

CITY OF BROWN CITY
REQUEST FOR PROPOSALS
CITY ATTORNEY SERVICES
Proposal Due Date: July 6, 2006

The City of Brown City invites proposals for contracted City Attorney services. Proposals are due to the City Clerk's Office by 2:00 p.m. on July 6, 2006. Faxed proposals should be submitted by 10:00 a.m. on July 6, 2006 to assure proper receipt. The City seeks services encompassing the traditional scope of work including legal counsel, opinions, consultation and coordination with special counsel. Attendance at a variety of meetings will be required, including committee meetings and Council meetings as specified. This will not include prosecuting services. For a copy of the RFP package, contact City Manager Clint Holmes at (810) 346-2325 or browncty@greatlakes.net.

Delivery: Proposals may be mailed, faxed, or hand-delivered to the City of Brown City Clerk. Please see the RFP document for specific information regarding delivery.

Pre-Proposal Conference: A Pre-Proposal conference has not been scheduled. Any questions should be directed to the City Manager.

Communications: Restrictions on communications and requests for information are delineated within the RFP package. All communications are to be directly through the City Manager's Office, and under restricted conditions.

Minimum Qualifications:

- (a) Each attorney in the proposed team must possess a Juris Doctorate degree and have graduated from a law school accredited by the American Bar Association;
- (b) Each attorney in the proposed team must be a member in good standing of the State Bar of Michigan, membership in the Michigan Association of Municipal Attorneys desired;
- (c) The proposed designated City Attorney must have a minimum of five years experience in the field of municipal law with particular experience in land use and public work construction.

The City of Brown City reserves the right to reject any or all proposals, waive technicalities or irregularities, and to accept any proposal if such action is believed to be in the best interest of the City.

Overview

Introduction

Brown City has 11 FTE employees, and operates under a strong Council-City Manager form of government. The City Council consists of six members elected at large. The Mayor serves as the head of the Council. The City Manager directs all City operations. The City has utilized the services of the Law Offices of Rickard, Denney & Associates for the past few years. The City expects to complete the process and have a contract in place no later than July 1, 2005. Anticipate that these City Attorney services will generally not exceed 20 hours per month in the future.

The City anticipates that submitted proposals will identify a lead City Attorney that works on City business and will maintain central responsibility, and anticipates one or multiple assisting attorney(s), depending upon the size, structure, specialties and preferences of the proposing firm. Proposer's are welcome to submit alternative approaches, but this is the model that the City anticipates to be most successful to City practices.

The City utilizes special counsel on an hourly basis, for certain litigation, claims, human resource concerns, public work construction and contract issues, and other special issues. Some of the current special counsel's work could be transferred to the City Attorney firm, depending upon the depth and breadth of special services available from the winning firm for these services. Some special counsel work will continue with the existing relationship, particularly for litigation work. The awarded City Attorney firm will assist the City in coordination of these relationships to the City.

The City has three central departments (Administrative Services, Police and Public Works). Each department works actively with the City Attorney for advice and counsel. Individual departments may request assistance, although the City Manager retains the core responsibility for legal functions, coordination of these services, and the legal budget.

Scope of Work

1. Provides legal advice, counsel, services, training, consultation, and opinions to the City Manager, City Council, Boards and commissions, and all levels of the City government, on a wide variety of civil assignments, including but not limited to land use planning, laws against discrimination, construction of public works, purchasing and procurement, leasing, purchase and sale of property, employment legal matters, public disclosure issues, and tort law. The City Attorney's advice includes methods to avoid civil litigation.
2. Furnishes legal representation at all City Council business meetings, and at other meetings when requested.
3. Appears before courts and administrative agencies to represent the City's interests.
4. Prepares and reviews ordinances and resolutions, contracts and other documents for legal correctness and acceptability.
5. Works cooperatively with special legal counsel retained by the City for special projects.

6. Coordinates with other special counsel, as needed, to assure proper management of legal issues, and proper coordination and transition of legal issues among special counsel.
7. Assists City officials and employees to maintain awareness of ethical standards and appearance of fairness standards, and to avoid potential conflicts of interest, prohibited transactions and the appearance of prohibited transactions.
8. Assists officials and employees to understand the legal roles and duties of their respective offices and interrelationships with others.
9. Provides the Mayor and City Council with guidance as to Robert's Rules of Orders and related procedural matters relating to Council meetings.
10. Prepares legal opinions at the request of the City Council or the City Manager.
11. Provides the City Manager, Mayor and City Council, and administration a legal perspective and advice on various governmental issues.
12. Performs other legal services and tasks as assigned by the City Manager.

