



CITY OF BURTON
BURTON CITY COUNCIL MEETING
DECEMBER 20, 2021
AGENDA

Council Chambers

Regular Meeting

7:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

A. INVOCATION LED BY: TINA CONLEY

B. THE PLEDGE OF ALLEGIANCE IS LED BY: TINA CONLEY

C. ROLL CALL

D. APPROVAL OF AGENDA

E. STAFF PRESENT

F. APPROVAL OF MINUTES

1. City Council - Workshop - Dec 6, 2021 5:30 PM
2. City Council - Special Meeting - Dec 6, 2021 6:30 PM
3. City Council - Regular Meeting - Dec 6, 2021 7:00 PM

G. ADMINISTRATIVE REPORTS

H. COMMITTEE REPORTS

I. AUDIENCE PARTICIPATION

Now is the time set-aside for members of the audience to address the Burton City Council. I would ask each individual to give their name and address for the record and to limit their comments to three (3) minutes and to speak on the topics germane to City business.

J. COUNCIL DISCUSSION

K. COUNCIL ACTION

1. Approve and authorize the payment of Attorney Billing (Doyle) 12/1/21 to 12/14/21 in the amount of \$5,631.00.
2. Approve and authorize the payment of Attorney Billing (Masud) 11/1/2021 to 11/30/2021 in the amount of \$1,596.00.
3. Approve and authorize the 2022 City Council & Board of Review Meeting Calendar.

4. Approve and authorize the request for a Residential Sanitary Water & Sewer Installer's License for Bush Contracting, Inc., 5329 Shoemaker Road, Almont, MI 48003.
5. APPROVE and AUTHORIZE the City Clerk to Set First Public Hearing for Thursday January 20, 2022 at 6:30 p.m. at City Hall, or any later date of City Council choice; (a minimum of fourteen (14) days is required between this Council meeting and the proposed public hearing date), and instruct the Clerk's Office, to publish and mail notices to hear and consider any favorable comments and/or objections which may be submitted by any interested person with respect to the making of the improvements and to the assessing of the cost of the improvements to the lands in the aforesaid special assessment district Montcalm and Day St. Project #21-018-P.
6. Approve and Authorize the Mayor and City Clerk to execute a contract with Orchard, Hiltz & McCliment, In. (OHM), 34000 Plymouth Rd. Livonia, MI 48150, for Professional Engineering of Genesee Road from Court to Davison Road (DPW Project No. 21-023-P), at an estimated cost of \$82,069.43, contingent upon approval of the City Attorney.
7. Approve and Authorize the Mayor and City Clerk to execute a contract with Fleis and VandenBrink Engineering, 9475 Holly Rd. Grand Blanc 48439, for Professional Engineering of Belsay Rd., Lapeer to I-69 (DPW Project No. 21-021-P), at an estimated cost of \$59,900, contingent upon approval of the City Attorney.
8. Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Belsay Road, Davison to Potter (DPW Project No. 20-012-P), at an estimated cost of \$54,805.00, contingent upon approval of the City Attorney.
9. Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Maple Road, Sandalwood to Saginaw (DPW Project No. 20-011-P), at an estimated cost of \$51,085, contingent upon approval of the City Attorney.

10. Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Maple Road, Fenton to Sandalwood (DPW Project No. 20-011-P), at an estimated cost of \$90,630.00, contingent upon approval of the City Attorney.

11. Approve and authorize the following 2021-2022 budget amendment: Increase 2002-4051-802.7615 Belsay Road (Lapeer to I-69) by \$59,900; Decrease Major Street Fund Balance by \$59,900.

Agendas and minutes may be found at www.burtonmi.gov



CITY OF BURTON
BURTON CITY COUNCIL MEETING
DECEMBER 6, 2021
MINUTES

Council Chambers

Workshop

5:30 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 5:30 PM.

A. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Vice President	Present	
Steven Heffner	President	Present	
Vaughn Smith	Councilman	Present	
Gregory Fenner	Councilman	Present	
Christina Conley	Councilwoman	Present	
Greg Hull	Councilman	Present	
Christina Hickson	Councilwoman	Present	

B. STAFF PRESENT

Duane Haskins, Mayor
 Racheal Boggs, City Clerk
 Charles Abbey, DPW Director/HR
 Jodi Holbrook, Controller
 Ryan Bertram, IT Director
 Dave Cantin, IT Department

Others Present:

Pam Hill, Plante Moran (attending virtually)
 Chris Gilbert, Plante Moran

C. ADMINISTRATIVE REPORT

None.

D. PRESENTATION

1. Presentation of the 2020-2021 Audit By Plante Moran.

Pam Hill and Chris Gilbert presented the following:

- Financial Statement Audit, unmodified opinion, GASB 84 fiduciary activities
- Single audit, no federal program audit findings
- Financial highlights
- New accounting standards in 2021 and 2022
- City of Burton end of audit letter, internal control related matters, required audit communications and recommendations
- Sewer and water fund net position comparison
- Legacy costs, Pension and OPEB liabilities

- Governmental Fund Revenue and Expenditures year ending June 30th
- Components of Governmental Fund Balance year ending June 30th
- General Fund Balance year ending June 30th

Mr. Heffner asked if the net position numbers include the \$1 million.

Mayor Haskins said it should not because we have not received that money yet. When we do receive it, it will go to council for a transfer.

Mr. Gilbert stated that is correct. It does not include those funds.

Mr. Fenner asked if 60% going into capital assets is typical.

Ms. Hill stated every community's infrastructure is a little bit different in terms of aging. When you have aging infrastructure, you will need to fund it somehow, either with current cash on hand, bonding or another source. With mature infrastructure like yours, you will see a larger investment. There is not a percentage of expenditures that you want to see.

Mr. Smith stated I see we are growing in our unrestricted net position from 2020 to 2021. We have approved the second phase of our sewer project which is approximately \$2.6 million. How do we look at this money relative to phase two?

Ms. Hill stated there are a couple factors to consider. I believe you have increases from the county on your sewer rates. I am not sure what those increases are. That will need to be taken into account. Also there are several phases of the project. The cost of each phase as well as the price to bond for those need to be considered. Interest rates are still very low. The city has been successful in the past in obtaining low rate loans as well as loan forgiveness. This should all be weighed and taken into account in your long term planning to determine what will be the most beneficial. Realistically, you cannot pay cash for all the phases of the project.

Mr. Heffner stated the change in our OPEB liability since 2017 is amazing.

Ms. Hill stated the city's commitment to making the additional contributions was one of the biggest contributors to the change. This is true on the pension side as well. You should feel good about the strides you have made.

Mr. Martinbianco stated we have been putting an additional \$1 million into our legacy over the last five year period and the return on our investment has not been much. I know you represent other communities that employ MERS. How does our return compare to other communities similar in size?

Ms. Hill stated I know it doesn't feel like you are getting much back but you are paying benefits of almost \$4 million this year. Five years ago you were only paying about \$3 million. You are starting to turn the curve where you are coming up and your benefits are going to continue to go up. You will really start to see the return on the downside of the curve. Your contributions have made a difference.

Mr. Martinbianco asked if there is anything we can do to protect our interest and our continued funding level?

Ms. Hill stated I don't know if there is much you can do considering you don't have the option to tell MERS what you want them to invest in so you are at the mercy of their investment managers.

Mr. Martinbianco stated we can choose to apply or not apply the extra \$1 million. If we see the economy going south, we might choose to keep the \$1 million in our pocket or invest it in the community.

Mr. Smith stated we pay out approximately \$4 million to retirees. If we had not put the extra \$1 million in, we would be further in the hole and borrowing money again. We are not having to pay for the borrowed money at 7 3/4% by putting the extra \$1 million.

Ms. Hill said, yes. Your liability would have increased if you would not have put the extra money in.

Discussion continued regarding unfunded liability.

Mr. Martinbianco asked if we should set up a special revenue account for the money we are supposed to be receiving from the federal government. Are other communities doing something differently that we should know about?

Ms. Hill stated every community is doing something different. You want to make sure you have a clear way to track it. We are seeing communities set up a special fund or the money is going into the general fund and being transferred to the correct department for the project.

Discussion continued regarding allowable uses for federal funds, setting up a special fund and other options.

Mr. Hull asked about the comprehensive report, there is a yes or no checklist on page 151. What does material weakness identified mean?

Ms. Hill stated this is related to some year end journal entries to account for accrual entries such as an invoice that comes in the month of July that was for services provided in May.

Mr. Hull asked about the cyber security and information tech controls. Is this standard language or were there vulnerabilities identified?

Ms. Hill stated we do not do a cyber assessment as part of the financial statement audit. It is somewhat of a standard paragraph we use to bring it to the forefront. With the passing of the infrastructure bill, there is \$24 million that the State of Michigan is going to receive specifically to help strengthen cyber security at the local level. We are encouraging our clients to have a cyber risk assessment completed to identify vulnerabilities.

Mayor Haskins stated we have started this analysis in the IT Department. We are hoping there may be some type of reimbursement we qualify for.

E. COUNCIL DISCUSSION

None.

Meeting was adjourned at 6:32 PM.

Minutes Acceptance: Minutes of Dec 6, 2021 5:30 PM (APPROVAL OF MINUTES)



CITY OF BURTON
BURTON CITY COUNCIL MEETING
DECEMBER 6, 2021
MINUTES

Council Chambers

Special Meeting

6:30 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 6:30 PM.

A. ROLL CALL

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Vice President	Present	
Steven Heffner	President	Present	
Vaughn Smith	Councilman	Present	
Gregory Fenner	Councilman	Present	
Christina Conley	Councilwoman	Present	
Greg Hull	Councilman	Present	
Christina Hickson	Councilwoman	Present	

B. STAFF PRESENT

Duane Haskins, Mayor
 Racheal Boggs, City Clerk
 Charles Abbey, DPW Director/HR
 Jodi Holbrook, Controller
 Brian Ross, Police Chief
 Kirk Wilkinson, Fire Chief
 Pete Wingblad, Engineer/DPW
 Alice Bryce, Treasurer

C. OPEN PUBLIC HEARING

Public Hearing was opened at 6:35PM.

1. PRESIDENT STATES THE PURPOSE OF THE HEARING:

1. 1st Public Hearing for a Paving Project for: Maplewood Meadows Subdivision

2. DPW PRESENTATION

Mr. Abbey stated we set out for these projects during budget time when the council came up with guidelines on how to proceed with getting some of these neighborhood streets fixed and upgraded. This is the first petition that has come through. There are a couple others in the works right now. The necessary petition signatures were validated and approved to move forward. Mr. Wingblad is here tonight from our Engineering Department if there are any technical questions.

Minutes Acceptance: Minutes of Dec 6, 2021 6:30 PM (APPROVAL OF MINUTES)

3. PRESIDENT ANNOUNCES:

THIS IS THE TIME FIXED FOR HEARING AND CONSIDERING ANY OBJECTIONS AND/OR FAVORABLE COMMENTS TO THE ASPHALT MILL AND RESURFACE, INCLUDING ASSOCIATED STORM SEWER IMPROVEMENTS IN THE FOLLOWING STREETS, TO-WIT:

ALL STREETS LOCATED WITHIN THE MAPLEWOOD MEADOWS SUBDIVISION

4. AUDIENCE PARTICIPATION/PUBLIC COMMENTS

Council listens to objections and/or favorable comments to said improvements.

Geraldine Ruddock of 5460 Aspen Circle in Burton stated she is one of the original homeowners in this area. She has lived here for 19 years. She is in support of this project.

Barry Catrell of 5476 Aspen Circle in Burton stated this is a great deal and it will take the neighborhood 30 years forward.

D. CLOSE PUBLIC HEARING

Public Hearing closed at 6:46PM.

E. COUNCIL DISCUSSION

Mr. Smith asked the administration to describe this process to the public.

Mr. Abbey stated under the Special Assessment Program, someone initiates a special assessment petition. The DPW prepares preliminary cost estimates, petitions are circulated requiring 50% plus one signatures in that district. The district is defined and in this case it is all of Maplewood Meadows subdivision which is roughly 365 parcels. They have done this. We verify the signatures through the Assessor's Office. We set the Public Hearing and hold the Public Hearing. We move forward through council action.

Mr. Fenner stated there is a cost estimate on the petition when it is circulated so no one is shocked. If they have signed it, they understand the approximate cost, correct?

Mr. Abbey stated the preliminary cost estimate is put together with the engineering firms. The petition they signed was at 100% until the council takes action. They were told about the program and how it works. The cost estimate is as accurate as it can be until we go out for bid. This is why the timing is so critical. We get our best bids early in the spring. The timing on this one is perfect. If the bids came in something astronomical, we would have to revisit this. Historically, this does not happen. We are usually pretty accurate.

Mr. Martinbianco stated astronomically doesn't define a number. My understanding is that anything 10% or above would have to be re-circulated or re-certified by the petitioners.

Mr. Abbey stated that is correct.

Mr. Martinbianco asked to hear from Pete Wingblad.

Mr. Wingblad stated there is a 10% contingency and provided further clarification.

Minutes Acceptance: Minutes of Dec 6, 2021 6:30 PM (APPROVAL OF MINUTES)

Mr. Heffner stated he would like to adjourn the meeting because no action can be taken at a Public Hearing. He recommended adding the action item on this agenda to the City Council Meeting.

Ms. Boggs stated this is a Special Meeting with a Public Hearing so the council can take action if they so choose.

Mr. Heffner asked if that is how the meeting was advertised.

Attorney Doyle stated that is my understanding. As long as it is advertised and published as a Special Meeting, you can take action. I believe it was.

