City of Hart, Michigan
CITY COUNCIL AGENDA
October 22, 2024, 7:30 PM
407 State St. – Council Chamber
NOTICE OF PUBLIC MEETING
REGULAR COUNCIL MEETING

1. Call to Order
2. Roll Call – Burillo, Cunningham, Evans, Hodges, Klotz, Trygstad, Platt
3. Pledge of Allegiance
4. Approval of Agenda
5. Public Comments – **Public comment on any matter other than a scheduled public hearing. We ask that you please limit your comments to 3 minutes.**
    a. Correspondence, Events, Presentations
        i. State of Michigan Governor Proclamation, Michigan Public Power Week
        ii. City of Hart Treasurer, Karla Swihart - Michigan Certified Professional Treasurer
6. Consent Agenda:
    a. Approval of Minutes from October 8, 2024
    b. Bills, Claims, Payroll
    c. Reports of Boards, Commissions, and Committees
    d. Department Reports – Police/BioPure/Public Works/Energy/♥C&E Dvlp./Parks & Rec
7. Action Items
    a. Resolution 2024-29 Approve Water Rate Study Proposal
    b. Resolution 2024-30 Approve Drinking Water State Revolving Fund Revenue Bond Advisor
    c. Resolution 2024-31 Approve Engineering Services Proposal for DWSRF Implementation
    NOTE: Barbara Marczak will attend to review the proposal for Item 7 & answer questions.
8. Discussion Items
    a. Review of City Goals and Projects from November 2018 to present.
9. City Manager Report
10. Communications from the Mayor and Council (Including board and committee updates.)

11. Adjournment – ***impairments.*** *https://hamiltonrelay.com/michigan/index.html*

Access is provided through the Michigan Relay Service for individuals with speech or hearing

With advance notice of seven calendar days, the City will provide interpreter services at all public meetings, including language translation and signage for the hearing impaired. Call 231-873-2488. La Ciudad proporcionará servicio de intérprete para esta reunión pública si se pide con siete días de anticipación, lo cual incluye la traducción de idioma y letreros para los con una discapacidad auditiva. Llame al 231-873-2488.

STATE OF MICHIGAN

CERTIFICATE OF PROCLAMATION

ON BEHALF OF THE PEOPLE OF MICHIGAN,
I, Gretchen Whitmer, governor of Michigan, do hereby proclaim

October 6-12, 2024
as
PUBLIC POWER WEEK

WHEREAS, public power utilities are non-profit, community-owned and operated utilities, regulated directly by the city and the customers they serve; and,

WHEREAS, 40 public power utilities operate in Michigan providing safe, reliable, and affordable electricity to nearly 300,000 homes, businesses, schools, social services, and government agencies; and,

WHEREAS, Michigan's public power utilities employ nearly 2,000 employees in roles from line workers to customer service representatives, who live, work, and give back to their communities serving as a valuable community asset; and,

WHEREAS, public power utilities contribute to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development, and safety awareness; and,

WHEREAS, public power utilities provide the most reliable power in the state, ensuring that residents can depend on their utility when they turn on their lights; and,

WHEREAS, during the week of October 6-12, we recognize the people behind public power at our state's municipal utilities for their contributions to the community;

NOW, THEREFORE, I, Gretchen Whitmer, governor of Michigan, do hereby proclaim October 6-12, 2024 as Public Power Week in Michigan.

Gretchen Whitmer

Gretchen Whitmer
Governor

MICHIGAN MUNICIPAL TREASURERS ASSOCIATION



In recognition of completing the requirements of MMTA as a

MICHIGAN CERTIFIED PROFESSIONAL TREASURER

Karla M Swihart, MiCPT

Is awarded certification on June 1, 2024

M
MTA
MICHIGAN MUNICIPAL
TREASURERS ASSOCIATION

Certification is subject to renewal June 1, 2028

CITY OF HART
407 S. STATE ST.
HART, MI 49420
REGULAR MEETING OF CITY COUNCIL - COUNCIL PROCEEDINGS
October 8th, 2024
MINUTES – Draft

PRESENT: Mayor Vicki Platt, Councilors Catalina Burillo, Jim Cunningham, Dean Hodges, Amanda Klotz and Kris Trygstad
ABSENT: Jim Evans
OTHERS PRESENT: City Manager – Rob Splane, BioPure Superintendent – Paul Cutter, DPW Superintendent – Brad Whitney, HAERT Director – Nichole Kleiner, JGP Manager – Chris TerHaar, Gayle Harris and Christine Juska

Mayor Platt called the meeting to order; following the roll call, then led the Council in the pledge of allegiance.

APPROVAL OF AGENDA:

- A. Klotz motioned to approve Amended agenda and was supported by J. Cunningham
  - Ayes: 6 Nays: 0 Absent: 1

PUBLIC COMMENTS:

- None

CORRESPONDENCE, EVENTS, PRESENTATIONS:

CONSENT AGENDA:

- Approval of minutes from September 24th, 2024
- Bills, Claims, Payroll
- Reports of Boards, Commissions, and Committees
- Department Reports – Police/BioPure/Public Works/Energy/C&E Dvlp
  - A. Klotz motioned to approve Consent Agenda and supported by D. Hodges
    - Ayes: 6 Nays: 0 Absent: 1

ACTION ITEMS:

- Resolution 2024-27 Halloween Trick or Treat hours
  WHEREAS, the City of Hart deems it in the best interest for safety of our area children to set hours for Halloween Trick or Treating; and
  WHEREAS, in order to secure the benefits of self-government and to promote and protect the common interests and welfare, the City Council hereby declares;
  NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL
  Sets Halloween hours for Thursday, October 31, 2024 between the hours of 6pm and 8pm.
  - A. Klotz motioned to approve Resolution 2024-27 and supported by C. Burillo
    - Ayes: 6 Nays: 0 Absent: 1
- Resolution 2024-28 Master Plan Reaffirmation and Extension – 42 Day Review
  WHEREAS, the City of Hart is required to review and update its Master Plan periodically as required by the Michigan Planning Enabling Act, PA33 of 2008; and
  WHEREAS, the City is currently a MEDC Redevelopment Ready Certified Community affording the community access to various grants and support not available to communities that do not hold this designation; and
  WHEREAS, maintaining RRC status requires several standards including a 5 year review of the Master Plan; and
  WHEREAS, the planning commission has recommended that City Council reaffirm and extend the existing Master Plan to help the City retain RRC designation; and
  WHEREAS, a 42-day review period allowing the public and area agencies to offer comments on the proposed extension is required to extend the Master Plan; and

WHEREAS, in order to secure the benefits of self-government and to promote and protect common interests and welfare, the City Council hereby declares;

NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL:

Authorizes and directs the City Manager to forward the draft Extended Master Plan to other area agencies for the required 42-day review

- J. Cunningham motioned to approve Resolution 2024-28 and supported by A. Klotz
  - Ayes: 6 Nays: 0 Absent: 1

DISCUSSION ITEMS:

- Downtown Tree Trimming and Removal
- Reaffirmation of Parks and Rec Master Plan

CITY MANAGER'S REPORT:

Updates:

- Wadel Stabilization will begin Parking Lot #0 (Walkers Lot) is complete with some back fill, seeding, and striping yet to be finished up.
- Michigan Municipal Electric Association Annual meeting was productive with some good take-aways including reviewing a great Crisis Communications Plan from the Grand Haven Board of Light and Power. Hart Energy will be developing a similar plan in the near-term.
- The Hart Art Walk 2024 was well attended with beautiful weather, there was a lot to experience with; a pumpkin pie contest, and lot's of live art creation, with a live band producing a painting with the help of the crowd, individual artists painting canvases of scenes downtown, a sidewalk chalk artist doing a live chalk mural, rock painting, and artists showcasing their work in our businesses.
- Review 2023 and 2024 Council retreat docs.

