

**CITY OF ELKHART
BOARD OF PUBLIC WORKS MEETING
AGENDA**

Common Council Chambers

9:00 A.M., Tuesday, March 07, 2023

<https://coei.webex.com/coei/j.php?MTID=m80f4ed493d1bcc341355180a409e4e65>

Join by phone: 1-415-655-0001

Meeting Number (access code): 2301 525 9232 Meeting password: BOW23

- I. Roll Call**
- II. Approve Agenda**
- III. Open Quotes**
 - 23-03 Lexington Landing Stormwater Pipe Replacement Project
- IV. Claims & Allowance Docket**
- V. Minutes:** Regular Meeting February 21, 2023, and Memorandum of Special Meeting February 22, 2023
- VI. Mayor for the Day:** Penelope Pontius
- VII. Engineering**
 - a.) Administration
 - Change Order #1: Lerner HVAC Equipment Installation Bid #22-19
 - b.) Utility
 - INDOT Agreement: Sunnyside Bridge Utility Coordination
 - c.) Right of Way
 - Change Order #1 & Final: Hardee's Parcel Improvements Bid #22-07
 - Award Greenleaf Road Rehabilitation Bid #23-03
 - Request Quote #23-07 Franklin Street Drainage
 - Request Bid #23-06 2023 Street Department Curb Ramp Project
 - Award Quote 23-03 Lexington Landing Stormwater Pipe Replacement
 - d.) Stormwater
 - PSA with Christopher B. Burke Engineering to Prepare Stormwater Permit Documents, Assist with Spill Prevention Plan, and Conduct Municipal Facility Inspections for 2023
- VIII. Utilities**
 - a.) Administration
 - Special Introductions: Steve Brown Pretreatment Manager, Daragh Deegan Water Quality Manager
 - Wastewater MRO January 2023
 - b.) Pretreatment
 - Conn Selmer North Permit #85-06 Notice of Violation
 - Swift Prepared Foods Permit #2001-01 Notice of Violation

IX.

New Business

- Uniform Conflict of Interest Disclosure- James Rieckhoff
- Request Vehicle Purchase
- Commission Assistance Program Contract with Indiana Landmarks

X.

Public Participation

XI.

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.

March 1st _____, 2023 JAR _____
JAMIE ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF **\$5,195,526.88** AS LISTED ON THE REGISTER ATTACHED HERETO **CONSISTING OF 26 PAGES**, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 7TH DAY OF MARCH 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
March 7, 2023

Individual Claims Over \$25,000 each:

Fund	Vendor	Description	Amount
1101	LOCHMUELLER GROUP INC	BRIDGE INSPECTION	39,680.00
1101	R&B SALES	2023 NEW SQUAD EQUIPMENT	157,878.18
2226	HABITAT FOR HUMANITY	STIVER PARK PHASE 2 INFRASTRUCTURE	200,000.00
2404	RIETH-RILEY CONSTRUCTION	RIVER GREENWAY/ NEXT LEVEL	128,112.51
2404	RIETH-RILEY CONSTRUCTION	RIVER GREENWAY/ NEXT LEVEL	374,298.09
4402	CIVICPLUS LLC	SEE CLICKFIX UNLIMITED ANNUAL	31,500.00
4402	DELL MARKETING, LP	56 DELL OPYIPLX 7000	49,979.44
6101	NORTH AMERICAN PUMP CO	SOUTH WELL FIELD- WELL #2	30,850.00
6203	HULL LIFT TRUCK INC	NEW HANGCHA	55,208.00
6504	BEC ENTERPRISES	VAC TRUCK 442	426,250.22
7704	EVERSIDE HEALTH LLC	MONTHLY FEES	47,541.48
7704	EVERSIDE HEALTH LLC	MONTHLY FEES	47,541.48
7704	EVERSIDE HEALTH LLC	MONTHLY FEES	47,541.48
7704	BERKLEY LIFE & HEALTH INS	INSURANCE	81,729.54
7704	HEALTH RESOURCES	DENTAL & VISION MARCH	25,567.61
7704	HEALTH RESOURCES	DENTAL & VISION FEBRUARY	37,282.43
7704	HEALTH RESOURCES	DENTAL & VISION JANUARY	36,863.56
7739	ONB BENEFITS ADMIN.	WORK COMP- EXCESS LIABILTY	99,976.00
Total Claims over \$25,000			1,017,831.24
Regular Claims under \$25,000:			1,515,332.57
Total Regular Departmental Claims:			2,533,163.81

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

1101	CITY OF ELKHART	TRANSFER TO CAPITAL OUTLAY	500,000.00
4425	BCICAPITAL, INC	LEASE PAYMENT HEAVY RESCUE	182,430.05
Total Pre-Approved over \$25,000:			682,430.05
Regular Claims under \$25,000:			90,302.19
Total Pre-Approved Claims:			772,732.24

American Rescue Plan Claims:

2474	WARRICK & BOYN, LLP	WORKFORCE HOUSING	2,231.26
2474	EBY PLUMBING PLUS INC	HOMEOWNER OCCUPIED REHAB	4,500.00
2474	ROBERT ALLEN LEINONEN	HOMEOWNER OCCUPIED REHAB	450.00
2474	KONE INC	MUNICIPAL BLDG ELEVATOR	37,723.50
2474	JI CONTRACTING COMPANY, LLC	HOMEOWNER OCCUPIED REHAB	920.00
Total American Resuce Plan Claims:			45,824.76

UTILITY REFUNDS

756.28

Payroll and Pension Payments:

Fire & Police Pension		
Bi-weekly Payroll		1,843,049.79
RETRO PAY		-
Total Payroll:		1,843,049.79

Total All Claims, Internal Payments, and Payroll: \$ 5,195,526.88

(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, February 21, 2023

President Mike Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, February 21, 2023. Clerk of the Board Nancy Wilson called the roll. Mike Machlan, Chad Crabtree, Rose Rivera, Ronnie Davis and Jamie Arce attended in person. Mike Machlan said it was after 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the agenda was adopted.

2. Open Bids

Bid #23-03 Greenleaf Blvd. Road Rehabilitation Project

Proof of publication was presented which appeared in The Elkhart Truth on February 4, 2023 and February 11, 2023. The following bids were received:

Niblock Construction submitted a signed and certified bid summary form with all items checked. The base bid was \$445,905.00.

Selge Construction Company submitted a signed and certified bid summary form with all items checked. The base bid was \$522,393.50.

Rieth-Riley Construction submitted a signed and certified bid summary form with all items checked. The base bid was \$445,819.73.00.

Milestone Contractors North submitted a signed and certified bid summary form with all items checked. The base bid was \$585,685.00.

On motion by Jamie Arce, seconded by Chad Crabtree and unanimously carried, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at the next meeting.

Quote #23-05 Holly Lane Stormwater Headwall Replacement

One quote was received from Selge Construction Company for \$14,300.00.

On motion by Jamie Arce, seconded by Chad Crabtree and carried 5-0, the Board assigned the quote to staff to award later in the meeting.

3. Claims & Allowance Docket.

On motion by Chad Crabtree, seconded by Rose Rivera and carried 5-0, the Board approved the claims and allowance docket totaling \$3,959,921.56, consisting of 30 pages as prepared on February 14, 2023 at 3:43 p.m.

4. Minutes Regular Meeting February 7, 2023

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the minutes from February 7, 2023.

5. Engineering

(A.) Administration

St. Joseph County Regional Water and Sewer District Board

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board appointed Utility Engineer Paul Wunderlich as Elkhart's designated Trustee to serve on the St. Joseph County Regional Water & Sewer District Board.