F. COUNCIL ACTION

Mr. Abbey stated you will need to fill in the blanks for items D and E. They are the length of the terms of the Special Assessment District and how it is funded.

1. APPROVE AND AUTHORIZE the following for the Special Assessment Paving District known as 21-019-P.

Mr. Fenner stated included the following in his motion:

Item D: The improvements made using funding by: GL# 2003-4063-818.5000 Road Repavement under Local Street Surface Maintenance.

Item E: The number of installments in which the assessments may be paid, and ordering shall be 12 years.

Discussion continued regarding options for spreading out payments, interest rates and bonds.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Gregory Fenner, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

Meeting was adjourned at 7:02 PM.



CITY OF BURTON
BURTON CITY COUNCIL MEETING
DECEMBER 6, 2021
MINUTES

Council Chambers

Regular Meeting

7:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 7:23 PM.

A. INVOCATION LED BY: STEVE HEFFNER

B. THE PLEDGE OF ALLEGIANCE IS LED BY: STEVE HEFFNER

C. ROLL CALL

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Vice President	Present	
Steven Heffner	President	Present	
Vaughn Smith	Councilman	Present	
Gregory Fenner	Councilman	Present	
Christina Conley	Councilwoman	Present	
Greg Hull	Councilman	Present	
Christina Hickson	Councilwoman	Present	

D. APPROVAL OF AGENDA

1. Motion to approve the agenda as presented.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Gregory Fenner, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

E. STAFF PRESENT

Duane Haskins, Mayor
 Racheal Boggs, City Clerk
 Charles Abbey, DPW Director/HR
 Brian Ross, Police Chief
 Kirk Wilkinson, Fire Chief
 Jodi Holbrook, Controller
 Alice Bryce, Treasurer
 Ryan Bertram, IT Director
 David Cantin, IT Department

F. APPROVAL OF MINUTES

1. City Council - Regular Meeting - Nov 15, 2021 7:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Tom Martinbianco, Vice President
SECONDER:	Christina Hickson, Councilwoman
AYES:	Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

2. City Council - Organizational Meeting - Nov 15, 2021 8:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Tom Martinbianco, Vice President
SECONDER:	Christina Hickson, Councilwoman
AYES:	Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

G. ADMINISTRATIVE REPORTS

Mayor Haskins gave a report on the following:

- Condolences to the Raber family. Two days before Mr. Raber passed away, Mrs. Raber passed away.
 - Thank you to Mrs. Conley, Jeremy Scharrer, and all the volunteers that helped put on the Christmas Tree Lighting Ceremony. It was a big success and a great way to kick off the holiday season.
 - Pizza with Santa was another big success, we had well over 200 kids. Thank you to everyone in Parks and Rec for their work in both events.
 - 'Twas the Lights before Christmas is still going on. If you decorate your home and enter the contest by December 15th you will have a chance to enter for the 2021 Clark Griswold Award. The grand prize winner will receive a \$150 gift card.
 - Our Treasurer, Mrs. Bryce is here tonight. A few weeks ago we discussed an issue with the tax payments and the mail. She found a vendor that offers electronic check processing. It would cost our city \$300 per year and \$0.25 per transaction. It is a service agreement but I wanted to bring it before council to see if you want to make a motion on it.
 - Introduced John O'Brien, Genesee County Director of Water and Waste.
1. Presentation from Genesee County Water and Waste Services on changes to sewer rates effective January 2, 2022.

John O'Brien, Director of the Genesee County Water and Waste stated Genesee County placed a rate increase on community members beginning 2022 for the next five years. These are step rate increases in lieu of annual increases. We project our expenses over the next five years and set the rate on the five year cycle. Normally, what happens is in the first two years we make little money, the third year, we break even and the last two years we lose a little money. The goal is to try to stay even over the five year period so we are at the same place at the end of the cycle as we were in the beginning. This is a different philosophy than some community's use where they raise rates every year. These rates are based on our permit. Every five years we have to get a permit from EGLE to discharge waste water to the Flint River. The last time we did the rates was 2014, we did a five year rate cycle at that expired in 2019. We had some beneficial activities so we were able extend the rate cycle up another two years, through 2021. In 2001, we did our 20 year master plan that involved meeting with our communities and collected future projections and needs. We then laid out our future plan for water and waste. We then take the 20 year plan

and break it out into five years to address our immediate need. With that, we overlay our new permit and operating costs. Taking all of this into account, we establish a new rate. Additionally, in 2021, the state has placed new requirements on the county for I&I. It entails identifying where all the I&I is coming from out of our 34 communities. As you know, there is PFAS in the environment that ends up in the sanitary sewer system. We are obligated to remove it so it is not discharged into the Flint River. Every household that has Stain Master Carpet or teflon pans has PFAS that ends up at our treatment plant. We get it out of the water so it is not discharged into the Flint River but then we have that in our solids. We are looking at an alternative method for disposal. Another thing that hit us hard in 2021 was inflation. We had a 20% jump in our chemical costs due to transportation and an increase in electric due to Consumers Energy's use of peak hours. Another thing we have to consider is our system is aging. The original system was put in back in 1965. It is time to think about a process for replacement. All of these things considered, we are looking at an increase to all of our communities of approximately 20% for five years until 2027. Our current charge to the city is \$27.43 per unit per month. It will now be \$33.25 per unit per month.

Discussion ensued regarding the difference between a five year rate cycle and an annual increase, interceptor running through Burton, new connections, The Woodhill Group and methodology changes.

Mayor Haskins stated to make this clear, there is no increase on the city side at all. This increase is from Genesee County.

H. COMMITTEE REPORTS

President Heffner made the following Committee appointments:

911 Consortium: Greg Fenner
 LED Committee: Greg Fenner, Chairperson, Greg Hull, Vaughn Smith
 Metropolitan Alliance: Greg Hull, Tom Martinbianco, Alternate
 Solid Waste Committee: Greg Fenner
 Library Committee: Tina Conley
 Public Access Committee: Tina Conley, Chairperson, Vaughn Smith, Christina Hickson
 Planning Representative: Greg Fenner
 Zoning Representative: Vaughn Smith
 Parks & Recreation: Greg Hull
 Finance Committee: Tom Martinbianco, Chairperson, Vaughn Smith, Greg Hull
 Legislative Committee: Christina Hickson, Chairperson, Tina Conley, Tom Martinbianco

I. AUDIENCE PARTICIPATION

None.

J. COUNCIL DISCUSSION

Mrs. Conley stated she had residents call her that needed help with their water bill. They said Burton isn't working with them and the water is being turned off when they can't pay.

Mr. Abbey stated that is not correct. There are agencies out there that can help. Alice and her staff are very good at working with these agencies for the residents that need help. The agencies have a criteria and residents have to qualify and make a commitment to them. When that is done, there is a hold put on the account. Alice is here and can speak on this. She deals with it every day. We have applied for everything possible as far as federal dollars

to help people. There are a lot of people we have helped. There are ordinances and laws we have to follow.

Mrs. Bryce stated the agency contacts us and we put the account on hold and discontinue any shut off procedures. There have been times where residents say they applied to an agency and they do not follow through and funding never comes. They don't get shut off and their bills bet bigger and bigger.

Mrs. Conley stated it was GCARD. I will call them tomorrow.

Mr. Abbey stated we all know there are people going through a rough time. We are very sensitive to that but we have protocols in place for a reason. What we are doing is working. We used to shut off hundreds and this time, I think we had forty. It is working and people are paying their bills much better. Some people need help and we do everything we can to work with them. When someone falls through the crack it is because they don't follow up on their end to get it resolved.

Mr. Heffner asked, what kind of spike did you see during the pandemic?

Mr. Abbey stated at first there was a no shut off rule from the government. When you tell people they don't have to pay their bills, they don't. It made it difficult because small bills became big bills after not paying it for a while. People had a hard time getting caught up. We make payment plans with people. Sometimes they follow through and sometimes they don't.

Discussion regarding the use of an electronic check processing system. Council decided to allow the Treasurer to proceed with the use of an electronic system for payment processing.

Mr. Smith recognized the following Eagle Scouts who were recognized by the Mayor with a proclamation at Bentley School. Jackson McDaniel, Oliver McDaniel, Samuel Mobley, Nathan Mobley and Asher Donnelly. Becoming an Eagle Scout is not easy. These are our future leaders. I am very proud of them.

K. COUNCIL ACTION

1. Approve and authorize the payment of Attorney Billing (Doyle) 11/10/21 to 11/30/21 in the amount of \$5,689.00.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Christina Conley, Councilwoman
SECONDER:	Gregory Fenner, Councilman
AYES:	Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

2. Approve and authorize the payment of Attorney Billing (Masud) 10/1/2021 to 10/31/2021 in the amount of \$1,178.00.

RESULT: CARRIED [UNANIMOUS]
MOVER: Gregory Fenner, Councilman
SECONDER: Christina Conley, Councilwoman
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

3. Approve and authorize the sale of Vacant Lot - Cashin, Parcel No. 59-03-577-036, to give first and final approval for the sale of this parcel to Bay to Bay Investments, LLC, 12745 S. Saginaw St. Grand Blanc MI 48439, for the sum \$10 cash or its equivalent and authorizing the Mayor and the Clerk to execute any and all documents required to effectuate this sale.

No motion made.

RESULT: FAILED LACK OF SUPPORT

4. Approve and authorize the "Hard Cap" Resolution 2021-23 regarding the cost sharing model set forth in State of Michigan Public Act 152 of 2011.

RESULT: CARRIED [UNANIMOUS]
MOVER: Tom Martinbianco, Vice President
SECONDER: Gregory Fenner, Councilman
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

5. Approve and authorize the City Treasurer to pay MERS a lump sum of \$1,000,000 via wire transfer by 12/31/21 to be applied to the unfunded liability of the City of Burton pension plan.

RESULT: CARRIED [UNANIMOUS]
MOVER: Vaughn Smith, Councilman
SECONDER: Christina Conley, Councilwoman
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

6. Approve and authorize the Amy Street Capital Projects Shortfall Elimination Plan.

RESULT: CARRIED [UNANIMOUS]
MOVER: Vaughn Smith, Councilman
SECONDER: Tom Martinbianco, Vice President
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

7. GIS Project 2022-2028 Approve and authorize with Genesee County Aerial Imagery Project 2022-2028 at an expected cost of \$24,758.46 over six years, and agrees to pay at least the initial payment of \$4,126.41 to Genesee County no later than June 1st, 2022.

RESULT: CARRIED [UNANIMOUS]
MOVER: Gregory Fenner, Councilman
SECONDER: Vaughn Smith, Councilman
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

8. Budget Amendment Approve and authorize the following 2021-2022 budget amendment: Increase 1001-2009-818.7100 Pictometry & Orthoimagery Project by \$1,627; Decrease General Fund Balance by \$1,627.

RESULT: CARRIED [UNANIMOUS]
MOVER: Christina Conley, Councilwoman
SECONDER: Tom Martinbianco, Vice President
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

9. Budget Amendment Approve and authorize the following 2021-2022 budget amendment: Increase 2007-2007-975.0002 Gasoline Storage Tank by \$20,000; Decrease Police Fund Balance by \$20,000.

RESULT: CARRIED [UNANIMOUS]
MOVER: Tom Martinbianco, Vice President
SECONDER: Vaughn Smith, Councilman
AYES: Martinbianco, Heffner, Smith, Fenner, Conley, Hull, Hickson

Agendas and minutes may be found at www.burtonmi.gov

Meeting was adjourned at 8:15 PM.

Minutes Acceptance: Minutes of Dec 6, 2021 7:00 PM (APPROVAL OF MINUTES)



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Clerk's Office
Category: Attorney Billing
Prepared By: Racheal Boggs
Department Head: Racheal Boggs

K.1

SCHEDULED

AGENDA ITEM (ID # 5269)

DOC ID: 5269

**Approve and authorize the payment of Attorney Billing
(Doyle) 12/1/21 to 12/14/21 in the amount of \$5,631.00.**



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Clerk's Office
Category: Attorney Billing
Prepared By: Racheal Boggs
Department Head: Racheal Boggs

K.2

SCHEDULED

AGENDA ITEM (ID # 5268)

DOC ID: 5268

**Approve and authorize the payment of Attorney Billing
(Masud) 11/1/2021 to 11/30/2021 in the amount of \$1,596.00.**



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Clerk's Office
Category: Miscellaneous
Prepared By: Racheal Boggs
Department Head: Racheal Boggs

K.3

SCHEDULED

AGENDA ITEM (ID # 5248)

DOC ID: 5248

Approve and authorize the 2022 City Council & Board of Review Meeting Calendar.

ATTACHMENTS:

- 2022 City Council Meeting Schedule (DOCX)

2022 Burton City Council Meeting Schedule

Meetings are held in Council Chambers in the lower level of City Hall at 7:00 PM

Thursday, January 6th*	Thursday, January 20th*
Monday, February 7th	Monday, February 21st
Monday, March 7th	Monday, March 21st
Monday, April 4th	Monday, April 18th
Monday, May 2nd	Monday, May 16th
Monday, June 6th	Monday, June 20th
Thursday, July 7th*	Monday, July 18th
Monday, August 1st	Monday, August 15th
Thursday, September 8th*	Monday, September 19th
Monday, October 3rd	Monday, October 17th
Thursday, November 10th*	Monday, November 21st
Monday, December 5th	Monday, December 19th

***Thursday Meetings due to the following:**

Monday, January 3, 2022 – 1st day back from holiday break
 Monday, January 17 2022 - Martin Luther King Jr. Day
 Monday, July 4, 2022 – Independence Day
 Monday, September 5, 2022 - Labor Day
 Monday, November 7, 2022 - Day before General Election

2022 Board of Review Meeting Schedule

Meetings are held in Council Chambers in the lower level of City Hall

Monday, March 14th 9:00AM-5:00PM
 Tuesday, March 15th 9:00AM-5:00PM
 Wednesday, March 16th 3:00PM-9:00PM
 Tuesday, March 22nd 9:00AM-5:00PM
 Tuesday, July 19th 2:00PM-5:00PM
 Tuesday, December 13th 2:00PM-5:00PM



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM

Department: Clerk's Office

Category: License

Prepared By: Lindsey Bice

Department Head: Racheal Boggs

K.4

SCHEDULED

AGENDA ITEM (ID # 5260)

DOC ID: 5260

Approve and authorize the request for a Residential Sanitary Water & Sewer Installer's License for Bush Contracting, Inc., 5329 Shoemaker Road, Almont, MI 48003.