Legacy Topics:

- Safe Routes to School trail project – **Approved for bid letting in October' 24!**

Upcoming Topics:

- Adoption of 5-year Park and Rec Master Plan
- Council review of rental inspection policies, procedures, and implementation.

COMMUNICATIONS FROM THE MAYOR AND COUNCIL:

- J., Cummimgham – Regarding the Fire Hydrants and is glad to see that there is a plan in place.
- C. Burillo – Kudos to everyone involved in Hart Prize
- Mayor Platt – Thank you for the decorating Committee Downtown the City looks beautiful.

ADJOURN:

- There being no further business to come before the Council, the meeting adjourned upon a motion by A. Klotz and supported by K. Trygstad. The next regularly scheduled meeting will be on October 22nd, 2024, at 7:30 pm.

Respectfully Submitted

Karla Swihart

Karla Swihart, City Clerk

Payables Date 10.23.2024	Description	Total	General +	DPW	Energy	BPTF	Water
Ace 1 Port-A-Potties	Portable Restroom - Vet's Park	$ 175.00			$ 175.00		
Ace 1 Port-A-Potties	Portable Restroom - Disc Golf Course	$ 100.00			$ 100.00		
Ace 1 Port-A-Potties	Portable Restroom - John Gurney Boat Launch	$ 100.00	$ 100.00				
Ace 1 Port-A-Potties	Portable Restroom - Vet's Park	$ 175.00			$ 175.00		
Ace 1 Port-A-Potties	Portable Restroom - Disc Golf Course	$ 100.00			$ 100.00		
Ace 1 Port-A-Potties	Portable Restroom - John Gurney Boat Launch	$ 100.00	$ 100.00				
Ace 1 Port-A-Potties	Port. Restroom - Halloween Event Historic District	$ 175.00	$ 175.00				
BS&A Software	Annual Service/Support Fees	$ 1,458.00	$ 1,458.00				
Charter Communications	Internet - Hart Commons	$ 114.99			$ 114.99		
Charter Communications	Phone/Internet Service - Starting Block	$ 174.97			$ 174.97		
Cintas	Bathroom Supplies - JGP 10/8/24	$ 76.51	$ 76.51				
Cintas	Bathroom Supplies - Hart Commons 10/15/24	$ 61.45	$ 61.45				
Dubois Tree & Land Mgmnt	Tree Services - Lever Rd/Main St	$ 14,679.50			$ 14,679.50		
Dubois Tree & Land Mgmnt	Tree Services - Main St/Plum St/Lever Rd	$ 4,399.25			$ 4,399.25		
F and J Signs	Hart Historic District Decal	$ 25.00	$ 25.00				
Frontier	Phone Service - JGP	$ 154.82	$ 154.82				
Frontier	Phone Service - Dam	$ 107.47			$ 107.47		
Great Lakes Cleaning Services	Cleaning Services Sept 2024 - CH & CC	$ 1,350.00	$ 1,350.00				
IDEXX	Lab Supplies	$ 316.18				$ 316.18	
Kelley, Stephen	Reimbursement/Mileage - Lake City 2024	$ 820.26			$ 820.26		
Keystone Cooperative	Fuel	$ 1,853.28				$ 1,853.28	
Lawson-Fisher Associates	2024 Hart Dam Licensing Requirements	$ 6,970.56			$ 6,970.56		
Model First Aid	First Aid Supplies - BioPure	$ 174.58				$ 174.58	
MPPA	Purchased Power	$ 23,361.87			$ 23,361.87		
MPPA	Purchased Power	$ 69,337.40			$ 69,337.40		
MPPA	Purchased Power - Oct 2024	$ 109,902.26			$ 109,902.26		
Municipal Supply Co	Meter Couplings	$ 2,396.00					$ 2,396.00
Napa Auto Parts	Auto Parts/Supplies	$ 453.96				$ 453.96	
Napa Auto Parts	Auto Parts/Supplies	$ 34.99				$ 34.99	
Power Line Supply	Parts/Supplies	$ 1,739.25			$ 1,739.25		
Power Line Supply	Parts/Supplies	$ 158.88			$ 158.88		
Power Line Supply	Parts/Supplies	$ 2,395.56			$ 2,395.56		
Power Line Supply	Parts/Supplies	$ 774.29			$ 774.29		
Power Line Supply	Parts/Supplies	$ 2,772.11			$ 2,772.11		
Prein & Newhof	2200777 Drinking Water Asset Mgmnt Phase 2	$ 2,587.50					$ 2,587.50
Prein & Newhof	2220218 Dam Monitoring 2022-2024	$ 217.00			$ 217.00		
Prein & Newhof	2221059 BioPure Facility Construction	$ 17,165.10				$ 17,165.10	
Prein & Newhof	2240473 West Main St Resurfacing	$ 5,723.60		$ 5,723.60			
Prein & Newhof	2200777 Drinking Water Asset Mgmnt Phase 3	$ 2,527.00					$ 2,527.00
Prein & Newhof	2221057 SRF Wastewater Improvements	$ 1,216.60				$ 1,216.60	
Prein & Newhof	2221070 Dryden & Wood St Reconstruction	$ 26,444.20		$ 26,444.20			
Quill	Office Supplies	$ 285.53	$ 285.53				
Quill	Office Supplies	$ 134.99	$ 134.99				
Ricoh	Copier Renewal	$ 143.20	$ 143.20				
Splane, Robert	Appliance Recycling Rebate	$ 50.00			$ 50.00		
Spring Brook Inc	Parts/Supplies	$ 190.00				$ 190.00	
Verizon	Office Phones	$ 484.23	$ 396.15	$ 29.36	$ 29.36	$ 29.36	
Verizon	Department Phones	$ 499.19	$ 82.21	$ 158.32	$ 176.18	$ 82.48	
Versalift Midwest	2024 Freightliner M2-106	$ 143,694.00			$ 143,694.00		
West Michigan Criminal Justice	Fall 2024 Distribution MCOLES Payment	$ 419.66	$ 419.66				
Wilbur-Ellis	Chemicals	$ 24.75				$ 24.75	
	Sub-total	**$ 448,794.94**	**$ 4,962.52**	**$ 32,355.48**	**$ 382,425.16**	**$ 21,541.28**	**$ 7,510.50**
HAND CHECKS/ACH/EFT							
Alerus	City Share 401 Retirement	$ -	$ -				
US Postmaster	Postage/Tax Bills						
AFLAC	Insurance Premium	$ -	$ -				
Guardian	Insurance Premium	$	$				
Delta Dental	Insurance Premium	$	$ -				
MWG/Amfirst	Insurance Premium	$ -	$ -				
Blue Cross Blue Shield	Insurance Premium	$ -	$ -				
	TOTAL HAND CHECKS	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
	Sub-Total Regular Bills/Hand Checks	***$ 448,794.94***	***$ 4,962.52***	***$ 32,355.48***	***$ 382,425.16***	***$ 21,541.28***	***$ 7,510.50***
Gross Payroll	PR 217	$ 79,270.76					
	Sub-Total	**$ 79,270.76**					
	GRAND TOTAL	***$ 528,065.70***	**$ 4,962.52**	**$ 32,355.48**	**$ 382,425.16**	**$ 21,541.28**	**$ 7,510.50**