Specifications

1. The appointed City Attorney attends all City Council meetings. These are scheduled for the second and fourth Monday night every month, from 7:00 p.m. until close, which could be as late as 10:00 p.m. to midnight. The City Attorney attends all Council meetings, so that there remains continuity in representation.
2. The City Attorney must be available by phone, cell phone, fax and e-mail.
3. Timeliness of response and accessibility to the City Attorney is an important aspect of the service. Accessibility and responsiveness for the proposed designated City Attorney is of greatest importance, although these elements will also be considered in relation to assistant attorney(s) as well. Accessibility includes the ability to be generally available to attend meetings in person on short notice and the ability to be reached promptly by telephone.
4. The City does not offer space for offices in a City location. The City may be able to assist in certain ways to promote efficient coordination among offices, such as mail delivery services or copy services, although this will be considered following award.

Contract Term

The City anticipates a two-year contract, with options for two-year renewals. Renewal of the contract will require Council reauthorization.

Contract

A sample contract, and terms and conditions is attached (Attachment B). *Note: The City expects all submitting firms to consent to the City contract, terms and conditions. Exceptions desired must be noted in the proposal submittal (Attachment A). The City reserves the right to revise the stated contract terms and conditions prior to contract signature.*

Schedule

The City provides the following schedule. This is for information only and will be adjusted as needed. Proposers are encouraged to reserve flexibility for interviews from

June 6 through June 10, as the City will not be able to allow much advance notice when scheduling initial interviews.

RFP Release Date: May 12, 2005

RFP Conference: None scheduled

RFP Submission: May 31, 2005

Interviews: June 6 through June 10, 2005

Council Consideration: June 20, 2005

Anticipated Start: July 1, 2005

How to Respond

Please provide eight copies of a written response, responding to each inquiry in the order below. Please attach one set of business cards for your team with the original.

1. **Vendor Business History:** Please complete and submit Attachment A.
2. **Firm Experience**
 - Provide a narrative description of the firm.
 - Describe the general experience of the firm.
 - Identify other municipal clients.
 - Identify experience with municipal issues including land use, zoning, growth management, environmental law, complicated agreements including interlocal government agreements (IGAs), public works, personnel, and other municipal specialties.
3. **Proposed Attorney, Team**
 - Name and describe the attorney(s) and/or team proposed. Clearly identify the lead City Attorney and name assisting attorney(s).
 - Provide a resume or similar description for each team member, with considerable detail in the experience and qualifications of the lead City Attorney and any significant assisting attorney(s).
 - Specify the organization structure applicable to this contract, including who the lead City Attorney is, and the relationship of any assisting attorney(s) to that lead City Attorney.
 - If specialty attorney(s) or additional resources are available through your firm (in addition to the named team) to meet special or unusual needs, please identify such individuals and specialties as well.
4. **Accessibility and Responsiveness**
 - Identify the accessibility of the proposed designated City Attorney, and the response time that the individual offers to the City. Specifically identify the lead-time required for attending scheduled or ad-hoc meetings. Identify how quickly the City Attorney can arrive in person to attend an unscheduled, urgent meeting.
 - Identify the same for any assisting attorney(s).
5. **Proposed Fee Structure**
 - Propose a compensation package, inclusive of all service costs. The City is open to a variety of approaches, including hourly rates or a flat monthly rate with add-ons. The City will select the finalist by considering the proposed compensation as a “best and final offer,” although the City reserves the right

to negotiate terms as needed to improve elements of the proposal to best meet the needs of the City, including cost.

6. References: Provide three references for the lead City Attorney.

The City prefers references that include municipal government experience.

Inclusion of the reference in your proposal is also agreement that the City may contact the named reference.

The City may contact any companies or individuals, whether offered as references or others, to obtain information that will assist the City in evaluating the Proposer. The City retains the right to use such information to make selection decisions. Submittal of a proposal is agreement that the City may contact and utilize such information.

Evaluation and Selection

Evaluation Process

The City reserves the right to award the contract to that proposal that best meets the needs and interest of the City. The following steps are anticipated.

Step 1: Receipt and review of minimum qualifications

Step 2: City Committee scoring of written proposals

Step 3: Initial reference and information checks

Step 4: City Manager interviews

Step 5: City Council interviews of finalists

Step 6: City Council Confirmation process

Scoring and Evaluation of the Written Proposal

Written proposals will be scored by panelists as follows. Those respondents that receive the highest scores and also achieve successful reference and information checks will be invited to interview:

400 Experience of proposed designated City Attorney, particularly municipal law experience

200 Depth and stability of firm or practice

200 Attorney(s) knowledge of special municipal legal issues

200 Cost

200 Accessibility and Responsiveness of both City Attorney and assisting attorney(s)

100 Overall presentation

Contract Negotiations: The City of Brown City reserves the right to negotiate all elements which comprise the apparent successful proposal to ensure that the best possible consideration is afforded to all concerned. City representatives and the selected finalist will review in detail, all aspects of the requirements and the proposal. During the review of the most favorable, apparent successful proposal, the Proposer may offer and the City may accept revisions to the proposal.

