



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

July 16, 2020

SUBJECT: CONSIDER APPROVAL OF TETRATECH ENGINEERING SERVICES PROPOSAL FOR AMERICA’S WATER INFRASTRUCTURE ACT (AWIA) WATER SYSTEM RISK AND RESILIENCY ASSESSMENT AT A COST NOT TO EXCEED \$17,500

ADMINISTRATIVE SUMMARY

- As part of the new compliance requirements that were initiated in 2018, the Environmental Protection Agency (EPA) created a new program known as America’s Water Infrastructure Act (AWIA). This Act requires community water systems with a population of more than 3,300 to develop a Risk and Resilience Assessment (RRA) and Emergency Response Plan (ERP) for their facilities. Compliance dates are based on population size with June 30, 2021 being the City of Brighton’s due date for the RRA portion and December 31, 2021 being the ERP compliance date. Currently the City has an ERP in place, but it will most likely need to be updated when the Assessment is finished. Staff will return to Council with a separate proposal for the ERP and security recommendations from concerns that are found during the Assessment.
- An AWIA assessment is intended to look at a utility’s water system’s assets and cyber system vulnerability. With telemetry components like Supervisory Control And Data Acquisition (SCADA) that help control water pressure, tower levels and other operating controls within the system, natural occurring hazards or malicious acts could cause severe or dangerous disruptions to our customer service. Staff recently attended a webinar that pointed out the requirements and phases that are needed within an acceptable AWIA plan. This Assessment will help staff evaluate the soft points of the existing system and help safeguard against possible future problems. Below are the seven phases that need to be considered for a successful Assessment.

Asset Characterization	List of assets and which are critical
Threat Characterization	What types of hazards should we consider?
Consequence Analysis	Loss of life, injuries, money
Vulnerability Analysis	What would allow this to happen?
Threat Analysis	Likelihood of hazard, natural or otherwise
Risk/Resilience Analysis	Risk = Consequence x Vulnerability x Likelihood Resilience = Service Outage x Vulnerability x Likelihood
Risk/Resilience Management	Options to reduce risk, increase resilience, & Cost to benefit ratio

- After viewing the webinar, staff realized the Assessment will be time consuming and would require help from the engineering staff in order to submit the AWIA Assessment on time. Staff asked Tetra Tech to provide a proposal for the Assessment. While it was discussed in the webinar that the COVID-19 pandemic may result in an extension of the original compliance date, there has been no



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confirmation from the EPA as of yet. With a \$25,000–a-day penalty for not meeting Federal compliance, the team intends to move forward to meet our June 30, 2021 deadline.

- Tetra Tech submitted a proposal of \$17,500 for the City of Brighton’s Risk Assessment. While staff will be able to supply much of the information to move forward, Tetra Tech will be performing the technical portion of the project. Tetra Tech estimates approximately 10 weeks to complete the work once they have received authorization. Once the project is complete and staff has had time to review the Assessment, we will determine if the ERP needs to be updated and what security measures should be considered. If further action is needed for the ERP, staff will bring back recommendations for Council’s approval.
- While this project was not budgeted in the 2020/2021 fiscal year, it must be completed by its end. Unfortunately, this came to staff’s attention after the budget was already approved. While other capital utility projects are planned for this year, staff will review their necessity and if needed, push those forward to next year if funds are not available at the end of this fiscal year. In other words, staff is not asking for a budget amendment and looks to complete within existing resources.

RECOMMENDATION

Approval of Tetra Tech Engineering Services proposal of America’s Water Infrastructure Act (AWIA) Water System Risk and Resiliency Assessment at a cost not to exceed \$17,500.

Prepared by: Marcel Goch, DPS Director

Approved by: Nate Geinzer, City Manager

Attachment: Tetra Tech Proposal



June 10, 2020

Mr. Marcel Goch
City of Brighton
200 North First Street
Brighton, MI 48116

Re: America's Water Infrastructure Act Water System Risk and Resiliency assessment and Emergency Response Plan

The City of Brighton, as with other municipalities in Michigan, is required under the America's Water Infrastructure Act (AWIA) to conduct a water system risk and resilience assessment (RRA) and prepare an Emergency Response Plan Update (ERP) of its physical operational water system assets and cyber networks. This Act is administered by the United States Environmental Protection Agency (EPA). The assessment is designed to determine the water system's vulnerabilities to malevolent acts and natural hazards as well as proximity and dependency risks.

