

CITY OF ELKHART
BOARD OF PUBLIC WORKS MEETING
AGENDA

Common Council Chambers

9:00 A.M., Tuesday, October 19, 2021

<https://coei.webex.com/coei/j.php?MTID=mb55ad6b28214fb6d36607774600c72fc>

Join by phone: 1-415-655-0001

Meeting Number (access code): 2317 027 0930 Meeting password: BOW21

- I. Roll Call**
- II. Approve Agenda**
- III. Claims**
- IV. Minutes:** Regular Meeting October 5, 2021
- V. Engineering**
 - a.) Administration
 - PSA DLZ Indiana LLC, Lerner HVAC Replacement Design
 - b.) Utility
 - Change Order #1: Calumet Ave Water Main Bid #21-21
 - Change Order #1 S. 6th Street Sewer Extension Bid #21-23
 - c.) Right of Way
 - Declaration of Emergency: Pedestrian Bridge Crossing Nappanee Street
 - Change Order #1 & Final South Curb Ramp Bid #21-08
 - Change Order #1 & Final North Curb Ramp Bid #21-07
 - d.) Stormwater
 - Indemnification Agreement with 1127 Miles Ave., LLC
 - e.) Summary
 - Revocable Permits
 - Driveway Permits
 - Release of Bond
 - Sewer Assessment Applications
 - Water Assessment Applications
- VI. Utilities**
 - a.) Administration
 - Request to Engage: Waggoner Irwin Scheele
 - Water Utility MRO for September 2021
 - b.) Environmental Compliance
 - Notice of Violation with Compliance Order: Swift Prepared Foods Permit #2002-01
 - Notice of Violation: 25% Rule Subway 2525 Toledo Rd B1

(F2015-317)

- Notice of Violation with Compliance: Continental Industries Permit #2003-01
- Notice of Violation with Compliance: Lippert Components #72 Permit #98-03

VII. New Business

- Contract Amendment #1 with Weaver Consultants Group and Indiana Finance Authority: 700 West Beardsley Avenue
- Uniform Conflict of Interest Disclosure: Kenneth Hunt
- Anti-Gun Violence Campaign- Basketball Tournament Contracts
- PSA Zimmerman/Volk Associates, Inc.: Analysis of Residential Market Potential
- PSA Smart Incentives: Economic Development Incentives
- PSA Renfro/McCarty: Concord Mall

VIII. Use & Event Permits


- Cunenguez Birthday Party 10/16- Special Exception from Noise
- Navarro Baptism 10/16- Temporary Street Closure, Special Exception from Noise
- Bottles & Throttles Jack Daniels Elkhart Indian Motorcycle 10/22- Special Exception from Noise
- Ugly Sweater Run 12/4- ESS, Temporary Street Closures, Plaza Sign, Public Assembly
- Halloween Skate Bash 10/23- EMS, Public Assembly
- United in Color Peace Rally 10/23/21 Roosevelt Park Public Assembly, Special Exception from Noise, EPD

IX. Public Participation

X. Adjournment

Board of Public Works
CLAIM AND ALLOWANCE DOCKET

I HEREBY CERTIFY THAT EACH OF THE ABOVE LISTED VOUCHERS AND INVOICES OR BILLS ATTACHED THERETO ARE TRUE AND CORRECT AND I HAVE AUDITED SAME IN ACCORDANCE WITH IC 5-11-10-1.6. I ALSO HEREBY CERTIFY THAT THESE VOUCHERS AND INVOICES REPRESENT GOODS AND/OR SERVICES THAT ARE FOR THE BENEFIT OF THE CITY OF ELKHART AND THAT APPROPRIATIONS FOR THESE EXPENDITURES HAVE BEEN DULY MADE OR OTHERWISE AUTHORIZED BY THE CITY COUNCIL AND OTHER APPROPRIATE AUTHORITY.

October 14th, 2021 
JAMIE ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF \$1,676,368.14, AS LISTED ON THE REGISTER ATTACHED HERETO CONSISTING OF 109 PAGES, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 19H DAY OF OCTOBER 2021 BY:

PRESIDENT _____
MICHAEL C. MACHLAN

VICE PRESIDENT _____
CHAD CRABTREE

MEMBER _____
JAMIE ARCE

MEMBER _____
RON DAVIS

MEMBER _____
ROSE RIVERA

ORIGINAL COPY MUST BE RETAINED IN THE CONTROLLER'S OFFICE

Board of Public Works

Accounts Payable Summary
October 19, 2021

Individual Claims Over \$25,000 each:

Fund	Vendor	Description	Amount
203	PAVEMENT SOLUTIONS	CRACK SEALING	124,946.70
203	RIETH-RILEY CONSTRUCTION	PAVING	28,253.76
502	SELGE CONSTRUCTION	S MAIN STREET SCAPHE PH II	248,027.78
101	BENCHMARK HOLD CO	BENCHMARK SOFTWARE - POLICE	25,622.00
402	DELL MARKETING	ANNUAL RENEWAL O256 LICENSE	49,966.40
444	GREATER ELKHART CHAMBER OF COMMERCE	PARTNERSHIP GRANT	50,000.00
433	MOTOROLA SOLUTIONS	TAHOE RADIOS - FIRE	36,244.52
Total Claims over \$25,000			<u>563,061.16</u>
Regular Claims under \$25,000:			<u>549,319.05</u>
Total Regular Departmental Claims:			<u>1,112,380.21</u>

Pre-Approved Claims Over \$25,000 each: (a)

606	INDIANA MICHIGAN POWER	PWU ELECTRIC	27,697.22
101	INDIANA MICHIGAN POWER	CITY HALL ELECTRIC	33,966.98
526	RELIANCE STANDARD LIFE	LIFE INSURANCE PREMIUM SEP 2021	27,283.34
704	INDIANA PUBLIC RETIREMENT	INPRS-CIVIL	106,061.76
704	INDIANA PUBLIC RETIREMENT	INPRS-FIRE	91,183.31
704	INDIANA PUBLIC RETIREMENT	INPRS-POLICE	83,380.23
Total Pre-Approved over \$25,000:			<u>369,572.84</u>
Regular Claims under \$25,000:			<u>194,415.09</u>
Total Pre-Approved Claims:			<u>563,987.93</u>

Payroll and Pension Payments:

Fire & Police Pension
Bi-weekly Payroll

Total Payroll: -

Total All Claims, Internal Payments, and Payroll: \$ 1,676,368.14

(a) Claims with rigid payment deadlines. As provided for in the Elkhart Municipal Code §33.415, certain payments may be made prior to review and approval by the Board of Public Works. Typically such payments include utility bills, credit card bills, control services, association dues, employer-paid benefits, training, and employee reimbursements. Unusual items in excess of \$25,000 are noted in detail.

(b) Movement of monies between funds via check issuance and re-deposit. Done primarily for transfer of employer share of health insurance premiums and basic term life insurance premiums (100% employer paid) from various budgeted funds into the Group Insurance Fund (526) where it is combined with the employee share of health insurance premiums to be paid to the provider.

BOARD OF PUBLIC WORKS
Tuesday, October 05, 2021

President Mike Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, October 05, 2021. The Clerk of the Board Nancy Wilson called the roll. Jamie Arce, Rose Rivera, and Ron Davis attended in person. Chad Crabtree was absent.

1. Approve Agenda

A motion was made by Rose Rivera and seconded by Ron Davis to approve the agenda. On motion by Rose Rivera seconded by Ron Davis and carried 4-0 the agenda was amended by adding a Contract for Lerner HVAC. On motion by Rose Rivera seconded by Jamie Arce and carried 4-0 the agenda was amended by adding a PSA Amendment with DLZ for the Beck Drive Traffic Impact Study. The amended agenda carried 4-0.

2. Claims

On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the Board approved the Claim and Allowance Docket in the amount of \$4,345,624.41 consisting of 108 pages as prepared on September 30, 2021 at 4:08 p.m.

3. Minutes Regular Meeting September 21, 2021

On motion by Rose Rivera, seconded by Jamie Arce and carried 3-0-1 abstention, the minutes from September 21, 2021 were adopted.

4. Engineering

(A.) Administration

PSA Amendment #2 with American Structurepoint for Public Safety Building

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the Professional Services Agreement Amendment #2 between the City of Elkhart and American Structurepoint for the Public Safety Buildings for an additional \$693,387.00.

Engagement Letter with Katz, Korin, & Cunningham PC for Oakland Tank Study

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved an Engagement Letter with Katz, Korin, & Cunningham PC for legal services on the Oakland Tank Project.

Change Order #1 Jackson Blvd. Bridge Over the Elkhart River Bid #20-40

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 for the Jackson Blvd. Bridge over the Elkhart River project, Bid #20-40, for an increase of \$35,492.94, bringing the contract price to \$1,503,684.19.

Lerner HVAC Replacement

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board authorized the City Engineer to enter into a contract to begin design services on the Lerner Theater HVAC system, then bring it back to the Board of Works for ratification.

(B.) Right-of-Way

Amendment #1 PSA with DLZ Indiana LLC for Beck Drive Traffic Impact Study

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved Amendment #1 with DLZ Indiana, LLC for the Beck Drive Industrial Area Traffic Impact Study, for an increase of \$9,700.00, bringing the total not to exceed amount to \$35,300.00.

