pirochta, Chief of Police

Reviewed by: Gretchen Gomolka, City Manager
Elizabeth Gaines, Finance Director

Elizabeth Ga, Finance Director (Required for all financial related agenda items)

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

Reviewed &

Approved by: Gretchen Gomolka, City Manager