ATTACHMENTS:

- Bush Contracting Inc (PDF)



City of Burton
4303 S. Center Rd.
Burton, MI 48519
www.burtonmi.gov

Application for Sewer & Water Installer License

Date: 12-7-21 License Expiration: _____
 Name of Applicant: BUSH CONTRACTING INC RALPH BUS
 Applicant Address: 5329 SHOEMAKER RD ALMONT MI 48003
 Phone Number: (866) 855-0723 Email: BUSH CONTRACTING INC @ YAHOO.COM
 Name of Business: BUSH CONTRACTING INC
 Business Address: 5329 SHOEMAKER ROAD, ALMONT MI 48003
 Phone Number: (866) 855-0723 Plumbing License #: _____

LICENSE FEES	Amount	Proration	PAID
1. Sewer Installer Expires - March 31, _____	\$100.00		☒
2. Water Installer Expires - March 31, _____	\$100.00		☒

- Applicant must file a Performance Bond in the Amount of \$10,000.
- Applicant must maintain insurance against liability in the amounts of \$100,000 for injury to one person and \$300,000 per occurrence, and against liability for property damage in the amount of \$100,000.
- Each contractor shall maintain Workman's Compensation Insurance covering all employees.

The undersigned hereby specifically agrees that any approval granted for license received after said approval is subject to revocation at any time by the Burton City Council, and that there shall be no liability on the part of the Burton City Council of the City of Burton, or any officers, members or employees of said units, because of any revocations and the granting of such approval of license does not create a vested right.

The undersigned hereby specifically agrees to abide by all provisions of Burton City Ordinance #112, adopted 8-4-69, effective 9-15-69, and all City Ordinances and Resolutions of the Burton City Council now in force or hereinafter adopted.

I, RALPH BUS (applicant) being duly sworn, state that I have read the foregoing application and exhibits therein contained and attached, by me subscribe and knowingly made the foregoing answers, statements, and representations therein contained and that said statement representations are true.

THIS APPLICATION MUST BE SIGNED BEFORE A NOTARY: _____

Signature of Applicant

Subscribed and sworn before me a Notary Public in and for the County of Genesee, State of Michigan this 17th day of December, 20 21.

Lindsey Bie
Notary Public

01/04/2026
Commission Expires

CITY OF BURTON
 4303 S. CENTER RD.
 BURTON, MI 48519
 Phone : 810-743-1500
 WWW.BURTONMI.GOV

Received From:
 BUSH CONTRACTING INC

Date: 12/07/2021 Time: 11:35:26 AM
 Receipt: 110728199
 Cashier: HOLBROOKC
 Workstation: Drawer: 1

ITEM REFERENCE	AMOUNT
LICENSE LICENSE FEES	
WATER AND SEWER	
1001-0000-450.0000	\$200.00
SUB-TOTAL	\$200.00
Total Tendered:	\$200.00
ORDER #:	
649efedd-12ed-47d3-9472-9bba2bc23441	
Credit Card Type Visa	
CC Processing Fee	\$5.90
CREDIT CARD XXXXXXXXXXXX1153	
Grand Total:	\$205.90
Change:	\$0.00

Signature

Attachment: Bush Contracting Inc (5260 : Residential Sanitary Water & Sewer Installer's License)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/07/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Follmer Insurance Services, Inc. 5058 S Old US Hwy 23 Brighton MI 48114	CONTACT NAME: Lisa Follmer-Gagnon PHONE (A/C, No, Ext): 810-224-5115 FAX (A/C, No): 810-224-5116 E-MAIL ADDRESS: Lisa@follmerinsurance.com INSURER(S) AFFORDING COVERAGE INSURER A: Merchants Preferred Ins Co NAIC # 12901 INSURER B: Merchants Insurance Group INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Bush Contracting Inc 5329 Shoemaker Road Almont MI 48003-9729	

COVERAGES**CERTIFICATE NUMBER:** 20211207150123145**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	☒ COMMERCIAL GENERAL LIABILITY			CTR1002915	11/07/2021	11/07/2022	EACH OCCURRENCE	
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	
	GEN'L AGGREGATE LIMIT APPLIES PER:							MED EXP (Any one person)
	☒ POLICY ☐ PRO-JECT ☐ LOC						PERSONAL & ADV INJURY	
	OTHER:						GENERAL AGGREGATE	
							PRODUCTS - COMP/OP AGG	
							\$	
A	AUTOMOBILE LIABILITY			CAPI072321	11/07/2021	11/07/2022	COMBINED SINGLE LIMIT (Ea accident)	
	☐ ANY AUTO						BODILY INJURY (Per person)	
	☐ OWNED AUTOS ONLY	☒ SCHEDULED AUTOS					BODILY INJURY (Per accident)	
	☐ HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	
							\$	
							\$	
	UMBRELLA LIAB						EACH OCCURRENCE	
	EXCESS LIAB						AGGREGATE	
	DED	RETENTION \$					\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y ☒ N	N/A				OTH-ER	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Burton
 4303 S Center Rd
 Burton MI 48519

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Executed In Duplicate

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One Watermain Installer City of Burton

bond with bond number 65716472

for Bush Contracting Inc

as Principal in the penalty amount not to exceed: \$ 10,000.00.

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its
Vice President with the corporate seal affixed this 7th day of December,
2021.

ATTEST

P. Leitheiser
P. Leitheiser, Assistant Secretary

WESTERN SURETY COMPANY
By Paul T. Bruflat
Paul T. Bruflat, Vice President

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 7th day of December, 2021, before me, a Notary Public, personally appeared
Paul T. Bruflat and P. Leitheiser

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the
voluntary act and deed of said Corporation.



My Commission Expires March 2, 2026

Notary Public

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.

Executed In Duplicate

Bond No. 65716472WATERMAIN INSTALLER'S BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Bush Contracting Inc of the City, Township, or Village of Almont, State of Michigan, hereinafter called the Principal and WESTERN SURETY COMPANY, hereinafter called the Surety, a corporation organized under the laws of the State of South Dakota, with its home office in the City of Sioux Falls, in the said state are held an firmly bound unto the City of Burton, a Municipal Corporation of the State of Michigan, hereinafter called the Obligee, in the sum of Ten Thousand and no/100ths Dollars (\$10,000.00), lawful money of the United States of America: for the payment whereof to the Obligee, the Principal/Principals bind (s) himself/themselves, his/their heirs, executors, administrator, successors and assigns, and the surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that WHEREAS, the above named Principal is about to engage in the business of installing and connecting watermain service leads and excavating for that purpose within the private property of the City of Burton in accordance with the provisions of Ordinance No. 59-C as amended, entitled, "An Ordinance licensing contractors for the installation and connection of watermain service leads within the City of Burton, connections thereto and use thereof: Providing penalties for violations, and providing for other related matters." Adopted April 2, 1979, and has made application for a license therefore as provided in said Ordinance during the period between ~~April 1st~~ ^{December 7th} 2021 and March 31, 2022. Therefore, if the above named Principal shall well and faithfully comply with all the provisions of said Ordinance and those of all other Ordinances of the City of Burton relative to said business and shall save and keep harmless the said City of Burton from any and all claims or suits for damages resulting from any violation thereof by him or his employees in case such license is issued, then this obligation to be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 7th day of December, A.D., 2021.



(Power of Attorney with seal thereon, must be attached)

Bush Contracting Inc
Principal

By: _____

WESTERN SURETY COMPANY
Surety

By: Paul T. Bruflat

(Attorney-in-fact)

Paul T. Bruflat, Vice President

Attachment: Bush Contracting Inc (5260 : Residential Sanitary Water & Sewer Installer's License)



SCHEDULED

AGENDA ITEM (ID # 5261)

DOC ID: 5261

APPROVE and AUTHORIZE the City Clerk to Set First Public Hearing for Thursday January 20, 2022 at 6:30 p.m. at City Hall, or any later date of City Council choice; (a minimum of fourteen (14) days is required between this Council meeting and the proposed public hearing date), and instruct the Clerk's Office, to publish and mail notices to hear and consider any favorable comments and/or objections which may be submitted by any interested person with respect to the making of the improvements and to the assessing of the cost of the improvements to the lands in the aforesaid special assessment district Montcalm and Day St. Project #21-018-P.



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Amber Abbey
Department Head: Charles Abbey

K.6

SCHEDULED

AGENDA ITEM (ID # 5262)

DOC ID: 5262

Approve and Authorize the Mayor and City Clerk to execute a contract with Orchard, Hiltz & McCliment, In. (OHM), 34000 Plymouth Rd. Livonia, MI 48150, for Professional Engineering of Genesee Road from Court to Davison Road (DPW Project No. 21-023-P), at an estimated cost of \$82,069.43, contingent upon approval of the City Attorney.

ATTACHMENTS:

- GeneseeRoad_PE_Prop_final (PDF)



ARCHITECTS. ENGINEERS. PLANNERS.

December 1, 2021

City of Burton

Department of Public Works
4093 Manor Drive
Burton, MI 48519

Attention: **Mr. Peter Wingblad**
Engineering and Inspection Superintendent

Regarding: **N. Genesee Road Rehabilitation Project**
Design Engineering Services

Dear Mr. Wingblad:

OHM Advisors is excited for the opportunity to provide professional engineering services for the above referenced project. We have prepared the following project understanding and scope of services to be provided by OHM Advisors based on our previous discussions.

PROJECT UNDERSTANDING

The City has received federal funding to rehabilitate approximately 1-mile of N. Genesee Road from Court Street to Davison Road within the City limits. The existing pavement section varies consisting of either full depth concrete or a composite section with hot mix asphalt overlaying existing concrete. The depth of the overlaid sections of pavement are not known. Existing curb and gutter is located near both the Court Street and Davison Road intersections however the majority of the road section has paved and gravel shoulders. The project will consist of rubblizing the concrete sections of N. Genesee Road and milling and resurfacing the composite section. Soil borings will be required to determine existing pavement thickness and milling and resurfacing depths. As determined by the City and Engineer, repairs to existing curb and gutter, and drainage structures will occur throughout the project. Permanent signing, pavement markings, localized areas of joint and crack repair will be completed within the composite pavement sections. Additionally, the City has requested to add sidewalk on the west side of the road throughout the entire project. This project is in the approved MDOT S/TIP as a FY22 project and the City would like construction to begin around July or August 2023. The project construction cost listed in the S/TIP is \$1,033,615.00.

The federal funding for the project must be administered through the Michigan Department of Transportation (MDOT) Local Agency Programs Unit (LAP). The plans for this project will be developed in accordance with MDOT guidelines. Additional project administration effort resulting from the federal aid process (program application, crash analysis, mobility analysis, GI meeting, NEPA, SHPO, etc.) has been included in this scope.

SCOPE OF SERVICE

Task 1 – Project Initiation and Obtain Information

Under this task, we will initiate the project and obtain necessary information to proceed with the design. Specific work efforts include:

- Organize and attend a kickoff meeting with City staff to review project objectives, prepare design criteria, and establish a specific delivery schedule.
- Prepare and submit Local Agency Environmental Clearance Form (MDOT #5323) at least 2 months prior to the GI submittal in accordance with MDOT LAP guidelines.



- Review existing utility information and record drawings for the N. Genesee Road corridor.
- Perform a site review to identify elements that are sensitive to project, i.e., driveway locations and other access issues, utility facilities in the area, geometric deficiencies, and drainage features.
- Collect topographic survey throughout the project limits.
- Complete a Crash Analysis per MDOT requirements. We will obtain traffic crash data for the last three-year period showing the location and type of crashes. A report will be developed and submitted to the city outlining what was discovered and possible corrective actions that can be implemented into the design to help mitigate any possible deficiencies that may have contributed to accidents.
- Notify known utility agencies of the proposed work and verify locations of existing known utilities, including both public and private, within the project limits for conflicts and coordinate relocations if necessary.
- Contact the MDOT Office of Rail to notify them of the project and determine if a Diagnostic Safety Team Review (DSTR) meeting will be necessary.
- Coordinate with G2 Consulting Group to obtain soil borings and pavement cores along the project route. We anticipate nine (9) full depth pavement cores and six (6) soil borings.
- Coordinate with Commonwealth Heritage Group to complete SHPO investigation and submittal.