(B.) Utility

Award Bid #22-25 Oakland Project A- Oakland A CSO Forcemain Project

A motion was made by Chad Crabtree, and seconded by Ron Davis to award the Oakland Avenue Project A: CSO Forcemain, Bid #22-25 to C&E Excavating, Inc. who was the lowest, responsive and responsible bidder with a Contract price in the

BOARD OF PUBLIC WORKS

Tuesday, February 21, 2023

amount of \$11,866,259.00. On motion by Jamie Arce, seconded by Chad Crabtree and carried 5-0, the Board amended the motion to make the award contingent upon the receipt of final financing. The amended motion carried 5-0.

Amendment #2 Wessler Engineering: Sunnyside Bridge Utility Coordination

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Amendment #2 to the PSA between the City and Wessler Engineering, Inc. for the Sunnyside Bridge Utility Coordination, in an amount not to exceed \$119,600.00.

Change Order #3: Elkhart WWTP Capacity Upgrades Phase 2, Bid #21-13

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved Change Order #3 for the Elkhart WWTP Capacity Upgrades Phase 2 project in the form of 18 additional days to the contract time with no change in contract price.

IDEM Permit Review Fee Increase

Mike Machlan passed the chair over to Vice-President Chad Crabtree. On motion by Ron Davis, seconded by Jamie Arce and carried 4-0-1 (Mike Machlan abstained); the Board approved IDEM Permit Review Fee increases as presented.

(C.) Right of Way

Request Bid #23-05 SR 19 Streetscape Project

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved plans and specifications and granted permission to advertise Bid #23-05 SR 19 Streetscape Project.

Award Quote #23-05 Holly Lane Stormwater Headwall Replacement

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board awarded Quote #23-05 Holly Lane Stormwater Headwall Replacement to Selge Construction, Inc., who was the lowest, responsive, and responsible bidder with a Contract price of \$14,300.00.

(D.) Summary

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board ratified the following permits:

Sewer Assessment Application:

Zimmerman Holdings LLC
1316 W. Blaine Ave
Elkhart, IN. 46517
Property: 919 Concord Ave
Paid \$5395.00

L.J.Builders LLC
62309 SR 19
Elkhart, IN 46517
Property: 2324 Stark Ave
Paid \$3775.00

Dubnation LLC
65981 Glenvon Rd
Vandalia, MI 49095

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Property: 1108 N. Nappanee
Paid \$3655.00
Giuseppe Siciliano
2822 Pleasant Plain Ave
Elkhart, IN 46517
Property: 3440 S. Main
Paid \$ 3655.00

Habitat for Humanity for Elkhart County
2910 Elkhart Rd P.O. Box 950
Goshen, IN 46527
Property: 2912 Homer
Paid \$5455.00

Water Assessment Application:

L.J. Builders LLC
62309 SR 19
Elkhart, IN 46517
Property: 2324 Stark Ave
Paid \$1033.80

Revocable Permits: #6551, Owner: Vaughn Hart
Property: 524 Vistula, Elkhart, IN
Permit Holder: Fire Bins Dumpsters
Description: Dumpster placement at 524 Vistula

6. Utilities

(A.) Administration

Transfer of Deed from Elkhart Water Co. to City of Elkhart Board of Works
Resolution 23-R-05

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved Board of Works Resolution 23-R-05, a Resolution of the City of Elkhart, Indiana Board of Works transferring the Deed of Real Property from the Elkhart Water Company to the City of Elkhart, Indiana by its Board of Public Works.

Request Bid #23-04 Benham Water Tower Rehabilitation

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board granted permission to advertise for the painting and rehabilitation of the Benham Water Tower, Bid #23-04.

Water Utility MRO for January 2023

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board accepted and placed on file the Water Utility MRO for January 2023.

(B.) Regulatory Compliance

Property Determination Memorandum

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board accepted and placed on file a Memorandum of Property Determination from Regulatory Compliance Manager Bryan Cress for Parcel ID 20-05-12-351-014.0000-001.

BOARD OF PUBLIC WORKS
Tuesday, February 21, 2023

7. Use & Event Permits

On motion by Rose Rivera, seconded by Ron Davis and carried 5-0 the Board approved the following permits:

- Girls on the Run 5/13- ESS, EMS, Temporary Street Closures, Special Exception from Noise Ordinance, Public Assembly
- EPD K-9 5K Race/ 1 Mile Walk 5/13- ESS, EMS, EPD, Temporary Street Closures, Public Assembly
- Heinniefest 8/4 & 8/5/23- Special Exception from Noise Ordinance
- MHC Annual Health Fair & Back2School 7/29- ESS, EMS, EPD, Temporary Street Closure, Public Assembly, Plaza Sign
- Mary Daly Dash and Block Party 5/6- ESS, EMS, Temporary Street Closures, Public Assembly, Special Exception from Noise Ordinance
- Earth Day 4/22 Event Trailer, PA System, Plaza Sign, Special Exception from Noise Ordinance, Public Assembly
- After Work Bike Rally 5/19- Fencing, Event Trailer, EPD, Public Assembly, Plaza Sign
- 7-Eleven Grand Opening Event 3/2 & 3/3- Special Exception from Noise Ordinance
- Junk in the Trunk 6/4- Temporary Street Closure, Public Assembly, Plaza Sign
- Curbside Concerts Elkhart Public Library- Special Exception from Noise Ordinance

8. Adjournment

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board of Works adjourned at 9:30 a.m.

_____ Michael C. Machlan, President

Attest: _____ Nancy Wilson, Clerk of the Board

Rod Roberson
Mayor



Board of Public Works
229 S. Second St.
Elkhart, IN 46516

574.294.5471 ext. 1055

MEMORANDUM OF
THE FEBRUARY 22, 2023 SPECIAL MEETING OF
THE CITY OF ELKHART BOARD OF PUBLIC WORKS

Present: Michael Machlan
Rose Rivera
Jamie Arce
Chad Crabtree

Also Present: Gary Boyn, Chris Pottratz, Dina Harris, Gerald Roberts, Alex Holtz, Mike Huber, Adam Fann, Mary Kaczka, Eric Trotter, Kristen Smole, Sherry Weber, Tory Irwin, Corinne Straight, Rod Roberson, John Espar, Michelle Frank, Lori Harris, David Weaver, David Bucksner, Paul Hendrickson, Randy Brown, Stefanos Polyzoides, JJ Bond, Britt Croyle, Susan Diehl

Pursuant to I.C. 5-14-1.5-6.1(b)(2)(d) and I.C. 5-14-1.5-6.1(b)(4)(h) the City of Elkhart Board of Public Works met in executive session on February 22, 2023 at 1:33 p.m., to discuss strategy with respect to a real property transaction.

No other subject matters were discussed, and no votes were taken.

Following discussion, the meeting was adjourned at 3:05 p.m.

Michael C. Machlan

Rose Rivera

Jamie Arce

Chad Crabtree

Attest:

Clerk of the Board of Works



M E M O R A N D U M

DATE: February 24, 2023

TO: Board of Public Works

FROM: Tory Irwin, Director of Public Works *TI*

RE: **Change Order Request #1: The Lerner Theater – HVAC Equipment Installation – Bid #22-19**

Attached is change order request #1 for the Lerner Theater – HVAC Equipment Installation project. This change order is for work by Wagner-Meinert, LLC.

The additional work included installation of wiring and programming by Johnson Controls, and locating and troubleshooting duct system dampers. Additional work was at a cost of \$30,509.00.