RESOLUTION 2024-29
City Council
City of Hart, Michigan
Oceana County

APPROVE BENDZINSKI & CO MUNICIPAL ADVISORS TO CONDUCT WATER RATE STUDY

WHEREAS, the City of Hart owns and operates a water distribution system; and

WHEREAS recent city auditors highlighted the water distribution system is somewhat underfunded based on their analysis for general operational health of the utility; and

WHEREAS the city is considering several million dollars in water system capital improvements that will parallel work with the city's wastewater and stormwater infrastructure; and

WHEREAS, utility funds should be self-supporting, and it has been over seven years since the last rate/cost of service study was conducted;

WHEREAS, to secure the benefits of efficient self-government and to promote and protect our common interests and welfare, the City Council hereby declares;

NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL:

Approve selecting Bendzinski & Co. Municipal Financial Advisors to conduct a water utility rate study at a cost not to exceed of $9,000.

Moved by _____, supported by _____ and thereafter adopted at the regular City of Hart City Council meeting on October 22, 2024

Ayes: __ Nays: __ Absent: __

Bendzinski & Co.
MUNICIPAL FINANCE ADVISORS

September 28, 2024

Mr. Rob Splane

RE: City of Hart – Water Rate Study (DWAM Grant)

Dear Rob Splane and the City of Hart Council,

Bendzinski & Co. Municipal Finance Advisors would like to thank you for the opportunity to serve as the rate consultant for the above-referenced user rate study. This letter will confirm the scope and terms of our engagement:

- Review and analyze historical operating expenses using audit and budget information.
    - 2-4 years of audits and budgets.
    - Current and proposed (if available) budget.
- A "Test Year" is developed that reflects a "normalized" operating budget.
    - Current and/or proposed budgets are considered.
    - Analysis of anticipated changes to operating costs with both client input and our input.
    - Inflation multipliers are analyzed and attached to each budget line item.
- Existing debt is analyzed.
    - Drafting of existing semi-annual debt service by debt issue.
    - Refinancing and/or restructuring possibilities are explored.
- The customer base is analyzed, including the number of meter equivalents, billable flow, treated/pumped flow and other methods.
    - This information is verified by applying it to the current rate structure to ascertain margin of error compared to audited and budgeted revenues.
    - Other operating and non-operating revenues analyzed for trends and stability.
    - Analysis of assumptions made for duration of the analysis, including prediction of meter equivalents, billable flow and other user rate revenue methods.
- Capital improvement plans are analyzed and discussed.
    - Annual asset management plans are analyzed, and scenarios are developed for cash funding and debt funding costs.
    - Funding asset management plans from cash reserves is analyzed against potential efficiency of grouping certain costs together for purposes of debt financing.

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  - Financing options are considered including the State Revolving Fund, USDA Rural Development, other agency funding sources and open market bonds. Various term options, bond securities and possible interest rate scenarios are considered.

- Cash reserve analysis.
  - Cash and investments are analyzed for trending and stability, including restricted funds.
  - A cash reserve policy is recommended based on the fund's stability, capital improvement plans, size of the system and changing customer dynamics.
- User rate management is considered with various options and scenarios.
  - Appropriateness of rate structure, including the proportion of revenue generated from ready to serve and commodity charge, is analyzed.
  - Rate adjustments of a one-time nature, annual inflationary increases and other options are considered.
- Meetings
  - In-person attendance of three meetings is included.
    - This includes a rate presentation to be conducted by the company to discuss findings and recommendations.
  - Virtual attendance of Teams meetings and/or calls is included.
- Reports
  - Upon completion of study, a five-year user rate recommendation will be made.
  - Provide financial information, important supporting data, important trends and analysis, narrative detailing findings and recommendations.
- Usual and customary rate consultant services as may be requested by the Client.

Bendzinski & Co. proposes a fee of $9,000. The typical billing method for this service is quarterly bills until completion, but this can be negotiated with the Client.

Bendzinski & Co. is registered as a "municipal advisor" pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the SEC and the MSRB. As part of this registration Bendzinski & Co. is required to disclose to the SEC information regarding any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation involving Bendzinski & Co. Pursuant to MSRB Rule G-42, Bendzinski & Co. is required to disclose any legal or disciplinary event that is material to the Issuer's evaluation of Bendzinski & Co.

or the integrity of its management or advisory personnel. Bendzinski & Co. has determined that no such event exists as there are no criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations or civil litigation involving Bendzinski & Co. that were required to be reported to the SEC.

The MSRB has made available on its website (www.msrb.org) a municipal advisory client brochure that describes the protections that may be provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

Copies of Bendzinski & Co.'s filings with the SEC can currently be found by accessing the SEC's EDGAR system Company Search Page, which is currently available at https://www.sec.gov/edgar/searchedgar/companysearch.html and searching for either Bendzinski & Co. or for our CIK number which is 1614475.

It is understood and agreed that either party to this contract of employment may terminate the contract for any reason upon thirty (30) days prior written notice to the other party. If our employment on this basis is agreeable to you, please endorse your acceptance hereof on this letter which will constitute our contract of employment.

Should you have any questions or require any additional information, please do not hesitate to call.

Sincerely,

BENDZINSKI & CO.
Municipal Finance Advisors



Andy Campbell, CPA
Registered Municipal Advisor

Accepted: _____, 2024

CITY OF HART, STATE OF MICHIGAN

Signature:_____

Printed Name:_____

Title:_____

RESOLUTION 2022-54
City Council
City of Hart, Michigan
Oceana County

RESOLUTION APPROVE BAKERTILLY MUNICIPAL ADVISORS TO CONDUCT WATER UTILITY RATE STUDY

WHEREAS, the City of Hart owns and operates a water distribution system; and

WHEREAS recent city auditors highlighted the water distribution system is somewhat underfunded based on their analysis for general operational health of the utility; and

WHEREAS the city is planning several million dollars in water system capital improvements that will parallel work with the city's wastewater and storm water infrastructure; and

WHEREAS, utility funds should be self-supporting, and it has been over five years since the last rate/cost of service study has been conducted;

NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL:

Approve selecting BakerTilly Municipal Advisors to conduct a water utility rate study at a cost not to exceed of $9,000.