Task 2 – Base Plan Development

Under this task, develop preliminary geometrics for the project. The design will be developed in accordance with the current version of MDOT's Local Agency Programs Guidelines for Geometrics and AASHTO's A Policy on Geometric Design of Highways and Streets, 2011. The Base Plan Phase represents approximately 30% of the total design. Specific work efforts include:

- Review field information collected to identify any deficient areas in the existing geometrics.
- Prepare typical roadway cross-sections for the project.
- Prepare preliminary sidewalk layout on the west side of the road per MDOT and ADA requirements.
- Prepare documents to obtain National Environmental Policy Act (NEPA) approval
- Evaluate grading and ROW impacts associated with elevation adjustment of the proposed overlay and determine construction limits.
- Prepare a Maintenance of Traffic concept for the City's review and general concurrence.
- Prepare a preliminary Engineer's Opinion of Probable Cost.
- Arrange and attend one (1) project meeting with City staff to review the project and identify concerns.
- Complete final Base Plans and submit to the City for review. A meeting will be held with City staff to review the plans.

Task 3 – Preliminary Plan Development

Based on comments received from the Base Plan review, Preliminary Plans (GI plans) will be created. These plans will include input from several elements, including roadway geometrics, utility evaluation, traffic crash analysis, geotechnical evaluation, and special provisions. The Preliminary Plan Phase represents approximately 80% of the total design. Specific work efforts include:

- Develop road plans in accordance with current AASHTO standards based on comments received from the City on base plans. Plans will be prepared using a scale of 1" = 40' (profile scale 1" = 4').
- Develop pavement marking and signing plans within the affected influence of the project in accordance with MMUTCD requirements.
- Detailed maintenance of traffic plans will be provided for the project per the approved concept completed during the Base Plan phase. The maintenance of traffic plans will be developed in accordance with MDOT work zone safety and mobility guidelines.
- Create special provisions for all non-standard pay items in accordance with 2020 MDOT Standard Specifications for Construction and MDOT LAP guidelines.
- Compute preliminary quantities and revise the preliminary Engineer's Opinion of Probable Construction Cost.
- Evaluate and identify temporary grading easements required for the purposes of tying existing drive approaches into the proposed road elevation.

- Prepare proposed preliminary schedule for work including the construction start, substantial completion, and final completion dates.
- Submit Grade Inspection (G.I.) package including plans, project specifications, MDOT program application, crash analysis, and engineer's opinion of probable construction cost to MDOT Local Agency Programs for review.
- Coordinate and attend G.I. review meeting with MDOT and City representatives.

Task 4 – Final Plan Development

Based on comments received from the G.I. review, Final Plans will be created. Specific work efforts include:

- Finalize design plans based on comments obtained from the G.I. review meeting.
- Complete construction details.
- Finalize detailed grading.
- Finalize the locations and limits of grading easement (if required).
- Submit final plans, project specifications, and an opinion of probable construction cost in MERL format to MDOT Local Agency Programs.
- Answer questions raised by contractors from MDOT during the bidding process.

SCHEDULE

This project will commence upon authorization to proceed. It is anticipated that the field work for the design would take place as soon as possible (weather allowing), with design, and permitting taking place in 2022. Based on the MDOT LAP Project Planning Guide, it is anticipated that the project could be let in either late 2022 or early 2023, whichever would be preferred by the city.

COMPENSATION

The services outlined above will be performed on an hourly basis for the **not-to-exceed amount of eighty-two thousand sixty-nine dollars and forty-three (\$82,069.43)**. This amount is based on the assumptions listed below. The City will be invoiced for services on a monthly basis. The estimated budget breakdown is as follows:

Design and Topographic Survey	\$ 72,081.93
SHPO by Commonwealth Heritage Group	\$ 2,870.00
<u>Soil Borings by G2 Consulting Group</u>	<u>\$ 7,117.50</u>
Engineering Services Total	\$ 82,069.43

FURTHER CLARIFICATIONS AND ASSUMPTIONS

The above-listed scope of services was prepared with the following assumptions.

- The City will be responsible for all permit application fees and permit fees.
- No temporary easements or permanent right-of-way acquisition is anticipated. If acquisitions are necessary, the City will be responsible for negotiations and valuation determinations as required by MDOT. OHM can provide sketches and descriptions for an additional fee of \$1,500.00 per location.
- Extending the culvert(s) are not necessary to accommodate the proposed sidewalk on the west side of the road. Additional design fee will be required if extending the culverts is necessary.
- OHM will be pleased to provide any additional services for this project on an hourly basis. Services not included in this proposal:
 - a. Construction phase services such as, but not limited to, construction management, construction engineering, contract administration, construction observation and/or construction layout.
 - b. Relocation design services for sanitary sewer, if required.
 - c. Wetland delineation and survey, mitigation, and permitting.
 - d. Environmental assessments or reports, drainage studies, or other environmental evaluations associated with potential contaminated soils.

- e. Traffic study / traffic signalization design.
- f. Preparation of plans for landscaping and ornamental features.
- g. Location of private utilities, other than requesting as-built information from private utility owners.

Should you find this agreement acceptable, please execute both copies and return one copy to us for our files. We look forward to providing professional services on this project. If you have any questions, please feel free to contact me at mark.landis@ohm-advisors.com or (248) 751-3107.

Sincerely,
 OHM Advisors



Mark A. Landis, P.E.
 Project Manager



Andrew J. Harris, P.E.
 Principal

Enclosure: *Standard Terms and Conditions*

cc: Amber Abbey, Deputy DPW Director
 File

City of Burton
N. Genesee Road Rehabilitation – Engineering Design Services

Accepted By: _____

Printed Name: _____

Title: _____

Date: _____

TERMS & CONDITIONS

1. THE AGREEMENT. These Terms and Conditions and the attached Proposal or Scope of Services, upon acceptance by CLIENT, shall constitute the entire Agreement between Orchard, Hiltz & McCliment, Inc. (OHM ADVISORS), a registered Michigan Corporation, and CLIENT. OHM ADVISORS and CLIENT may be referred to individually as a Party or collectively as Parties. This Agreement supersedes all prior negotiations or agreements and may be amended only by written agreement signed by both Parties.
2. CLIENT RESPONSIBILITIES. CLIENT, at no cost, shall:
 - a. Provide access to the project site to allow timely performance of the services.
 - b. Provide all information in CLIENT'S possession as required by OHM ADVISORS to perform the services.
 - c. Designate a person to act as CLIENT'S representative who shall transmit instructions, receive information, define CLIENT policies, and have the authority to make decisions related to services under this Agreement.
3. PROJECT INFORMATION. OHM ADVISORS shall be entitled to rely on the accuracy and completeness of services and information furnished by CLIENT, other design professionals, or consultants contracted directly to CLIENT.
4. PERIOD OF SERVICE. The services shall be completed within the time specified in the Proposal or Scope of Services, or if no time is specified, within a reasonable amount of time. OHM ADVISORS shall not be liable to CLIENT for any loss or damage arising out of any failure or delay in rendering services pursuant to this Agreement that arise out of circumstances that are beyond the control of OHM ADVISORS.
5. COMPENSATION. CLIENT shall pay OHM ADVISORS for services performed in accordance with the method of payment, as stated in the Proposal or Scope of Services. CLIENT shall pay OHM ADVISORS for reimbursable expenses for subconsultant services, equipment rental, or other special project related items at a rate of 1.15 times the invoice amount.
6. TERMS OF PAYMENT. Invoices shall be submitted to the CLIENT each month for services performed during the preceding period. CLIENT shall pay the full amount of the invoice within thirty days of the invoice date. If payment is not made within thirty days, the amount due to OHM ADVISORS shall include a service fee at the rate of one (1%) percent per month from said thirtieth day.
7. STANDARD OF CARE. OHM ADVISORS shall perform their services under this Agreement in a manner consistent with the professional skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar conditions.
8. RESTRICTION OF REMEDIES. OHM ADVISORS is responsible for the work of its employees while they are engaged on OHM ADVISORS' projects. As such, and in order to minimize legal costs and fees related to any dispute, CLIENT agrees to restrict any and all remedies it may have by reason of OHM ADVISORS' breach of this Agreement or negligence in the performance of services under this Agreement, be they in contract, tort, or otherwise, to OHM ADVISORS, and to waive any claims against individual employees.
9. LIMIT OF LIABILITY. To the fullest extent permitted by law, CLIENT agrees that, notwithstanding any other provision in this Agreement, the total liability in the aggregate, of OHM ADVISORS to CLIENT, or anyone claiming under CLIENT, for any claim for losses, damages or costs whatsoever arising out of, resulting from or in any way related to this Agreement or the services provided by OHM ADVISORS pursuant to this Agreement, be limited to \$25,000 or OHM ADVISORS fee, whichever is greater, and is irrespective of whether the claim sounds in breach of contract, tort or otherwise.
10. ASSIGNMENT. Neither Party to this Agreement shall transfer, sublet, or assign any duties, rights under or interest in this Agreement without the prior written consent of the other Party.
11. NO WAIVER. Failure of either Party to enforce, at any time, any provisions of this Agreement shall not constitute a waiver of such provisions or the right of either Party at any time to avail themselves of such remedies as either may have for any breach of such provisions.
12. GOVERNING LAW. The laws of the State of Michigan shall govern the validity of this Agreement, its interpretation and performance.
13. INSTRUMENTS OF SERVICE. OHM ADVISORS shall retain ownership of all reports, drawings, plans, specifications, electronic data and files, and other documents (Documents) prepared by OHM ADVISORS as Instruments of Service. OHM ADVISORS shall retain all common law, statutory and other reserved rights including, without limitation, all copyrights thereto. CLIENT, upon payment in full for OHM's services, shall have an irrevocable license to use OHM's Instruments of Service for or in conjunction with repairs, alterations or maintenance to the project involved and for no other purpose. CLIENT shall not reuse or make any modifications to the Documents without prior written authorization by OHM ADVISORS. In accepting and utilizing any Documents or other data on any electronic media provided by OHM ADVISORS, CLIENT agrees they will perform acceptance tests or procedures on the data within 30 days of receipt of the data.
14. CERTIFICATIONS. OHM ADVISORS shall have 14 days to review proposed language prior to the requested dates of execution. OHM ADVISORS shall not be required to execute certificates which it has a reasonable objection, or that would require knowledge, services, or responsibilities beyond the scope of this Agreement, nor shall any certificates be construed as a warranty or guarantee by OHM ADVISORS.
15. TERMINATION. Either Party may at any time terminate this Agreement upon giving the other Party 7 calendar days prior written notice. CLIENT shall within 45 days of termination pay OHM ADVISORS for all services rendered and all costs incurred up to the date of termination in accordance with compensation provisions in this Agreement.
16. RIGHT TO SUSPEND SERVICES. In the event CLIENT fails to pay OHM ADVISORS the amount shown on any invoice within 45 days of the date of the invoice, OHM ADVISORS may, after giving 7 days' notice to CLIENT, suspend its services until payment in full for all services and expenses is received.

17. OPINIONS OF PROBABLE COST. OHM ADVISORS preparation of Opinions of Probable Cost represents OHM ADVISORS' best judgment as a design professional familiar with the industry. CLIENT recognizes that OHM ADVISORS has no control over costs of labor, equipment, materials, or a contractor's pricing. OHM ADVISORS makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual cost.
18. JOB SITE SAFETY. Neither the professional activities of OHM ADVISORS, nor the presence of OHM ADVISORS or our employees and subconsultants at a construction site shall relieve the Contractor or any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and the health or safety precautions required by any regulatory agency. OHM ADVISORS has no authority to exercise any control over any construction contractor or any other entity or their employees in connection with their work or any health or safety precautions.
19. CONTRACTOR SUBMITTALS. If included in the services to be provided, OHM ADVISORS shall review the contractor's submittals such as shop drawings, product data, and samples for the limited purpose of checking for conformance with information given and the design concept expressed in the construction documents issued by OHM ADVISORS. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the contractor's responsibility. OHM ADVISORS review shall not constitute approval of safety precautions or, unless otherwise specifically stated by OHM ADVISORS, of any construction means, methods, techniques, sequences or procedures. OHM ADVISORS approval of a specific item shall not indicate approval of an assembly of which the item is a component.
20. CONSTRUCTION OBSERVATION. If requested, OHM ADVISORS shall visit the project construction site to generally observe the construction work and answer questions that CLIENT may have. OHM ADVISORS shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the construction work, or to determine whether the construction work is being constructed in accordance with the Contract Documents.
21. HAZARDOUS MATERIALS. As used in this Agreement, the term hazardous materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. Both Parties acknowledge that OHM ADVISORS' Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event OHM ADVISORS or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to OHM ADVISORS that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of OHM ADVISORS' services, OHM ADVISORS may, at its sole option and without consequential or any other damages, suspend performance of its services under this Agreement until CLIENT retains appropriately qualified consultants and/or contractors to identify and abate remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. CLIENT agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless OHM ADVISORS, its officers, partners, employees and subconsultants (collectively, OHM ADVISORS) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos, hazardous or toxic substances, products or materials that exist on or about or adjacent to the Project site, whether liability arises under a breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action except for the sole negligence or willful misconduct of OHM ADVISORS.
22. WAIVER OF CONSEQUENTIAL DAMAGES. The Parties waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement.
23. WAIVER OF SUBROGATION. The Parties waive all rights against each other and any of their contractors, subcontractors, consultants, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to a written contract or other property insurance applicable to the construction work.
24. THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either CLIENT or OHM ADVISORS.
25. CODE REVIEW/ACCESSIBILITY. In providing its services under this Agreement, OHM ADVISORS may have to interpret federal and or state laws, codes, ordinances, regulations and statutes. CLIENT understands and agrees that these may be subject to different and possibly contradictory interpretations by relevant governmental officials charged with interpreting same. CLIENT furthermore understands and agrees that OHM ADVISORS do not warrant or guarantee that their interpretation will be consistent with the interpretation of the relevant governmental officials. OHM ADVISORS shall not be liable for unreasonable or unforeseen interpretation of federal and or state laws, codes, ordinances, regulations and/or statutes by governmental officials charged with interpreting same.
26. DISPUTE RESOLUTION. In an effort to resolve any conflicts that arise during the project or following the completion of the project, the Parties agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the Parties mutually agree otherwise, as a prerequisite to further legal proceedings. The Parties agree to share the mediator's fee and any filing fees equally, and the mediation shall be held in the place where the project is located, unless another location is mutually agreed upon.



