CITY OF ELKHART
BOARD OF PUBLIC WORKS MEETING
AGENDA
Common Council Chambers
9:00 A.M., Tuesday, January 3, 2023

https://coei.webex.com/coei/j.php?MTID=m1be26cdcacd96b7251856413543afbd6
Join by phone: 1-415-655-0001
Meeting Number (access code): 2310 664 2061 Meeting password: BOW23

I. **Roll Call**

II. **Approve Agenda**

III. **Open Bids:** #23-01 2023 Utility Materials
#23-02 2023 Street Materials

IV. **Election of 2023 Officers**

V. **Claims & Allowance Docket**

VI. **Minutes** Regular Meeting December 27, 2022

VII. **Utilities**

a.) Administration

- Wastewater Utility MRO for November 2022

VIII. **Engineering**

a.) Project Manager

- Change Order #4 & Final River District Drive and Riverwalk SE- Bid #21-10

IX. **New Business**

- PSA with Community Planning Insights to Administer the HUD Community Development Block Grant Funds

X. **Use & Event Permits**

- Frosty 5k 2-11-23 ESS, EMS, Temporary Street Closures, EPD, Plaza Sign, Special Exception from Noise, & Public Assembly

XI. **Public Participation**

XII. **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.

December 28 ,2022

JAMIE ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF **$2,051,994.50** AS LISTED ON THE REGISTER ATTACHED HERETO **CONSISTING OF 12 PAGES**, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 3RD DAY OF JANUARY 2023 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
January 3, 2023

Individual Claims Over $25,000 each:

Fund	Vendor	Description	Amount
6207	SELGE CONSTRUCTION CO, INC	756 N RIVERSIDE	25,526.87
		Total Claims over $25,000	25,526.87
		Regular Claims under $25,000:	216,424.32
		Total Regular Departmental Claims:	**241,951.19**

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

		Total Pre-Approved over $25,000:	-
		Regular Claims under $25,000:	33,046.00
		Total Pre-Approved Claims:	**33,046.00**

American Rescue Plan Claims:

2474	IB COMMUNICATIONS	LARAZA RADIO- SMALL BUSINESS CONTIN.	3,500.00
2474	PATHFINDER COMMUNICATIONS	COVID ADVERTISING	1,190.00
2474	ROBERT ALLEN LEINONEN	HOMEOWNER OCCUPIED REHAB	600.00
2474	PATHFINDER COMMUNICATIONS	COVID ADVERTISING	840.00
2474	EBY PLUMBING PLUS, INC	HOMEOWNER OCCUPIED REHAB	4,500.00
2474	EBY PLUMBING PLUS, INC	HOMEOWNER OCCUPIED REHAB	1,500.00
2474			
2474			
		Total American Resuce Plan Claims:	**12,130.00**

UTILITY REFUNDS 319.40

Payroll and Pension Payments:

Fire & Police Pension		
Bi-weekly Payroll	12/23/2022	1,764,547.91
RETRO PAY		-
	Total Payroll:	**1,764,547.91**
	Total All Claims, Internal Payments, and Payroll:	**$ 2,051,994.50**

(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, central services, association dues, employer-paid benefits, training, and employee reimbursements. Unusual items in excess of $25,000 are noted in detail.

BOARD OF PUBLIC WORKS
Tuesday, December 27, 2022

President Mike Machlan called a regular meeting of the Board of Public Works to order at 10:00 a.m., Tuesday, December 27, 2022. Clerk of the Board Nancy Wilson called the roll. Mike Machlan, Chad Crabtree, Jamie Arce and Ronnie Davis attended in person. Rose Rivera was absent at roll call.

1. Approve Agenda

On motion by Chad Crabtree, seconded by Ron Davis and carried 4-0, the agenda was approved as presented.

2. Claims & Allowance Docket

On motion by Chad Crabtree, seconded by Ron Davis and carried 4-0, the claims & allowance docket was approved in the amount of $779,241.52 consisting of 19 pages as prepared on December 20, 2022 at 4:00 p.m.