This change order request is for an increase of \$30,509.00 to the original contract price of \$434,535.00. Approval of change order #1 would increase the current contract price to \$465,044.00 resulting in a 7.0% increase from the original contract price of \$434,535.00.

It is requested the Board of Public Works:

approve Change Order #1 for the Lerner Theater – HVAC Equipment Installation project, Bid #22-19, for an increase of \$30,509.00, bringing the current Contract price to \$465,044.00.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. One
Dated 02.09.23

Project: The Lerner Theater - HVACV Equipment Installation Contract No. 22-19

To: Wagner-Meinert
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

1. Provide, install and wire (1) Johnson Controls Inc. New supervisory Network Engine to be paired with upcoming software upgrades per other project	\$29,050.00
2. Unit 18- Locate duct system dampers. Note repairs needed and written quote to perform necessary corrective action	\$1,459.00
TOTAL	\$ 30,509.00

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

Original Contract Price	<u>\$ 434,535.00</u>
Contract Price Prior to this Change Order	<u>\$ 434,535.00</u>
Net change resulting from this Change Order	<u>\$ 30,509.00</u>
Current Contract Price including this Change Order	<u>\$ 465,044.00</u>
Current Contract Price % Change from Original Price	<u>7.0%</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
2/9/23
DATE

The above changes are accepted:

BY: [Signature]
Contractor
2-9-2023
DATE



WAGNER-MEINERT LLC
 Engineers – Contractors
 www.wagner-meinert.com

CHANGE ORDER PROPOSAL

PROJECT:	HVAC Equipment Installation Bid #22-19	WMI COP #	WMI-01
TO:	Stephen Kromkowski	CO Name:	1B Duct Dampers
COMPANY:	DLZ Indiana, LLC	Date Submitted:	January 31, 2023
PHONE #:	(574) 236-4400 X653	Submitted By:	Ryan Deetz
FAX #:		Approved By:	_____

Change Order Description:

Unit 1B
 Locate duct system dampers. Note repairs needed and written quote to DLZ for approval.

Change Order Cost Breakdown:

Lift provided by Lerner Theater.
 Project Management, labor and travel \$655.00
 Subcontractor \$804.00

Total Cost Change Order Proposal WMI-01 is:\$1,459.00

- Provide and install new breakers for RTU-8, RTU-4, RTU-7, RTU-1A, & RTU-1C
- Extend existing fire alarm cables utilized from existing units to new units
 - New fire alarm devices to be monitored by Johnson Controls
- Provide Crane for removal and install of Rooftop Units
- Coordinate shut-down of street with city of Elkhart authorities
- Provide record drawings using owner-provided model
- Provide all permits and inspections required
- Provide HVAC Air Test and Balance and Commissioning according to provided Specs

HVAC Install Price..... \$ 434,535.00

Voluntary Add Alternate – Network Engine Upgrade:

- A. Provide, install, and wire (1) Johnson Controls Inc. New Supervisory Network Engine to be paired with upcoming software upgrade per other project.

Network Engine Upgrade Price..... \$ 29,050.00

Project Schedule:

- A. Construction Schedule to be as follows:
- a. 1st Trip for removal and install of (3) Rooftop Units – January 20th, 2023 through January 26th, 2023
 - b. 2nd Trip for removal and install of (3) Rooftop Units – January 28th, 2023 through February 4th, 2023
 - c. 3rd Trip for removal and install of (4) Rooftop Units – February 6th, 2023 through February 16th, 2023
 - d. Start-up, HVAC Air Test and Balance, and Commissioning - February 19th, 2023 through March 2nd, 2023
 - e. After receipt of Notice to Proceed Order, 2 Weeks is required for preparation of shop drawings.
 - f. Construction Schedule assumes a total 10 Weeks from delivery of owner-provided equipment to final completion.
 - g. Construction Schedule assumes these dates will not be available for any construction per customer request:
 - i. January 13th
 - ii. January 24th
 - iii. February 11th
 - iv. March 3rd
 - h. Construction Schedule assumes owner-provided equipment will arrive within 3 Weeks of Notice to Proceed and that Notice to Proceed will be received by December 25th, 2022.

Bid Clarifications:

- A. Condensate Drain of new Rooftop Units to drain to roof, matching existing piping.
- B. Condensate Drain piping to be Galvanized with Threaded Fittings.



M E M O R A N D U M

DATE: February 28, 2023
TO: Board of Public Works
FROM: Paul Wunderlich, Utility Engineer
RE: **Sunnyside Bridge Utility Coordination – INDOT Agreement**

Attached is a standard agreement with INDOT to be reimbursed for Utility relocation for the Sunnyside Bridge Utility Coordination project. This cost comes from the coordination with Wessler Engineering and INDOT to successfully relocate City of Elkhart utilities. INDOT will reimburse the City for these consultant design costs. The total agreed cost for design and construction is \$1,859,000.00. Of this total, the design cost by Wessler is \$119,600.00 and the construction cost estimate is \$1,739,400. The agreement dictates that INDOT will reimburse the City of Elkhart for its design costs and INDOT will pay the contractor for the construction cost.

This agreement has been sent to legal for review and approval.

It is requested the Board of Public Works:
approve the agreement between the City and INDOT for the Sunnyside Bridge Utility Coordination, in an amount of \$1,859,000.

INDIANA DEPARTMENT OF TRANSPORTATION
HIGHWAY UTILITY AGREEMENT

Agreement Amount: \$1,859,000 Des No: 1801913

Agreement Type: Professional Services

Work Description: New Grade Separation Road: Sunnyside Avenue

33/Sunnyside Dr/Concord Mall Dr County: Elkhart County

THIS AGREEMENT, made and entered into, by and between

City of Elkhart acting through its Board of Public Works

&

Indiana Department of Transportation

(hereinafter referred to as the Utility), and the State of Indiana, through the INDIANA DEPARTMENT OF TRANSPORTATION, (hereinafter referred to as INDOT).

WITNESSETH:

WHEREAS, INDOT desires to reimburse the Utility as referenced by the Des No. and Project No. given above (hereinafter referred to as the "project"); and

WHEREAS, due to the said highway construction certain adjustments, removals, alterations, and/or relocations of the existing facilities of the Utility will have to be made as shown on the plan marked Exhibit "A" attached hereto and incorporated by reference;

WHEREAS, INDOT will recommend approval of this project, if applicable, to the Federal Highway Administration for construction with funds apportioned to INDOT under Title 23, United States Code and Acts amendatory thereof and supplementary thereto;

WHEREAS, it is necessary for the parties hereto to comply with the applicable terms and provisions of the Federal-Aid Policy Guide (hereinafter called the Policy Guide and available at <http://www.fhwa.dot.gov/legregs/directives/cfr23toc.htm> on the FHWA website) and 23 CFR 645 Subpart A, which is hereby incorporated by reference, in order to receive reimbursement;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL AGREEMENTS AND COVENANTS HEREIN CONTAINED (THE ADEQUACY OF WHICH CONSIDERATIONS AS TO EACH OF THE PARTIES TO THIS AGREEMENT IS HEREBY MUTUALLY ACKNOWLEDGED), AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

SECTION 1 – PREPARATION OF RELOCATION PLANS FOR INDOT’S CONSTRUCTION CONTRACT

The Utility shall prepare, or cause to be prepared, all plans, specifications and a preliminary itemized cost estimate, for relocation of the Utility’s facilities that need to be relocated in order to construct INDOT’s project. INDOT’s construction contract will require the contractor, which is awarded the contract, to list the Utility as an additional named insured. In addition, INDOT’s construction contract will provide that the Utility is a third-party beneficiary with respect to the relocation work. No changes to the plans or specifications for relocation of the Utility’s facilities shall be made without the written approval of the Utility. INDOT will prepare the final engineer’s estimate for the construction contract.