BOARD OF PUBLIC WORKS
Tuesday, October 5, 2021

Stop Sign Requests: Greenleaf Blvd. and Bay St., Greenleaf Blvd. and Broadmoor, & Greenleaf Blvd. and Osolo Rd.

A motion was made by Rose Rivera and seconded by Jamie Arce to approve a three-way stop sign at the intersection of Greenleaf Blvd. and Bay St. Mike asked Ryan if the City is doing three stop signs. Jamie asked Ryan to give some background on what a Warrant A is, and the meaning behind the MUTCD. Mike Machlan said it is the Manual of Uniform Traffic Control Devices (MUTCD). Ryan said yes, Manual is the nationwide governance for the use of traffic ordinances such as stop signs, traffic lights, and other signage. Warrant analysis is to see if something is warranted. Typically, it is used for signals. There is also a stop sign warrant study. Ryan said he went through that process for all three intersections individually, and found out that all three warranted stop signs due to the high number of traffic, and some of the approaches were not clean. By not clean he meant sight distance was an issue. Mike said they stand on their own because of the configuration and the traffic count, and considering them together as a group would not change that analysis. Ryan responded the high number of traffic would still be the same considering it as a group, and each individual intersection is warranted as a whole. Mike said he recalled the accident is away from the stop signs near Marguerite. Ryan said we are a little bit west of that area. Ryan said safety is a concern. When you go east of Osolo there are no more sidewalks, and we were wanting to slow people and make them more aware of their surroundings. Jamie asked if Marguerite and Greenleaf is another potential stop sign. Ryan said Marguerite has less traffic than Osolo, Bay or Broadmoor. Mike understands speed is an issue and asked what the speed study shows. Mike asked if the study showed people going 80mph on Greenleaf, and Ryan said he did not recall a number that high. Jamie said he thought that was on Beardsley Ave., and that was another area Tory's group looked at. Jamie said if our intent is to slow down traffic, does it make sense to expand this further to Marguerite and Greenleaf after we see how this works. Ryan said the City is looking at some intersection improvements at Beardsley and Osolo. Mike added that he supports the stop signs. His scenic way home is Greenleaf. Just yesterday a kid on a skateboard on the middle of Greenleaf refused to get off. He asked Ryan to speak to the Police about that. Now, if this pushes traffic off Greenleaf and on to Bristol Street, will Bristol from Jeanwood to Johnson be effected. He asked Ryan to look at that. Ryan said they will look into that. Jamie asked about the timeline. Ryan said soon before the weather gets cold and the ground freezes. Mike said he was impressed with the warning signs on CR 17 about the paving project and delays that are coming. He said the City might want to consider a sign informing the Greenleaf travelers some changes are coming. Jamie echoed that and said it would be good to give people a heads up regarding the changes to the traffic pattern on Greenleaf. Mike asked if anyone on line or present wished to speak to this issue. Seeing no one he closed discussion and called for the vote. The motion carried 4-0. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved a three-way stop sign at the intersection of Greenleaf Blvd. and Broadmoor Dr. On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved a three-way stop sign at the intersection of Greenleaf Blvd. and Osolo Rd.

BOARD OF PUBLIC WORKS

Tuesday, October 5, 2021

5. Utilities

(A.) Administration

Administration

Wastewater Treatment Plant MRO for August 2021

On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the Board accepted and placed on file the Wastewater MRO for August 2021.

(B.) Regulatory Affairs

Request to Approve Occupational Safety and Health Compliance Audit

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the occupational safety and health compliance audit and development of environmental health and safety training matrix with Industrial Safety and Environmental Services for a total cost of \$7,170.00.

(C.) Environmental Compliance

FOG Variance Request for Bent Oak Golf Club, LLC (F2021-005)

For purposes of discussion, a motion was made by Rose Rivera and seconded by Jamie Arce to approve a FOG Variance for Bent Oak Golf Club, LLC. Megan Kolaczyk explained the variance to the Board. Bent Oak changed ownership earlier this year. Their initial plan was to have a menu with sandwiches. They want to add fried foods which changes things. They have a 300-gallon grease interceptor outside which they want to use. They are asking for a Category A sizing requirement variance. Staff does not support the request because they have plenty of room to install a properly sized interceptor. Jamie asked Megan to explain the point system for category "a" or "b". Megan said category "a" is 24 or more points, and when they added a fryer, it moved them from a "b" to an "a". Category "a" requires an 1,800-gallon interceptor, and they have a 300-gallon interceptor. Megan explained that the Ordinance requires a minimum of 1,000-gallon grease interceptor and a maximum of 2,000-gallon interceptor. There is a formula based system in one of the State codes that determines the size. The 1,000-gallons is an industry standard. Megan said they are very good to work with. She talked to 4 out of the 5 owners. Staff recommended annual review since they do not have a manhole. Ron Sumrak came forward to speak to the Board. He is one of the five owners. He thanked the Board for the opportunity for the variance. Bent Oak came under new management in the Spring. They are the last golf course in Elkhart. He said they were inundated with requests for french fries. Mike asked him if he spoke to Megan about monitoring. He said yes, and he studied the Ordinance. Mike explained they need visual monitoring. He said yes, they do understand and they did speak to Megan about that requirement. They are going to be a public course. Megan said she is confident they will communicate any changes in their services. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board amended the motion to include visual monitoring every year before February 15th. The amended motion carried 4-0.

6. New Business

SUGA Scholarship Award for Communications Center

On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the Board accepted a scholarship award in the amount of \$2,198.00 from the SunGard Users Group Board to cover the conference cost for two employees to attend a nationwide technology convention.

BOARD OF PUBLIC WORKS

Tuesday, October 5, 2021

Economic Development Partnership Grant for Greater Elkhart Chamber of Commerce

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the Economic Development Grant for the Greater Elkhart Chamber of Commerce for \$50,000.00. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the motion was amended not to exceed \$60,000.00 or the amount budgeted. The amended motion carried 4-0.

LIFEPAK CR2 AED Purchase- Elkhart Fire Department

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0 the Board approved the purchase of LIFEPAK CR2 AED's for the Fire Department in an amount not to exceed \$41,115.00.

Operative IQ Narcotics Tracking License

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved the contract with Operative IQ for the purchase of a Narcotic tracking program for the Elkhart Fire Department for a cost not to exceed \$4,360.00.

7. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board of Works adjourned at 10:12 a.m.

Mike Machlan, President

Attest: _____ Nancy Wilson, Clerk of the Board.



M E M O R A N D U M

DATE: October 13, 2021
TO: Board of Public Works
FROM: Tory Irwin, Director of Public Works *TI*
RE: **Lerner HVAC Replacement Design PSA with DLZ**

The Lerner's HVAC system is in various states of failure. Last night, October 4, the City Council appropriated \$500,000 of the \$1,000,000 to replace the HVAC system.

DLZ will be providing the investigation, analysis and design of the HVAC replacement. The will be done in two parts. The first part will consist of investigating the current HVAC system including electrical and zones, performing heating and load calculations, and an estimate. Once the first phase is completed, an amendment will be brought for the construction documents, admin and inspection.

This will be paid for using appropriated Civil City money.

It is requested the Board of Public Works:

Approve the Professional Service Agreement between the City and DLZ Indiana, LLC for the Lerner HVAC Replacement project, in an amount not to exceed \$52,000.



M E M O R A N D U M

DATE: October 12, 2021
TO: Board of Public Works
FROM: Edgar Moreno, Utility Engineer *EM*
RE: **Change Order Request #1: Calumet Ave Water Main Extension project – Bid #21-21**

Attached is change order request #1 for the Calumet Ave Water Main Extension project. This change order is for the changes to the project contract time with Niblock Excavating, Inc.

This change order to alter the contract time through the end of May 2022 is due to the shortage of water construction materials. Materials are anticipated to be prepared in February, thus we have accounted for shipping and construction time after February.

It is requested the Board of Public Works:

Approve Change Order #1 for the Calumet Ave Water Main Extension project, Bid #21-21, for an adjustment to the contract time through May 31, 2022.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. One
Dated 10/12/2021

Project: Calumet Ave Water Main Extension Contract No. 21-21

To: NIBLOCK EXCAVATING & ASPHALT
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By _____
President, Board of Public Works

Dated _____

Nature of Changes

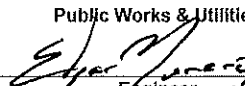
Adding time to contract due to delay in supply of materials. \$0.00

TOTAL \$ -

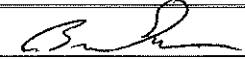
These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	<u>\$ 277,036.00</u>
Contract Price Prior to this Change Order	<u>\$ 277,036.00</u>
Net change resulting from this Change Order	<u>\$ -</u>
Current Contract Price including this Change Order	<u>\$ 277,036.00</u>
Current Contract Price % Change from Original Price	<u>0.0%</u>
Contract End Date prior to this Change Order	<u>10/18/2021</u> (Date)
Net Time change resulting from this Change Order	<u>225</u> (Days)
Current Contract Time including this Change Order	<u>5/31/2022</u> (Days or Time)

The above changes are approved:

Public Works & Utilities
BY: 
Engineer
10/13/21
DATE

The above changes are accepted:

BY: 
Contractor
10/13/21
DATE



M E M O R A N D U M

DATE: October 13, 2021
TO: Board of Public Works
FROM: Edgar Moreno, Utility Engineer *EM*
RE: **Change Order Request #1: S. 6th Street Sewer Extension project – Bid #21-23**

Attached is change order request #1 for the S. 6th Street Sewer Extension project. This change order is for the changes to the earthwork quantities by Niblock Excavating, Inc.