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Amber Abbey
Department Head: Charles Abbey

K.7

SCHEDULED

AGENDA ITEM (ID # 5263)

DOC ID: 5263

Approve and Authorize the Mayor and City Clerk to execute a contract with Fleis and VandenBrink Engineering, 9475 Holly Rd. Grand Blanc 48439, for Professional Engineering of Belsay Rd., Lapeer to I-69 (DPW Project No. 21-021-P), at an estimated cost of \$59,900, contingent upon approval of the City Attorney.

ATTACHMENTS:

- P17537 Burton Belsay Rd PE Prop Ltr (PDF)
- P17537 Burton Belsay Rd PE PSA (PDF)



November 10, 2021

Via Email (a.abbey@burtonmi.gov)

Ms. Amber Abbey, Deputy DPW Director
City of Burton
4303 S. Center Road
Burton, Michigan 48519

**RE: Proposal for Preliminary Engineering Services –
Genesee County TIP FY2023 Belsay Road Rehabilitation (Lapeer Road to I-69)
MDOT Job No. 212908**

Dear Amber,

It has been a pleasure working with the City of Burton over the past year on your upcoming FY2022 road improvements. It's great to hear that funding has become available through the GCMPC for the rehabilitation of Belsay Road from Lapeer Road to I-69. The programmed total cost for this roadway rehabilitation project is \$929,348, including construction engineering.

Project Understanding

The proposed project limits are from the northern spring points of the Belsay Road and Lapeer Road intersection northerly approximately 0.47 miles to I-69. The exiting road surface is experience cracking, pavement, and base failure and is proposed to be rehabilitated with concrete pavement repairs, joint repairs, sidewalk, curb ramp, and HMA improvements.

From Lapeer Road to Raymond Avenue the improvements will include full width cold milling of the HMA surface; isolated joint and base repairs; isolated curb and gutter, curb ramp, and drive approach replacement; full depth concrete pavement or joint repairs on the outside lanes; manhole adjustments; HMA paving; pavement markings; and permanent signage. The City also desires to close short gaps in sidewalk, primarily in the southerly commercial area of the project limits.

From Raymond to I-69 the improvements will include isolated full depth concrete pavement and joint repairs, as well as isolated curb and gutter, curb ramp, and drive approach replacement; pavement markings; and permanent signage.

Along the entire project limits, storm sewer and drainage structure improvements will be evaluated and considered.

9475 Holly Road, Suite 2
Grand Blanc, MI 484

P: 810.743.9120

F: 810.771.7860

Scope of Service

Our preliminary engineering services includes design, permitting, and approvals necessary for obligation and bidding through the MDOT Local Agency Program. Our scope of services includes:

- Preparation of program application
- Preparation of NEPA Local Agency Environmental Clearance form
- SHPO Clearance (requires 3rd party subconsultant)
- Topographic survey of project area
- Rehabilitation design
- Preparation of construction plans
- Coordination with private utility companies
- Preparation of unique special provisions
- Preparation of engineer's opinion of probable construction costs
- Geotechnical investigation
- Grade Inspection (GI) submittal and attendance at GI Meeting
- Final plans, estimate, and specs submittal to MDOT
- Review of draft proposal prior to bidding
- Assistance with contractor inquiries during the bidding process

Fee Budget

The above professional services will be completed on an hourly fee contract plus 1.1 times reimbursable expenses with a not-to-exceed fee of **\$59,900**.

Schedule

The City has proactively planned this project and is allowing ample time for the preliminary engineering and environmental clearances to be obtained. While this project will be constructed in the summer of 2023, it is desired to complete the topographic survey and geotechnical investigation yet this year prior to snow cover so NEPA and SHPO preparation and design can proceed through the winter and spring of 2022. This will allow adequate time for the NEPA and SHPO clearances required for this project and meet the GCMPC's and City's desired time frame for obligation and advertisement.

We appreciate the opportunity in providing our services to the City of Burton.

If you have any questions, please contact me at (810) 244-1729 or grose@fveng.com.

Sincerely,

FLEIS & VANDENBRINK



Geric L. Rose, PE, PS
Operations Manager, Associate

FLEIS & VANDENBRINK ENGINEERING, INC.
9475 Holly Road, Suite 201, Grand Blanc, Michigan 48439
P: 810.743.9120 F: 810.771.7860

This Professional Services Agreement ("PSA") is entered into between Fleis & VandenBrink Engineering, Inc. ("Engineer") and **City of Burton**, whose address is **4303 S. Center Road, Burton, MI 48519**, ("Owner") where Engineer agrees to provide services for Owner and Owner agrees to pay Engineer, all in accordance with the terms of this PSA.

DESCRIPTION OF PROJECT AND SCOPE OF SERVICES: The description of the Project ("Project") and the scope of services ("Services") provided under this PSA is as follows: **Preliminary Engineering for the Belsay Road (Lapeer to I-69) MDOT Local Agency Program rehabilitation project in accordance with engineer's proposal letter dated November 10, 2021.**

AGREEMENT DOCUMENTS: All obligations covered under this PSA are governed by the Agreement Documents, which specifically include this PSA and all of the following documents, which are all incorporated herein by reference: Engineer's proposal / letter dated **November 10, 2021**

COMPENSATION OF ENGINEER: This contract is an Hourly Fee contract plus 1.1 times reimbursable expenses with a Not To Exceed Fee of **\$59,900**.

Authorized additional services will be provided on an hourly basis plus 1.1 times reimbursable expenses unless otherwise negotiated.

Owner shall Pay Engineer for all Services and reimbursable expenses on a monthly basis or as otherwise stated herein which shall be due and payable within fifteen (15) calendar days of presentation of the invoice. Invoices shall be past due fifteen (15) calendar days after presentation, and shall then incur interest at the rate of 7% per annum, or the highest rate permitted by law, whichever is lower. Reimbursable expenses include the cost of subconsultants.

PAYMENT. If Owner fails to make any payment when due, Engineer may suspend performance of Services hereunder until all past due amounts and accrued interest are paid. Engineer shall have no liability of any type as a result of suspension of services caused by Owner's failure to pay. The suspension of Services shall not limit any other remedy available to Engineer.

If Owner objects to any portion of an invoice, Owner shall notify Engineer in writing within seven (7) calendar days of presentation. Owner shall identify the disputed charges and shall pay when due that portion of the invoice not in dispute. If the disputed amount of the invoice is resolved in Engineer's favor and not paid by the invoice due date, interest as stated in the agreement shall be paid by Owner on the disputed amount from the original due date.

The Owner's Payment of Engineer's invoices shall not be subject to any right of setoff, and payment shall be due regardless of suspension or termination of this Agreement by either party. If any payment obligation is not paid when due, Owner agrees to pay all costs of the collection, including actual attorney's fees through all levels of appeal, whether or not a legal proceeding for collection is commenced as part of the collection process.

OWNER REPRESENTATIVE. The Owner's representative for this Project shall be **Mayor**, who shall have complete actual authority on behalf of the Owner and its governing body to make all decisions in connection with the PSA.

OWNER RESPONSIBILITIES. The Owner shall timely furnish, at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Engineer may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Engineer shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's Engineers and contractors.

CHANGES. For all services that were completed due to changes to the Description of the Project and/or the Scope of Services, Engineer shall be paid by Owner on an hourly basis at Engineer's customary hourly rates, plus 1.1 times reimbursable expenses, unless otherwise negotiated. If the construction period extends beyond the contracted period in the Scope of Services or the contracted completion date, all services of Engineer thereafter shall continue to be performed and shall be paid by Owner on an hourly basis plus 1.1 times reimbursable expenses. Owner understands and accepts that field techniques and analytical capabilities are evolving and that the standards and regulations are subject to rapid change such that currently acceptable investigative approaches and techniques may become superseded after the time of the signing of this PSA. Such changes will constitute changed conditions requiring adjustment in the Services and Engineer's Compensation.

DELAYS. Engineer shall not be responsible to Owner for any delay of any type or kind unless caused in whole by Engineer.

CONSULTANTS. Engineer may engage Consultants and subcontractors to perform, in its sole discretion, all or any portion of the Services.

COST ESTIMATES. Engineer has no control over the costs of labor and material for construction or over competitive bidding and market conditions. All cost estimates provided by Engineer are based on Engineer's experience and are considered opinions of probable cost. Engineer does not warrant the accuracy of any cost estimate. If project costs exceed the Owner's expectations and the Owner decides to re-design or re-bid any or all portions of the Work, all re-design, re-bid or other services provided by Engineer shall be paid by Owner on an hourly basis at Engineer's customary hourly rates, plus 1.1 times reimbursable expenses.

INDEMNITY. Owner indemnifies, defends and holds harmless Engineer and its agents, consultants and employees, from and against any claim, injury, damage, cost, expense or liability, regardless of the legal theory, including actual attorneys' fees, whether arising before, during or after completion of Services performed under the PSA, caused by, arising out of, resulting from or occurring in connection with the performance of the Services or any activity associated with the Services, whether or not caused in part by the active or passive negligence or other fault of Engineer excepting only injury to person or damage to property caused by the sole negligence of Engineer. In the case of claims against Engineer or any of its consultants, agents or employees by anyone for whose acts Owner may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts and/or disability benefit acts. This indemnity includes, but is not limited to, any claims resulting from interpretation of or changes to the documents prepared as a result of this PSA. This indemnity survives termination of this PSA.

In addition to the indemnity provided herein by Owner, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees and consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to or resulting from any and all environmental contamination on the Project.

Engineer, to the extent covered by insurance, indemnifies, defends and holds harmless Owner and its agents and employees, from and against any claim, injury, damage, cost, expense or liability, arising out of or relating to the Services provided by Engineer for the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property other than the work itself, but only to the extent caused solely by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees or consultants.

To the fullest extent permitted by law, a party's total liability to the other party under the terms and conditions of this PSA including any indemnity, as well as to anyone claiming by, through or under the other party, for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party, and any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of all of the responsible parties.

PERFORMANCE STANDARDS. The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by other engineers performing similar services in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

MUNICIPAL ADVISOR. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

LIMITATION OF LIABILITY. Engineer shall not be liable for any claim, damage, cost, expense or other liability not caused by negligent acts, errors or omissions of Engineer. The total liability of Engineer under any legal theory whatsoever, in the aggregate, as well as any claimed liability of Engineer's officers, directors, employees, or agents or consultants, for any claims arising out of the PSA, shall not exceed the fees actually paid by the Owner for the particular Service which forms the basis of the claimed liability.

Engineer makes no warranties, express or implied, with respect to the Services under the PSA, and disclaims any liability for implied warranties of any type or kind, including but not limited to implied warranties of fitness or merchantability, and disclaims any liability for special or consequential damages of any type or kind. Within these limitations, Engineer shall not be liable in any way for errors, omissions or negligence unless caused by the sole and exclusive negligence of Engineer. For all PSAs which involve multiple projects or general consultations, or various services for various projects over a period of time, liability shall not exceed the fee actually paid by the Owner for the particular Services on the specific Project or consultation or assignment which forms the basis of the claimed liability and any statute of limitations shall commence upon the completion of the task giving rise to the claim, not the last unrelated service provided under the PSA for general consultation services. To the extent that Engineer may be found liable under the terms of this paragraph, and only to such extent, Engineer's liability shall not exceed the percentage share of Engineer's responsibility.

INSURANCE. Upon Owner's request, Engineer will furnish Owner with a written statement of insurance coverage. No oral representations regarding insurance shall be binding.

SITE ACCESS. Owner shall be solely responsible for obtaining all site access, easements, and permission from third party property owners for Engineer to access the site to perform the Services herein. Owner is solely responsible for any claims arising from the disturbance of surface or subsurface soil or water conditions caused by the performance of Engineer's Services, excepting damages caused by the sole negligence of Engineer. Engineer will take reasonable precautions to avoid damage to underground structures and utilities. Owner indemnifies Engineer from any damage caused by or to underground structures and utilities not called to Engineer's attention, all in accordance with the indemnity provisions herein. Owner shall provide Engineer with a list of all known hazardous substances on site and a list of protective measures in case of exposure, all in compliance with the current Federal, State and Local Right to Know laws and Federal Hazard Communication Standards.

SHOP DRAWINGS AND SUBMITTALS. If shop drawing or submittal review is part of the Services Engineer provides, Engineer will review the shop drawings and submittals only for conformance with the design concept of the project and compliance with the Contract Documents. Unless specifically indicated in writing, this PSA does not include the preparation of record drawings.

CONSTRUCTION PHASE SERVICES. Unless specifically included in the Scope of Services, there are no construction phase services as part of this PSA. It is agreed that the Engineer's services under this Agreement do not include project observation, review of the Contractor's performance or any other construction phase services. The Owner assumes all responsibility for all construction phase services including, but not limited to:

Submittal review and approval; Contract document interpretation; Site observations; Change order review and approval; Review and approval of contractor payment applications; Certificates of substantial and final completion; Preparation and disposition of punch lists; Responding to contractor requests for information; Administration of any operational and maintenance and training including collection operational and training manuals.