SECTION 2 – AWARDING OF CONSTRUCTION CONTRACT

INDOT will advertise one (1) contract for bids which includes the plans and specifications for relocation of the Utility’s facilities and INDOT’s plans and specifications for INDOT’s project. Upon receipt of an acceptable bid in accordance with State law, INDOT will award a contract for construction of the work. The Utility agrees to have the contractor to whom INDOT awards the contract relocate the Utility’s facilities.

SECTION 3 – CONSTRUCTION TESTING AND INSPECTION

INDOT will provide construction inspection and testing services to monitor the contractor’s relocation of the Utility’s facilities. The Utility may inspect, at its own cost, the relocation of the Utility’s facilities. The Utility shall timely advise INDOT, in writing, of any deficiencies that are observed. Prior to INDOT’s final acceptance of the construction contract, the Utility shall make an inspection of the Utility’s relocation work and advise INDOT in writing of the Utility’s acceptance thereof. Such acceptance shall not be unreasonably withheld.

SECTION 4 – SUBORDINATION OF RIGHTS

[Check the following that applies]

- The existing facilities are located on public right-of-way.
- The existing facilities are not located on public right-of-way.

If such facilities are located on property, other than public right-of-way, and the Utility either has an easement thereon or a continuing right to maintain the facilities in that location, the Utility, for and in consideration of this Agreement, shall subordinate the Utility’s rights herein to those of the INDOT in the highway right-of-way by executing a subordination Agreement.

SECTION 5 – REIMBURSEMENT

- (a) 100% of the cost to design and prepare construction plans, specifications and preliminary itemized cost estimate for relocation of the Utility’s facilities shall be borne by INDOT.
- (b) 100% of the cost to provide testing and inspection services for relocation of the Utility’s facilities shall be borne by INDOT.
- (c) INDOT shall bear 100 % of the cost of relocating the Utility’s facilities. (See exhibit “B”, attached hereto and incorporated by reference.)

The cost of relocation of the Utility’s facilities (provided for in (c)) shall equal the amount paid by INDOT to the contractor (based upon the actual units of work performed at the unit prices set out in the contractor’s itemized proposal or extra work agreement), selected in accordance with the procedure in Section 2.

The estimated cost of relocation is \$1,739,400 (See Exhibit "B" for an itemized estimate of all anticipated costs, including but not limited to, materials, labor, and equipment costs.)

The estimated cost of non-reimbursable relocation work to the utility's facilities is \$0.00. The Utility has appropriated, duly made and entered of record, the sum of \$0.00 to apply to the cost of the project. A copy of the Utility's official record wherein such appropriation was made is attached as Exhibit "C" attached hereto and incorporated by reference. If the amount to be contributed by the utility is zero then no Exhibit "C" is attached.

SECTION 6 – COMPLETION OF PROJECT

Upon final acceptance of the contractor's work (the construction contract) by INDOT, the Utility shall be responsible for maintenance, repair, and/or reconstruction of the Utility's facilities.

SECTION 7 – WAIVER

In consideration for INDOT's participation in this contract, the Utility waives any claim, demand, or expectation it may have in the future against INDOT based upon any negligent omission and/or commission by INDOT's contractor performing the relocation of the Utility's facilities.

SECTION 8 – PAYMENTS

Within forty-five (45) days after the contract is awarded, the Utility shall pay INDOT a sum equal to one hundred percent (100%) of the Utility's share of the bid price for construction as stated above in Section 5. If an Advice of Change Order (AC) is approved which increases the Utility's share of the project cost, the Utility shall pay INDOT within thirty (30) days a sum equal to one hundred percent (100%) of such increased cost. If the Utility's share is less than the amount the utility has contributed, then INDOT will refund the difference within thirty (30) days.

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Utility in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this agreement except as permitted by IC 4-13-2-20

SECTION 9 – BINDING UPON SUCCESSORS OR ASSIGNS

This Agreement shall be binding upon the parties and their successors and assigns.

SECTION 10 – GENERAL LIABILITY PROVISIONS

The Utility for itself, its employees, agents and representatives, shall indemnify, protect and save harmless the Indiana Department of Transportation, and the State of Indiana from and against any and all legal liabilities and other expenses, claims, cost, losses, suits or judgments for damages, or injuries to or death of persons or damage to or destruction of property (hereafter "Claim"), arising out of intentional tortious acts or whether due in whole or in part to the negligent acts or omissions of the Utility, its employees or agents or contractors, in relation to or in connection with any work performed or to be performed pursuant to this agreement, provided however, that where the State has been found liable by a court, tribunal or governing body entitled to make such a determination for intentional tortious acts and/or negligence with respect to the occurrence or occurrences giving rise to the Claim, the Utility shall have no duty to indemnify, protect, or save harmless either the Department of Transportation or the State.

SECTION 11 – INCORPORATION OF THE UTILITY POLICY GUIDE

The Policy Guide forms an essential part of this Agreement, and the terms or provisions of this Agreement in no way abrogate or supersede the terms or provisions set forth in said Policy Guide.

SECTION 12 – PENALTIES/INTEREST/ATTORNEY’S FEES

INDOT will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, and/or attorney’s fees, except as required by Indiana law.

SECTION 13 – COMPLIANCE WITH LAWS; APPLICABLE LAW

The UTILITY agrees to comply with all federal, state and local laws, rules, regulations, or ordinances that are applicable at the time the UTILITY's services pursuant to this agreement are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any Indiana or federal statute or the promulgation of regulations there under after execution of this agreement shall be reviewed by the Office of the Indiana Attorney General and the UTILITY to determine whether the provisions of this agreement require formal amendment.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

SECTION 14 – COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT

As required by IC 5-22-3-7:

- (1) the UTILITY and any principals of the UTILITY certify that
 - (A) the UTILITY, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations] , or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the UTILITY will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- (2) The UTILITY and any principals of the UTILITY certify that an affiliate or principal of the UTILITY and any agent acting on behalf of the UTILITY or on behalf of an affiliate or principal of the UTILITY:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

SECTION 15 – CONFLICT OF INTEREST

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Agreement;
2. An individual who has an interest of three percent (3%) or more of the Utility, if the Utility is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Commission” means the State Ethics Commission.

B. INDOT may cancel this Agreement without recourse by the Utility if any interested party is an employee of the State of Indiana.

C. INDOT will not exercise its right of cancellation under section B, above, if the Utility gives INDOT an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of INDOT employees. INDOT may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this section.

- D. The UTILITY has an affirmative obligation under this Agreement to disclose to INDOT when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that the Utility knows or reasonably could know.

SECTION 16 – DRUG-FREE WORKPLACE CERTIFICATION

The UTILITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Utility will give written notice to INDOT and the Indiana Department of Administration within ten (10) days after receiving actual notice that the Utility or an employee of the UTILITY has been convicted of a criminal drug violation occurring in the UTILITY's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of agreement payments, termination of this Agreement and/or debarment of agreement opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total agreement amount set forth in this Agreement is in excess of \$25,000.00, the UTILITY hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Utility and made a part of the contract or agreement as part of the contract documents.

The Utility certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Utility's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Utility's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Utility of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing INDOT within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

SECTION 17 – FUNDING CANCELLATION CLAUSE

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of an agreement, the agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

SECTION 18 – NON-DISCRIMINATION

- A. Pursuant to I.C. 22-9-1-10, the Utility and its Contractor and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this agreement.
- B. The UTILITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the UTILITY and its Contractor and subcontractors, if any, agree that if the UTILITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with INDOT and is not exempt, the UTILITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The UTILITY shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this agreement.