3. Minutes Regular Meeting December 20, 2022

On motion by Chad Crabtree, seconded by Ron Davis and carried 4-0, the minutes from December 20, 2022 were adopted. On motion by Chad Crabtree, seconded by Ron Davis and carried 4-0, the Board approved the Memorandum of Executive Session held December 20, 2022.

4. Tabled Items

- Service Agreement with Wilden Uniform & Linen- no action taken
- Cancellation of Service Agreement with Cintas- no action taken
- BOW Resolution 22-R-23 and Board of Works Resolution 22-R-24- no action taken

5. Utilities

(A.) Utility Finance

2022 Monthly Utility Transfer Schedule

On motion by Chad Crabtree, seconded by Ron Davis and carried 4-0, the Board approved and authorized the 2022 monthly Utility transfer schedule to be completed by the Utility Accountant and/or Controller to fund the 2022 approved budget as attached.

6. Engineering

(A.) Project Manager

Change Order #2 & Final: Calumet Water Extension Bid #21-21

Mike noted for the record member Rose Rivera joined the meeting.

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the release of all retainage and Change Order #2 & Final for the Calumet Avenue Water Main Project, Bid #21-21, for a decrease of $18,402.48, bringing the final Contract price to $258,633.52.

(B.) Right-of-Way

Karen Drive Right of Way Dedication

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the Karen Drive Right of Way dedication.

7. New Business

Contract Amendment for IDEM Agreement No. VWL2-009

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved a six-month extension agreement No. VWL2-009 with IDEM for the installation of EV Chargers.

BOARD OF PUBLIC WORKS
Tuesday, December 27, 2022

8. Adjournment

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board of Works adjourned at 10:13 a.m.

_____Mike Machlan, President

Attest: _____Nancy Wilson, Clerk of the Board

City of Elkhart
Public Works and Utilities

Date	Dec 22, 2022
Memo To	Board of Public Works
Memo From	Laura Kolo, Utility Services Manager
Subject	Wastewater Utility Monthly Report of Operations for the month of November, 2022

Wastewater MRO Highlights

Parameter	Monthly Avg	Permit Limit
Suspended Solids mg/L	5	30
cBOD5 mg/L	2	25
Phosphorus mg/L	0.95	1.0
Ammonia mg/L	0.16	4.4 (Dec-Apr) 4.2 (May-Nov)
Avg Daily Flow MGD	12.05	Design - 20
Total Monthly Flow MGD	361	Report

Incident Reports Filed

Date	Location	Volume (gal)	Cause
none			

Wet Weather Overflows

Number of Events	Total Overlfow Volume (MG)
1	0.0138

Phosphorus % removal violation - resolution remains uncertain

City of Elkhart
Engineering

M E M O R A N D U M

DATE: December 28, 2022

TO: Board of Public Works

FROM: Jason Simnick, Engineering Project Manager JS

RE: **Change Order #4 & Final River District Drive and Riverwalk SE – Bid#21-10**

Attached is change order request #4 & Final for River District Drive and Riverwalk SE. This change order is for some irrigation repair work and for the adjustment to final quantities.

While construction was happening, it was discovered that the Town Green sprinkler system had broke. C&E called out Wissco to repair the system. Wissco found that a part had been broken on the Jackson sprinkler system, and since the two are connected, it caused a lack of pressure on the Town Green system.

This change order request is for a decrease of $2,445.76 from the previous contract price of $1,605,142.20. Approval of this change order would decrease the contract price to $1,602,696.44, resulting in a 11.7% increase from the original contract price.

It is requested the Board of Public Works approve release of all retainage and change order #4 & Final for the River District Drive and Riverwalk SE - Bid #21-10, for a decrease of $2,445.76 bringing the contract price to $1,602,696.44.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. **FOUR & FINAL**
Dated **12/16/22**

Project: **PA7705 River District Drive and Riverwalk SE** Contract No. **21-10**

To: **C&E 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

Town Green irrigation repairs	$632.64
Adjustment to final quantities	($3,078.40)
TOTAL	**($2,445.76)**

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

Original Contract Price	**$1,435,174.00**
Contract Price Prior to this Change Order	**$ 1,605,142.20**
Net change resulting from this Change Order	**($2,445.76)**
Current Contract Price including this Change Order	**$ 1,602,696.44**
Current Contract Price % Change from Original Price	**11.7%**
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: _____
Engineer

_____
DATE

The above changes are accepted:

By: _____
Contractor

12/19/22
DATE

City of Elkhart
Community
Development
Development Services
Department

Memo

To: Elkhart Board of Public Works

From: Mary K. Kaczka, Assistant Director, Community Development

cc: Mike Huber, Director, Development Services

Date: December 28, 2022

Re: Community Planning Insight PSA

Request to approve professional service contract for Community Planning Insights.

This PSA provides services to the Community Development Department to administer the HUD Community Development Block Grant funds.

This is an ongoing annual contract, formerly paid by HUD CDBG-CV (Coronavirus) funds, now to be paid by City Economic Development Professional Services, for 2023, not to exceed $ 25,000.

CITY OF ELKHART, INDIANA

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES (Edition 2020)

THIS IS AN AGREEMENT effective as of_____("Effective Date")

between The **City of Elkhart, Indiana, acting by and through its Board of Public Works**

("Owner") and **Community Planning Insights** ("Provider").

For the following Project: ("Project").
Technical assistance for the HUD CDBG program including reports, and the MBE/WBE report, more specifically defined in Exhibit A.

Owner and Provider agree as follows:

ARTICLE 1 – SERVICES OF PROVIDER

1.01 *Scope*

A. Provider shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. The Agreement is structured as a time and materials contract, with technical assistance service to be billed at an hourly rate of $100.00. Direct costs (travel, printing, postage, etc.) will be billed at cost. The total amount of the contract is not to exceed $25,000.00.

C. Owner shall be responsible for, and Provider may rely upon the accuracy and completeness of all written requirements, programs, instructions, data, and other written information furnished by Owner pursuant to this Agreement. Provider may use said documents in performing or furnishing services under this Agreement.

ARTICLE 3 – DEFINITIONS

3.01 *Defined Terms*

A. The terms used in this Agreement and Exhibits, including the singular and plural forms, have the meanings indicated in the following provisions:

1. *Basic Services* – The services to be performed for or furnished to Owner by Provider in accordance with Exhibit A, Part 1, of this Agreement.

2. *Consultants* – Individuals or entities having a contract with Provider to furnish services with respect to this Project as Provider's independent professional associates, consultants, subcontractors, or vendors.

3. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

4. *Documents* – Data, reports, Drawings, Specifications, record drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Provider to Owner pursuant to this Agreement.

5. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective. If no such date is indicated, it means the date on which the last party duly executes this Agreement.

6. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and authorities.

7. *Work* – The various identifiable parts required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation.

ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES

4.01 *Commencement*

A. Provider shall begin rendering services as of the Effective Date of the Agreement.

4.02 *Time for Completion*

A. Provider shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth in Exhibit C and are hereby agreed to be reasonable.

B. If, through no fault of Provider, such periods of time or dates are changed, or the orderly and continuous progress of Provider's services is impaired, or Provider's services are

delayed or suspended, then the time for completion of Provider's services, shall be extended for the period of such delay or Owner shall authorize Provider to work overtime to make up such lost time, and Provider's compensation shall be adjusted equitably.

C. If, through no fault of Owner, such periods of time or dates are changed, or the orderly and continuous progress of Provider's services are impaired, or Provider's services are delayed by reason of any error, inconsistency or omission of Provider, Provider shall compensate Owner for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay. In addition, Provider shall provide all necessary services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay.

D. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Provider's services, and the rates and amounts of Provider's compensation, shall be mutually agreed upon by the parties.

ARTICLE 5 – INVOICES AND PAYMENTS

5.01 *Invoices*

A. *Preparation and Submittal of Invoices.* Provider shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Provider shall submit its invoices to Owner no more than once per month along with reasonable supporting detail. Owner shall pay approved amounts no later than 60 days after receipt or as Owner's standard practices allow.

5.02 *Payments*

A. Prior to final payment to Provider, Provider shall furnish evidence satisfactory to Owner that there are no claims, obligations or liens outstanding in connection with its services. Acceptance of final payment shall constitute a waiver of all claims by Provider for compensation for its services.

B. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from Provider's services, Provider shall reimburse Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by Owner in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to Provider in accordance with the terms of this Agreement.

C. Should Provider or its consultants fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. The standard of care for all professional providing the related services performed or furnished by Provider under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Provider shall be responsible to Owner for the costs of any errors or omissions of the Provider or of consultants retained by Provider.

B. Provider may retain such Consultants as Provider deems necessary to assist in the performance or furnishing of the services, subject to written approval of Owner. The retention of such Consultants shall not reduce the Provider's obligations to Owner under this Agreement.

C. Provider and Owner shall comply with applicable Laws and Regulations. Provider shall comply with Owner-mandated standards that Owner has provided to Provider in writing.

D. Provider guarantees the performance of any subcontractor and assumes responsibility for any subcontractor's failure to furnish and perform the Work in accordance with the Contract Documents.

E. All Contract Documents and Applications for Payment shall be subject to Owner approval.

6.02 *Use of Documents*

A. Upon the making of final payment to Provider, Owner shall receive ownership of the property rights of all of the Documents prepared, provided or procured by Provider or by consultants retained by Provider. All Documents prepared, provided or procured by Provider or by consultants retained by Provider shall be distributed to Owner. All Documents whether printed or electronic media format, shall be provided to Owner at any time upon the Owner's request. If this Agreement is terminated pursuant to Paragraph 6.04.B, Owner shall receive ownership of the property rights of the Documents upon payment for all services rendered according to this Agreement, at which time, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Provider or one of its Consultants.

B. Owner may use, reproduce or make derivative works from the Documents for extensions of the Project or other projects without the prior authorization of Provider or its consultant. However, Owner's use of the Documents for derivative work without Provider's authorization or involvement is at Owner's sole risk unless negligence of the Provider's work is the cause of any damages.

C. Similarly, Provider shall obtain from its consultants property rights and rights of use that correspond to the rights given by Provider to Owner in this Agreement.

D. A party may rely upon that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

E. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

F. The Provider may not use the information gathered or the Documents created for this Project at the Owner's expense without the written consent of the Owner.

6.03 *Insurance*

A. Before commencing its services and as a condition of payment, Provider shall procure and maintain insurance as set forth in Exhibit D, "Insurance", which will protect it from claims arising out of the performance of its services under this Agreement, whether such services are provided by Provider or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Provider shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Provider.

B. Provider shall require its consultants to maintain Comprehensive General Liability, Automobile Liability, Workers Compensation and Professional Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

C. Provider shall maintain Professional Liability insurance with a company satisfactory to Owner for claims arising from any negligent act, error, or omission of Provider under this Agreement, which shall be a practice policy written for the amounts set forth in Exhibit D, "Insurance" with a deductible not to exceed $100,000. The Professional Liability insurance shall contain prior acts coverage sufficient to cover all services performed by Provider for this Project. The Professional Liability policy shall be continued in effect for three (3) years following final payment to Provider. The deductible shall be paid by Provider.

D. Provider shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit D, and a copy of its Professional Liability policy. Such certificates and policy shall be furnished prior to commencement of Provider's services and at renewals thereafter during the life of the Agreement. No policy shall be cancelled or modified without thirty (30) days prior written notice to Owner. Such requirement for prior written notice does not

apply to modifications caused by claims made against the policy. Provider and its Professional Liability insurance carrier shall notify Owner within thirty (30) days of any claims made or loss expenses incurred against the Professional Liability policy. Owner shall have the right to notify directly Provider's Professional Liability insurance carrier of a claim against the policy.