The Owner waives any claims against the Engineer that may be in any way connected with the Owner's decision not to retain the Engineer to performance construction phase services. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and consultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions.

The Owner, the Owner's contractors or subcontractors, or anyone for whom the Owner is legally liable shall assume full responsibility for the results of any changes made to the Contract Documents during construction. The Owner agrees to waive any claims against the Engineer and to release the Engineer from any liability arising directly or indirectly from such changes.

REJECTION OF WORK. In the event that the Scope of Services includes construction phase services in the form of site observation, then Engineer shall have the authority to reject any work which is not, in the judgment of the Engineer, in conformance with the Contract Documents, Plans and Specifications. Neither this authority nor Engineer's good faith judgment to reject or not reject any work shall subject Engineer to any liability or cause of action to any contractor, subcontractor, supplier, or Owner on the Project.

SPREAD OF CONTAMINATION. Owner understands and agrees that Engineer shall not be responsible for any claims or damages which may arise as a result of or from the spread of contamination caused by drilling, sampling or any other activity unless such spread or contamination is substantially caused by the negligence of Engineer. To the extent that Engineer may be found liable under the terms of this Paragraph, and only to such extent, Engineer's liability shall not exceed the percentage share of Engineer's responsibility.

FAILURE TO ENCOUNTER HAZARDOUS MATERIALS. Owner understands that the failure to discover hazardous materials does not guarantee (1) hazardous materials do not exist at the project site, and/or (2) that a non-contaminated site may later become contaminated. Although Engineer will use reasonable care and a level of skill ordinarily exercised by members of the profession currently practicing in the city, municipality or political subdivision where the Project is located under similar conditions, Owner agrees that Engineer shall not be responsible for the failure to detect the presence of hazardous materials through techniques and practices commonly used for those purposes.

PERMITS AND APPROVALS. Unless otherwise specifically stated in the Scope of Services, obtaining permits and approvals for the Project is the responsibility of the Owner. For an additional fee, Engineer may assist the Owner provided the assistance shall consist of completing and submitting forms as to the results of certain work included in the Scope of Services and the assistance does not include special studies, special research, attendance at meetings with public authorities, special testing or special documentation not normally required for similar projects. If Engineer participates in any way with any permitting process, Engineer provides no guaranty or warranty that any permits or approvals will be provided. Owner shall pay Engineer for all fees and reimbursable expenses under this PSA regardless of the outcome of approval or denial of permits or other approvals.

ADA AND CODE COMPLIANCE. The Americans with Disabilities Act ("ADA") provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are accessible to persons with disabilities. The Owner acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. To the extent applicable, the Engineer will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they may apply to the Project. The Engineer does not warrant or guarantee that the Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local codes, rules, laws, ordinances and regulations as they may apply to the Project. Owner shall pay Engineer its customary hourly fees plus 1.1 times reimbursable expenses for any design changes made necessary by newly enacted laws, codes and regulations, or changes to any existing laws, codes or regulations after the date that this PSA is last signed by the parties.

WAIVER. No delay on the part of any party hereto in the exercise of any right or remedy shall operate as a waiver of such right or remedy and a waiver on any one (1) occasion shall not be construed as a bar to or a waiver of any subsequent breach of the same or any other provision of the agreement on a future occasion. No waiver by Engineer of any breach by Owner of a provision of this PSA shall be deemed a waiver of any other provision hereof or of any subsequent breach by Owner of such provision.

ENFORCEABILITY. This agreement shall be binding upon the parties hereto and their respective successors and assigns.

SEVERABILITY. In the event that any one (1) or more provisions contained in the agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the agreement shall not be affected or impaired.

OWNERSHIP OF INSTRUMENTS OF SERVICE. Engineer's documents prepared pursuant to this PSA, including those in electronic format, are instruments of service. All reports, plans, specifications, computer files, field data, notes and other documents prepared by Engineer as instruments of service shall remain the property of Engineer. Engineer shall retain all common law, statutory and other reserved rights, including the copyright thereto and all other intellectual property rights. Owner shall not use or permit the use of said documents on any other project. Owner fully indemnifies Engineer against any and all claims for unauthorized use.

TERMINATION: This PSA may be terminated by either party upon seven (7) calendar days' written notice. Upon termination, Engineer shall be paid by Owner for all Services performed up to the notice of termination, as well as all costs necessary to demobilize from the site.

DISPUTE RESOLUTION: In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the Owner and the Engineer agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute through mediation using a mediator agreed upon between both parties. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then the parties may (1) mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction. The venue for a court resolution will be Kent County, Michigan.

NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to this PSA and the Services provided herein are exclusively for the direct benefit of the Owner indicated above. Owner shall ensure that all other agreements relating to this project reflect that there are no third party beneficiaries to this PSA.

ASSIGNMENT. This is a professional services contract and is non-assignable without the express written consent of Engineer.

MISCELLANEOUS. No additional or contrary terms, whether contained in an order, acknowledgment, or other document from Owner, shall be binding upon Engineer unless agreed to in writing signed by an authorized representative of Engineer, and Engineer expressly rejects all such additional or contrary terms as may be contained in Owner's documents. The terms in this PSA will have precedence over any other terms expressed by the Owner's authorization process such as a purchase order. Engineer's performance is conditioned on Owner's unmodified consent exclusively to this PSA. Engineer shall have the right to correct any errors, whether clerical or mathematical, which are contained in this PSA. Unless otherwise specifically indicated in writing or otherwise required by law and paid for by Owner, there are no Performance or Payment bonds required on this Project. This PSA shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. This PSA shall be governed by the laws of the State of Michigan. This contract sets forth the entire agreement between Engineer and Owner. This is a fully integrated contract.

ELECTRONIC/FACSIMILE SIGNATURES. The signatures on this PSA shall be deemed to be original signatures when transmitted electronically or by facsimile machine or by any other medium. No party shall be required to produce a PSA with an original signature in order to enforce any provision of this PSA.

IN WITNESS WHEREOF, the parties hereto have made and entered into this PSA. To be valid, this PSA must be signed by an authorized representative of Fleis & VandenBrink Engineering, Inc.

OWNER
CITY OF BURTON

By: _____

Duane Haskins

Title: Mayor

By: _____

Racheal Boggs

Title: Clerk

Date: _____

ENGINEER
FLEIS & VANDENBRINK ENGINEERING, INC.

By: _____

Geric L. Rose, PE, PS

Title: Project Manager, Associate

By: _____

Gary Bartow

Title: Group Manager, Associate

Date: 11/10/21

Attachment: P17537 Burton Belsay Rd PE PSA (5263 : Contract with Fleis and Vandenbrink Engineering For PE For Belsay Rd, Lapeer to I-69)



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Amber Abbey
Department Head: Charles Abbey

K.8

SCHEDULED

AGENDA ITEM (ID # 5265)

DOC ID: 5265

Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Belsay Road, Davison to Potter (DPW Project No. 20-012-P), at an estimated cost of \$54,805.00, contingent upon approval of the City Attorney.

ATTACHMENTS:

- proposal letter Belsay Rd. 2022 (PDF)
- Contract for Engineering Services Belsay Rd. Burton 207655 (PDF)



ROWE PROFESSIONAL SERVICES COMPANY

*Large Firm Resources. Personal Attention.*sm

December 14, 2021

Mr. Peter Wingblad
City of Burton
4093 Manor Drive
Burton, MI 48519

RE: Construction Engineering Services for Belsay Road Rehabilitation (Potter Road to Davison Road)

Dear Mr. Wingblad:

ROWE Professional Services Company is pleased to submit a proposal to provide complete construction engineering services for the above referenced project.

The City of Burton has received funding from Michigan Department of Transportation (MDOT) through the Local Agency Program (LAP) to rehabilitate the 1.0-mile segment of Belsay Road from Potter Road to Davison Road. The plans are currently nearing completion, and construction is anticipated to occur between September and November of 2022. The current construction cost estimate prepared by others is \$430,554.50.

ROWE's budget for construction observation and contract administration is based on the equivalent of a four (4) weeklong period where full time observation is required. Our proposed scope of services and budget for providing services for this time frame totals **\$54,805.00**, per the attached fee breakdown. The billing will reflect the actual staff hours required during construction. ROWE will provide full time observation, construction staking, aggregate base, bituminous density testing, concrete testing, contract administration, and coordination between the city, MDOT, Contractor, and adjacent property owners/tenants.

We appreciate the opportunity to work with you on this project. To authorize ROWE to begin work, please sign the attached Contract for Engineering Services, and return a copy of the document to our office. If you have any questions, please do not hesitate to contact me at 810-341-7500.

Sincerely,
ROWE Professional Services Company

Paul T. O'Meara, PE
Project Manager

Attachment

Engineering | Surveying | Aerial Photography/Mapping | Landscape Architecture | Planning

Corporate: The ROWE Building, 540 S. Saginaw Street, Suite 200 • Flint, MI 48502 • O (810) 341-7500 • F (810) 341-7573

With Offices In: Farmington Hills, MI • Grayling, MI • Kentwood, MI • Lapeer, MI • Mt. Pleasant, MI • Myrtle Beach, SC

www.rowepsc.com

Mr. Peter Wingblad
 December 14, 2021
 Page 2

Construction Engineering Fee Breakdown

Construction Observation and Testing

- Measure and track quantities daily.
- Perform construction concrete, asphalt, and density testing services.
- Verify construction compliance with contract specifications.

Construction Observation and Testing Total \$35,805

Contract Administration

- Obtain documents from MDOT to set up Field Book and Field Manager files.
- Review material shop drawings for compliance with contract documents.
- Verify project quantities with contractor.
- Process pay requests and change orders.
- Provide all administration that conforms to MDOT Local Agency Program requirements including completing wage rate interviews and reviewing certified payrolls.
- Prepare and attend pre-construction and progress meetings and distribute minutes.
- Prepare punch list for contractor and prepare project closeout paperwork.

Contract Administration Total \$19,000

Construction Engineering Services Total \$54,805

\\CAD\Projects\PROPOSAL\P.O'Meara\City of Burton\Belsay Rd. Resurfacing 2022\proposal letter Belsay Rd. 2022

Attachment: proposal letter Belsay Rd. 2022 (5265 : Third Party Agreement with Rowe Professional Services For CE For Belsay Rd.)

Contract for Engineering Services
Belsay Rd. Rehabilitation
Potter Rd. to Davison Rd.
MDOT JN 207655

THIS AGREEMENT, entered into this ____ day of _____, by and between City of Burton hereinafter referred to as the "OWNER", and ROWE Professional Services Company, hereinafter referred to as the "ENGINEER".

WITNESSETH, that whereas it is the intent of the Owner to complete the following, hereinafter called the "PROJECT": Miscellaneous concrete repairs, milling and resurfacing of 1.00 mile segment of Belsay Rd.

NOW, THEREFORE, the OWNER and the ENGINEER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 – BASIC SERVICES OF THE ENGINEER

A. General:

1. The Engineer agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Engineer will serve as the Owner's professional representative for the project, and will give consultation and advice to the Owner during the performance of the Engineer's services.

B. Scope of Service:

After written authorization to proceed with the project, the Engineer will execute the work plan described in the Engineer's Proposal, dated December 14, 2021

SECTION 2 – ADDITIONAL SERVICES OF THE ENGINEER

A. General:

If authorized in writing by the Owner, the Engineer will finish or obtain from others additional services of the following types which will be paid for by the Owner as indicated in Paragraph 5.B.

1. Additional services due to significant changes in general scope of the Project or its design.
2. Additional services in connection with the Project, not otherwise provided for in this agreement, subject to prior approval of the Owner.

SECTION 3 – THE OWNER'S RESPONSIBILITIES

1. Provide full information as to its requirements for the Project.
2. Assist the Engineer by placing at the Engineer's disposal all available information pertinent to the site of the Project, including previous reports and any other data relative to design and construction of the Project.
3. Provide access for the Engineer to enter upon lands as required for the Engineer to perform work under this Agreement.
4. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the Engineer and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the Engineer.
5. Provide reasonable legal, accounting and insurance counseling service for the Project.
6. Designate a person to act as the Owner's representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to material, equipment elements and systems pertinent to the work covered by this Agreement.

7. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project.
8. Obtain approval of governmental authorities having jurisdiction over the Project.
9. Furnish, or direct the Engineer to provide, at the Owner's expense, necessary additional services as stipulated in Section 2 of this Agreement, or other services as required.

SECTION 4 – PERIOD OF SERVICE

1. Upon written authorization from the Owner, the Engineer will proceed with the performance of the service called for in this Agreement.
2. Unless sooner terminated as provided in Paragraph 6.A, this Agreement shall remain in force for a period which may reasonably be required for completion of the construction of the proposed project; however, not greater than one year from the Engineer's substantial completion of the phases of work that have been authorized for commencement.

SECTION 5 – PAYMENTS TO THE ENGINEER

A. Payments for Basic Service of the Engineer Under Section 1:

1. The Owner will pay the Engineer for basic services \$54,805.00
2. The fee as defined above shall be allocated to be paid monthly, as the work progresses.

B. Payment for Additional Services of the Engineer Under Section 2:

1. The Owner will pay the Engineer for additional service at a mutually agreed upon fee.

C. General

1. If this Agreement is terminated upon completion of any phase of the Engineer's services, the progress payments to be made in accordance with Paragraph 5.A.1 and 5.A.2 on account of all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work not due to any fault of the Engineer, payment shall be made for services performed during such phases on the basis of the portion of each phase completed prior to termination.
2. If, prior to termination of this Agreement, any work designed or specified by the Engineer during any phase of the work is suspended in whole or in part or abandoned not due to any fault of the Engineer, after written notice from the Owner, the Engineer shall be paid for services performed prior to receipt of such notice from the Owner as provided in Paragraph 6.A for termination during any phase of the work.
3. Where the Engineer utilizes subcontractors to perform a portion of the project, and the subcontractor(s) directly invoices the Engineer, the subconsultant's invoices will be marked up by fifteen percent to cover administration costs.