SECTION 19 – DEBARMENT AND SUSPENSION

The UTILITY certifies, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this agreement by any federal agency or department agency or political subdivision of the State of Indiana. The term "principal" for the purposes of this agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the UTILITY.

SECTION 20 – CERTIFICATION FOR FEDERAL-AID CONTRACTS LOBBYING ACTIVITIES

The UTILITY certifies, by signing and submitting this Contract, to the best of its knowledge and belief, that the UTILITY has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The UTILITY also agrees by signing this agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

SECTION 21 – APPROVAL OF ATTORNEY-GENERAL

This Agreement shall not be effective unless and until it is approved by the Attorney General of Indiana or an authorized representative, as to form and legality.

SECTION 22 – ETHICS

The Utility and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated hereunder, and Executive Order 05-12, dated January 12, 2005. If the Utility is not familiar with these ethical requirements, the Utility should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Utility or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Utility. In addition, the Utility may be subject to penalties under Indiana Code § 4-2-6-12.

SECTION 23 – NON-COLLUSION

The undersigned attests, subject to the penalties for perjury, that he/she is the Utility, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the Utility, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

SECTION 24 – BUILD AMERICA, BUY AMERICA ACT

The Utility agrees that all steel, iron, manufactured products and construction material permanently incorporated into the project and used under this agreement will be produced and manufactured in the United States of America pursuant to the requirements of 23 CFR 635.410 and Infrastructure Investment and Jobs Act (IIJA, Public Law 117-58, Title IX-Build America, Buy America, div. G §§ 70901-52) on November 15, 2021, and Federal Memorandum M-22-11.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS HEREOF, the parties hereto separately and severally have caused this instrument to be executed in their respective names by and through their duly authorized officers.

THE UTILITY:

(Utility Name)

(Signature of Officer)

Date

(Officer's Name, Printed or typed)

(Officer's Position)

I understand and agree that by electronically signing and submitting this Contract electronically I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

The State of Indiana

By the Indiana Department of Transportation

By:

Samantha Anderson
Statewide Director of Utilities and Railroads
Capitol Program Management
For: Michael J. Smith
Commissioner

Date

APPROVED AS TO LEGALITY AND FORM:

Theodore E. Rokita, Attorney General of Indiana

Date



M E M O R A N D U M

DATE: February 24, 2023
TO: Board of Public Works
FROM: Jason Simnick, Engineering Project Manager JS
RE: **Change Order Request #1 and Final: Hardee's Parcel Improvements – Bid # 22-07**

Attached is change order request #1 & Final for the Arlington Road Improvements project. This change order includes additional costs for overlooked items and adjustment to final quantities.

This project and the Arlington Road Improvements project butt up against each other at the south property line of Hardee's. When the contractor began work on the project, the Arlington project was already underway so we would not cut off access to Hardee's during construction. The Arlington project had already cleared entirely up to the property line. There were a dozen or so trees left to be removed that were not part of either contract. Since the trees were on Hardee's property, I had Boettcher's crew remove the trees.

The dumpster enclosure details on the plans seemed to be copied and pasted into the plans, and were not site-specific. When questioned by Boettcher, we contacted the consultant that made the plans. The person most involved with producing the plans was no longer with the company, but our issues with the design were confirmed and we were able to get a better detail for our enclosure. The new plan took some additional work and material to complete.

This change order request is for an increase of \$28,795.82 to the current contract price of \$333,960.70. Approval of change order #1 and Final would increase the current contract price to \$362,756.52 resulting in a 8.6% increase from the original contract price of \$333,960.70.

It is requested the Board of Public Works:
approve release of all retainage and approve Change Order #1 and Final for the Hardee's Parcel Improvements, Bid #22-07, for an increase of \$28,795.82, bringing the final contract price to \$362,756.52.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. One & Final
Dated 2/13/2023

Project: **Hardee's Parcel Improvements**

Contract No. **Bid # 22-07**

To: John Boettcher Sewer & 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 _____

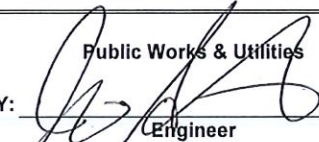
Nature of Changes

Tree Removal	\$10,306.38
Dumpster Pad - Additional Work	\$4,030.00
Adjustment to final quantities	\$14,459.43
TOTAL	\$28,795.82


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

Original Contract Price	<u>\$ 333,960.70</u>
Contract Price Prior to this Change Order	<u>\$ 333,960.70</u>
Net change resulting from this Change Order	<u>\$ 28,795.82</u>
Current Contract Price including this Change Order	<u>\$ 362,756.52</u>
Current Contract Price % Change from Original Price	<u>8.6%</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: 
Engineer
2-24-23
DATE

The above changes are accepted:

By: 
Contractor
2-23-23
DATE



M E M O R A N D U M

DATE: February 28, 2021

TO: Board of Public Works

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

RE: **Award Recommendation for Greenleaf Road Rehabilitation Project - Bid #23-03**

On February 21, 2023, bids were opened for the Greenleaf Road Rehabilitation project at the regular Board of Works meeting. Four bids were received at that time and given to the City's Engineering Department for review.

The bids have been reviewed and the results are as follows:

Contractor	Total Bid
Rieth-Riley Construction Co., Inc	\$445,819.73
Niblock Excavating	\$445,905.00
Selge Construction Co., Inc.	\$522,393.50
Milestone Contractors, Inc.	\$585,685.00

There were no discrepancies with any of the quotes. **Rieth-Riley Construction Co., Inc.** was determined to be the lowest responsive and responsible bidder, and they have successfully completed projects in the past for the City of Elkhart.

This project will be funded through already awarded civil city funds.

It is recommended the Board of Public Works:

Award the Greenleaf Road Rehabilitation Project Bid #23-03 to Rieth-Riley Construction Co. Inc., who was the lowest, responsive and responsible bidder with a contract price in the amount of \$445,819.73.



M E M O R A N D U M

DATE: March 7, 2023

TO: Board of Public Works

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

RE: **Permission to Quote Franklin Street Drainage Project - Quote #23-07**

The Department of Public Works requests permission to quote the Franklin Street Drainage project.

The project will consist of the removal and replacement of the existing concrete drive approach at 2016 W. Franklin Street in order to divert storm water from entering into the parking lot from the street.

It is intended to fund this project through small drainage funds.

It is requested the BOW:

Grant permission to quote the Franklin Street Drainage Project Quote #23-07.



M E M O R A N D U M

DATE: March 7, 2023
TO: Board of Public Works
FROM: Ryan Clussman, Right of Way Engineer RC
RE: **Permission to Advertise 2023 Street Dept. Curb Ramp Project - Bid #23-06**

The Department of Public Works requests approval of the specifications, and permission to advertise the 2023 Street Department Curb Ramp Project.

The project will consist of removing non-compliant curb ramps, curb & gutter, and portions of sidewalk in order to install ADA compliant curb ramps according to the "Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way."

The design specifications for the project were developed by city staff and are being presented to the Board of Works for approval and permission to advertise.

This project will be funded by the Street Department asphalt materials fund.

It is requested the BOW:

Approve the specifications and grant permission to advertise the 2023 Street Department Curb Ramp Project Bid #23-06.