Water utilities may take a number of approaches to meet the EPA requirements. EPA does not prescribe a single approach. Some communities elect to conduct a comprehensive evaluation with multiple workshops and recommendations. This approach requires a significant investment but provides a complete understanding and picture of the vulnerabilities of the public water system.

Other communities elect to take a minimalistic approach to meet EPA requirements at a reduced budget. Water utilities are still free to use the results of this simpler approach to invest more time and effort to address more vulnerable areas.

The following proposal is structured assuming the City of Brighton would start with the minimal approach in your response to the EPA's RRA component of the act.

SCOPE OF SERVICES

Task 1 Kickoff Phone Conference

Tetra Tech will conduct a project planning meeting with the City. The objectives of this meeting will be to confirm the project timeline and coordinate compilation of the necessary documents to conduct the plan reviews. The critical path item in developing a plan of this nature is data collection. We will address this need immediately. Using the AWIA requirements as a minimum baseline, we will develop a data needs list, data needs submission log, and draft data collection plan. The data collection schedule will be finalized at the kickoff meeting.

During the meeting, Tetra Tech will confirm the overall project, scope, project plan, and schedule.

Task 2 Data Collection and Review

Data gathering, through existing documentation and field assessment, will address the following elements:

- Malevolent acts (physical and cyber intrusion by internal/external perpetrators) and natural hazards (for the City it is assumed that the list of natural hazards can be limited to earthquakes, fires, floods, and storm events)
- System resilience
- Monitoring practices
- Financial network infrastructure
- Chemical handling
- Operation and maintenance (including dependencies such as utilities and chemical suppliers)
- Network diagrams addressing schemes and system descriptions
- Drawings showing the relationship of each system to the treatment process (i.e., process flow diagrams, record drawings and O&M manuals). Tetra Tech has most of these within our files.
- City records of previous malevolent acts, natural events, and service outages due to utility or external factors

The focus of data collection will be identifying the status of existing systems and analyzing existing systems and deficits per the EPA guidelines and City's objectives. It is assumed that the following documents will be provided (Tetra Tech already has the *Reliability Study* in our files):

- *Current Emergency Operations/Response Plan*

Additional technical documentation that may be requested if available includes:

- Latest version of all security policies and procedures
- Any contract/asset access service agreements
- Security documentation such as post orders, recent calls for service, and security organization chart.
- Electronic engineering files of the administration and operations building utilities, communications and security systems
- Available O&M manuals
- New assets that are in some phase of planning, design, or construction

At a minimum, this assessment will include the following system elements:

- Transmission pipelines
- Pump stations
- Source of supply
- Treatment facilities
- Finished water storage
- Security systems and practices
- Operations center

- Cyber systems
- Chemical handling

Task 3 Asset and Threat Characterization and Consequence Analysis – Workshop

A qualitative analysis of assets and threats is required. A quantitative assessment that ranks the assets and threats is recommended by EPA but is not required. The City could choose to perform a quantitative analysis at a future date on your own schedule.

Asset-Threat Pair Determination

Tetra Tech will prepare for and facilitate a workshop with the City to introduce the Vulnerability Self-Assessment Tool (VSAT) assessment approach and develop the physical and cyber asset characterization. The workshop will be attended by Tetra Tech's project manager and project engineer.

Tetra Tech will review the major cyber assets associated with each facility and their criticality to the City's mission. Tetra Tech will facilitate a discussion with City staff to define their mission, followed by a discussion of how each facility is critical to this mission.

A threat characterization will be conducted to assess malevolent acts and natural hazards, including threats that can impact off-site assets controlled by others (e.g., utilities and chemical suppliers). The workshop will identify reasonable, worst-case threats using the VSAT table of potential hazards and threat scenarios.

Tetra Tech will prepare for, and facilitate, the threat characterization process at the workshop. This part of the workshop will identify threats and narrow the focus of threats that represent real, physically possible threats to critical assets identified during the asset characterization.

Tetra Tech will prepare an Asset Classification and Threat Characterization Technical Memorandum summarizing the key assets and associated criticality identified during the workshop.

Deliverable

- Facilitated workshop. Documentation of criticality considerations and Threat-Asset pair development to be included in the final report.
- Listing of Asset-Threat pairs

Assumptions

- This assessment will be conducted in a manner and develop results to meet the needs of the AWIA RRA requirements.
- The RRA will fully evaluate a maximum of twenty (20) water system Asset-Threat pairs.