SECTION 6 – GENERAL CONDITIONS

A. Termination:

This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform, in accordance with terms hereof, by the other party through no fault of the terminating party. If this Agreement is so terminated, the Engineer shall be paid as provided in Paragraph 5.C.

B. Ownership:

All documents, except original drawings, but including estimates, specifications, field notes and data are and remain in the property of the Engineer as Instruments of Service. The Owner shall be provided a set of reproducible drawings and copies of other record documents. However, they are not intended or represented to be suitable for re-use by the Owner or others for extensions of the project or for any other project.

C. Insurance — Save Harmless:

The Engineer shall secure and maintain such insurance as will protect the Engineer and the Owner from claims under the Workman's Compensation Acts and from claims for bodily injury, death or property damage which may rise due to the Engineer's negligence in the performance of services under this Agreement.

D. Successors & Assigns:

The Owner and the Engineer each binds themselves and any partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the Owner nor the Engineer shall assign, sublet or transfer their interests in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

E. Independent Contractor:

It is understood and agreed that the Engineer is an independent contractor, responsible to the Owner for the results of this undertaking by the Engineer and is not an employee or agent of the Owner.

F. Non-Discrimination:

The Engineer and/or any sub-contractors shall not discriminate against any employees or applicant for employment, or to be employed in the performance of his Contract with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, national origin or ancestry.

The Engineer and/or any sub-contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his hire, tenure, terms, conditions or privileges of employment, because of age or sex, except where based on a bona fide occupational qualification.

G. Mediation:

In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

H. Jobsite Safety:

Neither the professional activities of the Engineer, nor the presence of the Engineer or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees to require the General Contractor(s) to provide liability insurance for the project(s), indemnifying and listing as additional insureds the Owner, the Engineer and the Engineer's subconsultants.

I. Limitation of Liability:

In recognition of the relative risks and benefits of the project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert-witness fees and costs, so

that the total aggregate liability of the Engineer to the Owner shall not exceed \$100,000, or the Engineer's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

J. Standard of Care:

The Owner recognized that the engineering services require decisions which are not based upon pure science but rather upon judgmental considerations, including the economic feasibility of alternative designs. The Engineer shall perform its services in accordance with generally accepted engineering practices. Services are rendered without any other warranty, express or implied and the Engineer shall be responsible solely for its own negligence.

K. Construction Costs:

The Owner shall advise the Engineer in writing before design commencement of any budgetary limitation for the overall cost of construction. The Engineer will endeavor to work within such limitations and will, if requested and included within the scope of services, submit to the Owner an opinion of probable construction cost. Opinions of probable construction cost will represent the Engineer's best judgment as a design professional familiar with the construction industry but does not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. Owner acknowledges that neither the Engineer nor the Owner has control over the cost of labor, materials or methods by which contractors determine the prices for construction.

L. Applicable State Law:

This document shall be governed by the laws of the State of Michigan.

SECTION 7 – SPECIAL PROVISIONS

The Owner and the Engineer mutually agree that this Agreement shall be subject to the following special provisions which, together with the provisions hereof and the exhibits hereto represent the entire Agreement between the Owner and the Engineer and that; they may only be altered or repealed by a duly executed written instrument.

NONE.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

Owner:
City of Burton

Engineer:
ROWE Professional Services Company

Signature

Signature

Duane Haskins, Mayor

Rick Freeman, Vice-President



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Amber Abbey
Department Head: Charles Abbey

K.9

SCHEDULED

AGENDA ITEM (ID # 5266)

DOC ID: 5266

Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Maple Road, Sandalwood to Saginaw (DPW Project No. 20-011-P), at an estimated cost of \$51,085, contingent upon approval of the City Attorney.

ATTACHMENTS:

- proposal letter Maple 2022 (PDF)
- Contract for Engineering Services Maple Ave. Burton 207657 (PDF)



ROWE PROFESSIONAL SERVICES COMPANY

Large Firm Resources. Personal Attention. sm

December 14, 2021

Mr. Peter Wingblad
City of Burton
4093 Manor Drive
Burton, MI 48519

RE: Construction Engineering Services for Maple Avenue Rehabilitation (Fenton Road to Saginaw Street)

Dear Mr. Wingblad:

ROWE Professional Services Company is pleased to submit a proposal to provide complete construction engineering services for the above referenced project.

The City of Burton has received funding from Michigan Department of Transportation (MDOT) through the Local Agency Program (LAP) to rehabilitate the 1.3-mile segment of Maple Avenue from Fenton Road to Saginaw Street. The plans are currently in final design, and construction is anticipated to occur between April and July of 2022. The current construction cost estimate prepared by others is \$1,477,660.

ROWE's budget for construction observation and contract administration is based on the equivalent of a six (6) weeklong period where full time observation is required. Our proposed scope of services and budget for providing services for this time frame totals **\$141,715.00**, split by contract number as follows:

MDOT JN 207656	\$90,630
MDOT JN 207657	\$51,085

The billing will reflect the actual staff hours required during construction. ROWE will provide full time construction, aggregate base and bituminous density testing, concrete testing, contract administration, and coordination between the city, MDOT, contractor, and adjacent property owners/tenants.

We appreciate the opportunity to work with you on this project. To authorize ROWE to begin work, please sign the attached Contract for Engineering Services, and return a copy of the signed document to our office. If you have any questions, please do not hesitate to contact me at 810-341-7500.

Sincerely,
ROWE Professional Services Company

Paul T. O'Meara, PE
Project Manager

Attachment

Engineering | Surveying | Aerial Photography/Mapping | Landscape Architecture | Planning

Corporate: The ROWE Building, 540 S. Saginaw Street, Suite 200 • Flint, MI 48502 • O (810) 341-7500 • F (810) 341-7573

With Offices In: Farmington Hills, MI • Grayling, MI • Kentwood, MI • Lapeer, MI • Mt. Pleasant, MI • Myrtle Beach, SC

www.rowepsc.com

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Attachment: proposal letter Maple 2022 (5266 : Third Party Agreement with Rowe Professional Services For CE For Maple Road)

Mr. Peter Wingblad
 December 14, 2021
 Page 2

Construction Engineering Fee Breakdown

Construction Observation and Testing

- Measure and track quantities daily.
- Perform construction concrete, asphalt, and density testing services.
- Verify construction compliance with contract specifications.

Construction Observation and Testing Total

JN 207656 \$58,830

JN 207657 \$34,685

Contract Administration

- Obtain documents from MDOT to set up Field Book & Field Manager files.
- Review material shop drawings for compliance with contract documents.
- Verify project quantities with contractor.
- Process pays requests and change orders.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program requirements including completing wage rate interviews and reviewing certified payrolls.
- Prepare and attend pre-construction and progress meetings, distribute minutes.
- Prepare punch list for contractor and prepare project closeout paperwork.

Contract Administration Total

JN 207656 \$31,800

JN 207657 \$16,800

Construction Engineering Services Total

JN 207656 \$90,630

JN 207657 \$51,085

GRAND TOTAL..... \$141,715

\\sem\cad\Projects\PROPOSAL\P.O'Meara\City of Burton\proposal letter 2022.docx

Attachment: proposal letter Maple 2022 (5266 : Third Party Agreement with Rowe Professional Services For CE For Maple Road)

Contract for Engineering Services
Maple Ave. Resurfacing
Sandalwood Dr. to Saginaw Rd.
MDOT JN 207657

THIS AGREEMENT, entered into this _____ day of _____, by and between City of Burton hereinafter referred to as the "OWNER", and ROWE Professional Services Company, hereinafter referred to as the "ENGINEER".

WITNESSETH, that whereas it is the intent of the Owner to complete the following, hereinafter called the "PROJECT": Miscellaneous concrete repairs, milling and resurfacing of 0.48 mile segment of Maple Ave.

NOW, THEREFORE, the OWNER and the ENGINEER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 – BASIC SERVICES OF THE ENGINEER

A. General:

1. The Engineer agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Engineer will serve as the Owner's professional representative for the project, and will give consultation and advice to the Owner during the performance of the Engineer's services.

B. Scope of Service:

After written authorization to proceed with the project, the Engineer will execute the work plan described in the Engineer's Proposal, dated December 14, 2021

SECTION 2 – ADDITIONAL SERVICES OF THE ENGINEER

A. General:

If authorized in writing by the Owner, the Engineer will finish or obtain from others additional services of the following types which will be paid for by the Owner as indicated in Paragraph 5.B.

1. Additional services due to significant changes in general scope of the Project or its design.
2. Additional services in connection with the Project, not otherwise provided for in this agreement, subject to prior approval of the Owner.

SECTION 3 – THE OWNER'S RESPONSIBILITIES

1. Provide full information as to its requirements for the Project.
2. Assist the Engineer by placing at the Engineer's disposal all available information pertinent to the site of the Project, including previous reports and any other data relative to design and construction of the Project.
3. Provide access for the Engineer to enter upon lands as required for the Engineer to perform work under this Agreement.
4. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the Engineer and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the Engineer.
5. Provide reasonable legal, accounting and insurance counseling service for the Project.
6. Designate a person to act as the Owner's representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to material, equipment elements and systems pertinent to the work covered by this Agreement.

7. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project.
8. Obtain approval of governmental authorities having jurisdiction over the Project.
9. Furnish, or direct the Engineer to provide, at the Owner's expense, necessary additional services as stipulated in Section 2 of this Agreement, or other services as required.

SECTION 4 – PERIOD OF SERVICE

1. Upon written authorization from the Owner, the Engineer will proceed with the performance of the service called for in this Agreement.
2. Unless sooner terminated as provided in Paragraph 6.A, this Agreement shall remain in force for a period which may reasonably be required for completion of the construction of the proposed project; however, not greater than one year from the Engineer's substantial completion of the phases of work that have been authorized for commencement.

SECTION 5 – PAYMENTS TO THE ENGINEER

A. Payments for Basic Service of the Engineer Under Section 1:

1. The Owner will pay the Engineer for basic services \$51,085.00
2. The fee as defined above shall be allocated to be paid monthly, as the work progresses.

B. Payment for Additional Services of the Engineer Under Section 2:

1. The Owner will pay the Engineer for additional service at a mutually agreed upon fee.

C. General

1. If this Agreement is terminated upon completion of any phase of the Engineer's services, the progress payments to be made in accordance with Paragraph 5.A.1 and 5.A.2 on account of all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work not due to any fault of the Engineer, payment shall be made for services performed during such phases on the basis of the portion of each phase completed prior to termination.
2. If, prior to termination of this Agreement, any work designed or specified by the Engineer during any phase of the work is suspended in whole or in part or abandoned not due to any fault of the Engineer, after written notice from the Owner, the Engineer shall be paid for services performed prior to receipt of such notice from the Owner as provided in Paragraph 6.A for termination during any phase of the work.
3. Where the Engineer utilizes subcontractors to perform a portion of the project, and the subcontractor(s) directly invoices the Engineer, the subconsultant's invoices will be marked up by fifteen percent to cover administration costs.

SECTION 6 – GENERAL CONDITIONS

A. Termination:

This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform, in accordance with terms hereof, by the other party through no fault of the terminating party. If this Agreement is so terminated, the Engineer shall be paid as provided in Paragraph 5.C.

B. Ownership:

All documents, except original drawings, but including estimates, specifications, field notes and data are and remain in the property of the Engineer as Instruments of Service. The Owner shall be provided a set of reproducible drawings and copies of other record documents. However, they are not intended or represented to be suitable for re-use by the Owner or others for extensions of the project or for any other project.

C. Insurance — Save Harmless:

The Engineer shall secure and maintain such insurance as will protect the Engineer and the Owner from claims under the Workman's Compensation Acts and from claims for bodily injury, death or property damage which may rise due to the Engineer's negligence in the performance of services under this Agreement.

D. Successors & Assigns:

The Owner and the Engineer each binds themselves and any partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the Owner nor the Engineer shall assign, sublet or transfer their interests in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

E. Independent Contractor:

It is understood and agreed that the Engineer is an independent contractor, responsible to the Owner for the results of this undertaking by the Engineer and is not an employee or agent of the Owner.

F. Non-Discrimination:

The Engineer and/or any sub-contractors shall not discriminate against any employees or applicant for employment, or to be employed in the performance of his Contract with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, national origin or ancestry.

The Engineer and/or any sub-contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his hire, tenure, terms, conditions or privileges of employment, because of age or sex, except where based on a bona fide occupational qualification.

G. Mediation:

In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

H. Jobsite Safety:

Neither the professional activities of the Engineer, nor the presence of the Engineer or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees to require the General Contractor(s) to provide liability insurance for the project(s), indemnifying and listing as additional insureds the Owner, the Engineer and the Engineer's subconsultants.

I. Limitation of Liability:

In recognition of the relative risks and benefits of the project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert-witness fees and costs, so

that the total aggregate liability of the Engineer to the Owner shall not exceed \$100,000, or the Engineer's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

J. Standard of Care:

The Owner recognized that the engineering services require decisions which are not based upon pure science but rather upon judgmental considerations, including the economic feasibility of alternative designs. The Engineer shall perform its services in accordance with generally accepted engineering practices. Services are rendered without any other warranty, express or implied and the Engineer shall be responsible solely for its own negligence.