This change order to increase Niblock Excavating, Inc. contracts costs for quantity adjustments at a cost of \$27,575.00. During construction, pavement removal revealed that areas within the project limits had 12" of topsoil in the road that was to be restored. This subbase is not suitable for paving as it doesn't compact well and it retains too much water. The remedy is to undercoat the road to remove the existing sub-base and install and compact suitable subbase for paving.

This change order request is for an increase of \$27,575.00 to the current contract price of \$147,143.10. Approval of change order #1 would increase the current contract price to \$174,718.10 resulting in a 18.7% overall increase from the original contract price of \$147,143.10.

It is requested the Board of Public Works:

Approve Change Order #1 for the S. 6th Street Sewer Extension project, Bid #21-23, for an increase of \$27,575.00, bringing the Contract price to \$174,718.10.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. One
Dated 10/11/2021

Project: S. Sixth Street Sewer Extension

Contract No. 21-23

To: NIBLOCK EXCAVATING
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By _____
President, Board of Public Works

Dated _____

Nature of Changes

Undercut roadway 8" to remove bad sub-base for 310 CY @ \$25.00/CY	\$7,750.00
Furnish, Install, Compact 8" Sub-base = 610 Tons @ \$32.50/Ton	\$19,825.00

TOTAL \$ 27,575.00

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	\$ <u>147,143.10</u>
Contract Price Prior to this Change Order	\$ <u>147,143.10</u>
Net change resulting from this Change Order	\$ <u>27,575.00</u>
Current Contract Price including this Change Order	\$ <u>174,718.10</u>
Current Contract Price % Change from Original Price	<u>18.7%</u>
Contract Time prior to this Change Order	<u>NO CHANGE</u> (Days or Time)
Net Time change resulting from this Change Order	<u>NO CHANGE</u> (Days)
Current Contract Time including this Change Order	<u>NO CHANGE</u> (Days or Time)

The above changes are approved:

Public Works & Utilities
BY: [Signature]
Engineer
10/13/21
DATE

The above changes are accepted:

BY: [Signature]
Contractor
10/13/21
DATE



M E M O R A N D U M

DATE: October 13, 2021

TO: Board of Public Works

FROM: Ryan Clussman, Right-of-Way Engineer *RC*

RE: **Declaration of Emergency: Pedestrian Bridge Crossing Nappanee Street**

The pedestrian bridge crossing Nappanee street between Mary Daly Elementary School and West Side Middle School is showing its age. Two concrete slabs are spalling and the debris is falling into the travel lanes. In order to protect the public safety and welfare Public Works mobilized and closed down the two outer travel lanes of Nappanee Street until work could be done to repair the bridge.

The bridge was inspected in the field by City staff and a representative from DLZ to give some structural knowledge. The bridge was deemed structurally sound but still hazardous to the public due to the spalling concrete. It was deemed that the most efficient and cost-effective repair method was to remove any excess debris and seal the concrete with an epoxy sealant. _____ was selected to perform the work after 3 requests were sent out. They have performed work for the City in the past and are a responsive and responsible contractor.

It is recommended the Board of Public Works:

Approves the declaration of emergency and the quote for \$ _____ for the work to be done by _____.



M E M O R A N D U M

DATE: October 01, 2021

TO: Board of Public Works

FROM: Ryan Clussman, Right-of-Way Engineer *RC*

RE: **Change Order Request #1 and Final: South Curb Ramp project – Bid #21-08**

Attached is change order request #1 and final for the South Curb Ramp project. This change order is for an increase in quantities for the work done by Rieth-Riley Construction Co., Inc.

This change order is for an addition to the final quantities.

This change order request is for an increase of \$600.25 to the current contract price of \$88,600.00. Approval of change order #1 and final would increase the current contract price to \$89,200.25, resulting in a 0.7% increase from the original contract price of \$88,600.00.

It is requested the Board of Public Works:

approve Change Order #1 and final and release all retainage for the South Curb Ramp project, Bid #21-08, for an increase of \$600.25, bringing the final Contract price to \$89,200.25.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. First & Final
Dated 9/20/2021

Project: South Curb Ramp Project

Contract No. 21-08

To: RIETH-RILEY CONSTRUCTION CO., INC.
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By _____
President, Board of Public Works

Dated _____

Nature of Changes

Increased quantities in order to achieve compliant ramp slopes. \$600.25

TOTAL \$ **600.25**

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	\$ 88,600.00
Contract Price Prior to this Change Order	\$ 88,600.00
Net change resulting from this Change Order	\$ 600.25
Current Contract Price including this Change Order	\$ 89,200.25
Current Contract Price % Change from Original Price	0.7%
Contract Time prior to this Change Order	NO CHANGE (Days or Time)
Net Time change resulting from this Change Order	NO CHANGE (Days)
Current Contract Time including this Change Order	NO CHANGE (Days or Time)

The above changes are approved:

Public Works & Utilities
BY: Ryan H. Clouston
Engineer/
9/30/21
DATE

The above changes are accepted:

BY: Drew Snodderly
Contractor
9/29/2021
DATE



M E M O R A N D U M

DATE: October 01, 2021

TO: Board of Public Works

FROM: Ryan Clussman, Right-of-Way Engineer *RC*

RE: **Change Order Request #1 and Final: North Curb Ramp project – Bid #21-07**

Attached is change order request #1 and final for the North Curb Ramp project. This change order is for a reduction in quantities for the work done by Rieth-Riley Construction Co., Inc.

This change order is for a reduction to the final quantities.

This change order request is for a decrease of \$5,841.45 to the current contract price of \$88,600.00. Approval of change order #1 and final would decrease the current contract price to \$82,758.55, resulting in a 6.6% decrease from the original contract price of \$88,600.00.

It is requested the Board of Public Works:

approve Change Order #1 and final and release all retainage for the North Curb Ramp project, Bid #21-07, for a decrease of \$5,841.45, bringing the final Contract price to \$82,758.55.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No.
Dated

First and Final
9/20/2021

Project: North Curb Ramp Project

Contract No. 21-07

To: RIETH-RILEY CONSTRUCTION CO., INC.
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By _____
President, Board of Public Works

Dated _____

Nature of Changes

Reduced quantities from original estimate (\$5,841.45)

TOTAL \$ (5,841.45)

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	<u>\$ 88,600.00</u>
Contract Price Prior to this Change Order	<u>\$ 88,600.00</u>
Net change resulting from this Change Order	<u>\$ (5,841.45)</u>
Current Contract Price including this Change Order	<u>\$ 82,758.55</u>
Current Contract Price % Change from Original Price	<u>-6.6%</u>
Contract Time prior to this Change Order	<u>NO CHANGE</u> (Days or Time)
Net Time change resulting from this Change Order	<u>NO CHANGE</u> (Days)
Current Contract Time including this Change Order	<u>NO CHANGE</u> (Days or Time)

The above changes are approved:

Public Works & Utilities
BY: Ryan W. Anderson
Engineer/
9/30/21
DATE

The above changes are accepted:

BY: Drew Snodgrass
Contractor
9/29/2021
DATE





M E M O R A N D U M

DATE: October 19, 2021
TO: Board of Public Works
FROM: Joe Foy, Stormwater Manager 
RE: **Indemnification Agreement with 1127 Miles Ave, LLC**

Engineering requests approval to enter into the attached License, General Release and Indemnification Agreement with 1127 Miles Ave, LLC to allow them to discharge the collected stormwater runoff from 1147 N. Michigan Street into the City's existing storm sewer. This runoff will discharge through a water quality device before entering the City's storm sewer at Randolph Street and vacated Ward Street. As part of this agreement, 1127 Miles Ave will also be required to purchase indemnity-liability insurance as requested by the Legal Department

The Legal Department has reviewed and approved this document.

Engineering requests approval of the License, General Release and Indemnification Agreement with 1127 Miles Ave, LLC to discharge stormwater runoff into the City's storm sewer.

**LICENSE, GENERAL RELEASE AND
INDEMNIFICATION AGREEMENT**

This License, General Release and Indemnification Agreement (the "Agreement") is made and entered into this 29th day of Sept, 2021, by and between the City of Elkhart, Indiana, hereinafter referred to as "CITY", and 1127 Miles Ave, LLC, hereinafter referred to as "INDEMNOR".