Moved by Jim Evans, supported by Kris Trygstad and thereafter adopted at the regular City of Hart City Council meeting on December 13, 2022

Ayes: 6 Nays: 0 Absent: 1

HISTORICAL

RESOLUTION 2024-30
City Council
City of Hart, Michigan
Oceana County

ACCEPT FINANCIAL SERVICES PROPOSAL RELATED TO 2025 DRINKING WATER STATE REVOLVING FUND BONDS

WHEREAS, the City of Hart owns, operates and maintains municipal water and wastewater systems; and

WHEREAS, the City of Hart is considering the letting of revenue bonds to provide funding for a series of water system capital improvement projects as adopted by council; and

WHEREAS The City of Hart has been tentatively awarded financing and principal forgiveness from the State of Michigan's Drinking Water State Revolving Loan Fund ("DWSRF"). This low interest loan will cover the funds needed for the proposed projects. The DWSRF loan will be evidenced by the city's issuance of revenue bonds under the provisions of Act 94 of the Public Acts of Michigan of 1933, as amended ("Act 94").; and

WHEREAS, A municipal financial advisor will be required to oversee preparation and processing of bond funding related documents including revenue support consulting, debt structuring, timetable management, application preparation, liaison assistance with the Municipal Finance Authority and the Department of Treasury; and

WHEREAS, to secure the benefits of efficient self-government and to promote and protect our common interests and welfare, the City Council hereby declares:

NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL:

Accepts the proposal submitted from Bendzinski & Co.Municipal Finance Advisors to provide services related to 2025 DWSRF Bonds for the fee of $14,850. City Council further authorizes the city manager to sign and execute any related documents to this expenditure.

Moved by _____, supported by _____, and thereafter adopted by the Hart City Council at a regularly scheduled meeting held on October 22, 2024.

Ayes: __ Nays: __ Absent: __

Bendzinski & Co.
MUNICIPAL FINANCE ADVISORS

September 28, 2024

Mr. Rob Splane

RE: City of Hart – DWSRF Water Revenue Bonds

Dear Rob Splane and the City of Hart Council,

Bendzinski & Co. Municipal Finance Advisors would like to thank you for the opportunity to serve as the Registered Municipal Advisor for the issuance of the above referenced bond issue. This letter will confirm the terms of our engagement:

- Act on behalf of the City of Hart (the "Issuer") with a fiduciary duty, which shall include a duty of loyalty and care in accordance with the rules and regulations set forth by the Municipal Securities Rulemaking Board (“Board” or “MSRB”) and the Securities and Exchange Commission (“SEC”);
- Prepare financial information and projections in cooperation with Issuer officials and engineers, in order to arrive at the amount of the issue to be sold and determine the methodology for the timely repayment of the bond issue;
- Attend meetings with Issuer's staff, its engineers, bond counsel, and Michigan Department of Environment, Great Lakes & Energy (“EGLE”) staff for the purpose of planning the proposed SRF project;
- Provide assistance when requested to the Issuer, Issuer Attorney and Bond Counsel to ensure that all possible provisions are made towards the most advantageous sale of bonds;
- Prepare with the Issuer's cooperation, the application required by the Municipal Finance Division of the Michigan Department of Treasury for their approval and expedite this approval;
- Prepare with the Issuer's cooperation, the application required by the Michigan Department of Environment, Great Lakes & Energy Assistance Division, Municipal Facilities Section to obtain their approval;
- Prepare bond specifications for bond counsel including interest rate limitations, redemption provisions, bidding and good faith details;
- Preparation of the required User Charge System, if required; and
- Advise and assist the Issuer to enable them a successful delivery of funds from Michigan Municipal Bond Authority.

2390 Woodlake Drive • Suite 300 • Okemos, Michigan 48864
(517) 580-0277
E-mail • acampbell@bendzinski.com

Bendzinski & Co. proposes a fee of $14,850. This includes all out-of-pocket expenses and meeting attendance.

We believe this provides you with the outline of the services we provide. The Registered Municipal Advisor fee is contingent upon the closing and delivery of the bonds. Although this form of compensation may be customary, it presents a conflict because Bendzinski & Co. may have an incentive to recommend unnecessary financings or financings that are disadvantageous to the Issuer. For example, when facts or circumstances arise that could cause the financing or other transaction to be delayed or fail to close, Bendzinski & Co. may have an incentive to discourage a full consideration of such facts and circumstances, or to discourage consideration of alternatives that may result in the cancellation of the financing or other transaction. Bendzinski & Co. manages and mitigates this conflict primarily by adherence to the fiduciary duty which it owes to municipal entities such as the Issuer which require it to put the interests of the Issuer ahead of its own.

The Municipal Advisory Council of Michigan (the "MAC") assesses Bendzinski & Co., a $450.00 fee for every bond issue where we act as municipal advisor in the State of Michigan. Our membership in the MAC is voluntary, but the per bond issue assessment is meant to cover costs for credit reports and similar information available from the MAC that is used in the offering document and in other states is billed directly by a third-party. The MAC is a single-source municipal database for essential bond and note details for all local government issuers in Michigan. Among 23 distinctive credit reports, the MAC is the primary source for Issuer's debt statements, overlapping debt and indirect debt, as used to determine suitability and as disclosed in official statements, (if applicable). The MAC tracks, monitors and records all Michigan new issue bond sales, whether competitive, negotiated or private placements and bond calls. The MAC does not do any lobbying. Robert J. Bendzinski, currently serves on the MAC Board of Directors. This fee is incurred by the firm, but not charged directly back to the client (included in fee proposal above).

Bendzinski & Co. is registered as a "municipal advisor" pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the SEC and the MSRB. As part of this registration Bendzinski & Co. is required to disclose to the SEC information regarding any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation involving Bendzinski & Co. Pursuant to MSRB Rule G-42, Bendzinski & Co. is required to disclose any legal or disciplinary event that is material to the Issuer's evaluation of Bendzinski & Co. or the integrity of its management or advisory personnel. Bendzinski & Co. has determined that no such event exists as there are no criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations or civil litigation involving Bendzinski & Co. that were required to be reported to the SEC.

The MSRB has made available on its website (www.msrb.org) a municipal advisory client brochure that describes the protections that may be provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

Copies of Bendzinski & Co.'s filings with the SEC can currently be found by accessing the SEC's EDGAR system Company Search Page, which is currently available at https://www.sec.gov/edgar/searchedgar/companysearch.html and searching for either Bendzinski & Co. or for our CIK number which is 1614475.

It is understood and agreed that either party to this contract of employment may terminate the contract for any reason upon thirty (30) days prior written notice to the other party. If our employment on this basis is agreeable to you, please endorse your acceptance hereof on this letter which will constitute our contract of employment.