Contract Term: The City seeks a two-year contract, with options for two-year extensions. City Council authorization will be required for each extension.

Attachment A: Submittal Form

Business Statement

Please complete and submit with your proposal response.

- 1. Name of Business:
- 2. Business Address:
- 3. Phone:
Business Fax:
E-Mail:
- 4. Business Classification (check all that apply):
Individual Partnership Corporation Women or Minority Owned
- 5. Federal Tax Number (a SSN or Federal Tax Number):
- 6. Name of Owner:
- 7. Does firm maintain insurance in amounts specified by the City contract:

Yes No

General Liability insurance of at least \$1,000,000 per occurrence; \$1,000,000 aggregate, Combined Single Limit (CSL); Automobile liability of at least \$1,000,000 per accident CSL Professional Liability of at least \$ 1,000,000

If no, describe differences:

- 8. Are there claims that are pending against this insurance policy? Yes No

If yes, describe:

- 9. During the past five years, has the firm, business, or any attorney in the firm or business, been involved in any:

- (1) bond forfeiture,
- (2) litigation personally involving the firm, business or any attorney in the firm or business (other than dissolution of marriage), or
- (3) claims filed with any insurance carrier concerning the firm, business, or any attorney in the firm or business, and/or
- (4) Bar Association complaints? Yes No. If yes, attach an explanation.

- 10. Has company been in bankruptcy, reorganization or receivership in last five years?

Yes No

- 11. Has company been disqualified or terminated by any public agency?

Yes No

- 12. Has the proposed designated City Attorney practiced municipal law a minimum of 5 years?

Yes No

- 13. Is each proposed attorney accredited and in good standing with the State Bar?

Yes No

- 14. Proposal Offers shall be good and valid until the City completes award or rejections of quotes. Failure to concur with this condition may result in rejection of the offer. Does the firm accept this condition?

Yes No (if no, state the desired exception:)

Having carefully examined all the documents of the solicitation, including the instructions, the Contract and Terms and Conditions, the undersigned proposes to perform all work in strict compliance with the above-named documents, as well as in compliance with all submitted proposal information.

FIRM NAME: FID #: _____

SIGNATURE: _____

PRINT NAME: _____

Attachment B Sample Contract, Terms and Conditions

PROFESSIONAL SERVICES CONTRACT

CONTRACT NUMBER:

City of Brown City
Contract Title:

This Contract, dated as of _____, 2005, is made and entered into by and between the City of Brown City ("City") and ("Consultant").

Consultant Business:

Consultant Address:

Consultant Phone:

Consultant Fax:

Contact Name:

Consultant e-mail:

WHEREAS, the purpose of this contract is for City Attorney Services; and,
WHEREAS, this Consultant was selected using the following process: public request for proposals; and,
WHEREAS, funds for this purpose are authorized through City of Brown City annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, the City and the Consultant mutually agree as follows:

I. TERM OF CONTRACT/TERMINATION

The term of this Contract shall be two years commencing on the date of execution <*date of last signature*> by the parties to this Contract. The Contract may be renewed for additional two-year terms, with authorization from the City Council. Should either party desire to not renew, a written notification shall be made at least 60 days in advance of the normal renewal action. Other termination actions shall comply with the standard Terms and Conditions.

II. SCOPE OF WORK

See attached "Scope of Work."

Work under this Contract shall, at all times, be subject to review and examination by the City and shall be subject to its approval. Execution of this Contract shall establish an attorney – client relationship. The Consultant shall periodically confer with the City periodically, during the course of work, and shall be subject to the direct administration of the City. The Consultant shall prepare and present information and materials (e.g. a detailed outline of completed work) as may be pertinent, necessary, or requested by the

City to determine the adequacy of the work as it progresses or to determine the Consultant's progress.

The making of (or failure or delay in making) such examination shall not relieve Consultant of responsibility for performance of Services in accordance with this Agreement, notwithstanding Brown City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Consultant shall provide Brown City sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities. Consultant is expected to perform all duties according to the rules of professional conduct at all times.

III. COMPENSATION.

As full compensation for satisfactory performance of the Services, Brown City shall pay Consultant in accordance to the attached schedule. Such payment shall be full compensation for work performed and/or services rendered and for all supervision, labor, supplies, materials, equipment or use thereof; and for all other expenses and incidentals necessary to complete all the work.