RECITAL:

The City of Elkhart, through its Board of Public Works, grants to INDEMNOR a license to use the City's Separate Storm Sewer System by discharging stormwater runoff from INDEMNOR's real property located at 1147 N Michigan Street, Elkhart, Indiana, to the City of Elkhart's storm sewer at a manhole located at the intersection of Randolph Street and vacated Ward Street, provided certain conditions are fulfilled by INDEMNOR including execution of this agreement with the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, the parties agree as follows:

1. INDEMNOR is hereby granted a license to connect to and discharge stormwater runoff into CITY'S Separate Storm Sewer System from his real Property located at 1147 N Michigan Street, more particularly described in attachment A.
2. INDEMNOR shall connect to CITY'S storm sewer manhole located at the intersection of Randolph Street and vacated Ward Street a single, thirty-six 36-inch separate storm sewer pipe, and discharge to CITY'S existing storm sewer one (1) fifty-four 54-inch separate storm sewer pipe that flows from a properly functioning water quality device, installed in accordance with the design, drawings, and specifications that are attached to this agreement as attachment B.
3. INDEMNOR agrees that all work done as part of this connection will meet or exceed the current version of "**Standard Specifications for Construction, City of Elkhart, IN**"
4. INDEMNOR shall indemnify, hold harmless, and defend CITY, its successors, representatives, departments, agencies, agents, employees, and assigns, (collectively, the "CITY") from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, or expense of whatsoever kind and nature, including attorney's fees, which CITY may suffer or incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss thereof, arising out of or in any manner connected with any activity and/or incidences authorized in Paragraph 1, and any activities or incidences incidental thereto, including but not limited to the discharge of pollutants from INDEMNOR's property into CITY'S Separate Storm Sewer System, and for which CITY may sustain or incur in connection with any litigation, investigation, or other expenditures incidental thereto, including any suit instituted by CITY to enforce the obligation of this agreement of indemnity. It is the intent of the parties hereto that INDEMNOR shall indemnify CITY under this indemnification clause to the fullest extent permitted by law.

5. INDEMNOR hereby releases and forever discharges CITY from any and all claims, demands, damages (compensatory and punitive), actions or causes of action, costs, loss of services and expenses of every kind and nature whatsoever, now existing or hereinafter arising out of or in any manner connected with any activity and/or incidence authorized at Paragraph 1, and/or any activities incidental thereto, including but not limited to the discharge of pollutants. INDEMNOR hereby declares and represents that it is understood and agreed that this instrument is intended to release CITY from any and all such liability, despite the indefinite nature thereof, and despite any unforeseen or unknown consequences of the circumstances described in this release. CITY acknowledges and agrees that it possesses all rights and obligations granted to it as the sole owner of the CITY's Separate Storm Sewer System, which rights include, but are not limited to, the right to install, construct, operate, patrol, maintain, repair, review, supplement, remove and replace any separate storm sewer components, fixtures or facilities (the "CITY activities"). Notwithstanding any contrary provision, CITY agrees it shall be solely responsible for any and all CITY activities and shall hold harmless INDEMNOR from the performance of any such CITY activities in addition to any and all claims, demands, damages, (compensatory and/or punitive), actions or causes of action, costs, and expenses related thereto.

6. INDEMNITY-LIABILITY INSURANCE: Liability Insurance must be in effect at all times. A Certificate of Insurance shall be furnished to City naming the City as additional insured: INDEMNOR covenants and agrees to indemnify and save the City harmless from and against any and all claims for damages or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life in, upon, or about arising out of or in any manner connected with any activity and/or incidences authorized in Paragraph 1 or in any way connected with the Activity during the term of this License Agreement.

7. INDEMNOR covenants to provide on or before the commencement date of the term herein and keep in force during the term of this License Agreement, a comprehensive liability policy of insurance insuring the INDEMNOR and any designee of INDEMNOR against any liability whatsoever occasioned by accident on or about the Licensed Area, or any appurtenances thereto. Such policy is to be written by a good and solvent insurance company in the amount of One Million Dollars (\$1,000,000.00) combined single limit. The original policy or evidence thereof together with evidence of payment therefore, shall be delivered to City. INDEMNOR shall renew said policy not less than thirty (30) days prior to the expiration date thereof from time to time, and furnish said renewals and evidence of payment therefore to the City. Said policy shall provide that it cannot be modified or terminated without thirty (30) days written notice to the City.

8. INDEMNOR hereby represents that in agreeing to the terms of this Agreement, it has had the opportunity to consult an attorney, and that it does not rely upon any representation or advice from the CITY or any other person, persons, or representatives acting for or on behalf of the CITY.

9. This Agreement constitutes the entire agreement between the parties related to the matters addressed herein and shall be interpreted in accordance with the laws of the State of Indiana.

10. INDEMNOR hereby agrees to pay the reasonable attorney's fees incurred by the CITY to enforce the terms of this Agreement.

11. CITY retains the right to immediately suspend the license granted hereunder and stop the discharge to CITY'S Separate Storm Sewer System when such suspension is necessary, in the opinion of CITY, in order to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes CITY to violate any condition of CITY'S National Pollutant Discharge Elimination System (NPDES) Stormwater Permit ("Illicit Discharge"). A detailed written statement submitted by the INDEMNOR describing the cause(s) of the Illicit Discharge and the measures taken to eliminate the current Illicit Discharge and prevent future such occurrences shall be submitted to CITY within 15 calendar days of written notification of the license suspension to preserve INDEMNOR'S right to reinstate the license granted herein. CITY shall promptly reinstate the license granted herein upon proof of the elimination of the Illicit Discharge. CITY shall also reinstate the license granted herein so long as INDEMNOR is not engaged in continuing conduct or violation which presents an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes CITY to violate any condition of CITY'S National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

12. The parties agree to cooperate with the other and to sign, execute and deliver, or cause others to do so, all such other documents and instruments and do, or cause to be done, all such other acts and things as may be reasonably requested in order to effect the intent and purpose of this Agreement, without further consideration.

13. Either party shall have the right to record this Agreement with the Office of the Recorder of Elkhart County / Register of Deeds of Elkhart County.

14. Any addendum attached hereto and signed by the parties shall be deemed a part hereof. This Agreement expresses the entire agreement of the parties and supersedes any and all previous agreements between them with regard to the parties. There are no other understandings, oral or written, which in any way alter or enlarge the terms hereof, and there no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any modification of this Agreement will be effective only if it is in writing and signed by the parties hereto.

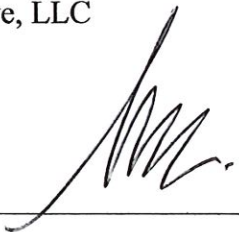
15. In any legal action involving this Agreement, the parties agree to litigate all disputes in Elkhart County, Indiana. The parties consent to jurisdiction and preferred venue in the courts of general jurisdiction of Elkhart County, Indiana for all purposes in such action and agree further that the venue of such action shall not be changed from such County. The parties irrevocably consent to the subject matter and personal jurisdiction of such courts and waive all rights to a trial by jury as to all or any part of such litigation. Each party also agrees to accept service of process in such action, by certified mail, return receipt requested, at the address to which notices are to be directed pursuant to this Agreement and to acknowledge the receipt thereof in writing.

16. INDEMNOR represents that it is authorized to execute this Agreement on behalf of the owner of the Property referred to herein, and that said authorization carries with it the power to bind the owner of said Property to all of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereby execute this License, General Release and Indemnification Agreement on the date first above written.

1127 Miles Ave, LLC

CITY OF ELKHART, INDIANA,
by its BOARD OF PUBLIC
WORKS

BY:  _____

BY: _____

ITS: Manager _____

ITS: _____

ATTEST:

Nancy Wilson

Approved as to form and legality



EXHIBIT "A"**LEGAL DESCRIPTION STORMWATER ACCESS EASEMENT**

A PART OF LOT NUMBERED 1A AS SAID LOT IS KNOWN AND DESIGNATED ON THE RECORD PLAT OF THE REPLAT OF LOT 1-AUTO DRIVEAWAY SUBDIVISION AS RECORDED IN PLAT BOOK 39, PAGE 74, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA AND A PART OF LOT NUMBERED TWO OF THE RECORD PLAT OF THE AUTO DRIVEAWAY SUBDIVISION AS RECORDED IN PLAT BOOK 39, PAGE 49, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; SAID SUBDIVISIONS BEING LOCATED IN THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 5 EAST, CITY OF ELKHART, OSOLO TOWNSHIP, ELKHART COUNTY, INDIANA; SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT NUMBERED 1A OF THE REPLAT OF LOT 1-AUTO DRIVEAWAY SUBDIVISION; THENCE NORTH 89 DEGREES 44 MINUTES 27 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1A, A DISTANCE OF 529.34 TO A POINT LOCATED ON THE CENTERLINE OF VACATED WARD STREET (60 FOOT RIGHT-OF-WAY); THENCE NORTH 89 DEGREES 45 MINUTES 43 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 30.00 FEET TO A POINT LOCATED ON THE WEST RIGHT-OF-WAY LINE OF SAID VACATED STREET; THENCE NORTH 0 DEGREES 15 MINUTES 23 SECONDS WEST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 35.00 FEET; THENCE SOUTH 89 DEGREES 45 MINUTES 43 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1A, A DISTANCE OF 30.31 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 27 SECONDS EAST PARALLEL WITH SAID SOUTH LINE, 529.32 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1A (BEING THE WEST LINE OF LOT NUMBER 2 OF THE AUTO DRIVEAWAY SUBDIVISION); THENCE SOUTH 89 DEGREES 44 MINUTES 27 SECONDS EAST, PARALLEL WITH THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 25.02 FEET; THENCE SOUTH 01 DEGREE 15 MINUTES 33 SECONDS WEST, A DISTANCE OF 35.0 FEET TO A POINT LOCATED ON THE SOUTH LINE OF SAID LOT 2; THENCE NORTH 89 DEGREES 44 MINUTES 27 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.47 ACRE, MORE LESS.