Should you have any questions or require any additional information, please do not hesitate to call.

Sincerely,

BENDZINSKI & CO.
Municipal Finance Advisors



Andy Campbell, CPA
Registered Municipal Advisor

Accepted: _____, 2024

CITY OF HART, STATE OF MICHIGAN

Signature: _____

Printed Name: _____

Title: _____

RESOLUTION 2024-31
City Council
City of Hart, Michigan
Oceana County

ACCEPT ENGINEERING SERVICES PROPOSAL FOR DRINKING WATER STATE REVOLVING FUND IMPLEMENTATION

WHEREAS, the City of Hart is responsible for the maintenance and operation of water, wastewater, and storm water sewer systems including roadway above those systems; and

WHEREAS, the City of Hart has been awarded 20% principal loan forgiveness through the State of Michigan Drinking Water State Revolving Fund Loan at an interest rate of 2% to assist the city in the replacement of the aging water system components as outlined in the Project Plan adopted by city council; and

WHEREAS, the City must obtain a qualified engineering entity to properly oversee the design, construction, and financial reporting of this critical infrastructure; and

WHEREAS, in order to secure the benefits of efficient self-government and to promote and protect our common interests and welfare, the City Council hereby declares:

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL

Accepts the proposal for engineering services from Prein and Newhof not to exceed $591,200 to provide professional engineering services and fund administration for the following projects:

- *Oceana Drive Low Pressure Tank Loop – Extends a transmission main from the low-pressure tank to the end of the City's system south of Polk Road.*
- *Orchard Street and Peach Street – Abandons old 2-inch water main and replace with 6-inch water main from Lake Street to Lake Street. Replace all water services within project area removing them from the old undersized mains. Including partial road replacement.*
- *Hart and Washington Intersection Utility Repair – Improves valving within the intersection, abandons portions of an old redundant 6-inch water main. Repairs an active sanitary sewer failure in the intersection.*
- *Lead Service Line Replacement (LSLR) – Replaces approximately 97 lead service lines at yet to be determined locations within the City.*
- *Flood Well Replacement – Replaces the City's Flood well and well house at a location to be determined.*

Council authorizes the City Manager to sign and execute related contractual agreement.

Moved by _____, supported by _____, and thereafter adopted by the Hart City Council at a regularly scheduled meeting held on October 22, 2024

Ayes: __ Nays: __ Absent: __

Prein&Newhof
Engineers ▪ Surveyors ▪ Environmental ▪ Laboratory

October 18, 2022

Mr. Rob Splane, Manager
City of Hart
407 State Street
Hart, MI 49420

Re: Proposal for Professional Engineering Services for FY 2025 DWSRF Implementation

Dear Mr. Splane:

We appreciate this opportunity to provide a proposal for professional engineering services to assist you with the DWSRF projects that were originally outlined in your FY 2022 Project Plan, which was updated and resubmitted submitted in 2024 for Fiscal Year 2025.

The City has been awarded a loan of $3,655,000 with $731,000 of principal forgiveness, which is part of the loan that does not need to be repaid and is essentially a grant. The loan will be at a low interest rate of 2.00% for a 20-, 30-, or 40-year payback period.

The specific projects covered under this proposal include the following:

- Oceana Drive Low Pressure Tank Loop – Extends a transmission main from the low-pressure tank to the end of the City's system south of Polk Road.
- Orchard Street and Peach Street – Abandons old 2-inch water main and replace with 6-inch water main from Lake Street to Lake Street. Replace all water services within project area removing them from the old undersized mains. This will include partial road replacement.
- Hart and Washington Intersection Utility Repair – Improves valving within the intersection, abandons portions of an old redundant 6-inch water main. Repairs an active sanitary sewer failure in the intersection.
- Lead Service Line Replacement (LSLR) – Replaces approximately 97 lead service lines at yet to be determined locations within the City.
- Flood Well Replacement – Replaces the City's Flood well and well house at a location to be determined.

We have developed the following scope of services based on the projects listed above. We assume that the City will follow the 4th quarter funding schedule, which requires project documents to be completed and ready for bidding by spring 2025. Construction will occur through the 2026 construction season.

Preliminary Design

- Gather and review record plans, private utility information and any available records pertinent to the proposed project areas;
- Complete topographic survey of all projects;
- Complete approximately one soil boring per 500 feet of project length;
- Complete environmental and historical (SHPO) reviews;

Design and Bidding Phase

- Complete design of proposed sanitary sewer, water main, service laterals, water services and road reconstruction as detailed in the DWRF Project Plan;
- Assist City in tracking and developing easement documents for replacement of water services on private property;
- Develop priority list for lead service line replacements in conjunction with City staff and prepare maps showing replacement areas;
- Site the proposed well, design well house and develop specifications for well construction and testing. Prepare and submit request for approval of rated capacity to EGLE. Design to include up to 1,000 ft of water main design if needed to connect the proposed well to the City's system;
- Attend three design review meetings;
- Prepare and submit permit applications (City to pay any permit fees);
- Prepare opinion of probable cost based on final design;
- Prepare Alternative Justifiable Expense (AJE);
- Prepare project specifications including specific DWRF requirements;
- Assist City with preparing bidding packages (assumes 4 contracts) and contract documents;
- Assist City with advertising for bids, provide responses to questions, prepare addenda;
- Attend pre-bid meeting and prepare minutes;
- Review bids, prepare bid tabulations, and provide recommendations;
- Assist City with Parts I, II, and III DWRF forms and administration;
- Prepare Notice of Award and Notice to Proceed; and
- Assist City with preparing final contracts for signing by Contractor

Construction Phase

- Schedule and attend preconstruction meetings and prepare minutes for 4 contracts;
- Track and review shop drawings;
- Provide construction staking;
- Provide testing (soil density, gravel, asphalt, and concrete, etc.);
- Provide construction observation for all utility work of the Oceana Drive Low Pressure Tank Loop assuming 3 weeks of construction, (135 hours);
- Provide construction observation for all utility work and reconstruction of Orchard Street, Peach Street and the Hart/Washington Intersection assuming a single combined project and 7 weeks of construction, (315 hours);
- Provide construction observation services for LSLR assuming 4 weeks of construction, (166 hours);
- Provide construction observation for the well and wellhouse replacement including necessary transmission main to connect to the system, assumes 21 days of field work, (172 hours);
- Schedule and attend monthly progress meetings for each contract as needed, and prepare minutes for each;
- Respond to RFIs, prepare payment applications and change orders;
- Assist with DWSRF administration;
- Prepare punch lists and close out documents; and

- Complete record plans, service record drawings and property iron replacement following completion.
- Update City GIS and LSL inventory following completion of project.

Fee

Based on the scope of work described above, we propose to complete the work for a not to exceed cost of $591,200. Our estimated time/work level of effort is attached. Our hourly rates are adjusted each January. Given the current labor and inflation climate, we have included an increase of 5% in hourly rates in 2025 and 2026.