Field Investigations

Tetra Tech will conduct field-data collection regarding water assets identified as critical and conduct interviews with key staff.

Tetra Tech's field investigations will determine the ability of current protection systems to withstand each identified threat. Each site will be classified based on the criticality of its cyber assets as defined in the VSAT methodology.

Tetra Tech will begin with threat analysis assumptions identified during the asset/threat characterization workshop to estimate the likelihood of a malevolent act or natural hazard based on relative alternative targets and historical records, respectively.

Consequence Analysis

Tetra Tech will use VSAT to determine the consequence results of the VSAT analysis.

Deliverable

- Documentation of consequence considerations to be included in the final memo.

Task 4 Draft Final and Final RRA

Following completion of the workshop Tetra Tech will prepare a Draft Final RRA memo (perhaps 3 to 5 pages) compiling and summarizing the process, results, recommendations, decisions, and action items that will provide the City with a Risk and Resilience Action Plan for review. Following review, Tetra Tech will conduct a meeting with the City project manager to review comments and revisions. Tetra Tech will prepare a Final RRA memo for the City's records. Tetra Tech will also prepare the required RRA Compliance Letter for the City's submission to the EPA. Tetra Tech will provide five hard copies along with PDF and Microsoft Word copies on a flash drive.

Deliverables

- Draft Final RRA memo
- Final RRA memo
- EPA RRA Compliance Letter

Assumption

- The City will provide a single set of reviewed and resolved comments of the Draft RRA memo.

PROPOSAL ASSUMPTIONS

Emergency Response Plan will be completed under a separate authorization.

The proposed scope of work is the minimum required to meet the federal requirements. Detailed security recommendations (including cybersecurity) will require a separate authorization.

SCHEDULE

We can hold the kickoff meeting within two weeks of receiving your authorization. We estimate all work in this proposal can be completed within approximately ten weeks of receiving your authorization.

COMPENSATION

We propose invoicing based on our hourly billable rates. Our standard terms and conditions are attached and considered a part of this proposal.

For the scope described, we propose a budget of \$17,500.

Mr. Marcel Goch
America's Water Infrastructure Act Water System
Risk and Resiliency Assessment and Emergency Response Plan
June 10, 2020
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EXECUTION

Should you agree with this proposal, please sign in the space provided and return one copy for our files. We appreciate this opportunity to provide this proposal and our long history of service to the City of Brighton.

Sincerely,



Gary Markstrom, P.E.
Vice President

Attachment: Tetra Tech Standard Terms and Conditions

PROPOSAL ACCEPTED BY CITY OF BRIGHTON

BY: _____

TITLE: _____ **DATE:** _____

Engineering Services Standard Terms & Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

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

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

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

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

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a

representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

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

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

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

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

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

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

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

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

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

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

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

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

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

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

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

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

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

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

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

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

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

Lien Rights Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

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



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

July 16, 2020

SUBJECT: REQUEST FOR DIRECTION ON POTENTIAL IMPLEMENTATION OF SOCIAL DISTRICTS

BACKGROUND

- On July 1, 2020, Governor Whitmer signed House Bill 5781 into law creating the Social District Permit. Under this permit, qualified licensees whose licensed premises are contiguous to a commons area within the designated Social District, and that have been approved for and issued a Social District Usage Permit, may sell alcoholic liquor (beer, wine, mixed spirit drink, spirits, or mixed drinks) on their premises to customers who may then consume the alcoholic beverages within the commons area of the Social District.

ADMINISTRATIVE SUMMARY

- In order for the City to implement a Social District, the following conditions must be met:
 - Designate a Social District that contains a commons area, as defined in MCL 436.1551(8)(a).
 - Create a commons area within a social district, which is clearly designated and clearly marked by the City, which is shared by, and contiguous, to the premises of at least two other qualified licensees. Commons area does not include the premises of any qualified licensee.
 - Current guidance from the Michigan Municipal League (MML) suggest the law to be interpreted as allowing for more than one common area.
 - The term qualified licensee is defined by MCL 436.1551(8)(c): "Qualified licensee" means any of the following:
 - A retailer that holds a license, other than a special license, to sell alcoholic liquor for consumption on premises. (This includes the following license types: Class C, Tavern, A-Hotel, B-Hotel, Club, G-1, G-2, Brewpub.)
 - A manufacturer with an on-premises tasting room permit issued under section 536.
 - A manufacturer that holds an off-premises tasting room license issued under section 536.
 - A manufacturer that holds a joint off-premises tasting room license issued under section 536
 - In terms of interest, we have heard from eight Downtown establishments that they are interested in participating in a social district.
 - Qualified licensees must apply to and be approved by City Council before applying to the Michigan Liquor Control Commission (MLCC) for a social district usage permit.
 - Qualified licensees must have a selected personnel complete a social district orientation prior to approval by council with the intent of educating or confirming knowledge of State law regarding utilization of the social district. Of these selected personnel, one must be present on premises at all times.
 - Current options for social district designation include, but not limited to:
 - Designate **the entire City** as a social district, with one or more common areas
 - Designate **Main St.** as a social district, with one or more common areas
 - Designate **the Downtown Business District** as a social district with one or more common areas.



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- Establish management and maintenance plans, including hours of operation, for a commons area.
 - City Staff recommends that hours of operation be from 2pm to 10pm on Friday and Saturday only. These hours of operation will change regularly based on seasonal conditions (i.e. earlier sunsets).
 - In addition to the container guidelines set forth in the law, a wrist band or other identifying mark should be present on those users of the legal drinking age of 21 years or older.
 - To streamline container regulation, to-go cups and common area cups should be required to be the same type of cup.
 - A design standard must be established for containers in accordance with the law.
 - Only alcohol should be served in the approved to-go/common area containers.
 - To ease management and maintenance, common areas should be within relatively close proximity.
 - Staffing requirements will vary, however, at first Police would require a minimum of two police officers in addition to the regular shift officers to regulate. Once an alcoholic beverage leaves a licensee's premises, it is the City responsibility to enforce all applicable laws as appropriate.
 - A regular sanitation and cleaning routine must be established.
- Define and clearly mark with signs the designated commons area.
 - Signs clearly displaying all relevant rules for the utilization of the common areas must be placed at the entrance to said common areas.
 - The boundary of each individual common area must be clearly defined in a way that cannot be easily altered by unauthorized individuals.
 - Ensure that any boundary does not prohibit the presence of non-common areas users from accessing a given business.
 - Users cannot leave a common area or enter another business with an alcoholic beverage.
 - If occupancy/gathering restrictions are in place (currently outdoor social gatherings are limited to 100 people), the size of each individual common area must not exceed 6 square feet multiplied by the maximum allowable number of people for a gathering as defined by any relevant state or federal directives.
- The City cannot designate a Social District that would require a road closure unless the City owns said road or receives prior approval from the road authority with jurisdiction over the road.
 - This is not considered an issue due to the proposed hours of operations and locations.
- The City shall maintain the commons area in a manner that protects the health and safety of the community.
 - Trash receptacles must be provided and attended to regularly.
 - Additional seating should be considered to assist in physical distancing.
 - All CDC, LCHD, State, and Federal guidelines for safe socialization must be adhered to and enforced.
- The City may revoke the designation if it determines that the commons area threatens the health, safety, or welfare of the public or has become a public nuisance.
 - Before revoking the designation, the City must hold at least 1 public hearing on the proposed revocation. The City shall give notice as required under the open meetings act of the time and place of the public hearing before the public hearing.
 - The City shall file the designation or revocation of the Social District with the MLCC



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- The City must establish a process to adjust any operations, maintenance, management based on any changes to State or Federal law/directives and/or conditions on the ground.

CONSIDERATIONS

- Identify and designate a social district within City limits that meets all requirements put forth in the law.
- Locate and clearly mark common area(s) that meets all requirements put forth in the law.
- Create and implement a review process for licensees to be approved by City Council.
- Determine if a fee should be imposed to cover the cost of the application process and/or the costs of administering the program.
- Create and implement an orientation process for licensees prior to approval.
- Create and implement a management and maintenance plan including allocation of staff and resources.
- Assess what level of staffing is appropriate and to what degree those staff members will be utilized.
- Determine how to ensure compliance with occupancy and gathering restrictions and/or other relevant State/Federal mandates.
- Create and implement a process to respond to significant changes in social, legal, or health conditions.
- It is the responsibility of the City and the Livingston County Health Department to enforce all laws, orders, and directives as appropriate for each respective agency.
- MML is working on an implementation strategy/white paper that may provide additional guidance.
- The City Attorney should also weigh in on staff's current understanding of this new legislation.

RECOMMENDATION

- City Council to review the legal, fiscal, and practical implementation of social districts in the City of Brighton and provide direction on next steps.

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