CROSS REFERENCES

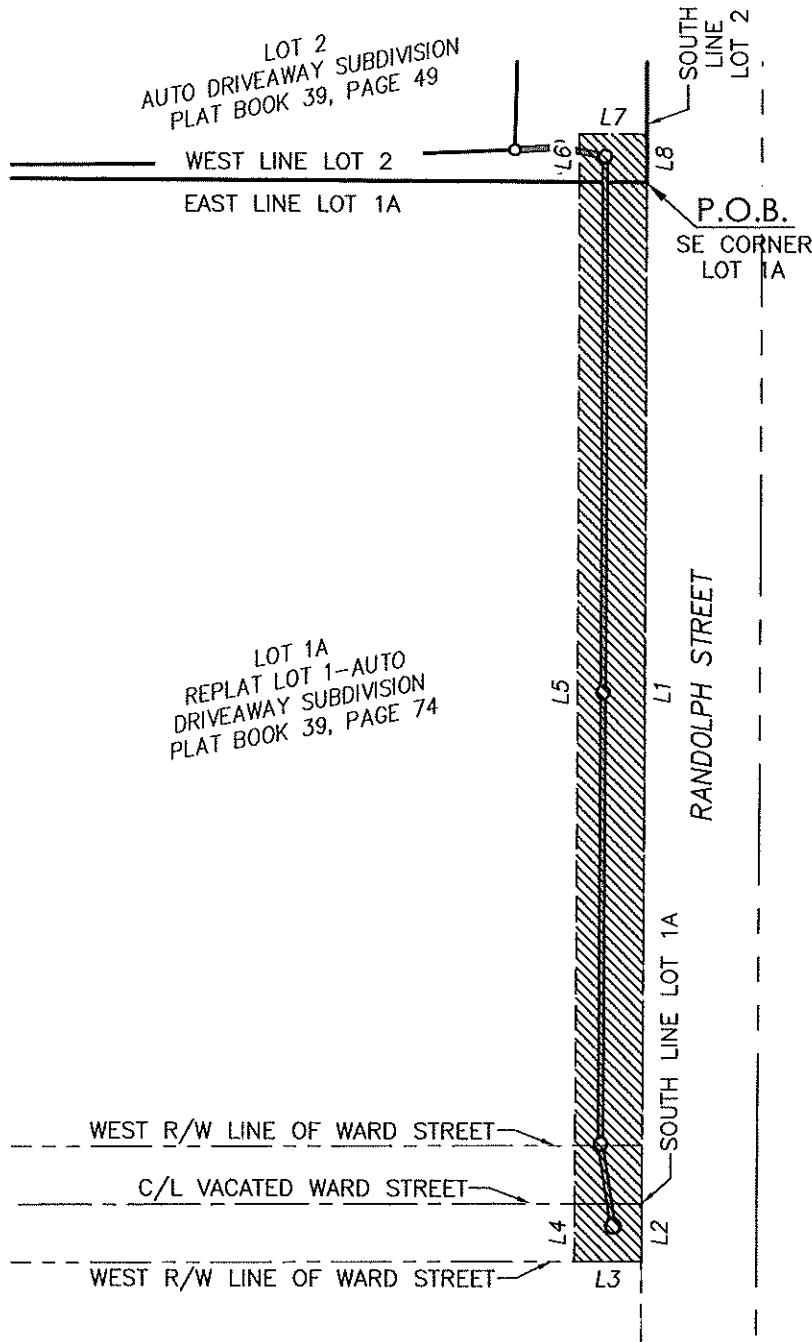
PLAT BOOK 39, PAGE 74 (REPLAT OF LOT 1A-AUTO DRIVEAWAY SUBDIVISION)

PLAT BOOK 39, PAGE 49 (AUTO DRIVEAWAY SUBDIVISION)

LAST DEEDS OF RECORD

LOT NUMBER 2 OF AUTO DRIVEAWAY SUBDIVISION: 2021-21207 (FEED THE CHILDREN, INC. TO 1127 MILES AVE., LLC)

LOT 1A OF REPLAT OF LOT 1-AUTO DRIVEAWAY SUBDIVISION: 2021-04089 (DRIVEAWAY FRANCHISE SYSTEMS, LLC TO AUTO DRIVEAWAY PROPERTIES LLC)



Line Table

Line #	Bearing	Length
L1	N89°44'27"W	529.34'
L2	N89°45'43"W	30.00'
L3	N0°15'23"W	35.00'
L4	S89°45'43"E	30.31'
L5	S89°44'27"E	529.32'
L6	S89°44'27"E	25.02'
L7	S0°15'33"W	35.00'
L8	N89°44'27"W	25.00'



ABONMARCHE

303 River Race Drive
 Unit 206
 Goshen, IN 46526
 T 574.533.9913
 F 574.533.9911

abonmarche.com
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Battle Creek
 Benton Harbor
 Lafayette
 South Bend
 Ft. Wayne

South Bend
 Hobart
 South Haven
 Valparaiso

Engineering · Architecture · Land Surveying

EXHIBIT "B"

STORMWATER ACCESS EASEMENT

B.O.W. SUMMARY
October 19, 2021

Revocable Permits:

#6496, Property Owner: Jeff Gouker
Property: 620 Noble St.
Permit Holder: Fire Bin Dumpsters
Placing dumpster in the street in front of the house

#6497, Property Owner: RETA, Inc
Property: 116 W. Jackson Blvd.
Permit Holder: DJ Construction
Temporary closure of one lane of traffic

#6498, Property Owner: Norfolk Southern
Property: Lusher Ave. between S. Main St. and Sterling Ave.
Permit Holder: Norfolk Southern/Scott Carpenter
Temporary road closure

#6499, Property Owner: Victory Driveway
Property: 1815 CR 6
Permit Holder: Hill Excavation
Temporary road closure

Driveway Permit:

#5007, Owner: Victory Driveway
1815 CR 6 E
Contractor: Ancon Construction
\$2,000.00 bond by contractor

#5026, Owner: Ramiro Robles
403 E. Lusher Ave.
Contractor: Owner
\$600.00 bond by owner

Release of Bond:

#5007, Contractor: Ancon Construction
Property: 1815 CR 6 E

#5026, Owner: Ramiro Robles
Property: 403 E. Lusher Ave.

Sewer Assessment Application:

Rohit Kunder
1605 Jeanwood Dr.
Elkhart, IN 46514
Property: 1605 Jeanwood Dr.
Paid in full, \$5,700.00

Vasco Realty Inc
PO Box 1742
Elkhart, IN 46515
Property: 1131 Davis St.
Paid in full, \$5,335.00

Anthony Datena
57482 Decamp Blvd.
Elkhart, IN 46516
Property: 516 CR 3
Paid in full, \$7,500.00

William Smart
56864 Pinecrest Dr.
Elkhart, IN 46516
Property: 2823 Edwardsburg Ave.
Paid in full, \$6,535.00

Water Assessment Application:

Edward J Smoker
110 Bowers Ct
Elkhart, IN 46516
Property: 3122 Burr Oak Ave.
Paid in full, \$690.00

DLR Realty/Amy Ritchie
58320 Crystal Springs Dr.
Goshen, IN 46528
Property: 23732 US 33
Paid in full, \$345.00

Mike McCuen
2111 Miller St
Elkhart, IN 46514
Property: 2111 Miller St.
Paid 20% down, \$256.44



M E M O R A N D U M

Date October 12, 2012
To Mike Machlan, Board of Works President
From Laura Kolo, Utility Services Manager *LK*
RE Request to Engage – Waggoner Irwin Scheele

Elkhart Public Works is respectfully requesting the Board of Works to contract Waggoner Irwin Scheele to conduct certain job classification reviews and assist with preparing and updating certain job descriptions.

Funding has been appropriated in the 2021 budget and the contract has been approved by Legal.

Waggoner • Irwin • Scheele
& Associates INC

OFFER OF CONSULTING SERVICES

TO: Laura Kolo
Utility Services Manager
Elkhart Public Works and Utilities

FROM: Kent Irwin
Addie Rooker

DATE: October 12, 2021

RE: Job Classification and Compensation System Maintenance

As requested, attached you will find a Letter of Engagement consulting services to provide on-going job class maintenance as an additionally requested service on an on-call, as needed basis. Job classification and compensation system maintenance includes:

- Providing consultation on the administration of the job classification and compensation system.
- Preparing new job descriptions or updating existing job descriptions.
- Conducting job classification reviews, including point-factoring positions and providing a report of findings and recommendations.
- Conducting review of wage and hour compliance.

All maintenance fees are billed at the hourly rates listed in the Letter of Engagement.

At this time, it is requested that we review three (3) existing Maintenance positions and prepare job descriptions and classify three (3) new positions. The fees to update the job descriptions, prepare new job descriptions, point-factor and classify the positions, and prepare an assessment report of findings and recommendations shall not exceed \$2,800.00.

If the Letter of Engagement meets with your approval, please return a signed copy to me.

We are ready to begin upon your approval.

LETTER OF ENGAGEMENT

ELKHART PUBLIC WORKS AND UTILITIES

JOB CLASSIFICATION AND COMPENSATION SYSTEM MAINTENANCE

The Elkhart Public Works and Utilities (EPWU) engages Waggoner, Irwin, Scheele & Associates Inc. (WIS) to provide the following professional consulting services:

1. Providing Consultation

Consultants will provide consultation to (EPWU) Administrators in the administration of the job classification and compensation system.

2. Preparing Job Descriptions

Consultants will prepare job descriptions for positions for newly created position where a job description does not exist and/or updating job descriptions as needed.

3. Job Classification Reviews

Consultants will review requests for job classification and compensation reviews, including point-factoring of positions, classifications, the impact of reclassifications on the system, and the fiscal impact. Consultants will prepare a report of job review findings and recommendations.

4. Wage and Hour Compliance

Consultants will review wage and hour compliance questions involving the Fair Labor Standards Act and Indiana Wage Statutes and provide consultation in such matters.

5. Other Requested Consulting Services

Consultants will provide other requested consulting services, including, but not limited to, salary analysis, preparing policies, expert witness research and testimony, and on-site meetings.

FEES

Fees will be billed on an hourly basis, plus expense reimbursement.

Principal:	\$125.00
Sr. Consultant:	\$ 95.00
Consultant:	\$ 45.00

EXPENSE REIMBURSEMENT

Expense reimbursement will be billed using the following rates:

Postage/Printing:	per receipts
Lodging:	per receipts
Mileage:	\$0.46 per mile
Per Diem:	\$24.00 per day

FOR THE ELKHART PUBLIC WORKS AND UTILITIES:

_____ **DATE:** _____

FOR

WAGGONER, IRWIN, SCHEELE & ASSOCIATES INC.
118 South Franklin Street
Muncie, Indiana 47305

_____ **DATE:** _____

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services



Public Works &
Utilities Department

Administration, Engineering
& Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

Memo To: City of Elkhart Board of Public Works
From: Laura Kolo, Environmental Resources Manager
Date : October 18th, 2021
Subject: Water Utility Monthly Report of Operation for September 2021

Pumpage Information

Well Field Site Name	Total Monthly Flow (MG)	Average Daily Flow (MG)	Maximum Daily Flow (MG)	Minimum Daily Flow (MG)
North Main St.	198.646	6.622	7.312	5.504
Northwest	88.201	2.940	3.672	1.877
South	43.118	1.437	2.220	0.891
Total	329.965	10.999	Highest Total Pumpage 9/4/21 – 11.361 MG	
September 2020 Total	289.173	9.639	Lowest Total Pumpage 9/12/21 – 8.351 MG	

Finished Water Quality Information (Monthly Averages)

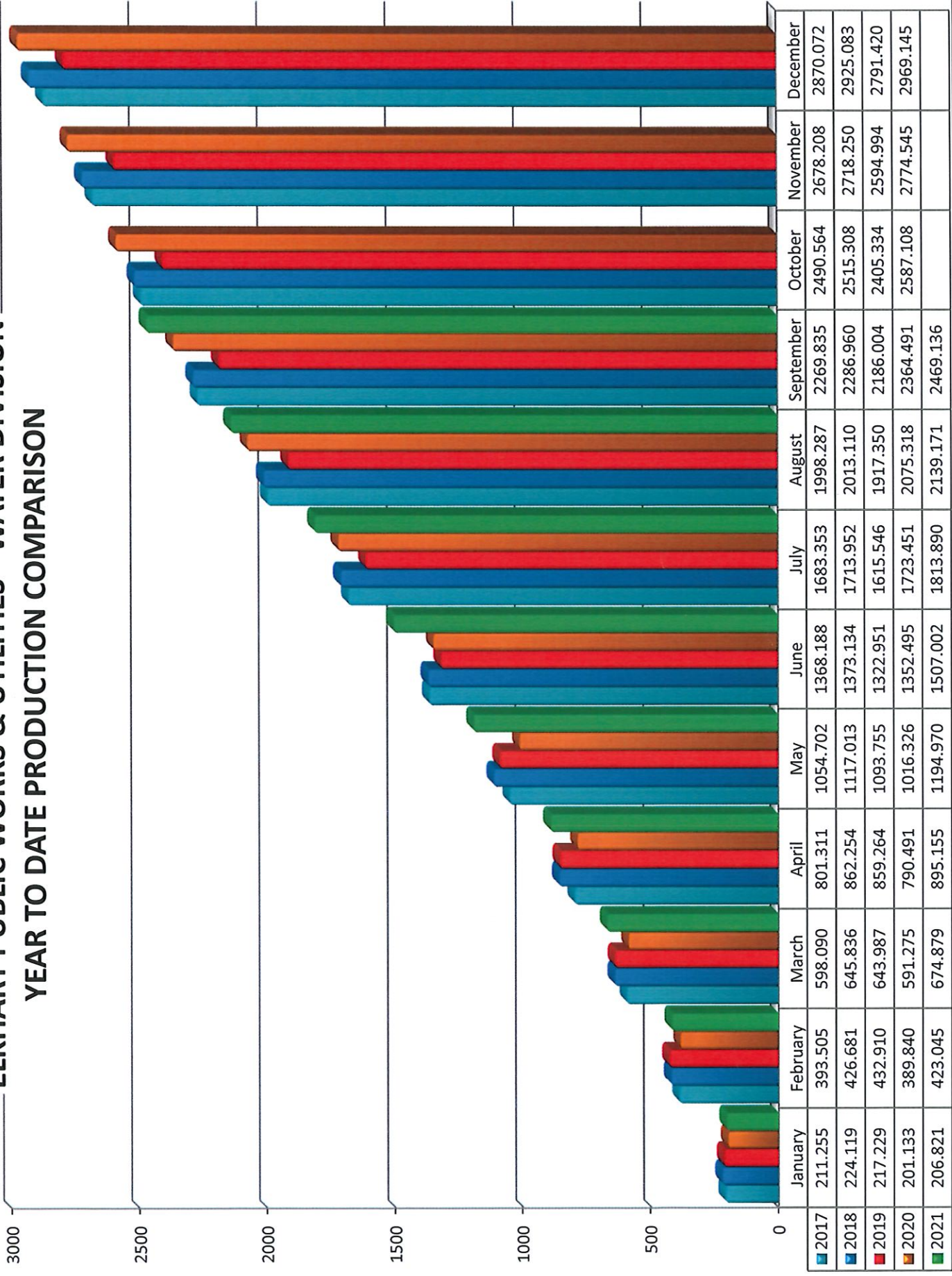
Well Field Site Name	Iron (mg/L)	Manganese (mg/L)	Fluoride (mg/L)	Total Chlorine (mg/L)	Orthophosphate (mg/L)
North Main St.	0.033	0.043	0.99	1.21	1.03
Northwest	0.077	0.040	0.86	1.12	1.02
South	0.620	0.083	0.94	1.38	1.15
Secondary Standard	0.300	0.050			
Desired Residual			0.8 – 1.0	0.9 to 1.5	0.5 – 1.0

" I certify under penalty of law by this signature, that this document was prepared by me or under my direction and the information submitted, is to the best of my knowledge and belief, true, accurate and complete. I am also aware that there are significant penalties for submitting false information."

Report, charts, and MROs approved by Laura Kolo
LK/trb

cert. # 024184

ELKHART PUBLIC WORKS & UTILITIES - WATER DIVISION YEAR TO DATE PRODUCTION COMPARISON





City of Elkhart
Public Works and Utilities

To: Members of the Elkhart Board of Public Works
From: Lynn Brabec, Environmental Compliance Manager *LB*
Date: October 13, 2021
Re: Notice of Violation with Compliance Order:
Permit #2002-01 Swift Prepared Foods

Swift Prepared Foods (Swift, FKA Plumrose), 24402 CR 45, Elkhart, IN is a hog belly processing facility (bacon manufacturer).

Swift submitted a self-monitoring report indicating a Fats, Oils and Grease effluent violation for a sample collected on May 26, 2021 at the end of pipe. A follow-up sample was collected by Swift in August and analyzed for FOG; the table below summarizes the results showing that the facility returned to compliance for that parameter.

This presents an additional violation as the Wastewater Utility Use Ordinance No. 5746, as amended states in Section 6.3.1 (a) *"The SIU shall repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 calendar days after notification unless a shorter time is specified by the Director."* Resampling was performed 8/26/2021 surpassing the 30 calendar day requirement.

The Enforcement Response Plan, Section 9.1.11 (a) *"Discharging wastewater containing parameters in excess of established limits per parameter."* Additionally, the Wastewater Utility Use Ordinance No. 5746, as amended states in Section 9.1 Effluent Limitation Penalties: *"Any User, who is found to have violated any Effluent Limitation set forth in this Ordinance, contained in the User's Industrial Wastewater Discharge Permit or found to have caused the POTW to violate any Effluent Limitation in the POTW's permit shall be fined no more than \$2,500.00 for each offense "*. The written response from Swift is attached for your review.

Each day on which a violation occurs or continues to occur may be deemed as a separate and distinct offense. In accordance with the Enforcement Response Plan Penalty Matrix the penalties may be assessed as follows:

May 2021: FOG (1 st Occurrence) \$100.00 x 3	\$300.00
May 2021: pH (1 st Occurrence) \$100.00	\$100.00
August 2021: Not resampling and reporting within required timeframe	\$ 50.00

Total Recommended Penalty

\$450.00

Penalty Assessed _____

Sample Type	Sample Date	Fats, Oil & Grease (mg/L)	Fats, Oil & Grease (mg/L)	Fats, Oil & Grease (mg/L)	pH (S.U.)
Permit Limits	----	200	200	200	5.0-10.0
Self-Monitoring End of Pipe	5/26/2021	418	949	830	12.03
Self-Monitoring End of Pipe	August	27	20.8	112	No data

Approved this 19th day of October, 2021

Michael Machlan, President

Date

Jamie Arce, Vice-President

Date

Chad Crabtree

Date

Ronnie Davis

Date

Rosa Rivera

Date



City of Elkhart
Public Works & Utilities

To: Members of the Board of Public Works
 From: Lynn Brabec, Environmental Compliance Manager *LB*
 Date: October 8, 2021
 Re: Notice of Violation: 25% Rule Violation – SUBWAY, 2525 Toledo Rd, B1 (F2015-317)

During a renewal inspection on 09/07/2021 at SUBWAY, 2525 Toledo Rd, B1, the grease trap was found to be in violation of the 25% Rule as defined in Ordinance No. 5434 as amended Section 5.11 and the Best Management Practices outlined in the Elkhart Public Works and Utilities Guide to Wastewater Utility Policies Section 15.6.1. This is the first 25% Rule Violation within a year. The Penalty Matrices recommends assessing a total penalty of \$100.