K. Construction Costs:

The Owner shall advise the Engineer in writing before design commencement of any budgetary limitation for the overall cost of construction. The Engineer will endeavor to work within such limitations and will, if requested and included within the scope of services, submit to the Owner an opinion of probable construction cost. Opinions of probable construction cost will represent the Engineer's best judgment as a design professional familiar with the construction industry but does not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. Owner acknowledges that neither the Engineer nor the Owner has control over the cost of labor, materials or methods by which contractors determine the prices for construction.

L. Applicable State Law:

This document shall be governed by the laws of the State of Michigan.

SECTION 7 – SPECIAL PROVISIONS

The Owner and the Engineer mutually agree that this Agreement shall be subject to the following special provisions which, together with the provisions hereof and the exhibits hereto represent the entire Agreement between the Owner and the Engineer and that; they may only be altered or repealed by a duly executed written instrument.

NONE.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

Owner:
City of Burton

Engineer:
ROWE Professional Services Company

Signature

Signature

Duane Haskins, Mayor

Rick Freeman, Vice-President



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Amber Abbey
Department Head: Charles Abbey

K.10

SCHEDULED

AGENDA ITEM (ID # 5267)

DOC ID: 5267

Approve and Authorize the Mayor and City Clerk to execute a contract with ROWE Professional Services Company, 540 S. Saginaw St. Ste 200 Flint, MI 48502, for Construction Engineering of Maple Road, Fenton to Sandalwood (DPW Project No. 20-011-P), at an estimated cost of \$90,630.00, contingent upon approval of the City Attorney.

ATTACHMENTS:

- proposal letter Maple 2022 (PDF)
- Contract for Engineering Services Maple Ave. Burton 207656 (PDF)



ROWE PROFESSIONAL SERVICES COMPANY

Large Firm Resources. Personal Attention. sm

December 14, 2021

Mr. Peter Wingblad
City of Burton
4093 Manor Drive
Burton, MI 48519

RE: Construction Engineering Services for Maple Avenue Rehabilitation (Fenton Road to Saginaw Street)

Dear Mr. Wingblad:

ROWE Professional Services Company is pleased to submit a proposal to provide complete construction engineering services for the above referenced project.

The City of Burton has received funding from Michigan Department of Transportation (MDOT) through the Local Agency Program (LAP) to rehabilitate the 1.3-mile segment of Maple Avenue from Fenton Road to Saginaw Street. The plans are currently in final design, and construction is anticipated to occur between April and July of 2022. The current construction cost estimate prepared by others is \$1,477,660.

ROWE's budget for construction observation and contract administration is based on the equivalent of a six (6) weeklong period where full time observation is required. Our proposed scope of services and budget for providing services for this time frame totals **\$141,715.00**, split by contract number as follows:

MDOT JN 207656	\$90,630
MDOT JN 207657	\$51,085

The billing will reflect the actual staff hours required during construction. ROWE will provide full time construction, aggregate base and bituminous density testing, concrete testing, contract administration, and coordination between the city, MDOT, contractor, and adjacent property owners/tenants.

We appreciate the opportunity to work with you on this project. To authorize ROWE to begin work, please sign the attached Contract for Engineering Services, and return a copy of the signed document to our office. If you have any questions, please do not hesitate to contact me at 810-341-7500.

Sincerely,
ROWE Professional Services Company

Paul T. O'Meara, PE
Project Manager

Attachment

Engineering | Surveying | Aerial Photography/Mapping | Landscape Architecture | Planning

Corporate: The ROWE Building, 540 S. Saginaw Street, Suite 200 • Flint, MI 48502 • O (810) 341-7500 • F (810) 341-7573

With Offices In: Farmington Hills, MI • Grayling, MI • Kentwood, MI • Lapeer, MI • Mt. Pleasant, MI • Myrtle Beach, SC

www.rowepsc.com

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Attachment: proposal letter Maple 2022 (5267 : Third Party Agreement with Rowe Professional Services For CE For Maple Road)

Mr. Peter Wingblad
 December 14, 2021
 Page 2

Construction Engineering Fee Breakdown

Construction Observation and Testing

- Measure and track quantities daily.
- Perform construction concrete, asphalt, and density testing services.
- Verify construction compliance with contract specifications.

Construction Observation and Testing Total

JN 207656	\$58,830
JN 207657	\$34,685

Contract Administration

- Obtain documents from MDOT to set up Field Book & Field Manager files.
- Review material shop drawings for compliance with contract documents.
- Verify project quantities with contractor.
- Process pays requests and change orders.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program.
- Provide all administration that conforms to MDOT Local Agency Program requirements including completing wage rate interviews and reviewing certified payrolls.
- Prepare and attend pre-construction and progress meetings, distribute minutes.
- Prepare punch list for contractor and prepare project closeout paperwork.

Contract Administration Total

JN 207656	\$31,800
JN 207657	\$16,800

Construction Engineering Services Total

JN 207656	\$90,630
JN 207657	\$51,085

GRAND TOTAL.....\$141,715

\\sem\cad\Projects\PROPOSAL\P.O'Meara\City of Burton\proposal letter 2022.docx

Attachment: proposal letter Maple 2022 (5267 : Third Party Agreement with Rowe Professional Services For CE For Maple Road)

Contract for Engineering Services
Maple Ave. Resurfacing
Fenton Rd. to Sandalwood Dr.
MDOT JN 207656

THIS AGREEMENT, entered into this _____ day of _____, by and between City of Burton hereinafter referred to as the "OWNER", and ROWE Professional Services Company, hereinafter referred to as the "ENGINEER".

WITNESSETH, that whereas it is the intent of the Owner to complete the following, hereinafter called the "PROJECT": Miscellaneous concrete repairs, milling and resurfacing of 0.82 mile segment of Maple Ave.

NOW, THEREFORE, the OWNER and the ENGINEER, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 – BASIC SERVICES OF THE ENGINEER

A. General:

1. The Engineer agrees to perform professional services in connection with the Project as hereinafter stated.
2. The Engineer will serve as the Owner's professional representative for the project, and will give consultation and advice to the Owner during the performance of the Engineer's services.

B. Scope of Service:

After written authorization to proceed with the project, the Engineer will execute the work plan described in the Engineer's Proposal, dated December 14, 2021

SECTION 2 – ADDITIONAL SERVICES OF THE ENGINEER

A. General:

If authorized in writing by the Owner, the Engineer will finish or obtain from others additional services of the following types which will be paid for by the Owner as indicated in Paragraph 5.B.

1. Additional services due to significant changes in general scope of the Project or its design.
2. Additional services in connection with the Project, not otherwise provided for in this agreement, subject to prior approval of the Owner.

SECTION 3 – THE OWNER'S RESPONSIBILITIES

1. Provide full information as to its requirements for the Project.
2. Assist the Engineer by placing at the Engineer's disposal all available information pertinent to the site of the Project, including previous reports and any other data relative to design and construction of the Project.
3. Provide access for the Engineer to enter upon lands as required for the Engineer to perform work under this Agreement.
4. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the Engineer and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the Engineer.
5. Provide reasonable legal, accounting and insurance counseling service for the Project.
6. Designate a person to act as the Owner's representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to material, equipment elements and systems pertinent to the work covered by this Agreement.

7. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project.
8. Obtain approval of governmental authorities having jurisdiction over the Project.
9. Furnish, or direct the Engineer to provide, at the Owner's expense, necessary additional services as stipulated in Section 2 of this Agreement, or other services as required.

SECTION 4 – PERIOD OF SERVICE

1. Upon written authorization from the Owner, the Engineer will proceed with the performance of the service called for in this Agreement.
2. Unless sooner terminated as provided in Paragraph 6.A, this Agreement shall remain in force for a period which may reasonably be required for completion of the construction of the proposed project; however, not greater than one year from the Engineer's substantial completion of the phases of work that have been authorized for commencement.

SECTION 5 – PAYMENTS TO THE ENGINEER

A. Payments for Basic Service of the Engineer Under Section 1:

1. The Owner will pay the Engineer for basic services \$90,630
2. The fee as defined above shall be allocated to be paid monthly, as the work progresses.

B. Payment for Additional Services of the Engineer Under Section 2:

1. The Owner will pay the Engineer for additional service at a mutually agreed upon fee.

C. General

1. If this Agreement is terminated upon completion of any phase of the Engineer's services, the progress payments to be made in accordance with Paragraph 5.A.1 and 5.A.2 on account of all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work not due to any fault of the Engineer, payment shall be made for services performed during such phases on the basis of the portion of each phase completed prior to termination.
2. If, prior to termination of this Agreement, any work designed or specified by the Engineer during any phase of the work is suspended in whole or in part or abandoned not due to any fault of the Engineer, after written notice from the Owner, the Engineer shall be paid for services performed prior to receipt of such notice from the Owner as provided in Paragraph 6.A for termination during any phase of the work.
3. Where the Engineer utilizes subcontractors to perform a portion of the project, and the subcontractor(s) directly invoices the Engineer, the subconsultant's invoices will be marked up by fifteen percent to cover administration costs.

SECTION 6 – GENERAL CONDITIONS

A. Termination:

This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform, in accordance with terms hereof, by the other party through no fault of the terminating party. If this Agreement is so terminated, the Engineer shall be paid as provided in Paragraph 5.C.

B. Ownership:

All documents, except original drawings, but including estimates, specifications, field notes and data are and remain in the property of the Engineer as Instruments of Service. The Owner shall be provided a set of reproducible drawings and copies of other record documents. However, they are not intended or represented to be suitable for re-use by the Owner or others for extensions of the project or for any other project.

C. Insurance — Save Harmless:

The Engineer shall secure and maintain such insurance as will protect the Engineer and the Owner from claims under the Workman's Compensation Acts and from claims for bodily injury, death or property damage which may rise due to the Engineer's negligence in the performance of services under this Agreement.

D. Successors & Assigns:

The Owner and the Engineer each binds themselves and any partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the Owner nor the Engineer shall assign, sublet or transfer their interests in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

E. Independent Contractor:

It is understood and agreed that the Engineer is an independent contractor, responsible to the Owner for the results of this undertaking by the Engineer and is not an employee or agent of the Owner.

F. Non-Discrimination:

The Engineer and/or any sub-contractors shall not discriminate against any employees or applicant for employment, or to be employed in the performance of his Contract with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, national origin or ancestry.

The Engineer and/or any sub-contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his hire, tenure, terms, conditions or privileges of employment, because of age or sex, except where based on a bona fide occupational qualification.

G. Mediation:

In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

H. Jobsite Safety:

Neither the professional activities of the Engineer, nor the presence of the Engineer or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees to require the General Contractor(s) to provide liability insurance for the project(s), indemnifying and listing as additional insureds the Owner, the Engineer and the Engineer's subconsultants.

I. Limitation of Liability:

In recognition of the relative risks and benefits of the project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert-witness fees and costs, so

that the total aggregate liability of the Engineer to the Owner shall not exceed \$100,000, or the Engineer's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

J. Standard of Care:

The Owner recognized that the engineering services require decisions which are not based upon pure science but rather upon judgmental considerations, including the economic feasibility of alternative designs. The Engineer shall perform its services in accordance with generally accepted engineering practices. Services are rendered without any other warranty, express or implied and the Engineer shall be responsible solely for its own negligence.

K. Construction Costs:

The Owner shall advise the Engineer in writing before design commencement of any budgetary limitation for the overall cost of construction. The Engineer will endeavor to work within such limitations and will, if requested and included within the scope of services, submit to the Owner an opinion of probable construction cost. Opinions of probable construction cost will represent the Engineer's best judgment as a design professional familiar with the construction industry but does not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. Owner acknowledges that neither the Engineer nor the Owner has control over the cost of labor, materials or methods by which contractors determine the prices for construction.

L. Applicable State Law:

This document shall be governed by the laws of the State of Michigan.

SECTION 7 – SPECIAL PROVISIONS

The Owner and the Engineer mutually agree that this Agreement shall be subject to the following special provisions which, together with the provisions hereof and the exhibits hereto represent the entire Agreement between the Owner and the Engineer and that; they may only be altered or repealed by a duly executed written instrument.

NONE.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

Owner:
City of Burton

Engineer:
ROWE Professional Services Company

Signature

Signature

Duane Haskins, Mayor

Rick Freeman, Vice-President



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 12/20/21 07:00 PM
Department: Controller's Office
Category: Budget
Prepared By: Jodi J. Holbrook
Department Head: Jodi J. Holbrook

K.11

SCHEDULED

AGENDA ITEM (ID # 5264)

DOC ID: 5264

Approve and authorize the following 2021-2022 budget amendment: Increase 2002-4051-802.7615 Belsay Road (Lapeer to I-69) by \$59,900; Decrease Major Street Fund Balance by \$59,900.

ATTACHMENTS:

- Budget Amendment 2021-22 12-20-2021 MS (DOC)

INTEROFFICE MEMORANDUM

To: Mayor Duane Haskins
From: Controller Jodi J. Holbrook
Date: December 13, 2021

Re: Memo of Explanation for
City Council Meeting of 12/20/2021

Mayor Haskins:

I am requesting that Council approve a budget amendment within the Major Street Fund Budget as follows: Increase 2002-4051-802.7615 Belsay Road (Lapeer to I-69) by \$59,900; Decrease Major Street Fund Balance by \$59,900.

This budget amendment adds a new street project to the 2021-2022 fiscal year, using money from the Major Street Fund Balance.

Attachment: Budget Amendment 2021-22 12-20-2021 MS (5264 : Budget Amendment)