Except as otherwise agreed, Consultant shall submit a monthly invoice for the compensation payable under this Agreement for Services performed during the preceding period. Invoice shall provide a detailed description of the Services performed during the month, the number of hours spent performing such services, and any reimbursable costs and expenses incurred in connection with such Services.

Any additional service(s) provided by the Consultant must have prior written approval of Brown City. Pricing Adjustments shall be made only as specified in the attachments, or if otherwise not stated, according to the Terms and Conditions.

Invoices shall be submitted to the following address. Questions regarding invoices or payment contact David VanCura (810 346-2325):

City of Brown City

4205 Main Street

Post Office Box 99

Brown City, MI 48416

Attention: Accounts Payable

Changes in fees shall be first proposed by the City Attorney to the City Manager or his/her designee for consideration in preparation of the annual budget. Except for those contract changes that are within the independent authority of the City Manager, any increases in fee and cost structure shall be considered by the City Council as part of the budget process. Such changes to the fee structure and budget approved by City Council shall, upon acceptance by the Attorney, be made a part of this Agreement and as replacement to the attached schedule.

IV. RECORD- KEEPING

Consultant shall promptly furnish such information related to the Agreement as requested by the City. Until the expiration of twelve months after final payment of the compensation payable under this Agreement, Consultant shall provide Brown City prompt access to (and Brown City shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services or this Agreement.

V. PROPERTY AND CONFIDENTIAL INFORMATION

Consultant shall not, without the prior written consent of Brown City, disclose to third parties any information received in connection with the Services unless:

- the information is known to Consultant prior to receiving the same directly or indirectly in connection with the Services;
- the information is in the public domain at the time of disclosure by Contractor; or
- the information is received by Consultant from a third party who does not have an obligation to keep the same confidential.

VI. RELEASES. INDEMNITY. HOLD HARMLESS

The Consultant releases and shall defend, indemnify, and hold harmless Brown City from and against all claims, cost liabilities, damages, and expenses, (including, but not limited to, reasonable attorney's fees) arising directly out of or in connection with:

- any fault, negligence, strict liability or product liability of the Consultant in connection with the Services of this Agreement;
- any lien asserted upon any property of Brown City in connection with the Services or this Agreement;
- any failure of Contractor, or the Services to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; or
- any breach of or default under this Agreement by Contractor.

As permitted by applicable law, this shall apply. However, this shall not require Consultant to indemnify Brown City against any liability for damages arising out of bodily injury or property damages caused by or resulting from negligence of Brown City. Further, in the case of concurrent negligence of Consultant on the one hand and Brown City on the other hand, Consultant shall be required to indemnify Brown City only to the extent of the negligence of the Contractor.

Consultant releases and shall defend, indemnify and hold harmless Brown City from and against all claims, cost, liabilities, damages, expenses (including, but not limited to reasonable attorneys' fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property right by any Services. Further, if any Services infringe or misappropriate any patent, copyright, trade secret, trademark, or other intellectual property right, Consultant shall either:

- procure for Brown City the right to use such Services; or
- modify such Services so that they no longer infringe or misappropriate any such right.

VII. INSURANCE

- A. Worker's Compensation and Employer's Liability Coverage: coverage or insurance in accordance with the applicable laws related to worker's compensation, and employer's liability insurance with limits no less than \$1,000,000 including \$1,000,000 for bodily injury by Accident, each accident; and \$1,000,000 bodily injury by disease, each employee; and \$1,000,000 bodily injury, policy limit (including but not limited to, the appropriate Michigan Public

Acts and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. In case of subcontracted work, the Contractor shall require each subcontractor to provide Worker's Compensation insurance for their employees unless such employees are covered by the Contractor.

B. Contractor's Liability & Property Damage Insurance:

1. The Consultant shall procure and maintain during the life of this Contract and during performance of these services, Commercial General Liability, and Automobile Liability Insurance, to protect the City and the Consultant from and against all claims, damages, losses and expenses arising out or resulting from the performance of these services, as detailed herein-with insurance companies or through sources approved by the Secretary of State. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.
2. The commercial general liability insurance shall include the City as Additional Named Insured on a Primary Basis, and shall include others if required by the Contract documents. All insurance policies shall be endorsed to provide that no policy shall be cancelled, changed or reduced in coverage, until after thirty (30) days prior written notice has been delivered to the City through certified mail.
3. A Certificate of Insurance Including the Additional Named Insured Endorsement for the primary policy of commercial general liability insurance, shall be filed with the City after award but prior to execution of the contract, meeting the requirements set forth herein. This Certificate shall be subject to approval by the City as to company, terms and coverage. Failure of the contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.
4. A Declaration of Professional Liability Insurance shall be filed with the City after award but prior to execution of the contract, meeting the requirements set forth herein. This Declaration shall be subject to approval by the City as to company, terms and coverage. Failure of the contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.
5. The Consultant shall not begin work under this Contract until all required insurance has been obtained and until such insurance has been approved by the City, nor shall the Consultant allow any subcontractor to commence work on its subcontract until the same insurance requirements have been complied with by such subcontractor. Said insurance shall provide coverage to the Consultant, any subcontractor performing work provided by this Contract, and the City. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of the Consultant or the