Violation #1: Failure to operate or maintain FOG control device in proper working order (Ord. No. 5434 as amended)

Violation Date & FOG Amount	Staff Recommendation:*	Met all requirements outlined in Notice of Violation? Requirements included submission of written response, signed certification statement	Additional Violation?
09/07/2021 100%	\$100	Yes	No

The Penalty Matrices recommend the Board assess the following penalty:

Location:	Date of Violation:	Penalty Matrices Recommendation:	BOW Assessed Penalty:
SUBWAY 2525 Toledo Rd, B1	09/07/2021	\$100	\$

Action taken by Board of Public Works: _____ Penalty: \$ _____

Approved this _____ of _____ 2021.

_____ Michael Machlan	_____ Date
_____ Chad Crabtree	_____ Date
_____ Jamie Arce	_____ Date
_____ Ronnie Davis	_____ Date
_____ Rose Rivera	_____ Date

Additional notes or requirements from the Board of Public Works:

*According to the "FSE FOG Penalty Guideline Table" contained in the Elkhart Public Works and Utilities "Guide to Wastewater Utility Policies", July 2019 revision, the following penalty is recommended for the second offense (within a year) of the 25% Rule:

Offense	First offense	Second offense	Third offense	Fourth & subsequent offense(s)
15.9.3 Failure to operate or maintain FOG control device in proper working order (Ord. No. 5285 as amended)	\$100	\$200	\$250	\$300



City of Elkhart
Public Works and Utilities

To: Members of the Elkhart Board of Public Works
From: Lynn Brabec, Environmental Compliance Manager
Date: October 12, 2021
Re: Notice of Violation with Compliance, Continental Industries, Permit #2003-01

Continental Industries, 100 W. Windsor Ave, Elkhart, IN. did not submit a self-monitoring report due by the 25th of the month following sample collection within the required time-frame. The samples were collected on May 25, 2021 making the report due on June 25, 2021. The report was finally received on July 30, 2021 making it one month late which puts the company in Significant Non-Compliance (SNC).

Continental's response to the NOV is attached for your reference.

40 CFR Part 403 and Elkhart's Wastewater Utility Use Ordinance, No. 5746 requires all industries in SNC be published in the newspaper once at the beginning of the next year.

The City of Elkhart Penalty Matrix contained in the Enforcement Response Plan, Section 9.3.5 "Failure to submit self-monitoring report, resulting in SNC" recommends the following penalty:

June 26, 2021 (1 st Occurrence)	\$100.00
Total Recommended Penalty	\$100.00

Penalty Assessed _____

Michael Machlan

Date

Chad Crabtree

Date

Jamie Arce

Date

Ronnie Davis

Date

Rose Rivera

Date



City of Elkhart
Public Works and Utilities

To: **Members of the Elkhart Board of Public Works**
From: **Lynn Brabec, Environmental Compliance Manager** *LB*
Date: **October 12, 2021**
Re: **Notice of Violation with Compliance Lippert Components #72**

Lippert Components #72, 2501 Jeanwood Drive, Elkhart, IN. did not submit a self-monitoring report due by the 25th of the month following sample collection within the required time-frame. The samples were collected on March 9, 2021 making the report due on April 25, 2021. The report was finally received on July 30, 2021 making it 3 months late which puts the company in Significant Non-Compliance (SNC).

Lippert #72's response to the NOV is attached for your reference.

40 CFR Part 403 and Elkhart's Wastewater Utility Use Ordinance, No. 5746 requires all industries in SNC be published in the newspaper once at the beginning of the next year.

The City of Elkhart Penalty Matrix contained in the Enforcement Response Plan, Section 9.3.5 "Failure to submit self-monitoring report, resulting in SNC" recommends the following penalty:

April 26, 2021 (1st Occurrence) \$100.00

Total Recommended Penalty \$100.00

Penalty Assessed _____

Michael Machlan

Date

Chad Crabtree

Date

Jamie Arce

Date

Ronnie Davis

Date

Rose Rivera

Date

October 4, 2021

Lynn Brabec
Environmental Compliance Manager
Public Works & Utilities
1201 S. Nappanee Street
Elkhart, IN 46516

Received
OCT 07 2021
ELKHART PUBLIC
WORKS & UTILITIES

Re: Lippert Components, Plant 72, Permit #98-03 NOV 9/22/21

Dear Mrs. Brabec,

This letter is being submitted to your attention in response to the NOV issued to LCI Plant 72 on 9/22/21.

Over the past couple of years, EHS responsibility for LCI Plant 72 has changed hands several times. I resumed responsibility over Plant 72 in late October/early November 2020. Most recently, Ed Ahlersmeyer assumed the role of EHS Manager sometime in April 2021 on a part time basis and very soon thereafter transitioned to full time EHS responsibility.

During the transition there were several topics that Mr. Ahlersmeyer required training on. In fact, that training still continues today. We certainly recognize the requirement to submit analytical results of all wastewater sampling within 30 days of LCI receiving those results. We believe the requirement referenced in the NOV can be found in Part IV, Paragraph A. This requirement was simply overlooked during the transition of EHS responsibilities for LCI Plant 72. However, we also believe it is noteworthy that we acknowledge any violations of effluent limits revealed by sampling must be reported within 24 hours of discovery. *The sample results in question did not reveal any effluent limit violations.*

If you have any questions or additional requests, please contact me.

Respectfully,



Tim Stickler
EHS Director, Chassis Division
(260)579-1190 mobile

Certification Statement

I certify under penalty of law that these documents and attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

REPORT CERTIFICATION STATEMENT


All reports submitted to the City must include the following certification statement, signed by an Authorized Representative.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

TIM STICKLER
Name of Authorized Representative

EHS DIRECTOR
Title


Signature of Authorized Representative

10/4/21
Date

Memo

To: Board of Public Works Member
From: Adam Fann
Date: 10/12/21
Re: 700 West Beardsley Contract

Attached are the contracts for ongoing work at 700 West Beardsley by Weaver Consultants Group. For several years now Weaver has done Phase I and II studies at this site. These contracts will continue this work with the introduction of a program using the current monitoring wells as injections sites to try and dissipate the contaminates. This contract also includes ongoing monitoring and reporting of the wells during the pilot program. The City has applied for and was granted funding through the Indiana Finance Authority in the amount of \$500,000. The contract with Weaver is \$832,100, Indiana Department of Environmental Management has agreed to cover the remaining balance. Staff requests the Board approve and sign the contracts between Weaver Consulting Group, Indiana Finance Authority, and The City.

Per Indiana Finance Authority please complete the following

1. RLF Subgrant Agreement

- a. Page 18- City of Elkhart sign, print, date AND ATTEST, print, date (left column under "Subgrant Recipient")
- b. Page 19- Master Schedule- leave Execution Date blank at top- IFA will fill in. City of Elkhart must initial at bottom left corner under "Subgrant Recipient's Representative"
- c. Page 24- Exhibit E "Consultant Supplement"- Weaver must sign, print, date AND ATTEST, print, date, then City of Elkhart must sign, print, date.

2. RLF Assignment Agreement

- a. Leave the date blank in the first paragraph- IFA will fill in

- b. Page 3- City of Elkhart sign, print, date AND ATTEST, print, date left column.
- 3. RLF Subgrant Activities Professional Services Contract- Weaver
 - a. Page 12- Weaver sign, print, date AND ATTEST, print, date left column
- 4. RLF Subgrant Site Specific Activities- Weaver Project Amendment #1
 - a. Page 4- Weaver sign, print, date lower half of page



Indiana Brownfields Program

an Indiana Finance Authority Environmental Program

100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
www.brownfields.in.gov

James P. McGoff
Director of Environmental Programs
(317) 232-2972
jmcgoff@ifa.in.gov

September 17, 2021

Mr. Scott Andrews, P.E.
Weaver Consultants Group
7121 Grape Road
Granger, Indiana 46530

Re: Environmental Remediation Scope of Work
and Cost Estimate
Beardsley Ave. Site (former Walter Piano)
700 W. Beardsley Avenue
Elkhart, Elkhart County, Indiana
Brownfield Site #4120904
Weaver Project Amendment #1

Dear Scott:

The Indiana Brownfields Program (Program) is in receipt of Weaver Consultants Group's (Weaver) proposal (*see Attachment A*) submitted in response to the Program's request for a scope of work and cost estimate for remediation of the Beardsley Avenue/former Walter Piano (Site) in Elkhart, Indiana. We have attached a Project Amendment as part of Exhibit A of your firm's Professional Services Contract with the Indiana Finance Authority (Authority) which acknowledges the Program's acceptance of your proposal and will serve as your authorization to proceed.