M E M O R A N D U M

DATE: March 7, 2023
TO: Board of Public Works
FROM: Ryan Clussman, Right-of-Way Engineer *RC*
RE: **Award Recommendation for the Lexington Landings Stormwater Pipe Replacement Project - Quote #23-03**

On March 7, 2023, quotes were opened for the Lexington Landing Stormwater Pipe Replacement project at the regular Board of Works meeting. _____ () quotes were received at that time and given to the City's Engineering Department for review.

The quotes have been reviewed and the results are as follows:

Contractor	Total Bid

There were/were no discrepancies with any of the quotes. _____ was the lowest responsive and responsible bidder, and they have successfully completed projects in the past for the City of Elkhart.

There are sufficient Small Drainage funds already appropriated for this project.


It is recommended the Board of Public Works:
Award the Lexington Landing Stormwater Pipe Replacement Project Quote #23-03 to _____, who was the lowest, responsive and responsible bidder with a contract price in the amount of \$_____.



MEMORANDUM

DATE: March 7, 2023

TO: Board of Public Works

FROM: Joe Foy, Stormwater Manager 

RE: **Professional Services Agreement with Christopher B. Burke Engineering, LLC to Prepare Stormwater Permit Documents, Assist with a Spill Prevention Plan and to Conduct Municipal Facility Inspections for 2023**

Attached is the Standard Form of Agreement for Professional Services (PSA) between the City and CBBE to prepare several documents and to perform required facility inspections.

The tasks that CBBE will complete for this Project include the following:

- Update the Water Quality Characterization Report (WQCR) and the Stormwater Quality Management Plan as required by the City's new MS4 Permit to be included with the annual report.
- Develop a spill prevention controls and countermeasures (SPCC) plan for Central Garage due to the large amounts of petroleum products stored at the facility.
- Conduct quarterly pollution prevention and good housekeeping (PP/GH) inspections for our Municipal facilities.
- Update municipal facility maps and exhibits for the Stormwater Pollution Prevention and Spill Response Plans for the Municipal facilities once the PP/GH inspections are completed.

This agreement has been reviewed and approved by Legal.

Funding for this project will be provided using budget line 6501-5-931-7360000 (Stormwater Contractual).

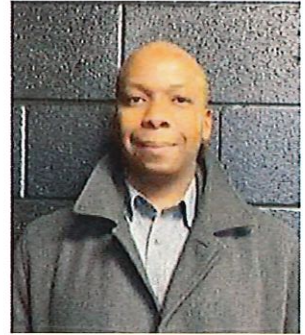
Engineering requests the Board of Public Works:

Approve the Professional Services Agreement with Christopher B. Burke Engineering, LLC to prepare stormwater permit documents, assist with a spill prevention plan and to conduct municipal facility inspections in 2023 for a total not-to-exceed amount of \$48,000.



The City of Elkhart Public Works and Utilities Department is excited to introduce their new Pretreatment Manager, Steve Brown.

Steve Brown began his tenure with the City of Elkhart in 1996 and has recently accepted a promotion to serve as the Pretreatment Manager. Steve will be responsible for leading the Pretreatment Team ensuring compliance with local, state and federal industrial pretreatment requirements and a key contact for industrial customers and food service establishments.

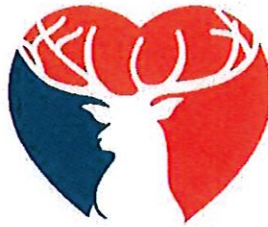


The City of Elkhart and its wastewater customers are fortunate to have Steve and his many years of experience step into this new role.

Steve is very much looking forward to working with Elkhart's industrial and food service customers in his new position and this new opportunity to serve the people of Elkhart.

Steve's contact information is:
1201 S. Nappanee Street
Elkhart, IN 46516
Office: (574) 293-2572 X 2220
Direct: (574) 322-4788
Email: steve.brown@coei.org

Congratulations Steve!



City of Elkhart

The City of Elkhart Public Works and Utilities Department is excited to introduce their new Water Quality Manager, Daragh Deegan.



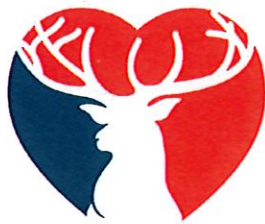
Daragh Deegan has been with the City of Elkhart since 2007 and has recently accepted a promotion to serve as the Water Quality Manager. Daragh will be responsible for leading the Water Quality Team which includes the Analytical Laboratory, Drinking Water Sampling and Aquatic Programs. Daragh will manage relationships with contract laboratories, vendors and other service providers.

The City of Elkhart and its residents are fortunate to have Daragh and his many years of experience step into this new role.

Daragh is very much looking forward to this new challenge and is excited to maintain Elkhart's high level of water quality services for all of its customers.

Daragh's contact information is:
1201 S. Nappanee Street
Elkhart, IN 46516
Office: (574) 293-2572 X 2219
Direct: (574) 322-4774
Email: daragh.deegan@coei.org

Congratulations Daragh!



City of Elkhart
Public Works and Utilities

Date Feb 28, 2023
Memo To Board of Public Works
Memo From Laura Kolo, Utility Services Manager *lk*
Subject Wastewater Utility Monthly Report of Operations
for the month of January, 2023

Wastewater MRO Highlights

Parameter	Monthly Avg	Permit Limit
Suspended Solids mg/L	11	30
cBOD5 mg/L	3	25
Phosphorus mg/L	0.77	1.0
Ammonia mg/L	0.57	4.4 (Dec-Apr) 4.2 (May-Nov)
Avg Daily Flow MGD	12.03	Design - 20
Total Monthly Flow MGD	373	Report

Incident Reports Filed

Date	Location	Volume (gal)	Cause
1/3/23	2045 Prarie St	748	grease
1/10/23	123 Joyce Court	5	rags
1/14/23	CSO 20	5358	power outage
1/26/23	WWTP AT #1	12,000	construction related

Wet Weather Overflows

Number of Events	Total Overflow Volume (MG)
1	57,900

Biomonitoring failed initial test. Retake was sampled week of February 20th
Test is currently still underway so the outcome is not yet known.



M E M O R A N D U M

Date March 1, 2023
To Mike Machlan, Board of Works President
From Steve Brown, Pretreatment Manager *SB*
RE Conn Selmer – North – Permit #85-06

Per the City of Elkhart Enforcement Response Plan, Penalty Matrix, Section 9.1.9, recommends a penalty of \$100 to Conn Selmer North, Permit #85-06 for discharging wastewater with a pH of greater than 10.0 for more than 30 minutes with no damage.

On February 1, 2023, Public Works was notified of an equipment malfunction which occurred on January 31, 2023, resulting in a discharge of wastewater with a pH of rather than 10.0 for approximately 2 hours.

On February 8, 2023, Public Works hand delivered a Notice of Violation to Conn Selmer for this event.

On February 20, 2023, Conn Selmer responded to the NOV. The response detailed what happened, corrective action, the cause of the malfunction and actions taken to prevent recurrence.

Per the City of Elkhart Enforcement Response Plan a penalty of \$100 to Conn Selmer North, Permit #85-06 is recommended.



M E M O R A N D U M

Date March 1, 2023
To Mike Machlan, Board of Works President
From Steve Brown, Pretreatment Manager *SB*
RE Swift Prepared Foods Permit # 2002-01

Per the City of Elkhart Enforcement Response Plan, Penalty Matrix, a total penalty of \$200 to Swift Prepared Foods Permit # 2002-01 is recommend. Per Section 9.3.2, the first offense for Failure to conduct required self-monitoring (per parameter) is \$50, for a total of \$100. Per Section 9.3.5, the first offense for Failure to submit self-monitoring report, resulting in SNC is \$100. These two violations result in a total recommended penalty of \$200.