subcontract, or by anyone directly or indirectly involved or employed by either of them.

6. Approval of the insurance by the City shall not relieve or decrease the liability of the Consultant for any damages arising from Consultant's performance of the Work.
7. Insurance shall provide, at a minimum, the types of insurance coverage, liability limits and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance. The insurance coverage's listed below shall protect the Consultant and the City from claims for damages of bodily injury, including death resulting therefrom, as well as claims for property damage, which may arise from operations under this Contract, whether such operation be by itself or by any subcontractor or by anyone directly employed by either of them, It being understood that it is the Consultant's obligation to enforce the requirements of this section in respect to any subcontractor employed for this project:
 - Commercial General Bodily injury and Property Damage Insurance shall include:
 - Premises & Operations;
 - Owners and Contractors Protective;
 - Products Liability including completed Operations Coverage;
 - Contractual Liability;
 - Broad Form Property Damage;
 - Commercial Form (to include Extended Bodily Injury) Employees as Additional Insured;
 - Explosion, Collapse & Underground Hazard;
 - Independent Contractors;
 - Personal Injury;
 - Stop Gap;
 - Gross Liability Clause.
 - Umbrella Liability Insurance in the amounts specified.
 - Professional Liability Insurance including Errors and Omissions as appropriate to the services performed;
 - Automobile Bodily Injury and Property Damage Insurance sufficient to cover any driving that is directly required for the performance of the stated work.
8. Liability Limits:
 - General Liability (Commercial General Liability Insurance) shall be written with limits of liability of no less than \$1,000,000 combined single limits, per occurrence and \$2,000,000 in aggregate;
 - Umbrella Liability Insurance shall be written on a following form basis with limits of, in no case less than, \$2,000,000.
 - Professional Liability Insurance including Errors and Omissions shall be written with limits no case less than \$1,000,000;
 - Automobile Insurance shall be at the level approved by the City.

9. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Consultant's responsibility for payment of damages resulting from operations under this Contract.
10. The coverage's provided by the General Liability and the Automobile Liability are primary to any insurance maintained by the City.
11. Special Provisions - Endorsements for Additional Insured: The City of Brown City shall be named as Primary Additional Insured for General Liability and Automobile Liability.
12. The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects to any claims, suit or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.
13. There shall be included in the general liability insurance contractual coverage sufficiently broad to insure the provisions of that Section herein entitled "Hold Harmless Clause."
14. Such insurance shall be maintained as required above, and any additional coverage's and limits as the City may from time to time specify to protect the City, its successor and assigns from any claims, losses harm, costs, liabilities, damages, and expenses (including but not limited to reasonable attorney's fees) that may arise out of any property damage, bodily injury (including death) or professional liability related to the services performed.
15. Failure to comply with provisions contained herein shall not waive the responsibility of the Consultant to provide the required protection.

VIII. MISCELLANEOUS

A. Communications:

All notices and other material related to the contract agreement , including duration, termination, rates, terms and conditions shall in writing and shall be delivered or mailed to the following:

City of Brown City
City Manager
4205 Main Street
Post Office Box 99
Brown City, MI 48416
Fax: 810 346-3802

Communications to the City regarding service delivery should also be directed to the City Manager.

- B. The obligation of Consultant under all provisions of this Agreement, which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Agreement, shall survive the completion, termination, or cancellation of this Agreement.
- C. The rights and remedies of Brown City or the Consultant set forth in any provision of this Agreement are in addition to and do not in any way limit any

other rights or remedies afforded to Brown City or the Consultant by any other provision of this Agreement or by law.

- D. This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior agreements, with respect to the Services. No amendment or modification of any provision of this Agreement (other than changes pursuant to Section 7) shall be valid unless set forth in a written amendment to this Agreement signed by both parties.
- E. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of sections of this Agreement are for convenience or reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections.
- F. Attorney Fees: The prevailing party in any action shall be entitled to reasonable attorney fees and court costs.

IX. GENERAL TERMS AND CONDITIONS

See attached "General Contract Terms and Conditions".

This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Michigan.

CITY OF BROWN CITY:
BY

CONSULTANT:
BY

City Mayor
Printed
Date:

Name:
Title:

ATTEST:

By:
Date:
Federal Employee ID No.:

Date:

GENERAL CONTRACT TERMS AND CONDITIONS

These terms and conditions are hereby a part of the conditions agreed to by the Consultant upon Offer.

1. **Entire Contract:** This Contract, including the exhibits and addenda attached hereto and forming a part hereof (if any), are all of the covenants, promises, agreements and conditions, between the parties. All such addenda and exhibits and attachments are incorporated herein by this reference, and shall be a part of this contract instrument. The Contract shall constitute the Contract, General Terms and Conditions, and any other attachments, which may include but is not limited to, Scope of Work, Offer Form, Specifications, Special Provisions, Response or Proposal, RFP/ITB Request, and Addenda. In the event there is discrepancy between any of the foregoing contract documents, the above order of documents governs so that the former prevails over the latter. This entire contract instrument, including all such attachments as incorporated by this reference, shall specify the working relationship between the City and the Contractor, and specific obligations of both parties.
2. **Complementary Provisions:** All provisions of this Agreement are intended to be complementary, and any requirements mentioned by one and not mentioned in another section of this Agreement, shall nevertheless be performed, to the same extent as though required by all.
3. **Contractor Obligation:** Except as otherwise specifically provided in this Agreement, Contractor shall furnish all that may be required to provide the scope of work as described in the contract and incorporated documents, including any personnel, labor and supervision, technical, professional and other services, equipment and supplies. Details of the any supplies, equipment, or installation or same, that are necessary to carry out the intent of this Agreement, but that are not expressly stated, shall be performed or furnished by the Contractor as part of the Contract, without any increase in the compensation otherwise payable under this Agreement.
4. **Executory Agreement:** This Contract will not be considered valid until signed by both parties.
5. **Binding Effect:** The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
6. **Venue:** The Contractor shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of this Agreement, to recover damages for breach or default in this Agreement, or otherwise arising under or by reason of this Agreement, other than in the courts of the State of Michigan, Sanilac County or the District Court of the United States, Eastern Division, State of Michigan. Contractor hereby irrevocably consents to the jurisdiction of the courts of the State of Michigan with venue laid in Sanilac County and of the District Court of the United States, Eastern Division, State of Michigan.
7. **No Verbal Agreements:** No verbal agreements or conversations between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Consultant prior to execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.
8. **No Gifts and Gratuities:** Businesses must not offer, nor City employees accept, gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with city business practices. It is also unlawful for anyone to offer another, to influence or cause them to refrain from submitting a bid.

Contractors and City employees must strictly adhere to the statutes and ordinances for ethics in contracting and purchasing, including the State of Michigan Ethics Act – Standards of Conduct for Public Officers and Employees (PA 196 of 1973) and the SBM Michigan Rules of Professional Conduct. This is applicable to any business practice, whether a contract condition, bid practice, or at any activity related to City business.

9. **No Conflict of Interest:** The Contractor confirms that the Contractor does not have a business interest or close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's performance.
10. **Applicable Law:** Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington. Any suit arising herefrom shall be brought in King County Superior Court, which forum shall have sole and exclusive jurisdiction and venue.
11. **Compliance with Law:** General Requirements: The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Michigan; and all applicable laws, ordinances, rules, regulations, orders, and other requirements, in effect, of any governmental entity (including but not limited to such requirements as may be imposed upon Brown City and applicable to the Agreement). Contractors shall furnish documents as may be required to effect or evidence such compliance. All laws, ordinances, rules or orders required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.
Licenses, Permits and Similar Authorization: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof. Taxes: The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract and any leasehold interest deemed to have been created thereby.
12. **Relationship between City and Contractor:** Contractor shall be at all times an independent contractor and not an agent or representative of Brown City with regard to performance of this Agreement. Contractor shall not represent that it is, or hold itself out as, an agent or representative of Brown City, unless specifically authorized by the Brown City City Council. The Contractor shall serve as City Attorney, which is intended to create an attorney client relationship.
13. **Restrictions on Assignment, Subcontracting, Delegation:** Contractor may not (by contract, operation of law, or otherwise) delegate or subcontract or assign performance of the Scope of Work to any other person or entity without the prior written consent of Brown City. Any such delegation or subcontracting without Brown City's prior written consent shall be voidable at Brown City's option. Approval of such assignment shall not be unreasonably withheld. No delegation or subcontracting of performance, with or without Brown City's prior written consent, shall relieve Contractor of responsibility to perform the services in accordance with this Agreement. Contractor shall be fully responsible for the performance, acts and omissions of Contractor's employees, Contractor's subcontractors and any other person who performs or furnishes any services.
14. **Performance and Execution:** Contractor shall perform the Services in a timely manner and in accordance with the standards of the profession. At the time of performance, Contractor shall be properly licensed, equipped, organized and

financed to perform the Scope of Work in accordance with this Agreement. Subject to compliance with the requirements of this Agreement, Contractor shall perform the Services in accordance with its own methods.

15. **Errors and Omission Correction:** The Contractor shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by or on behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or deficiencies in the designs, drawing, specifications and/or Contractor services immediately upon notification by the City. The indemnification provided for in this Article with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.
16. **Precautions Against Bodily Injury or Property Damage:** Contractor shall take all reasonable precautions to protect against any bodily injury (including death) or property damages that may occur in connection with this Agreement.
17. **Amendments or Change Order:** No modification or amendment of the provisions hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this Contract, from time to time, by mutual agreement.
18. **Extra Work:** The City may desire to have the Contractor provide additional units and/or perform work or render services in connection with this Contract other than that expressly provided for in the "Scope of Work." This will be considered extra work, supplemental to this Contract and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or any amendment.
19. **Notice Of Award:** Notice of award shall have been deemed to be given when the City Council authorizes the Contract award. If no such authorization is required, the notice of award shall be when the Contract, addressed to the successful Bidder at the address shown in the bid, is deposited in the Post Office in Brown City, Michigan, unless otherwise noted. The City will also provide a written notice to unsuccessful bidders.
20. **Acceptance of Award:** If any purchase by the City is accepted, or the awarded vendor otherwise begins work, the winning vendor is deemed to have agreed to all these Terms and Conditions, Contracts, ITB or RFP, Specifications, and all other related documents. If such work is accepted by the awarded vendor prior to the City receiving a signed contract, the City shall still regard the contract terms and related documents to be in force.
21. **Licenses, Permits. And Taxes:** The Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.
22. **Pricing:** Prices shall remain firm as stated in the bid offer for the duration of the Contract, including all extensions. Changes to pricing in service contracts will be in accordance to conditions stated in the Contract Document.
23. **Assignment:** Neither party to a Contract/Purchase Order may assign any portion of the agreement without the prior consent of the other party.
24. **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure, as determined by the City. The term "force majeure" means an occurrence beyond the control of the affected party and not avoidable by reasonable diligence. Force majeure includes acts of God, war, riots, strikes, fire, floods, epidemics, or other similar

occurrences. If either party is delayed by force majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. The City reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

25. **Indemnification:** To the maximum extent permitted by law, the Contractor shall be liable for and shall hold the City harmless from all damages and injuries caused to persons or property arising out of the performance of this Contract. The Contractor agrees to assume the defense of the City and its officers and employees in all legal proceedings or claims with third parties connected with the Contractor's performance under this Contract, to pay all expenses, including reasonable attorney's fees, incurred by the City directly or indirectly on account of such legal proceedings, and to satisfy any judgment rendered in connection therewith or to pay or reimburse the payment of any sums reasonable to settle such proceedings or claims.
26. **Personal Liability:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the City of Brown City be in any way liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement of representation made herein or in any connection with this agreement.
27. **Laws:** The consultant shall comply with all applicable federal, state and local laws, rules, and regulations affecting its performance and hold the Purchaser harmless against any claims arising from the violation thereof. No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the Contractor for any of the above reasons.
28. **Payments:** The Contractor shall be paid, upon submission of proper invoices, prices stipulated herein for supplies or services that are delivered and accepted (less deductions, if any), as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the City when the amount due on such deliveries so warrants; or if requested by the Contractor. Payment for partial deliveries shall only be made upon receipt of an accurate and adjusted invoice, or a certified receiving report, and/or final installed acceptance. All accounts are paid as follows: The City Council approves payments on the second and fourth Monday of each month. Payments will be mailed twice a month, according to the current City of Brown City payable schedule.
29. **Invoices:** Invoices must be submitted to: City of Brown City, 4205 Main Street, Post Office Box 99, Brown City, MI 48416.
30. **Nondiscrimination:** In all hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates, pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

31. **Equal Opportunity:** "The Equal Opportunity Clause" in Section 301 of Executive Order 10925 as amended, and the implementing Rules and Regulations, are herein incorporated by reference.
32. **OSHA:** The Contractor agrees to comply with the conditions of the Federal Occupational Safety and Health Act of 1970 and the Michigan Occupational Safety and Health Act (PA 154 of 1974) and standards and regulations issued thereunder, and certifies that all items furnished and purchased under the order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless Purchaser from damages assessed against Purchaser as a result of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.
33. **Hold Harmless:** The Contractor shall hold the City and its officers, agents and employees harmless from all costs; claims or liabilities of any nature including attorneys; fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the negligent activities or omissions of the Contractor, its agents or employees pursuant to the Agreement, or on account of any unpaid wages or other remuneration for services; and if a suit as described above be filed, the Contractor shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment by the City, the Contractor shall pay the same.
34. **Ownership Of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.
35. **Emergency Work:** The Contractor will not be allowed added compensation for any emergency work performed on Sundays or legal holidays, unless such work is ordered and approved by the City Manager or his/her designee or is otherwise required under condition #42, below.
36. **Guarantee:** The Contractor hereby guarantees that all of the work, materials or equipment furnished by him/her under this agreement will fully meet all requirements for quality of workmanship, materials, strength and any and all other requirements of the specifications.
37. **Workers Right to Know:** The Department of Labor and Industries are required by law to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires (among other things) that all manufacturers/distributors of hazardous substances, including any of the items so listed on this RFP, RFQ, ITB or contract bid and subsequent award, must include with each delivery completed MSDS (Material Safety Data Sheets) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: (1) The identify of the hazardous material; (2) appropriate hazardous warnings; and (3) Name and address of the

chemical manufacturer, importer or responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement, unless it is modified to include appropriate information relative to "carcinogenic ingredients" and "routes of entry" of the product(s) in question.

38. **Proprietary Proposal Material:** The City will attempt to protect legitimate trade secrets of any Vendor, but certain bid information is subject to Public Disclosure, and may be disclosable upon public request. Any information that a bidder considers proprietary, should be marked upon submittal. The City will seek to notify bidders should such information be requested for release, and to advise bidders concerning whether maintaining such information is possible or reasonable under public disclosure rights, however the City must release all information that is not reasonably protected from public disclosure.
39. **Emergency and Disasters:** The following shall be in effect during major emergencies or disasters when the City activates its Emergency Operations Center or otherwise provides verbal notice. Seller acknowledges that the City is procuring such goods/services for the benefit of the public. Seller agrees, in support of public good purposes, to consider the City as the customer of first priority and shall make its best effort to provide the City requested goods/services in as timely a manner as practicable. Seller and the City agree that a major emergency or disaster includes, but is not limited to: storms, high winds, earthquakes, floods, hazardous material releases, transportation mishaps, loss of utilities, fires, terrorist activities or combinations of above. The seller understands and agrees to provide the City, upon City request, such goods/services at such time as the City determines. In the event the Seller is unable to meet the delivery requirements due to circumstances beyond the reasonable control of the Seller, Seller agrees to make such delivery as soon as practicable. If Seller is prevented from making delivery to the requested location due to circumstance beyond its reasonable control, Seller shall immediately assist the City in whatever reasonable manner to gain access to such goods/services. In the event Seller is unable to provide goods/services as requested by the City, the Seller may offer limited substitutions for City consideration and shall provide substitutions with prior approval from the City. Seller agrees to charge the City the price determined in this contract. If no price has been determined, it shall charge the City a price that is normally charged for such goods/services. In the event that the City request results in the Seller incurring unavoidable additional costs that cause the Seller to increase prices in order to obtain a fair rate of return, seller shall charge the City a price not to exceed the cost/profit formula found in the contract.
40. **Americans with Disabilities Act:** the Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Consultant is providing services, programs or activities to City employees or members of the public as part of this Contract, the Consultant shall not deny participation or the benefits of such services, programs or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
41. **Termination:** Either party may terminate this Contract with or without cause. Notice: The party terminating this Contract shall give written notice to the other not less than sixty (60) calendar days prior to the effective day of termination, provided, in the event of emergency, termination may become effective without notice.

42. **Opportunity to Cure Default:** In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the City may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The City is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the City. The City may terminate the contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.
43. **Remedies for Cure of Default:** If the nonperformance; breach or default remains after Contractor has been provided the opportunity to cure, the City may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate this contract and any related contracts or portions thereof; (3) impose liquidated damages; (4) suspend contractor from receiving future invitations to bid. The City of Brown City may procure the articles or services from other sources and hold the Bidder responsible for any excess and expense occasioned thereby, including delay in time, whether foreseeable or unforeseeable.
44. **Failure To Perform:** Failure of a Bidder to furnish the equipment, supplies, materials and/or services from a bid which results in a contract award, may eliminate the Bidder from the active bidder's mailing list for the products or services concerned, at the discretion of the City.