Scope of Work

As outlined in Attachment A, Weaver will perform the following tasks:

- Task A: Analysis of Brownfield Cleanup Alternatives (ABCA), Community Relations Plan (CRP)
- Task B: Quality Assurance Project Plan (QAPP), Site-specific Health and Safety Plan (HASP), Remediation Work Plan (RWP)
- Task C: ISCO/ SVE Pilot Test and Report
- Task D: Remedial Program Implementation
- Task E: Submit Remediation Implementation/Completion Report and EPA Reporting

Site Access

Weaver will need to execute a site access agreement (Site Access Agreement) with the owner of the Site granting access to the site for the environmental assessment and/or remediation activities. An executed copy of the Site Access Agreement will be attached hereto by the Program as Attachment B after it is received from your firm. If the Site owner refuses to sign the Site Access Agreement, the Program may determine to withdraw funding for the Site.

Schedule for Project Tasks

The schedule outlined below approximates the timeline for implementation of the work outlined in Attachment A:

- September 21, 2021: Project Amendment transmitted to consultant
- October 1, 2021: Signed Project Amendment and Site Access Agreement received by the Program
- October 22, 2021: ABCA, CRP completed and submitted to the Program and US EPA
- October 22, 2021: QAPP, HASP and RWP completed and submitted to the Program and US EPA
- January 13, 2022: Pilot test/field activities initiated
- August 8, 2022: Pilot test report submitted to IDEM and IFA
- August 29, 2022: Remedial Program Implementation initiated
- August 22, 2025: Remediation Implementation/Completion Report
- September 30, 2025: EPA reporting and final invoice due

Total Estimated Project Expense Budget & Payment

The cost to complete the above-referenced Scope of Work will be based on the proposal contained in Attachment A and total project expense budget (Project Budget) outlined herein. Weaver will not change the Scope of Work or exceed the Project Budget for this project without prior written authorization from the Program. The Program has executed the Project Amendment attached hereto to authorize initiation of the activities under the Scope of Work. As soon as the Program receives Weaver's signed acknowledgment on the Project Amendment (please execute both copies of the Project Amendment, keeping one for your file, returning one to the Program), invoicing can begin according to the following proposed payment schedule:

- Category I: ABCA, CRP, QAPP, HASP, RWP
- Category II: Pilot Test
- Category III: Environmental Remediation
- Category IV: Reporting

Modifications to the above schedule shall be discussed with the Program's Project Manager for the Site, Dawn Andershock, and are subject to approval by the Program. Invoicing for this project will be in accordance with the above-listed payment milestones. The Program's *Financial Assistance Disbursement Guidelines-Federal Funding* (August 2018) will apply to

invoicing for this project. The guidelines are attached to your firm's contract as Exhibit C and can also be found on the Program's web site at: www.brownfields.in.gov/. Requests for payment should be submitted using the Disbursement Request Form attached hereto as Attachment C and should be accompanied by all required supporting documentation. The form may be submitted directly to the Program's Project Manager for the Site. Following invoice approval by the Program's Project Manager, payment will be made directly by the Program to Weaver.



UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

State Form 54266 (R2 / 6-15) / Form 236
STATE BOARD OF ACCOUNTS

Indiana Code 35-44.1-1-4

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. Name and Address of Public Servant Submitting Statement: Kenneth B. Hunt

28 Sunrise Dr Elkhart, In 46517

2. Title or Position With Governmental Entity: code Enforcement Officer

3. a. Governmental Entity: City of Elkhart

b. County: Elkhart

4. This statement is submitted (check one):

a. as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b. as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. Name(s) of Contractor(s) or Vendor(s): Kenneth B. Hunt

6. Description(s) of Contract(s) or Purchase(s) (Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.):

Submitted invoice for 15 games refereed at the tolon youth and community center on Aug 15, Aug 18, Aug 22, Aug 25, and Aug 29
total of 15 games paid at \$25 a game

7. **Description of My Financial Interest** (Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):

pay comes to \$375.00

(Attach extra pages if additional space is needed.)

8. **Approval of Appointing Officer or Body** (To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.):

I (We) being the Board of Public Works of
(Title of Officer or Name of Governing Body)

City of Elkhart Indiana and having the power to appoint
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

9. **Effective Dates** (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

Sept 3, 2021
Date Submitted (month, day, year)

Date of Action on Contract or Purchase (month, day, year)

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____

(Signature of Public Servant)

Date: _____

sept 3 ,2021

(month, day, year)

Printed Name: _____

Kenneth B Hunt

(Please print legibly.)

Email Address: _____

ken.hunt@coi.org

Within fifteen (15) days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts by uploading it here https://gateway.ifionline.org/sboa_coi/ which is the preferred method of filing, or by mailing it to the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county where the governmental entity took final action on the contract or purchase.

DATE: October 12, 2021
TO: Board of Works
FROM: Trina Harris, 311 Coordinator/Constituent Services
RE: Anti-Gun Violence Campaign – Basketball Tournament – August 15th thru August 29th

The City of Elkhart along with its partners (Elkhart Community Schools, Boys & Girls Clubs of Elkhart County, Minority Health Coalition, Elkhart's Housing Authority, The Village Community Center, and Heart City Health) stand united against gun violence. The intended outcome is to represent unity to the community and the city of Elkhart.

The event serves disproportionately impacted communities supporting community violence interventions.

The funds from this program will come from already appropriated funds in the 2021 Coronavirus State and Local Fiscal Recovery Funds passed by the City Council in September 2021.

It is requested that the Board of Works approve attached contracts in the amount of \$3200.00. See below.

- Ken Hunt \$ 375.00
- Michael Spann \$ 375.00
- Preston Morris \$ 750.00
- Chakiea Jackson \$1,700.00

\$3,200.00

Rod Roberson
Mayor

Development Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.970.1361



September 29, 2021

Michael Machlan
Chad Crabtree
Ronnie Davis
Jamie Arce
Rose Rivera

RE: PROPOSAL FOR PLANNING SERVICES
City of Elkhart, Balance of Elkhart County
Elkhart, Indiana

Dear Board:

The City is working to conduct an analysis of residential market potential with the City of Elkhart, Balance of Elkhart County, Downtown Elkhart and the In-Town Neighborhoods Study Area, Southern Elkhart Study Area, and A Northern Elkhart Study Area. We have engaged Zimmerman/Volk Associates, Inc., a nationally recognized organization with experience in residential market analysis across the urban-to-rural transect. Zimmerman/Volk Associates has provided Development Services with a proposal which includes their scope of work and professional fee.

For the service offered, Zimmerman/Volk Associates, Inc. agrees that the City shall not pay more than \$45,500.00. As such, the City is requesting that a motion be made to approve and the agreement with Zimmerman/Volk Associates, Inc. which contract limit the amount the City will pay for services to \$45,500.00.

Respectfully

Dayna Bennett

Rod Roberson
Mayor

Development Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.970.1361



September 29, 2021

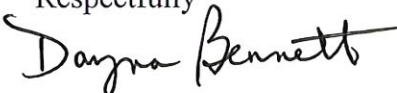
Michael Machlan
Chad Crabtree
Ronnie Davis
Jamie Arce
Rose Rivera

RE: PROPOSAL FOR PLANNING SERVICES
Economic Development Incentive Programs
Elkhart, Indiana

Dear Board:

The City is working to review its approach to offering incentives for economic development that align with current economic development goals and whether changes can be made to generate more value for the city and the residents. We have engaged Smart Incentives, a nationally recognized organization that is at the forefront of efforts to develop better methods for monitoring compliance and evaluating the effectiveness of incentive programs. Smart Incentives has provided Development Services with a proposal which includes their scope of work and professional fee.

For the service offered, Smart Incentives agrees that the City shall not pay more than \$35,000.00. As such, the City is requesting that a motion be made to approve and the agreement with Smart Incentives which contract limit the amount the City will pay for services to \$35,000.00.

Respectfully

Dayna Bennett

Rod Roberson
Mayor

Development Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.970.1361



September 29, 2021

Michael Machlan
Chad Crabtree
Ronnie Davis
Jamie Arce
Rose Rivera

RE: PROPOSAL FOR PLANNING SERVICES
The Concord Mall
Elkhart, Indiana

Dear Board:

The City is working to conduct an assessment and recommendations of the future use of the Concord Mall property. We have engaged Renfro/McCarty Team, a nationally recognized team with 60 years of experience in retail market analysis and strategies. Renfro/McCarty Team has provided Development Services with a proposal which includes their scope of work and professional fee.

For the service offered, Renfro/McCarty agrees that the City shall not pay more than \$12,250.00. As such, the City is requesting that a motion be made to approve and the agreement with Renfro/McCarty Team which contract limit the amount the City will pay for services to \$12,250.00.

Respectfully

Dayna Bennett

Use & Event Permits 10-12-21

- Cunenguez Birthday Party 10/16- Special Exception from Noise
- Navarro Baptism 10/16- Temporary Street Closure, Special Exception from Noise
- Bottles & Throttles Jack Daniels Elkhart Indian Motorcycle 10/22- Special Exception from Noise
- Ugly Sweater Run 12/4- ESS, Temporary Street Closures, Plaza Sign, Public Assembly
- Halloween Skate Bash 10/23- EMS, Public Assembly
- United in Color Peace Rally 10/23/21 Roosevelt Park Public Assembly, Special Exception from Noise, EPD