On January 26, 2023, Public Works scheduled a meeting with Swift Prepared Foods (Swift) to discuss deficiencies for the self-monitoring event for the second half of 2022. Items discussed included the report being late and incomplete and mercury, cyanide, and silver not being analyzed per their permit requirements.

On February 8, 2023, Public Works hand delivered a Notice of Violation to Swift for two permit violations. The first violation was failure to provide all permit required self-monitoring documents for the second half of 2022. The second violation was for incomplete permit sampling requirements for mercury, cyanide and silver for the same monitoring period.

On February 21, 2023, Swift responded to the NOV.

1. On January 13, 2023, the contract lab report was revised.
 - o Mercury was analyzed but out of hold time - voiding the sample
 - o Cyanide was not reflected in the revised report
 - o Silver was reflected in the revised report
2. Public Works does not find record of receiving the original lab report from the November 30th sample until February 21st putting Swift in SNC.

The City of Elkhart Enforcement Response Plan recommends a total penalty of \$200.



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:** James W. Rieckhoff,
P. O. Box 1504, Elkhart, IN 46515
2. **Title or Position With Governmental Entity:** OTA Hearing 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):** City of Elkhart, Department of Building and Code Enforcement

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.):*
indefinite contract commencing February 2017 for provision of services as Hearing Officer in proceedings involving unsafe buildings and related matters

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.):*

Contracted rate of \$90.00 per hour for services rendered in hearing and adjudicating disputes. Total compensation is variable, depending on number of cases heard in any year and time required in each.

(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 _____ of
(Title of Officer or Name of Governing Body)

_____ 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.):*

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: February 18, 2023
(month, day, year)

Printed Name: James W. Rieckhoff
(Please print legibly.)

Email Address: jwriekhoff@aol.com

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.

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

TO: BOARD OF PUBLIC WORKS
FROM: MAGGIE MARNOCHA, Esq.
RE: SPECIAL PURCHASE OF VEHICLES
DATE: FEBRUARY 28, 2022

A handwritten signature in black ink, appearing to read "Maggie Marnocha", is written over the "FROM:" line of the header.

Attached please find an email exchange from the Central Garage Department Head and the City Controller. Based upon the current issues with procuring adequate vehicles to provide the necessary services to our citizens, I have provided this opinion to the Board, Josh Holt and Jamie Arce. It is my opinion that the current situation allows for the special purchase of trucks pursuant to Indiana Code 5-22-10-4 and 5-22-10-8. Given the time factor and immediacy of the opportunity to commit to purchase, I am asking the Board to ratify the decision to proceed with the special purchase.

I.C. 5-22-10-4 states:

A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.

I.C. 5-22-10-8 states:

Compatibility of equipment, accessories, or replacement parts Sec. 8. A purchasing agent may make a special purchase when: (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements.

Please declare an emergency surrounding the current issues facing the procurement of necessary vehicles and ratify the Central Garage Department Head's special purchases of trucks for the Street Department, pursuant to I.C. 5-22-10-4 and I.C. 5-22-10-8.

Marnocha, Maggie

From: Arce, Jamie
Sent: Friday, February 24, 2023 10:32 AM
To: Marnocha, Maggie
Subject: Special Purchasing Needs - Central Garage

Maggie,

Yesterday I was informed that our Central Garage had been provided an opportunity to secure the purchase of 4 twin axle dump trucks / snow plows that were budgeted at 310,000 ea. Josh is supposed to be reaching out to both of us to ask for guidance and direction on how / if we can legally proceed with the purchase. I wanted to make sure you were aware of this issue so that it doesn't blind side you like it did me.

I'm hopeful that there is an appropriate exception that would allow for us to proceed in moving forward similar to what occurred with the recent acquisition of the street department pickup that you helped with. If we proceed with allowing the purchase using a special purchasing exception what Board action should occur? Should we ratify or is it better to suggest a special call in the event that formal authorization to proceed can not wait until the next meeting?

Bradley and I had a good conversation with Josh yesterday regarding the importance of follow the rules and the need to quote / bid regardless of if we believe someone will respond. Am I correct in my understanding of 5-22 that in the event that we don't receive any bids / quotes we would then have the flexibility to proceed with locating and forego rebidding / re quoting if that was our desire?

Anywho..... let me know your thoughts. Feel free to call if that's easier to chat through.

Thanks!



Carlos J. Arce | Controller
Municipal Building
229 South Second Street
Elkhart, IN 46516
Direct: (574) 322-4863
Fax: (574) 830-1027

Marnocha, Maggie

From: Holt, Josh
Sent: Friday, February 24, 2023 2:55 PM
To: Marnocha, Maggie; Arce, Jamie
Subject: Re: Special Purchasing Needs - Central Garage

Maggie,
Our plan is for every year we change out 2 of the plow trucks. This puts them at about 10 years of service. Our oldest plow trucks are 2009. For some reason we have 5 of these of this generation. These trucks are old and are costing us more to keep them going. As of this year, we are 5 trucks down, 2 from 2021, 2 from 2022 and 1 for this year. The sooner we get rid of them the better. Last summer I had my guys go through them and replace everything they needed, that cost was about 10-15k per truck. Currently, no dealer that I talk to can order any trucks for this year or next.

In 2021 I had 2 Kenworth's on order, and that order was canceled by Kenworth due to lack of parts. In late Dec of 2021, we made the deadline to order 2 Western Star brand trucks. That order currently has no timeframe of when they will be built, of even if they will be built. We were told at time of order they would be built late 2022. Needless to say, that didn't happen. The dealer is currently telling me that if/when the factory has the parts needed to build them they will notify us and build them. Other than that, they will just stay in a queue.

Last month I spotted some trucks while out on a trip to meet a new vendor in Fort Wayne. This is a company that upfits trucks for trash hauling. I just called them out of the blue and found out that they are selling 2 truck chassis that will be built this summer that the customer is no longer in business. These trucks have been on order since early 2021. I arranged to purchase these trucks and to be built using parts intended for the Western Stars that have been sitting in a field since early last year. With the purchase of these trucks I included new upfit parts that will be intended for the Western Star units currently on order.

Tuesday of this week, our local Kenworth dealer salesman called me to offer us up to 4 build slots they received from the factory, with a stipulation of a deadline on end of day Thursday. These are a medium duty chassis that we use for our plow trucks. Heavy truck dealers don't sell as many medium duty chassis than heavy duty chassis, this is why they are a harder to come by. These build slots are scheduled for 1st week of June.

If we order these 2 trucks, we would be nearly on target for the replacement plan, forgoing any other delays or parts shortages. If, the remaining 2 Western Stars get built we would be 1 truck ahead on our plan. But again, IF those get built it will not be until next year.

This is a locally owned dealer in South Bend. The state does use this dealer along with other municipalities in the area as well. We have also done much business with this dealer in the past and still do for parts for our current owned Kenworth's.

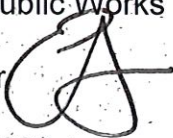
I apologize for the length of this email, I hope I answered all your questions. I asked the salesman to look into putting this on a Sourcewell deal, but I won't know until Monday when he gets back to his office what the details would be. Do you think this will be best to finish this deal?

Thanks, Josh.



Elkhart Historic & Cultural
Preservation Commission

M e m o r a n d u m

To: Board of Public Works
From: Eric Trotter 
Date: March 1, 2023
RE: **Commission Assistance Program Contract with Indiana Landmarks**

Please find attached the contract for professional services to allow Indiana Landmarks to assist the City of Elkhart and the Elkhart Historic and Cultural Preservation Commission in promoting historic preservation within the City. The agreement itself is similar to those that have been approved the last several years. The amount of the contract is \$7,250 plus \$35 for each member of the commission for membership in Indiana Landmarks.