Please note that there are still some uncertainties in the projects that may not have been accounted for. Once the construction contracts are awarded and construction schedules are provided, we will review the hours allocated for the construction phase services with you to determine whether adjustments need to be made.

If this proposal is acceptable to you, please sign and return the enclosed Professional Services Agreement. We look forward to working with you and your staff on this project. Should you have any questions, please contact us.

Sincerely,

Prein&Newhof

Barbara E. Marczak, P.E.

Mark R. Prein, P.E.

Enclosures: Estimated work effort/fee

Professional Hours Worksheet

City of Hart - DWRF 2025

Staff Member	Total Cost
Preliminary Design	
Kickoff Meeting	$2,200
Preliminary Engineering	$6,300
Environmental Clearances	$3,600
SHPO	$7,900
Soil Borings (Well)	$6,900
Soil Borings (Washington)	$2,700
Soil Borings (Church)	$2,700
Soil Borings (Peach and Orchard)	$2,700
Topo Survey (Well)	$5,900
Topo Survey (Oceana)	$2,200
Topo Survey (Washington)	$4,900
Topo Survey (Church)	$3,800
Topo Survey (Peach and Orchard)	$4,900
Financing	$4,700
QA/QC	$2,100
Review Meeting	$2,500
Preliminary Subtotals	**$66,000**

Design LSLR	
Easement	$200
Water Service Research	$3,800
Lead Service Line Priority List	$5,200
Lead Service Specifications	$2,700
Review Meeting (1)	$1,000
Bidding Documents	$2,000
Cost Estimates	$1,800
QA/QC	$500
2025 Rate Adjustment	$900
Design Well	
EGLE Submittals For Test Well Site Approval - Production Well	$1,100
Specifications/Bidding Documents - Production Well	$3,100
Review of Aquifer Test Data and Submittal for Rated Capacity - Production Well	$2,700
Site Design - Well House	$3,000
SESC Permit Application - Well House	$500
EGLE Water Permit Application - Well House	$1,300
Design / Construction Drawings - Well House	$48,200
Specifications/Bidding Documents - Well House	$13,200

Professional Hours Worksheet

City of Hart - DWRF 2025

Staff Member	Total Cost
SESC Permit Application - Transmission Main	$500
EGLE Water Permit Application - Transmission Main	$900
EGLE Wetland Permitting	$3,000
Design / Construction Drawings - Transmission Main	$8,000
Specifications/Bidding Documents - Transmission Main	$1,800
Cost Estimates	$400
Review Meeting (1)	$1,800
QA/QC	$2,400
2024 Rates Adjustment	$4,600
Design Oceana Loop	
Oceana Loop Design	$8,600
Oceana Phasing and MOT	$300
MDOT ROW Permit Application	$400
SESC Permit Application	$900
EGLE Water Permit Application	$400
Specifications	$2,000
Meeting w/ Client (1)	$1,100
Cost Estimate	$1,000
QA/QC	$2,800
2025 Rate Adjustment	$900
Design Washington, Peach, Orchard	
Easements water services	$800
Washington Design	$16,200
Peach and Orchard Design	$10,000
Staging, Phasing, MOT Design	$400
SESC Permit Application	$1,100
EGLE Water Permit Application	$400
EGLE Sanitary Permit Application	$400
Specifications	$3,000
Meeting w/ Client (1)	$1,400
Cost Estimate	$2,300
QA/QC	$5,800
2025 Rate Adjustment	$2,100

Professional Hours Worksheet

City of Hart - DWRF 2025

Staff Member	Total Cost
Design Church	
Easements water services	$800
Church Design	$25,000
Staging, Phasing, MOT Design	$1,100
SESC Permit Application	$400
EGLE Water Permit Application	$400
EGLE Sanitary Permit Application	$400
Specifications	$3,000
Meeting w/ Client (1)	$1,300
Cost Estimate	$1,800
QA/QC	$3,200
2025 Rate Adjustment	$1,900
Design Subtotals	**$216,200**

Bid, Award, and Contract Phase	
Advertise and Issue Bid Package - Dist	$1,900
Advertise and Issue Bid Package - Well	$1,000
Bidder Questions - Dist	$1,300
Bidder Questions - Well	$2,200
Pre-bid Meeting	$2,400
Addenda - Distribution	$1,600
Addenda - Well	$700
Attend Bid - Distribution	$700
Attend Bid - Well	$800
Review Bids/Recommend Award - Distribution	$2,600
Review Bids/Recommend Award - Well	$900
Prepare Contracts-DWRF admin.	$6,600
2025 Rate Adjustment	$1,100
Bid, Award, and Contract Phase Subtotals	**$23,800**

Professional Hours Worksheet

City of Hart - DWRF 2025

Staff Member	Total Cost
Construction Engineering Services	
Well	
Preconstruction Meeting and Minutes	$2,200
Construction Staking (Wellhouse & Water Main)	$7,600
Shop Drawing Review	$7,600
CO (3 days for well, 8 days for watermain, 10 days for wellhouse) including system startup)	$35,200
Project Administration	$8,200
Change Orders (2)	$2,100
Pay Apps (5)	$2,700
Punch List Visit (2 visits)	$2,200
Record Plans/Closeout	$3,100
2025 Rate Adjustment	$7,300
Oceana Loop	
Preconstruction Meeting and Minutes	$1,600
Preconstruction Video	$300
Construction Staking Oceana	$4,800
Oceana CO (3 weeks)	$17,800
Project Administration	$1,300
Respond to RFIs	$200
Change Orders (1)	$300
Pay Apps (2)	$800
Progress Meetings (none)	$0
Punch List Visits (1)	$200
Record Plans/Closeout	$1,500
Iron Replacement (Included in survey)	$0
2025 Rate Adjustment	$3,000

Professional Hours Worksheet

City of Hart - DWRF 2025

Staff Member	Total Cost
Washington, Peach and Orchard	
Preconstruction Meeting and Minutes	$1,600
Preconstruction Video (2 hours)	$300
Construction Staking Washington, Peach and Orchard	$8,100
Washington Peach And Orchard CO (7 weeks)	$40,500
Project Administration	$6,100
Respond to RFIs	$800
Change Orders (1)	$400
Pay Apps (3)	$900
Progress Meetings (not included)	$100
Punch List Visits (3)	$1,200
Record Plans/Closeout	$4,100
Iron Replacement (Included in survey)	$0
2025 Rate Adjustment	$6,600
Church Street	
Preconstruction Meeting and Minutes	$1,600
Preconstruction Video (2 hours)	$300
Construction Staking Church	$8,100
Church CO (7 weeks)	$40,500
Project Administration	$6,100
Respond to RFIs	$800
Change Orders (1)	$400
Pay Apps (3)	$900
Progress Meetings	$100
Punch List Visits (3)	$1,200
Record Plans/Closeout	$4,100
Iron Replacement (Included in survey)	$0
2025 Rate Adjustment	$6,600
LSLR	
Preconstruction Meeting and Minutes	$1,600
Construction Observation	$21,700
Project Administration	$3,200
Respond to RFIs	$400
Change Orders (2)	$600
Pay Apps (2)	$600
Progress Meetings	$100
Punch List Visits (1)	$600
Record Plans/Closeout	$1,900
2025 Rate Adjustment	$3,100
Construction Engineering Subtotals	**$285,200**
Project Grand Total	**$591,200**

Project No.

Professional Services Agreement

This Professional Services Agreement is made this 22nd day of October, 2024 ("Agreement") by and between Prein & Newhof, Inc. ("P&N"), of 3355 Evergreen Dr. NE, Grand Rapids, MI 49525, and City of Hart ("Client"), of 407 State Street, Hart, MI 49420.

WHEREAS Client intends to:

Professional Engineering Services for FY 2025 DWSRF Implementation

NOW THEREFORE, for and in consideration of the terms and conditions contained herein, the parties agree as follows:

ARTICLE 1 – DESIGNATED REPRESENTATIVES

Client and P&N each designate the following individuals as their representatives with respect to the Project.

For P&N	For Client
Name: Barbara E. Marczak, P.E	Name: Robert Splane
Title: Team Leader	Title: City Manager
Phone Number: 231-798-0101	Phone Number: 231-873-3475
Facsimile Number: 616-364-6955	Facsimile Number: _____
E-Mail Address: bmarczak@preinnewhof.com	E-Mail Address: rsplane@cityofhart.com

ARTICLE 2 – GENERAL CONDITIONS

This Agreement consists of this Professional Services Agreement and the following documents which by this reference are incorporated into and made a part of this Agreement.

☒ P&N Standard Terms and Conditions for Professional Services

☒ P&N Proposal dated, October 18, 2024

☐ P&N Standard Rate Schedule

☐ P&N Supplemental Terms and Conditions

☐ Other:

ARTICLE 3 – ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT:

Client hereby requests, and P&N hereby agrees to provide, the following services:

☒ P&N Scope of Services per Proposal dated, October 18, 2024

☐ Scope of Services defined as follows:

ARTICLE 4 – COMPENSATION:

☐ Lump Sum for Services Described in Article 3 above - $.

Additional services to be billed per P&N's Standard Rate Schedule in effect on the date the additional services are performed.

☒ Hourly Billing Rates plus Reimbursable Expenses per P&N's Standard Rate Schedule in effect on the date services are performed.

☒ Other: Maximum not to exceed $591,200unless authorized by Owner.

ARTICLE 5 – ADDITIONAL TERMS (If any)

None

This Agreement constitutes the entire Agreement between P&N and Client and supersedes all prior written or oral understandings. This Agreement may not be altered, modified, or amended, except in writing properly executed by authorized representatives of P&N and Client.

Accepted for:	**Accepted for:**
Prein&Newhof, Inc.	**City of Hart**
By:	By:
Printed Name: Mark R. Prein, P.E.	Printed Name: Robert Splane
Title: Vice-President	Title: City Manager
Date: October 18, 2024	Date:

Standard Terms & Conditions

A. General - As used in this Prein&Newhof Standard Terms and Conditions for Professional Services (hereinafter "Terms and Conditions"), unless the context otherwise indicates: the term "Agreement" means the Professional Services Agreement inclusive of all documents incorporated by reference including but not limited to this P&N Standard Terms and Conditions for Professional Services; the term "Engineer" refers to Prein & Newhof, Inc.; and the term "Client" refers to the other party to the Professional Services Agreement.

These Terms and Conditions shall be governed in all respects by the laws of the United States of America and by the laws of the State of Michigan.

B. Standard of Care - The standard of care for all professional and related services performed or furnished by Engineer under the Agreement will be the care and skill ordinarily used by members of Engineer's profession of ordinary learning, judgment or skill practicing under the same or similar circumstances in the same or similar community, at the time the services are provided.

C. Disclaimer of Warranties - Engineer makes no warranties, expressed or implied, under the Agreement or otherwise.

D. Construction/Field Observation - If Client elects to have Engineer provide construction/field observation, client understands that construction/field observation is conducted to reduce, not eliminate the risk of problems arising during construction, and that provision of the service does not create a warranty or guarantee of any type. In all cases, the contractors, subcontractors, and/or any other persons performing any of the construction work, shall retain responsibility for the quality and completeness of the construction work and for adhering to the plans, specifications and other contract documents.

E. Construction Means and Methods - Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for any safety precautions and programs in connection with the construction work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the construction work, or for the failure of any of them to carry out the construction work in accordance with the plans, specifications or other contract documents.

F. Opinions of Probable Costs - Client acknowledges that Engineer has no control over market or contracting conditions and that Engineer's opinions of costs are based on experience, judgment, and information available at a specific period of time. Client agrees that Engineer makes no guarantees or warranties, express or implied, that costs will not vary from such opinions.

G. Client Responsibilities

1. Client shall provide all criteria, Client Standards, and full information as to the requirements necessary for Engineer to provide the professional services. Client shall designate in writing a person with authority to act on Client's behalf on all matters related to the Engineer's services. Client shall assume all responsibility for interpretation of contract documents and construction observation/field observation during times when Engineer has not been contracted to provide such services and shall waive any and all claims against Engineer that may be connected thereto.
2. In the event the project site is not owned by the Client, the Client must obtain all necessary permission for Engineer to enter and conduct investigations on the project site. It is assumed that the Client possesses all necessary permits and licenses required for conducting the scope of services. Access negotiations may be performed at additional costs. Engineer will take reasonable precaution to minimize damage to land and structures with field equipment. Client assumes responsibility for all costs associated with protection and restoration of project site to conditions existing prior to Engineer's performance of services.
3. The Client, on behalf of all owners of the subject project site, hereby grants permission to the Engineer to utilize a small unmanned aerial system (sUAS) for purposes of aerial mapping data acquisition. The Client is responsible to provide required notifications to the property owners of the subject project site and affected properties where the sUAS services will be performed. The Engineer will operate the sUAS in accordance with applicable State and Federal Laws.

H. Hazardous or Contaminated Materials/Conditions

1. Client will advise Engineer, in writing and prior to the commencement of its services, of all known or suspected Hazardous or Contaminated Materials/Conditions present at the site.
2. Engineer and Client agree that the discovery of unknown or unconfirmed Hazardous or Contaminated Materials/Conditions constitutes a changed condition that may require Engineer to renegotiate the scope of or terminate its services. Engineer and Client also agree that the discovery of said Materials/Conditions may make it necessary for Engineer to take immediate measures to protect health, safety, and welfare of those performing Engineer's services. Client agrees to compensate Engineer for any costs incident to the discovery of said Materials/Conditions.
3. Client acknowledges that Engineer cannot guarantee that contaminants do not exist at a project site. Similarly, a site

which is in fact unaffected by contaminants at the time of Engineer's surface or subsurface exploration may later, due to natural phenomena or human intervention, become contaminated. The Client waives any claim against Engineer, and agrees to defend, indemnify and hold Engineer harmless from any claims or liability for injury or loss in the event that Engineer does not detect the presence of contaminants through techniques commonly employed.

4. The Client recognizes that although Engineer is required by the nature of the services to have an understanding of the laws pertaining to environmental issues, Engineer cannot offer legal advice to the Client. Engineer urges that the Client seek legal assistance from a qualified attorney when such assistance is required. Furthermore, the Client is cautioned to not construe or assume that any representations made by Engineer in written or conversational settings constitute a legal representation of environmental law or practice.
5. Unless otherwise agreed to in writing, the scope of services does not include the analysis, characterization or disposal of wastes generated during investigation procedures. Should such wastes be generated during this investigation, the Client will contract directly with a qualified waste hauler and disposal facility.

I. Underground Utilities – To the extent that the Engineer, in performing its services, may impact underground utilities, Engineer shall make a reasonable effort to contact the owners of identified underground utilities that may be affected by the services for which Engineer has been contracted, including contacting the appropriate underground utility locating entities and reviewing utility drawings provided by others. Engineer will take reasonable precautions to avoid damage or injury to **underground** utilities and other underground structures. Client agrees to hold Engineer harmless for any damages to below ground utilities and structures not brought to Engineers attention and/or accurately shown or described on documents provided to Engineer.

J. Insurance

1. Engineer will maintain insurance for professional liability, general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Engineer. Client will maintain insurance for general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Client. Upon request, Client and Engineer shall each deliver certificates of insurance to the other evidencing their coverages.
2. Client shall require Contractors to purchase and maintain commercial general liability insurance and other insurance as specified in project contract documents. Client shall cause Engineer, Engineer's consultants, employees, and agents to be listed as additional insureds with respect to any Client or Contractor insurances related to projects for which Engineer provides services. Client agrees and must have Contractors agree to have their insurers endorse these policies to reflect that, in the event of payment of any loss or damages, subrogation rights under these Terms and Conditions are hereby waived by the insurer with respect to claims against Engineer.

K. Limitation of Liability - The total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants, whether jointly, severally or individually, to Client and anyone claiming by, through, or under Client, for any and all injuries, losses, damages and expenses, whatsoever, arising out of, resulting from, or in any way related to the Project or the Agreement, including but not limited to the performance of services under the Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, expressed or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, consultants, or any of them, shall not exceed the amount of the compensation paid to Engineer under this Agreement, or the sum of fifty thousand dollars and no cents ($50,000.00), whichever is less. Recoverable damages shall be limited to those that are direct damages. Engineer shall not be responsible for or held liable for special, indirect or consequential losses or damages, including but not limited to loss of use of equipment or facility, and loss of profits or revenue.

Client acknowledges that Engineer is a corporation and agrees that any claim made by Client arising out of any act or omission of any director, officer, or employee of Engineer, in the execution or performance of the Agreement, shall be made against Engineer and not against such director, officer, or employee.

L. Documents and Data

1. All documents prepared or furnished by Engineer under the Agreement are Engineer's instruments of service, and are and shall remain the property of Engineer.
2. Hard copies of any documents provided by Engineer shall control over documents furnished in electronic format. Client recognizes that data provided in electronic format can be corrupted or modified by the Client or others, unintentionally or otherwise. Consequently, the use of any data, conclusions or information obtained or derived from electronic media provided by Engineer will be at the Client's sole risk and without any liability, risk or legal exposure to Engineer, its employees, officers or consultants.
3. Any extrapolations, conclusions or assumptions derived by the Client or others from the data provided to the Client, either in hard copy or electronic format, will be at the Client's sole risk and full legal responsibility.

M. Differing Site Conditions - Client recognizes that actual site conditions may vary from the assumed site conditions or test locations used by Engineer as the basis of its design. Consequently, Engineer does not guarantee or warrant that actual site conditions will not vary from those used as the basis of Engineer's design, interpretations and recommendations. Engineer is not responsible for any costs or delays attributable to differing site conditions. .

N. Terms of Payment - Unless alternate terms are included in the Agreement, Client will be invoiced on a monthly basis until the completion of the **Project**. All monthly invoices are payable within 30 days of the date of the invoice. Should full payment of any invoice not be received within 30 days, the amount due shall bear a service charge of 1.5 percent per month or 18 percent per year plus the cost of collection, including reasonable attorney's fees. If Client has any objections to any invoice submitted by Engineer, Client must so advise Engineer in writing within fourteen (14) days of receipt of the invoice. Unless otherwise agreed, Engineer shall invoice Client based on hourly billing rates and direct costs current at the time of service performance. Outside costs such as, but not limited to, equipment, meals, lodging, fees, and subconsultants shall be actual costs plus 10 percent. In addition to any other remedies Engineer may have, Engineer shall have the absolute right to cease performing any services in the event payment has not been made on a current basis.

O. Termination - Either party may terminate services, either in part or in whole, by providing 10 calendar days written notice thereof to the other party. In such an event, Client shall pay Engineer for all services performed prior to receipt of such notice of **termination**, including reimbursable expenses, and for any shut–down costs incurred. Shut–down costs may, at Engineer's discretion, include expenses incurred for completion of analysis and records necessary to document Engineer's files and to protect its professional reputation.

P. Severability and Waiver of Provisions - Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and P&N, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable **provision** that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the Agreement.

Q. Dispute Resolution - If a dispute arises between the parties relating to the Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:

1. Prior to commencing a lawsuit, the parties must attempt mediation to resolve any dispute. The parties will jointly appoint a mutually acceptable person not affiliated with either of the parties to act as mediator. If the parties are unable to agree on the mediator within twenty (20) calendar days, they shall seek assistance in such regard from the Circuit Court of the State and County wherein the Project is located, who shall appoint a mediator. Each party shall be responsible for paying all costs and expenses incurred by it, but shall split equally the fees and expenses of the mediator. The mediation shall proceed in accordance with the procedures established by the mediator.

2. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within thirty (30) calendar days, then, upon seven (7) calendar days' written notice to the other party, either party may pursue any other available remedy.

3. In the event of any litigation arising from the Agreement, including without limitation any action to enforce or interpret any terms or conditions or performance of services under the Agreement, Engineer and Client agree that such action will be brought in the District or Circuit Court for the County of Kent, State of Michigan (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Western District of Michigan), and the parties hereby submit to the exclusive jurisdiction of said court.

R. Force Majeure - Engineer shall not be liable for any loss or damage due to failure or delay in rendering any services called for under the Agreement resulting from any cause beyond Engineer's reasonable control.

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

T. Modification - The Agreement may not be modified except in writing signed by the party against whom a modification is sought to be enforced.

U. Survival - All express representations, indemnifications, or limitations of liability included in the Agreement shall survive its completion or termination for any reason.

V. Third-Party Beneficiary - Client and Engineer agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by a third party.

W. Fee Escalation - Engineer's fees are based on its billing rates, which are adjusted annually. For multi-year projects, Engineer's fees incorporate an estimate of future billing rates. If inflation causes actual billing rates to exceed these estimates, Engineer reserves the right to adjust its fees accordingly.