6.04 *Suspension and Termination*

A. *Suspension.*

1. By Owner: Owner may suspend the Project upon thirty (30) days written notice to Provider.

2. By Provider: If Provider's services are substantially delayed through no fault of Provider, Provider may, after giving thirty (30) days written notice to Owner, suspend services under this Agreement.

B. *Termination.* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon fourteen (14) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Provider:

1) upon seven (7) days written notice if Owner demands that Provider furnish or perform services contrary to Provider's responsibilities as a licensed professional; or

2) upon seven (7) days written notice if the Provider's services for the Project are delayed or suspended for more than 90 days for reasons beyond Provider's control.

2. For convenience,

a. By Owner effective upon Provider's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.04B may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Provider to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments upon Termination. In the event of any termination under Paragraph 6.04, Provider will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Provider will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Provider.

F. *Term of the Contract.* If this Agreement is not breached or terminated by either party prior to one year from the Effective Date, all terms of the contract automatically terminate and are void and null as of that date unless both parties agree in writing and attach to this document as an addendum an alternate date of the termination of the contract declaring the contract no longer enforceable.

6.05 *Controlling Law and Venue.*

A. This Agreement shall be governed by the law of the State of Indiana and venue shall in the state courts of Elkhart County, Indiana.

6.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Provider each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Provider (and to the extent permitted by Paragraph 6.06B the assigns of Owner and Provider) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Provider may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Provider to any Provider, Provider's consultant or subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Provider and not for the benefit of any other party.

6.07 *Dispute Resolution*

A. Owner and Provider agree to make a good-faith effort to resolve any claim, dispute or other matter in question arising out of or related to this Agreement by formal negotiation between authorized representatives of each party. Formal negotiations shall take place at a

mutually acceptable time and place within fifteen (15) days of notice. Formal negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.

B. All applicable statutes of limitation and defenses based on the passage of time shall be tolled during the formal negotiation process.

C. Any changes to the Agreement resulting from formal negotiation shall be incorporated into the Agreement by addendum.

D. Any claims not resolved through formal negotiation may be subject to litigation at the discretion of the aggrieved party.

6.08 *Indemnification by Provider*

A. To the fullest extent permitted by law, Provider shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to, all fees and charges of Providers, Providers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, death, or to damage to or destruction of tangible property (including any resulting loss of use), but only to the extent caused by any negligent act or omission of Provider or Provider's officers, directors, partners, employees, or Consultants.

6.09 *Miscellaneous Provisions*

A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability.* 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 Owner and Provider, 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.

D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims*. To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of final payment.

ARTICLE 7 – E-VERIFY REQUIREMENT

7.01 *Terms*

All terms defined in I.C. § 22-5-1.7 *et seq.* are adopted and incorporated into this section.

7.02 Enrollment and Participation

A. Pursuant to I.C. § 22-5-1.7 et seq., Provider shall enroll in and verify the work-eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement.

B. Provider shall provide Owner with documentation that it is enrolled and participating in the E-Verify program.

7.03 Affidavit

A. Provider is required to execute an affidavit affirming that: (i) it is enrolled and participating in the E-verify program, and (ii) it does not knowingly employ any unauthorized aliens.

B. This Agreement shall not take effect until said affidavit is signed by Provider and delivered to Owner along with the documentation of the E-Verify program enrollment and participation.

7.04 Subcontractors

A. Should Provider subcontract for the performance of any work under this Agreement, the Provider shall require any subcontractors to certify by affidavit that: (i) the subcontractors does not knowingly employ or contract with any unauthorized aliens, and (ii) the subcontractors is enrolled and participating in the E-verify program.

B. Provider shall maintain a copy of such certification for the duration of the term of any subcontract.

C. Provider shall also deliver a copy of the subcontractor's certification to the Owner within seven days of the effective date of the subcontract.

7.05 Employment of Unauthorized Aliens

A. If Provider, or any subcontractors of Provider, knowingly employs or contracts with any unauthorized alien, or retains an employee or contract with a person that the Provider or

subcontractors subsequently learns is an unauthorized alien, Provider shall terminate the employment of or contract with the unauthorized alien within thirty (30) days.

B. Should the Provider or any subcontractors of Provider fail to terminate the employment of, or contract with, the unauthorized alien within thirty (30) days, Owner has the right to terminate this Agreement without consequence.

7.06 When E-Verify is not Required

A. The E-Verify program requirements of this Agreement will not apply should the E-Verify program cease to exist.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

A. Exhibit A, "Provider's Services," consisting of one page.
B. Exhibit B, "Owner's Responsibilities," consisting of one page.
C. Exhibit C, "Payments to Provider for Services and Reimbursable Expenses," consisting of one page.
D. Exhibit D, "Insurance," consisting of one page.
E. Exhibit E, "Affidavit of E-Verify Enrollment and Participation" consisting of one page.
F. Exhibit F, "Certification Statement Regarding Investments in Iran," consisting of one page.
G. Exhibit G, "Title VI Notice," consisting of two pages.

8.02 *Total Agreement*

A. This Agreement constitutes the entire agreement between Owner and Provider for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Provider and Owner shall designate specific individuals to act as Provider's and Owner's representatives with respect to the services to be performed or furnished by Provider and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

8.04 *Suspension and Debarment*

A. Provider certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily

excluded from participation in this transaction by any state department or agency. Provider will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state department or agency. Necessary certification forms shall be provided by the Owner.

8.05 *Investments in Iran*

A. The Provider shall sign a certification statement regarding investments in Iran, and said statement is incorporated herein.

8.06 *Title VI Notice*

A. The Provider shall sign an acceptance certification statement regarding Title VI notification and compliance with the City of Elkhart's Title VI Policy during the duration of this agreement, and said statement is incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER: City of Elkhart, Indiana, acting by and through its Board of Public Works		PROVIDER: Community Planning Insights
By:	By:	Aaron Sorrell
Title:	Title:	Owner and Principal
Date Signed:	Date Signed:	12/26/2022
Attest:	Provider License or Certification No.:	
Clerk	State of:	
Address for giving notices:		**Address for giving notices:**
Elkhart City Board of Public Works		128 McDaniel Street
229 S. Second Street		Suite D
Elkhart, Indiana 46516		Dayton, Ohio 46405

	Designated Representative:		**Designated Representative:** Aaron Sorrell
Title:		Title:	Owner and Principal
Phone Number:		Phone Number:	937-331-8333
Facsimile Number:		Facsimile Number:	
E-Mail Address:		E-Mail Address:	Aaron.sorrell@cpi-planning.org

Approved as to form and legality.

Margaret M. Marnocha
Utility Staff Attorney

This is **EXHIBIT A**, consisting of 1 page, referred to in and part of the
Agreement between Owner and Provider for Professional Services

Scope of Services

1. Prepare planning calendar for HUD CDBG new program year to include public hearing dates, sub recipient meetings, redevelopment commission and city council action dates.

2. Prepare annual Action Plans, Amendments, and Assessment of Impediments to Fair Housing, Section 3 Plan and Consolidated Annual Performance Evaluation Report (CAPER).

3. Assist with filing Section 3 Annual Report (HUD 60002), Quarterly Cash on Hand Report, Semi-Annual Labor Standards Report and MBE/WBE /Annual Report.

4. Review Environmental Reviews in HUD Environmental Review Online System (HEROS).

5. Review Integrated Disbursement and Information System (IDIS) plans and activities.

6. Assist with program monitoring by HUD.

7. Create and implement onsite HUD CDBG training program for Community Development Specialist II to include but not limited to: Using IDIS, Environmental Reviews (HEROS), Section 3 Annual Report (HUD 60002), Quarterly Cash on Hand Report, Semi-Annual Labor Standards Report and MBE/WBE Annual Report.

This is **EXHIBIT B**, consisting of one page, referred to in and part of the
Agreement between Owner and Provider for Professional Services

Owner's Responsibilities

Owner shall be responsible for providing the following to Provider for use on this project:

A. Designate in writing a person to act as Owner's representative with respect to the Provider Services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information interpret and define Owner's policies and decisions with respect to Providers services for the Project, subject to the approval of the Owner.

B. Provide all criteria and full information as to Owner's requirements for the project, including performance requirements, flexibility and expandability, and any budgetary limitations.

C. Assist Provider by providing all available information pertinent to the Project including, but not limited to, the following:

   1. Previous reports and any other data relative to the Project.

   2. Data prepared by others and professional interpretations relating to such data.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the

Agreement between Owner and Provider for Professional Services

Payments to Provider for Services and Reimbursable Expenses

Provider's services will be billed monthly. Payment shall be made under the provisions of Article 5. If the Owner has questions or comments concerning our services or charges during the course of the work, they are to be brought to Provider's attention immediate so that any problem can resolved quickly.

The Owner shall reimburse the Provider all fees paid to review agencies to secure permits necessary for the project.

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Provider for Professional Services**

Insurance

Paragraph 6.03 of the Agreement is supplemented to include the following agreement of the parties:

Insurance

A. The limits of liability for the insurance required by paragraph 6.03 of the Agreement for Provider are as follows:

1. Workers' Compensation:	Statutory
2. Employer's Liability --	
a. Each Accident	$1,000,000
b. Disease, Policy Limit:	$1,000,000
c. Disease, Each Employee:	$1,000,000
3. Commercial General Liability --	
a. Each Occurrence:	$1,000,000
b. General Aggregate:	$2,000,000
c. Products/Completed Operations:	$1,000,000
d. Personal and Advertising	$1,000,000
e. Contractual Liability--	
Each Occurrence:	$1,000,000
General Aggregate	$2,000,000
4. Contractual Liability--	
a. Each Occurrence:	$1,000,000
b. General Aggregate	$2,000,000
5. Excess Umbrella Liability --	
a. Each Occurrence:	$5,000,000
b. General Aggregate:	$5,000,000
6. Business Automobile Liability --	
a. Bodily Injury –Each Accident:	$1,000,000
b. Property Damage –Each Accident:	$1,000,000
7. Professional Liability Insurance	
a. Each Claim Made:	$1,000,000
b. Annual Aggregate:	$1,000,000

This is **EXHIBIT E**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Provider for Professional Services**

AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION

I, **Aaron Sorrell**, being first duly sworn, depose and say that I am familiar with and have personal knowledge of the facts herein and, if called as a witness in this matter, could testify as follows:

1. I am over eighteen (18) years of age and am competent to testify to the facts contained herein.

2. I am now and at all times relevant herein have been employed by **Community Planning Insight** ("Provider") in the position of **Owner and Principal**.

3. I am familiar with the employment policies, practices, and procedures of Provider and have the authority to act on behalf of the Provider.

4. Provider is enrolled and participates in the federal E-Verify program. Documentation of this enrollment and participation is attached as Exhibit "A" and incorporated herein.

5. Provider does not knowingly employ any unauthorized aliens.

6. To the best of my information and belief, the Provider does not currently employ any unauthorized aliens.

I swear and affirm under the penalties for perjury that the foregoing statements and representations are true and accurate to the best of my knowledge and belief.

EXECUTED on the 22 day of December, 2022.

Printed: Aaron Sorrell, Owner and Principal, Community Planning Insights

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Provider for Professional Services**

CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN

I, **Aaron Sorrell**, certify to the following:

1. Pursuant to Indiana Code 5-22-16.5 *et seq.*, I am not now engaged in investment activities in Iran.

2. I understand that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

EXECUTED THIS 26 DAY OF December, 2022.

Printed: Aaron Sorrell, Owner and Principal,
Community Planning Insights

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the
Agreement between Owner and Provider for Professional Services

City of Elkhart, Indiana
the city with a heart

Title VI Notice

Title VI Policy

The City of Elkhart, Indiana (Elkhart) is committed to a policy of inclusiveness, fairness, and accessibility of its programs, activities and services to all persons in Elkhart. As provided by Title VI of the Civil Rights Act of 1964 and all related statutes, Elkhart assures that no person shall, on the grounds of religion, race, color, national origin, sex, age, disability/handicap, sexual orientation, gender identity, limited English proficiency, or low income status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any City of Elkhart program, activity or service. The City of Elkhart further assures every effort will be made to ensure non-discrimination in all of its programs, activities, and services, whether those program, activities and services are federally funded or not. In the event the City of Elkhart distributes Federal aid funds to another entity, the City of Elkhart will include Title VI language in all written agreements.

The Title VI Coordinator is:

Title VI Coordinator
City of Elkhart
229 S 2nd Street
Elkhart, Indiana 46516

Voice: (574) 294-5471
Fax: (574) 293-7658
TDD: (574) 389-0198
Email: titlevicoordinator@coei.org

Acceptance by Provider

I hereby certify that I have received the City of Elkhart's "Title VI Notice" and agree to comply with the requirements and provisions of the City of Elkhart's Title VI Policy during the durationof this Agreement with the City of Elkhart.

Signed

Aaron Sorrell, Owner and Principal, Community Planning Insights
Printed Name

12.26.2022
Dated

The City of Elkhart Title VI Policy may be accessed here:

https://elkhartindiana.org/government/human-resources/#tab-b900fced1bdffd36578

ELKHART BOARD OF WORKS
2022 USE & EVENT PERMIT APPLICATION

229 South 2nd Street
Elkhart, IN 46516
Phone: (574) 294-5471

Date Received: _____

INSTRUCTIONS: Please carefully read the "Event Procedures & Guidelines" sections before completing this application. Incomplete applications and/or applications without the required application fee will not be processed.

EVENT NAME: Frosty 5 DATE(S) REQUESTED Saturday, February 11, 2023

LOCATION/VENUE REQUESTED Studebaker Park & Pavilion, River Greenway Trail, Elkhart Environmental Center

LOCATION/VENUE 2ND CHOICE REQUESTED _____

OFFICE USE: DATE/VENUE AVAILABLE ☐ No ☐ Yes

APPLICANT INFORMATION

NAME OF APPLICANT Sherry Krask

NAME OF EVENT ORGANIZER/PRODUCER
Elkhart Parks & Recreation

PRODUCTION COMPANY/ORGANIZATION

STREET ADDRESS	APT/UNIT/SUITE
229 S 2nd Street	

CITY	STATE	ZIP CODE
Elkhart	IN	46516

E-MAIL ADDRESS
sherry.krask@coei.org

DAYTIME PHONE	FAX	CELL PHONE
574-295-7275	574-522-7808	574-326-4891

EVENT DAY ON-SITE CONTACT * REQUIRED	DAYTIME PHONE	CELL PHONE
Sherry Krask	574-295-7275	574-326-4891

EVENT SPONSOR: Are you, the applicant, organizing this event on behalf of another organization?
(Please check No or Yes Below)

☒ No ☐ Yes → Name of Organization: _____

NAME OF SPONSORING ORGANIZATION CONTACT	SPONSORING ORG. CONTACT PHONE

ADDRESS OF SPONSORING ORGANIZATION	CITY	ZIP CODE

Additional Documentation Required: If you checked "Yes" above, please submit an endorsement letter from the organization (on their official Letterhead) on whose behalf you are organizing this event.

Is the sponsoring organization a 501(c) (3)?
(Please check No or Yes below.)

☒ No ☐ Yes → Please attach current verification of 501(c) (3) status

Does the sponsoring organization have an ST-105, General Sales Tax Exemption Status?
(Please check No or Yes below.)

☐ No ☒ Yes → Please attach current verification of ST-105 status

FEDERAL TAX ID #