Mrs. Parcell's duties involve preparing staff reports for Certificates of Appropriateness within the historic district, coordinating with contractors on new product presentations, preparing Section 106 reviews on an as needed basis, and met with numerous residents to assist them in preservation efforts with their homes.

COMMISSION ASSISTANCE PROGRAM

AGREEMENT FOR PROFESSIONAL SERVICES



This agreement entered into this 1st day of January, 2023, by and between the City of Elkhart, State of Indiana, hereinafter referred to as the "Local Public Agency," and Indiana Landmarks, hereinafter referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Local Public Agency desires to promote certain historic preservation activities within the City of Elkhart, Indiana; and

WHEREAS, the Local Public Agency desires the services of a qualified preservation professional, to serve as a part-time staff person to its Historic Preservation Commission (hereinafter referred to as "The Commission") and staff; and

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICES.** The Contractor shall coordinate the work of a qualified preservation professional, or "community preservation specialist," who shall perform the following:
 - a) Facilitate a planning session with the Elkhart Historic and Cultural Preservation Commission members and staff to create a work plan for the year.
 - b) Attend meetings of the Commission and other related meetings.
 - c) Conduct two training workshops for the Commission members, staff, property owners and/or contractors.
 - d) Assist the Commission in establishing historic districts.
 - e) Assist the COA process and train Local Public Agency staff in completing COA's locally.
 - f) Assist in the promotion of historic preservation generally within the City.
 - g) Provide technical assistance such as National Register review and tax act projects.
 - h) Counsel building owners on restorations.
 - i) Assist with Section 106 Environmental Review within the City of Elkhart.
2. **RESPONSIBILITIES OF THE LOCAL PUBLIC AGENCY.** The Local Public Agency and The Commission will adopt an annual work program of projects which will assist in preservation planning activities for the period of one year. The work program will identify projects, including assisting with the establishment of single-site landmarks and multiple-property historic districts.
3. **TIME OF PERFORMANCE:** The services of the Contractor shall commence January 1, 2023 and shall be completed December 31, 2023.
4. **COMPENSATION:** The Contractor shall be compensated for services in the amount of Seven Thousand Two Hundred Fifty dollars (\$7,250) plus membership in Indiana Landmarks for any of The Commissions members and one designated staff person. The discounted membership rate for each commission member shall be \$35 per year.
5. **METHOD OF PAYMENT:** Payment of Three Thousand Six Hundred Twenty-Five dollars (\$3,625) plus the membership fees is due April 1, 2023, subject to receipt of an invoice or a voucher from the Contractor that services provided under this agreement are being performed. The balance of the contract in the amount of Three Thousand Six Hundred Twenty-Five dollars (\$3,625) is due August 31, 2023, subject to receipt of an invoice or a voucher from the Contractor that services provided under this agreement are being performed.
6. **NON-FEDERAL LABOR STANDARDS PROVISIONS.** The following Labor Standards Provisions are applicable to this Agreement under State or Local law: provided, that the inclusion of such provisions in this Agreement shall not be construed to relieve the Contractor or any subcontractor from the pertinent requirements of any

corresponding Federal Labor Standards Provisions upon hours per day, per week, or per month which the employees engaged in the work covered by this Agreement may be required or permitted to work thereon may not be exceeded.

Where the minimum rates of pay required under State or Local law are higher than the minimum rates of pay required by or set forth in the Federal Labor Standards Provisions of this Agreement for corresponding classifications, such State or Local minimum rates shall be applicable minimum rates of pay for such classifications.

7. PROVISION FOR EXTENSION: This agreement is subject to renewal upon agreement by both parties.
8. E-VERIFY REQUIREMENT: All terms defined in I.C. 22-5-1.7 et seq. are adopted and incorporated into this section.

Pursuant to I.C. 22-5-1.7 et seq., Contractor 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. Contractor is further 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. In support of the affidavit, Contractor shall provide the City with documentation that it is enrolled and participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Contractor and delivered to the City's authorized representative.

Should contractor subcontract for the performance of any work under this Agreement, the Contractor shall require any subcontractor to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) the subcontractor is enrolled and participating in the E-Verify program. Contractor shall maintain a copy of such certification for the duration of the term of any subcontract. Contractor shall also deliver a copy of the certification to the City within 7 days of the effective date of the subcontract.

If Contractor, or any subcontractor of Contractor, knowingly employs or contracts with any unauthorized aliens, or retains an employee or contract with a person that the Contractor or subcontractor subsequently learns is an unauthorized alien, Contractor shall terminate the employment of or contract with the unauthorized alien within thirty (30) days ("Cure Period"). Should the Contractor or any subcontractor of Contractor fail to cure within the Cure Period, the City has the right to terminate this Agreement without consequence.

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

9. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION: The Contractor understands and agrees that certain data, materials, or information disclosed to the Contractor incidental to this Agreement may contain confidential or protected information. The Contractor agrees that it will not disclose or discuss such information with third parties without the prior written consent of the Local Public Agency.

The Contractor understands and agrees to comply with the legal requirements of Indiana Code § 5-14-3-1 *et. seq.* (commonly known as Indiana's Access to Public Records Act), to the extent applicable, with respect to all documentation.

10. CONFLICT OF INTEREST: The Contractor acknowledges that he or she (or it and its directors, officer, employees and agents), may potentially be deemed to be a "public servant" as defined by Indiana Code § 35-41-1-24. Contractor hereby represents and certifies that it may enter into this Agreement under Indiana Code § 35-44-1.
11. DRUG-FREE WORKPLACE: The Contractor hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the Local Public Agency within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.
12. RELATIONSHIP/INDEPENDENT CONTRACTOR: Both parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another.

The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of the other party for any purpose whatsoever. Neither party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall be solely responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

Contractor is solely responsible for compliance with federal, state and local laws and regulations relating to taxes and social security payments that may be required to be made in connection with the compensation provided under this Agreement. The Local Public Agency, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Contractor in accordance with this Agreement under conditions imposed by federal, state or local laws applicable to such payment. The Local Public Agency shall provide IRS Form 1099 if applicable.

13. EQUAL OPPORTUNITY: Contractor shall comply with federal, state and local law in its hiring and employment practices and policies for any activity covered by this Contract.
14. LAW GOVERNING: This Agreement shall be construed and interpreted according to the laws of the State of Indiana.
15. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.
16. NON-COLLUSION AND ACCEPTANCE: The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.
17. ANTI-NEPOTISM: Contractor is aware of the provisions under Indiana Code § 36-1-21 et seq. with respect to anti-nepotism in contractual relationships with governmental agencies. Contractor certifies that none of the owners of Contractor is a relative of any "elected official" of the Local Public Agency, as that term is defined by Indiana Code § 36-1-21-2.
18. PROHIBITED INVESTMENT ACTIVITY: Contractor certifies that: (i) pursuant to Indiana Code § 5-22-16.5 et seq., Contractor is not now engaged in investment activities in the Country of Iran; and (ii) Contractor understands that providing a false certification could result in fines, penalties and civil action as listed in Indiana Code § 5-22-16.5-14.

IN WITNESS WHEREOF, The Local Public Agency and the Contractor have executed this Agreement as of the date first written above.

Indiana Landmarks
CONTRACTOR

By: Marsh Davis
President

**CITY OF ELKHART
BOARD OF PUBLIC WORKS**

ATTEST:
