

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

Common Council Chambers

9:00 A.M., Tuesday, March 21, 2023

<https://coei.webex.com/coei/j.php?MTID=m19f4a347471dd9b5563171595c925afd>

Join by phone: 1-415-655-0001

Meeting Number (access code): 2306 304 7982 Meeting password: BOW23

- I. Roll Call**
- II. Approve Agenda**
- III. Open Bids & Quotes**
 - Bid #23-04 Benham Tower Rehabilitation
 - Quote #23-06 Fire Station 4 Lavatory
 - Quote #23-07 Franklin Street Drainage Project
- IV. Claims & Allowance Docket**
- V. Minutes: Regular Meeting March 7, 2023**
- VI. Engineering**
 - a.) Administration
 - BOW Resolution 23-R-05 to Authorize Attorney to Purchase Real Estate
 - b.) Utility
 - Oakland Project A- Easement Agreement
 - INDOT Agreement- Adjusted Costs Sunnyside Bridge Utility Coordination
 - c.) Summary
 - Sewer Assessment Applications
 - Water Assessment Applications
 - Revocable Permits
- VII. Utilities**
 - a.) Administration
 - Donahue & Associates, Inc.: SCADA and Operations Consulting
 - 2023 Spring Watermain Flushing
 - Water Utility MRO February 2023
 - b.) Regulatory Compliance
 - CSO Long-Term Control Plan Six-Month Report
 - c.) Pretreatment
 - Swift Prepared Foods Permit #2001-01 Notice of Violation (tabled)
 - Consent Order with Compliance Schedule El Rancho Viejo 7
 - FOG Variance Las Carnitas Taqueria 1217 S. Main St.
- VIII. New Business**
 - Request Quote #23-09 Property Maintenance Services
 - Request to Purchase Cisco Phone System
 - Contract with Traci Adams for City Council Minutes

- BOW Resolution 23-R-06 to Authorize Controller to Approve Personnel Partners Contracts
- enFocus, Inc. Contract: Economic Development
- 2023 Lease with Art League


IX. Award Quotes: #23-06 Fire Station 4 Lavatory, #23-07 Franklin St. Drainage
X. Use & Event Permits

- Gateway Mile Autofest 7/14 & 7/15- ESS,EFD, Stage, EPD, Water, Electric, City Plaza, Temporary Street Closures, Special Exception from Noise Ordinance, Public Assembly, Plaza Sign
- Color for Kids Family Fun Run 6/3- ESS, EMS, EPD, Temporary Street Closures, Public Assembly, Central Green Stage, Special Exception from Noise, Plaza Sign
- Compassion Walk 5/20- Island Park, Public Assembly, Plaza Sign
- Peace Officers Memorial Service 5/17-Kardzhali Park, chairs, podium, Plaza Sign, Public Assembly, Special Exception from Noise
- Iechyd Da Tent Party 6/3- Temporary Street Closures (Alley behind Iechyd Da), Special Exception from Noise Ordinance
- Elite Aesthetic pre-St. Patty Party 3/16-Special Exception from Noise Ordinance
- Elite Aesthetic Spring Event 4/20- Special Exception from Noise
- Salute to Veterans WWII Reenactment & Airshow 5/20-5/21- Fencing, Event Trailer, ESS, EMS. Golf Cars, EPD, Public Assembly, Special Exception from Noise, Plaza Sign
- Crossroads Recovery in the Park 6/27- Central Green Stage, Special Exception from Noise Ordinance, Public Assembly, Plaza Sign
- Elkhart Juneteenth Celebration 6/19-- Temporary Street Closure, Public Assembly, Plaza Sign, Roosevelt Park, EFD, EPD, Special Exception from Noise,
- Hoosier Harley Davidson 2023 events- Special Exception from Noise Ordinance
- Cinco De Mayo 5/6- Central Green Stage, Civic Plaza, Fencing, EPD, Temporary Street Closure, Public Assembly, Special Exception from Noise, Plaza Sign
- ADEC Picture Possibilities 7/29- City Plaza, Temporary Street Closure, Public Assembly, Special Exception from Noise, Water, Electric. Plaza Sign
- EnviroFest 8/12- Island Park, Stage, Fencing, ESS, EMS, Event Trailer, P/A System, Golf Cars, EPD, Water, Electric, Plaza Sign, Bridge Banners (Johnson and Main) 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.

march 15, 2023 
JAMIE ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF \$4,815,924.52 AS LISTED ON THE REGISTER ATTACHED HERETO CONSISTING OF 31 PAGES, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 21ST 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 21, 2023

Individual Claims Over \$25,000 each:

Fund	Vendor	Description	Amount
1101	CURRIE MOTORS FORD	FORD EXPLORER	33,323.24
1101	YODER OIL COMPANY	GASOLINE	34,771.09
2201	TRAFFIC CONTROL CORP	TRAFFIC SIGNAL CABINETS	66,093.00
2248	AMERICAN CONSULTING, INC	BRISTOL ST WIDENING	44,279.50
2510	AUSTIN PAPARELLA	NYCRRM ROOF REPLACEMENT	118,895.00
2554	METRIC ENVIRONMENTAL, LLC	ADDITIONAL TESTING AT 1101 BEARDSLEY	150,000.00
4402	DELL MARKETING L.P.	0365 G1 LICENSES	53,389.00
4436	BORDEN WASTE- AWAY SERVICE	03/23 TRASH SERVICES	191,611.14
4436	AMERICAN CONSULTING, INC	PUBLIC SAFETY BUILDING	229,923.75
4450	JOHN BOETTCHER SEWER	HARDEE'S PARCEL WORK	292,573.24
4450	C & E EXCAVATING	ARLINGTON ROAD IMPROVEMENT	329,452.08
7704	EVERSIDE HEALTH, LLC	EVERSIDE MEMBERSHIP FEES	47,541.48
Total Claims over \$25,000:			1,591,852.52
Regular Claims under \$25,000:			765,319.61
Total Regular Departmental Claims:			2,357,172.13

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

1101	INDIANA MICHIGAN POWER	CONSOLIDATED- BOW ELECTRICITY	30,867.81
6201	INDIANA MICHIGAN POWER	1201 S NAPPANEE- ELECTRICITY	59,192.44
Total Pre-Approved over \$25,000:			90,060.25
Regular Claims under \$25,000:			190,265.24
Total Pre-Approved Claims:			280,325.49

American Rescue Plan Claims:

2474	NIPSCO	SMALL BUSINESS CONTINUITY	1,024.97
2474	COMCAST CABLE	SMALL BUSINESS CONTINUITY	209.23
2474	LOQUERCIO AUTOMOTIVE	SMALL BUSINESS CONTINUITY	1,001.49
2474	INDIANA MICHIGAN POWER	SMALL BUSINESS CONTINUITY	801.83
2474	BEST BUYS STORES, L.P.	SMALL BUSINESS CONTINUITY	1,445.80
2474	WAGNER- MEINERT, LLC	LERNER THEATER HVAC EQUIPMENT	97,565.40
2474	WAGNER- MEINERT, LLC	LERNER THEATER HVAC INSTALL	191,113.40
2474	RAFAEL CARRANZA	SMALL BUSINESS CONTINUITY	12,800.00
2474	FIRM FOUNDATION CONCRETE	SMALL BUSINESS CONTINUITY	3,196.07
2474	COMPLETE CONCRETE CORRECTION	SMALL BUSINESS CONTINUITY	7,462.00
2474	HARTER SUPPLY	SMALL BUSINESS CONTINUITY	538.12
2474	EBY PLUMBING PLUS INC	HOMEOWNER OCCUPIED REHAB	1,484.00
2474	OSBORNE HAWKINS SIERACKI	APR RENT SMALL BUSINESS CONT	1,200.00
2474	ROBERT ALLEN LEINONEN	HOMEOWNER OCCUPIED REHAB	600.00
2474	EBY PLUMBING PLUS INC	HOMEOWNER OCCUPIED REHAB	4,500.00
2474	MARTINEZ QUEDAZA, LLC	APR RENT SMALL BUSINESS CONT	2,000.00
2474	OCTAVIO RIOS	APR RENT SMALL BUSINESS CONT	2,600.00
2474	TOM THALHEIMER	APR RENT SMALL BUSINESS CONT	850.00
Total American Resuce Plan Claims:			330,392.31

UTILITY REFUNDS

389.71

Payroll and Pension Payments:

1,847,644.88

Fire & Police Pension
Bi-weekly Payroll
RETRO PAY

Total Payroll: 1,847,644.88

Total All Claims, Internal Payments, and Payroll: \$ 4,815,924.52

(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, March 7, 2023

President Mike Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, March 7, 2023. Clerk of the Board Nancy Wilson called the roll. Mike Machlan, Rose Rivera, Ronnie Davis and Jamie Arce attended in person. Chad Crabtree was absent. Mike Machlan said it was after 9:00 a.m. and no more quotes would be accepted.

1. Approve Agenda

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the agenda was adopted.

2. Open Quotes

Quote #23-03 Lexington Landing Stormwater Pipe Replacement Project

Two quotes were received. Selge Construction Company quoted \$49,500.00. Premium Concrete Services quoted \$74,925.00. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board assigned the quotes to staff to award later in the meeting.

3. Claims & Allowance Docket.

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the claims and allowance docket totaling \$5,195,526.88, consisting of 26 pages as prepared on March 1, 2023 at 9:25 a.m.

4. Minutes Regular Meeting February 21, 2023, & Special Meeting February 22, 2023

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the minutes from February 21, 2023. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the Memorandum of the Special Meeting February 22, 2023.

5. Mayor for the Day Penelope Pontius

Deputy Mayor for the Day Rod Roberson introduced the City of Elkhart honorary Mayor for the Day Penelope Pontius. Penelope is in fifth grade at Horizon Elementary School. She worked on a project regarding the homeless challenge. Penelope gave the Board a presentation on the topic of homelessness. She defined homelessness as a person who does not have a fixed, regular, and adequate nighttime residence. Another example is people who lose their home in the span of 14 days due to not being able to pay the bill. Homeless people do not deserve blame, they deserve support and aid. It is crucial to have empathy and kindness for the homeless. Certain demographics are very vulnerable to becoming homeless over others. 70% of the homeless population are males. Non-white Americans are far more disproportionately likely to end up homeless. In 2021, 10.5% of the population lived in poverty. Nearly 4million people are doubling-up right now, which means living in someone else's home because rent is too high. Homeless people need the following: healthy food, education, guaranteed employment, childcare services, transportation assistance, comprehensive accessible health care, mental health services, and mandatory living wages. Housing people is the first step. We can combine services like government businesses and fundraising committees and look at Houston, Texas. Houston is very successful at this topic. Houston housed 3,650 using the Housing First Program. In 2011, Houston had 8,400 homeless people. In 2020 Houston had 3,150 homeless people. With Housing First, you house them first,

BOARD OF PUBLIC WORKS
Tuesday, March 7, 2023

then, meet their other needs such as food. In 2015, there were 300 homeless residents in Elkhart. Some helpful activities like community involvement, the buddy system, ways to get the homeless to find out what is already in place. Face to face makes people care more. Homeless people have been through so much. They are brave and resilient and they need help from local businesses. Have we explored the world from their perspective? Get them in the news; interview one person's life per segment. They need empathy and to be seen as real people. We need more free buildings. We have a lot of buildings that aren't being used that we could use for the homeless people. Everyone has skill sets to contribute. Part of feeling like you belong is working together towards a common goal. Over 300 people are homeless in Elkhart. That is a problem. In Indiana, there are 5,449 homeless people. Some of the reasons for homelessness are life events, lack of affordable housing, poverty, and unemployment. Many women experiencing homelessness have escaped a violent or abusive relationship who often take their children with them to keep them safe. People experience homelessness when they leave prison care or the Army with no home to go to. You may be thinking why would we want to do this because this would just bring more homeless people. Penelope said her answer would be, if we don't, we won't make a change. If we do, Elkhart could be named the City that changed people's lives. She thanked the Board for listening. Mike Machlan commented the presentation was very impressive, very insightful, and thanked her for participating.

6. Engineering

(A.) Administration

Change Order #1: Lerner HVAC Equipment Installation Bid #22-19

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0 the Board approved 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.

(B.) Utility

INDOT Agreement: Sunnyside Bridge Utility Coordination

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the agreement between the City of Elkhart and INDOT for the Sunnyside Bridge Utility Coordination for \$1,859,000.00. Utility Engineer Paul Wunderlich noted for the Board the City of Elkhart will be reimbursed for the design work. Controller Jamie Arce noted we will front \$119,600.00 for the design, and INDOT will cover the construction expenses.

(C.) Right of Way

Change Order #1 & Final: Hardee's Parcel Improvements- Bid #22-07

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the release of all retainage and Change Order #1 & 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.

Award Greenleaf Road Rehabilitation Bid #23-03

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded the Greenleaf Road Rehabilitation Project Bid #23-03 to Reith-Riley Construction Co., Inc. who was the lowest, responsive and responsible bidder with a Contract price of \$445,819.73.

BOARD OF PUBLIC WORKS
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Request Quote #23-07 Franklin Street Drainage Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted permission to quote the Franklin Street Drainage Project Quote #23-07.

Request Bid #23-06 2023 Street Department Curb Ramp Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #23-06, 2023 Street Department Curb Ramp Project.

Award Quote #23-03 Lexington Landing Stormwater Pipe Replacement Project

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded Quote #23-03 Lexington Landing Stormwater Pipe Replacement Project to Selge Construction Co., Inc. who was the lowest, responsive, and responsible quoter with a Contract price of \$49,500.00.

(D.) Stormwater

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved the Professional Services Agreement with Christopher B. Burke Engineering, LLC to prepare Stormwater permit documents, assist with a spill prevention plan, and conduct municipal facility inspections in 2023 for a total not to exceed amount of \$48,000.00.

7. Utilities

(A.) Administration

Special Introductions

Laura Kolo said Lynn Brabec has led the City's Industrial Pretreatment program for over thirty years. She also led the Lab and Drinking Water Quality team that evolved over time to include the Aquatics program. Lynn planned to retire in 2024, but elected for personal reasons to move up her date. When an opportunity like this comes up, we evaluate and look for ways to improve efficiency and enhance the service we provide. The Board of Works took action in February to modify the Wage Resolution to accommodate revisions in the structure. Laura was happy to introduce the new Water Quality Manager Daragh Deegan, and the new Pretreatment Manager Steve Brown. Steve will be responsible for leading the Pretreatment team, ensuring compliance with Local, State, and Federal Industrial Pretreatment requirements, and will be a key contact for our Industrial Users and Food Service Establishments. Daragh will be responsible for leading the Water Quality team, which includes the analytical Laboratory, drinking water sampling, Aquatics program, and managing relationships with Contract Laboratories, vendors, and other service providers.

Wastewater Utility MRO for January 2023

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board accepted and placed on file the Wastewater Utility MRO for January 2023.

(B.) Pretreatment

Conn Selmer North Permit #85-06 Notice of Violation

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board assessed a penalty of \$100.00 to Conn Selmer North for a Notice of Violation for Permit #85-06. Steve Brown explained the violation to the Board. Ken Zmudzinski of Conn-Selmer said they responded in writing, they corrected the violation, and implemented ideas to make sure it does not happen again. It was equipment. They have PH probes that turn the chemical feed pumps on and off. It overfed because the

BOARD OF PUBLIC WORKS
Tuesday, March 7, 2023

PH membrane was fouled. They cleaned the membrane, but it took longer than 30 minutes for the PH to return to its target area. It was just under 2 hours. Mike thanked him for reacting so quickly. Mike called for the vote and the motion carried 4-0.

Swift Prepared Foods Permit #2002-01

A motion was made by Jamie Arce and seconded by Ron Davis to assess a penalty of \$200.00 to Swift Prepared Foods Permit #2002-01 for a Notice of Violation. Steve Brown explained the violation to the Board. Benjamin Nuss from Swift Prepared Foods said he has been with the plant for a year and they have made a lot of changes. They take compliance very seriously. They take responsibility for what happened. They were able to pull the sample that was missing and were in compliance. As soon as they noticed, they reported themselves and submitted the proper documentation. He asked the Board to remove the NOV. Mike thanked him for his effort. He suggested tabling the action and letting the Legal team investigate to see what the options are. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Notice of Violation for Swift prepared Foods Permit #2002-01 was tabled.

8. New Business

Uniform Conflict of Interest Disclose

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board accepted and placed on file a Uniform Conflict of Interest Disclosure for James Rieckhoff.

Request Vehicle Purchase

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board declared an emergency surrounding the current issues facing the procurement of necessary vehicles, and ratified 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. Josh Holt explained there were a total of four trucks available to purchase, two trucks at two different locations.

Commission Assistance Program Contract with Indiana Landmarks

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved a contract with Indiana Landmarks for Commission assistance for \$7,250.00, plus \$35.00 for each member of the commission for membership in Indiana Landmarks.

9. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board, the Board of Works adjourned at 9:57 a.m.

_____ Michael C. Machlan, President

Attest: _____ Nancy Wilson, Clerk of the Board

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

MEMORANDUM

TO: BOARD OF PUBLIC WORKS

FROM: MAGGIE MARNOCHA, PWU ATTORNEY *MM*

DATE: MARCH 7, 2023

RE: RESOLUTION TO AUTHORIZE ATTORNEY TO PURCHASE REAL ESTATE

As part of the Long Term Control Plan, an outfall will be constructed on the St. Joseph River near High Street. The original design was to place the outfall at the very end of High Street. An inspection of that location determined that the spot is unsuitable due to the unfettered dumping of concrete and other debris, making the bank unstable for construction. The design has now been shifted to a nearby location with a suitable bank. In order to move the proposed location of the facilities, four parcels of undeveloped real estate must be purchased.

The process begins with the City making offers of purchase to each of the real estate owners. If the City is unable to reach an agreement to purchase, then a taking by eminent domain will be necessary.

Attached please find the proposed Resolution authorizing the Public Works & Utilities Attorney to make offers on the unimproved real estate. If no agreement can be reached, please authorize the Public Works & Utilities Attorney to proceed with the taking by eminent domain.

23-R-05
Please approve and sign the attached resolution authorizing the Public Works & Utilities Attorney to make offers to purchase the real estate on behalf of the City, and if no agreement can be reached, to proceed with the taking of the real estate by eminent domain.

Resolution 23-R-05

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS OF THE
CITY OF ELKHART, INDIANA, TO DESIGNATE AND AUTHORIZE
PUBLIC WORKS & UTILITIES ATTORNEY OBTAIN REAL PROPERTY**

WHEREAS, the City of Elkhart, Indiana, is a municipal corporation;

WHEREAS, the Board of Public Works is the body authorized to purchase certain real property for the City of Elkhart;

WHEREAS, the City of Elkhart desires to obtain certain real estate within the City to be used in the Long Term Control Plan;

WHEREAS, that real estate consists of four parcels near West High Street, Vistula Street and the St. Joseph River, in Elkhart, Indiana; and

WHEREAS, the Public Works & Utilities Attorney, Margaret M. Marnocha ("Attorney"), is available and willing to attempt to negotiate the purchase of the four parcels, and if that is not possible, she is available and willing to take the parcels by eminent domain on behalf of the City of Elkhart.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF ELKHART, INDIANA, THAT:

1. Attorney is hereby designated by the Board as the authorized representative for the City of Elkhart, to negotiate the purchase of the following real estate:

- a. Parcel 20-06-05-376-022.000-012;
- b. Parcel 20-06-05-376-021.000-012;
- c. Parcel 20-06-05-376-011.000-012; and
- d. Parcel 20-06-05-376-010.000-012.

2. If Attorney is unable to negotiate a purchase then she is authorized to proceed with a taking of the real estate through the process of eminent domain.

RESOLVED this 21st of March 2023.

Michael Machlan, President

Chad Crabtree, Vice President

Jamie Arce, Member

Ronnie Davis, Member

ATTEST:

Rose Rivera, Member

Nancy A. Wilson, Clerk



M E M O R A N D U M

DATE: March 15, 2023
TO: Board of Public Works
FROM: Paul Wunderlich, Utility Engineer
RE: **Oakland A Project– Easement Agreement**

In preparation for the upcoming LTCP project, Oakland A Forcemain Extension, Elkhart Engineering has procured an easement on the property of Andrew and Ann Green. This easement allows for Elkhart to maintain our existing and future utility improvements from the construction of the Oakland A. Construction of the project depends on the approval of this easement agreement in the amount of \$6,880.00.

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

It is requested the Board of Public Works:

approve the easement agreement in the amount of \$6880.00 between the City and Andrew and Ann Green.

UTILITY EASEMENT

Grantors: Andrew L. Green
Ann Green
1618 W. Indiana
Elkhart, IN 46516

Grantee: City of Elkhart
By its Board of Public Works
229 S. Second Street
Elkhart, IN 46516

Affecting County PIN: 06-07-252-008-012


THIS INDENTURE WITNESSETH that the undersigned, Andrew L. Green and Ann Green (“Grantors”) in consideration of six thousand eight hundred eighty dollars (\$6,880.00), the receipt and sufficiency of which is hereby acknowledged, hereby grants, conveys, and warrants unto the CITY OF ELKHART, acting by and through its Board of Public Works (“Grantee”), a utility easement and therein, the right to install, construct, operate, patrol, maintain, repair, revise, supplement, remove and replace utility facilities, including without limitation, all pipes, lines, valves, and all other fixtures or components at any time forming parts of or in connection therewith in, under, along, over and above the real estate described in Exhibit A, which is attached and made part hereof (Legal Description of Easement Area). This easement is limited to utility facilities and does not authorize the Grantee to build or construct any non-utilities related appurtenances of any kind. “Over and above” the real estate is narrowly limited to the installation of a permanent manhole on the property as well as any temporary excavation necessary for the maintenance of the underground facilities. The location and easement area is further described and depicted in Exhibit B (Plat of Utility Easement), which is attached and made a part hereof.

This utility easement expressly includes the right of access to the Easement Area and the right and privilege at any time and from time to time, to clear and remove from said Easement Area, any timber, brush, debris, and any other obstructions at any time located thereon which, in the Grantee's judgment, should be removed to prevent interference with said utility lines, systems and facilities. Whenever feasible, the City of Elkhart will give the Grantor the opportunity to remove any obstructions. If Grantee determines that any timber, brush, debris, and/or any other obstructions must be removed, Grantee shall not be responsible to replace or repair any such items.

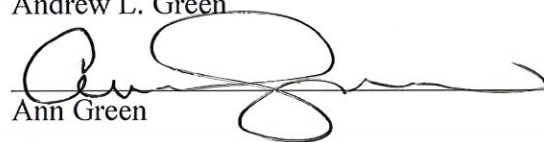
The Grantors warrant that Grantors are the fee simple owners of said property and have the right to grant this easement. This Utility Easement shall remain in effect until such time, if or when, the utility facilities are abandoned, at which time this Utility Easement shall terminate.

IN WITNESS WHEREOF, the Grantors have executed this instrument this 15 day of March 2023 .

GRANTORS:



Andrew L. Green

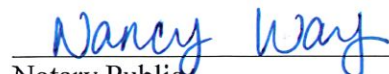


Ann Green

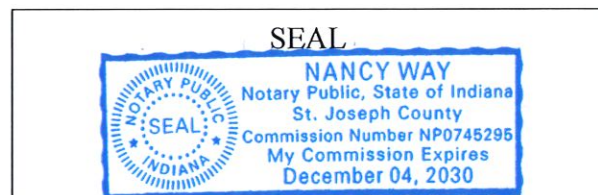
STATE OF Indiana)
) §
COUNTY OF Elkhart)

Before me, Nancy Way, Notary Public in and for said County and State, on this 15 day of march, 2023, personally appeared Andrew L. Green and Ann Green in their capacity as Grantors, and acknowledged the execution of the foregoing instrument as the duly authorized act of Grantors for the purposes stated therein.

Witness my hand and Notarial Seal this 15 day of March, 2023.



Notary Public
Resident of st. Joseph County
Commission Number: NP0745295
Commission Expires: 12-04-2030



ACCEPTANCE OF EASEMENT:

The CITY OF ELKHART by and through its Board of Public Works hereby accepts this easement.

Michael Machlan, President

Chad Crabtree, Vice President

Ronnie Davis, Member

C. James Arce, Member

Rose Rivera, Member

ATTEST:

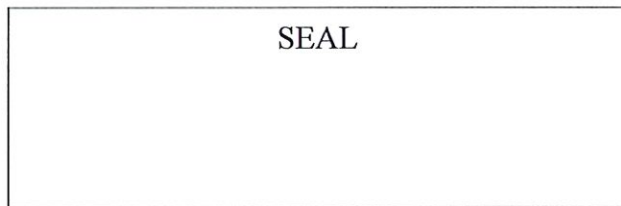
Nancy A. Wilson, Clerk of the Board

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, in and for said County and State, personally came Michael Machlan, Ronnie Davis, C. James Arce, Rose Rivera, and Chad Crabtree, the members of the Elkhart Board of Public Works, and acknowledged their acceptance and execution of this dedication.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, on this _____ day of _____, _____.

Nancy A. Wilson, Notary Public
Elkhart County ~ State of Indiana
Commission No. NP0665890
Commission Expires May 8, 2023



This instrument was prepared by Margaret Mary Marnocha, Attorney No. 23249-71, 229 S. Second Street, Elkhart, Indiana 46516, (574) 293-2572. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Margaret M. Marnocha.

St. Joseph River

Easement Area
4232± SQ. FT.
0.097± ACRES

Donald D. & Sallie L. Williams
Instr. #90-010270

Andrew L. & Ann Green
Instr. #2021-34269

Andrew L. & Ann Green
Instr. #2021-34269

Andrew L. & Ann L. Green
Instr. #2000-20338

Andrew L. Green
Instr. #97-003970

Damon M. Null
Instr. #2008-21798

36'

50'

50'

77 Rods and 10' to West Line of Thomas Street

INDIANA AVENUE (66' R/W)

FRANKLIN STREET



0 25 50
SCALE : 1"=50'

ABONMARCHE

315 West Jefferson Blvd.
South Bend, IN. 46601
T 574.232.8700
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Battle Creek
Benton Harbor
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DATE: 12/06/2022 ACI JOB #: 22-0409.108 SHT: 1 of 1
REV: 02/21/2023

EXHIBIT A

UTILITY EASEMENT

A 36-FOOT-WIDE EASEMENT LOCATED WITHIN THAT TRACT OF LAND CONVEYED TO THE ANDREW L. GREEN AND ANN GREEN AS DESCRIBED IN INSTRUMENT NUMBER 2021-34269 - PARCEL 1, SAID EASEMENT BEING A PART OF THE NORTHEAST QUARTER SECTION 7, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, AS DEPICTED ON THE ATTACHED PARCEL PLAT MARKED EXHIBIT B, AND DESCRIBED AS FOLLOWS:

THE WESTERLY THIRTY-SIX (36) FEET OF THE FOLLOWING DESCRIBED TRACT OF LAND:

A PART OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION SEVEN (7), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF INDIANA AVENUE, SEVENTY-SEVEN (77) RODS AND TEN (10) FEET WEST FROM THE WEST LINE OF THOMAS STREET; THENCE WEST ON THE NORTH LINE OF INDIANA AVENUE FIFTY (50) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING WEST ON THE NORTH LINE OF SAID INDIANA AVENUE FIFTY (50) FEET; THENCE IN A NORTHERLY DIRECTION AT RIGHT ANGLES TO THE NORTH LINE OF SAID INDIANA AVENUE TO THE ST. JOSEPH RIVER; THENCE EASTERLY ALONG THE MEANDERINGS OF THE ST. JOSEPH RIVER TO A POINT OPPOSITE THE PLACE OF BEGINNING; THENCE ON A LINE AT RIGHT ANGLES TO INDIANA AVENUE SOUTHERLY TO THE PLACE OF BEGINNING, EXCEPTING THAT PART OF THE SAME DEEDED TO ST. JOSEPH AND ELKHART POWER COMPANY FOR OVERFLOW.

EASEMENT AREA CONTAINING 4232 SQUARE FEET (0.097 ACRES) MORE OR LESS AND SUBJECT TO ALL COVENANTS, RIGHTS-OF-WAY, AND EASEMENTS OF RECORD.

REFERENCE DOCUMENTS: INSTRUMENT NUMBER 2021-34269

THIS DOCUMENT WAS PREPARED BY MICHAEL J ROZYCKI, INDIANA REGISTERED LAND SURVEYOR, LICENSE NUMBER 20500010.



MICHAEL J ROZYCKI, PS

DATE 02/21/2023



JOB NO.: 22-0409



M E M O R A N D U M

DATE: March 15, 2023
TO: Board of Public Works
FROM: Paul Wunderlich, Utility Engineer
RE: **Sunnyside Bridge Utility Coordination – INDOT Agreement – Adjusted Costs**

Attached is a revised version of the previously approved agreement with INDOT to be reimbursed for Utility relocation for the Sunnyside Bridge Utility Coordination project. This change is due to a new construction estimate from Wessler with decreased costs. The price 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 and INDOT will pay for the construction work. The total agreed cost for design and construction is \$1,479,600.00. Of this total, the design cost by Wessler is \$119,600.00 and the construction cost estimate is \$1,360,000. 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 \$1,479,600.00

INDIANA DEPARTMENT OF TRANSPORTATION
HIGHWAY UTILITY AGREEMENT

Agreement Amount: \$1,479,600 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 \$1,360,000 (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 it's 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

B.O.W. SUMMARY
March 21, 2023

Sewer Assessment Application:

Big and Tall Outlet
1333 S. Nappanee
Elkhart, IN. 46516
Property: 1333 S. Nappanee
Paid \$3540.00

Michael Dekker
3539 E. Jackson Blvd
Elkhart, IN 46516
Property: 3539 E. Jackson Blvd
Paid \$731.00, 20% down/Remaining balance, \$2925.00

Water Assessment Application

Square One Builders, dba: DDOT Properties
2812 Warren
Elkhart, IN 46516
Property: 2812 Warren
Paid \$2427.60


Revocable Permits:

#6552, EOZ Business, LLC
Property: 210 E. Jackson Blvd, Elkhart, IN. 46516
Permit Holder: DJ Construction
Description: sidewalk closure

#6553, Teachers Credit Union
Property: 145 Prairie St.
Permit Holder: RL Yoder, LLC
Description: Two concrete approach and sidewalk replacement



M E M O R A N D U M

Date March 15, 2023
To Mike Machlan, Board of Works President
From Laura Kolo, Utility Services Manager 
RE Request to Engage – SCADA and Operations Consulting

Elkhart Public Works is respectfully requesting the Board of Works to contract with Donahue for continued SCADA Consulting as well as Operations Consulting services for a cost not to exceed \$35,000:

- \$25,000 of SCADA Consulting
- \$10,000 for Operational Consulting

Funding has been appropriated in the 2023 water and wastewater operations and maintenance budgets and the contract has been approved by Legal.



M E M O R A N D U M

DATE: March 21, 2022
TO: Board of Public Works
FROM: Martin Noffsinger, Network System Supervisor *MN*
RE: **2023 Spring Watermain Flushing**

The Elkhart Public Utilities will begin the 2023 spring watermain flushing on Sunday April 30th at 6:00 a.m. and will continue through Wednesday May 17th at 3:00 p.m. Operations will begin daily at 6:00 a.m. and continue until darkness in some areas. Watermain flushing will not take place on Election Day Tuesday May 2nd.

Please find attached the flushing schedule, a press release, and an overview map for your review.

2023 SPRING WATERMAIN FLUSHING SCHEDULE

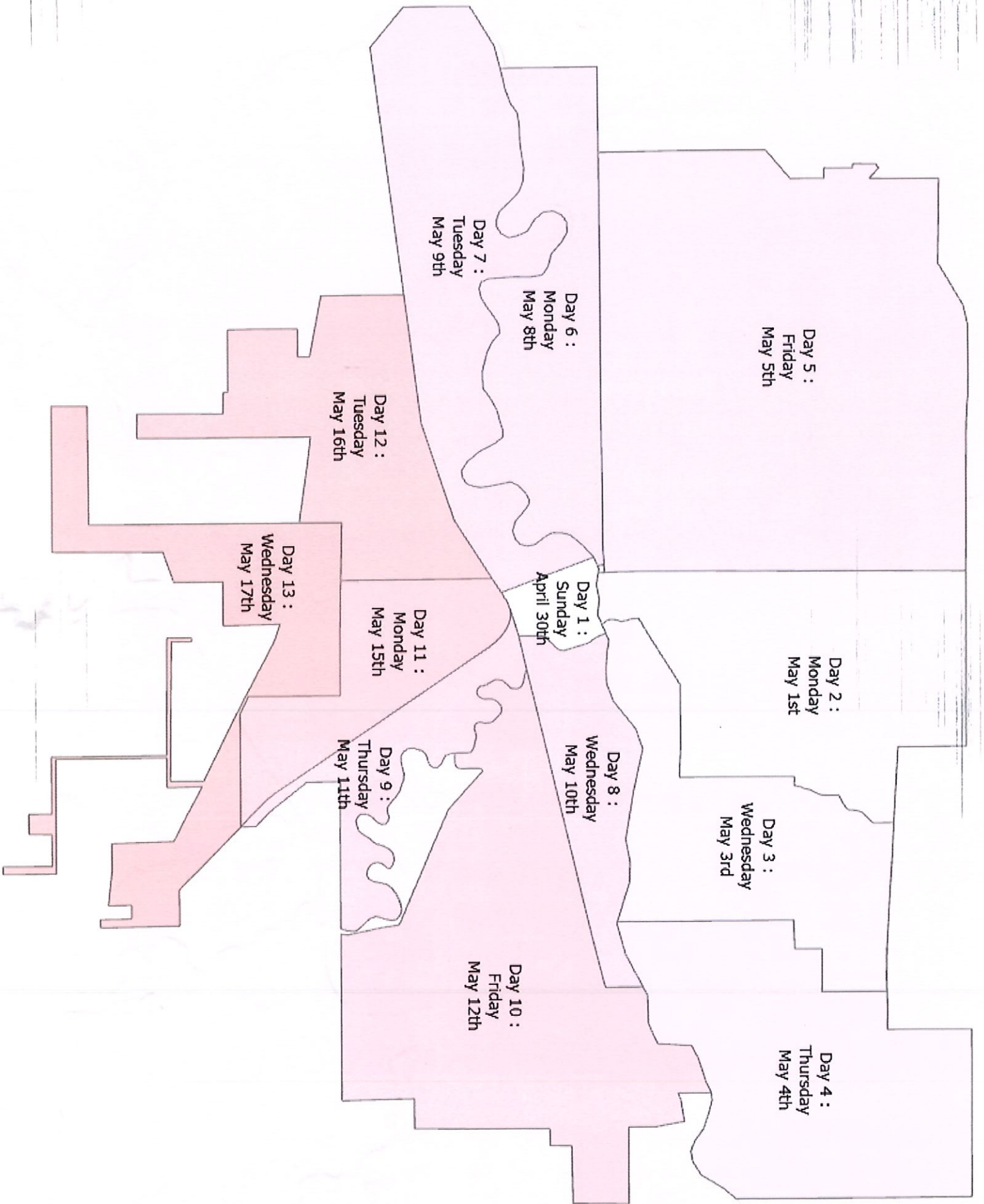
As a courtesy to our customers, we want to inform you that Elkhart Public Utilities will begin the spring watermain flushing on Sunday April 30th at 6:00 a.m. and will continue through Wednesday May 17th at 3:00 p.m. Watermain flushing will not take place on Election Day Tuesday May 2nd.

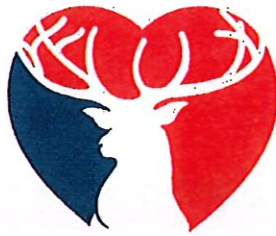
The utility warns residents that on the day when flushing is scheduled for their area, residential drains should be plugged in flood prone areas. All residents can help by making sure inlets and catch basins near their homes are clear of debris.

Since flushing will discolor the water, it is advised not to launder clothing when flushing is in progress within the area. Some discoloration will occur in areas not on the schedule that particular day.

Operations will begin daily at 6:00 am and continue until darkness in some areas. Please use extra caution when driving through flushing areas.

Pressures will be reduced in certain areas as a result of the flushing. This will be a temporary condition.





City of Elkhart
Public Works and Utilities

Memo To Board of Works
Memo From Laura Kolo, Utility Services Manager *LK*
Date Mar 08, 2023
Subject Water Utility Monthly Report of Operations
for the month of February, 2023

Water Produced

	Monthly Total MG	Daily Avg MGD	Daily Min MGD	Daily Max MGD
North Main	114.838	4.101	3.358	5.619
Northwest	51.402	1.836	1.266	2.352
South	30.388	1.085	0.726	1.487
System	196.63	7.02		

Finished Water Quality Information (Monthly Averages)

	Iron mg/l	Manganese mg/l	Fluoride mg/l	Chlorine mg/l	Orthophosphate mg/l
North Main	0.09	0.047	0.84	1.20	1.37
Northwest	0.13	0.049	0.86	1.22	0.93
South	0.12	0.043	0.85	1.37	1.05
Secondary Std / Target	0.30	0.050	0.8 - 1.0	0.9 - 1.5	0.5 - 1.0



M E M O R A N D U M

Date March 14, 2023
To Mike Machlan, Board of Public Works President
From Bryan Cress, Regulatory Compliance Manager *BC*
RE CSO Long-Term Control Plan (LTCP) Six-Month Status Report

The City is required to submit Six-Month Status Reports on the implementation of its Long-Term Control Plan to the Environmental Protection Agency, Indiana Department of Environmental Management and Department of Justice by January 31st and July 31st of each year. The report includes all activities and information generated in the previous six months and any projected work to be completed in the upcoming six months. A full copy of the report may be obtained by going to the Public Works and Utilities page on the City website at <https://elkhartindiana.org/government/public-works/>.

Additionally, a six-month expense report containing the progress of the LTCP implementation, estimated project costs, project costs to date and funding has been provided for your information. This report will be provided to you every six months in conjunction with the Six-Month Status Report submitted to the regulatory agencies.

Staff is available should you have any questions regarding these reports.

City of Elkhart
 Combined Sewer Overflow
 Long Term Control Plan
 6 Month Expense Report Ending December 31st, 2022

Control Measure	Description	Number of Elements Complete	Project Status	CD Required Completion Date	Estimated Project Cost ¹	Contracted Project Cost To Date	Bond Funding To Date	Pay-Go ² Funding To Date
CC	Christiana Creek	3/3	Complete	11/15/2014	\$14,880,000	\$7,200,000	90%	10%
UER	Upper Elkhart River	4/4	Complete	11/15/2018	\$20,280,000	\$10,200,000	36%	64%
WW-U	WWTP Upgrade	2/3	On Schedule	11/15/2023	\$30,045,000	\$25,167,000	99%	1%
LER	Lower Elkhart River	2/3 ⁴	Complete ⁴	11/15/2021	\$13,305,000	\$8,991,000	100%	0%
OA	Oakland Avenue	0/9	On Schedule	11/15/2028	\$27,315,000	\$1,963,000	0%	100%
USJ	Upper St Joe River	0/5	Not Started	11/15/2026	\$6,378,000	- \$37,870	N/A	N/A
LSJ	Lower St Joe River	1/8	On Schedule	12/31/2029	\$8,073,000	\$400,000	0%	100%
RSD	Riverside Drive	1/3	On Schedule	12/31/2029	\$13,875,000	\$73,000	0%	100%
Monitoring	Installation of CSO Outfall Monitors	29/29	Complete	11/15/2015	\$180,000	\$205,700	0%	100%

¹ includes legal, design and construction cost estimates

² pay for projects as we go, no bonding needed

³ includes allocated utility wages, benefits, supplies and materials to operate and maintain CSO remediation projects

⁴ last element will be completed as part of USJ Control Measure
 CD = Consent Decree

Semi-Annual Expense ³	Operation and Maintenance Costs	\$370,240
Semi-Annual Expense	Debt	\$1,683,918
Semi-Annual Expense	CSO Monitoring	\$74,790



M E M O R A N D U M

Date March 13, 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.

November 30, 2022, Swift Prepared Foods collected a self-monitoring sample as required by their permit.

January 13, 2023, Swift summary report was received by Public works. The report did not include the contract lab report, and did not include silver, mercury and cyanide results.

January 24, 2023, Swift sent a revised summary report to Public Works. The report did not include the contract lab report and **did not include cyanide results**. This report included an analysis of the missing parameters using the November 30, 2022 sample.

February 9, 2023, Swift sent a summary report to Public Works along with the contract lab report. The sample used in this report had been taken on January 17, 2023, **which was outside the mandatory sampling period**.

February 21, 2023, Swift sent the contract lab report regarding the November 30th sample, which stated that the **hold time for mercury had expired prior to the analysis**.

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.

Please find Swift in violation of the Wastewater Use Ordinance. The City of Elkhart Enforcement Response Plan recommends a total penalty of \$200.



DATE 3/7/23 tabled

APPROVED BY CITY OF ELKHART
BOARD OF PUBLIC WORKS

M E M O R A N D U M *Penalty \$*

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.



City of Elkhart
Public Works & Utilities

To: Members of the Board of Public Works
From: Megan Kolaczyk, Pretreatment Inspector
Date: March 14, 2023
Re: Consent Order with Compliance Schedule: El Rancho Viejo 7

El Rancho Viejo 7 plans on opening its new location at 3011 Belvedere Rd Suite 101 in late March or early April 2023. This is a Category A facility requiring a properly sized grease interceptor be installed and maintained. The establishment currently has an undersized 1,000 gallon grease interceptor. El Rancho Viejo 7 has been informed that this establishment needs at minimum a 2,000 gallon interceptor as well as a control monitoring manhole.

The attached Consent Order with Compliance Schedule was prepared by the City of Elkhart Public Works and Utilities in conjunction with the El Rancho Viejo 7 authorized representative.

Elkhart Public Works and Utilities

Consent Order

Compliance Schedule

El Rancho Viejo #7

March 21, 2023

El Rancho Viejo #7 is a new food service establishment that hopes to open in March 2023. This is a Category A facility requiring a properly sized grease interceptor be installed and maintained (minimum 2,000) as well as a control monitoring manhole.

This site has an existing 1,000 gallon grease interceptor that if it is still in operational order, will be utilized until the replacement 2,000 interceptor is installed.

The following schedule was prepared by the City of Elkhart Public Works and Utilities in conjunction with the Authorized Representative of El Rancho Viejo #7. If the Milestones detailed below are not met by the respective deadlines or the required report is not submitted on time, the corresponding actions shall be carried out by the Board of Public Works as outlined in the Enforcement Response Plan Penalty Matrix.

Milestone	Deadline	Action for Non-Compliance*
Secure a Contractor	June 30, 2023	\$1,000
Develop Plan (narrative and supporting graphic) for Installation of a Grease Interceptor and control manhole. Submit to City for Review	July 31, 2023	\$1,000, \$1,750
Order Supplies & Materials	August 11, 2023	\$1,000, \$1,750, \$2,500
Complete Installation and Engineering Inspection	September 29, 2023	\$1,000, \$1,750, \$2,500
Final FOG Inspection	October 4, 2023	\$1,000, \$1,750, \$2,500
Operational by:	October 6, 2023	\$1,000, \$1,750, \$2,500
**Final Report Submitted to City. Required if any of the above milestones have been missed.	<i>If required: 15 Days after final Milestone is completed.</i>	\$1,000, \$1,750, \$2,500
Close-out Consent Order		

*Each Milestone that is missed constitutes a separate violation of the Consent Order as described in the Wastewater Utility Use Ordinance, No 5746, as amended, Section 8.1.3 and the Enforcement Response Plan Penalty Matrix, Section 9.2.5.


** 40 CFR 403 allows 14 calendar days after the Milestone deadline for the required reports to be submitted.

El Rancho Viejo 7 Consent Order

I certify that I have read, understand and agree to the conditions and terms contained in this Consent Order.

Ajmer Singh

Name of Authorized Representative


Signature of Authorized Representative

Property Owner's Authorized Representative

Title

March 15, 2023
Date

Name of Utility Representative

Title

Signature of Utility Representative

Date

Approved this _____ of _____ 2023.

Michael Machlan

Date

Chad Crabtree

Date

Jamie Arce

Date

Ronnie Davis

Date

Rose Rivera

Date



FATS, OILS AND GREASE NEW VARIANCE REQUEST

Name of FSE: Las Carnitas Taqueria Inc

Physical Address: 1217 S. Main St.

Current calculated requirement per City Ordinance No. 5434, as amended:

Category A: Properly sized grease interceptor

Minimum size required: 2,000 Gallon

Current Size: None

Variance Requested:

Due to physical constraints (no place to install an interceptor on the property) this food service establishment is requesting a variance from Category A requirements.

Pretreatment Recommendation: Approve: Deny: No Recommendation:

Staff has confirmed there is no space to install a properly sized grease interceptor on this property. If approved, Pretreatment staff recommends requiring the installation of properly sized grease trap(s) on the two three compartment sinks.

Is there a control manhole? Yes: No:

Submitted by: Megan Kolaczyk

Board of Works Action-Variance Request: Approved Not Approved

- If approved, required: Annual Sampling
- Annual Visual Monitoring
- Other: _____

Approved this _____ of _____, 2023

Michael Machlan _____ Date _____

Chad Crabtree _____ Date _____

Jamie Arce _____ Date _____

Ronnie Davis _____ Date _____

Rose Rivera _____ Date _____



FATS, OILS AND GREASE APPLICATION FOR VARIANCE

PLEASE FILL OUT COMPLETELY & PRINT CLEARLY!

(Incomplete forms will be denied.)

Name of FSE: LAS CARNITAS TAQUERIA INC.

Name of Owner of FSE: ERIKA RODRIGUEZ

Physical Address: 1217 S MAIN ST.

City: ELKHART State: IN Zip Code: 46516

Mailing Address: 1217 S MAIN ST.

City: ELKHART State: IN Zip Code: 46516

Telephone Number: 574-584-4118

Email Address: erindr07@gmail.com / victordemianczuk@gmail.com

Is there a control manhole on site? Yes * No

*If yes, please attach a map indicating the location.

Current FSE Category: A B C

Is this variance renewal request? Yes No

Detailed reason for applying. (Please attach additional sheets if necessary.)

We are applying for a variance for the above mentioned FSE because there is no physical space within the boundaries of the property to install a grease interceptor.

Given the circumstances the requested grease interceptor is, in our case, an insurmountable requirement. Our restaurant will clean the grease traps once per week and will fully cooperate with the Department of Public Works to make sure the due inspections take place in a timely and orderly manner.

I certify that the information submitted is true, accurate and complete to the best of my knowledge.

Signature: ERIKA RODRIGUEZ Date: 03/13/2023

Printed Name: ERIKA RODRIGUEZ

Title: OWNER

VARIANCE REQUEST: Approved Not Approved

Required: Annual Sampling

Annual Visual Monitoring (to be completed between Jan. 15 and Feb. 15)

Other: _____

Please Return This Form & Associated Documents To:

Elkhart Public Works & Utilities
Pretreatment Division
1201 S. Nappanee St.
Elkhart, IN 46516

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: Adam Fann, Assistant Director of Redevelopment
RE: Property Maintenance Services RFQ#23-09
DATE: March 15 2023

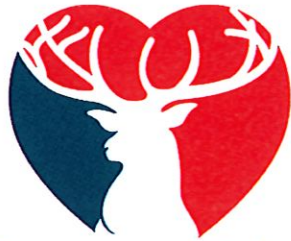
The Department of Development Services is requesting permission to advertise a Request for Quotes (RFQ) for the mowing of vacant City owned lots. The RFQ will be emailed to a list of local lawn care companies once approved for advertisement. The contract will be paid for out of the Development Service budget.

Please pass a motion to accept and approve the requested advertisement of the RFQ.

Mow

<u>Parcel Number (18-digits)</u>	<u>Address</u>	<u>Amount</u>
20-06-05-326-021.000-012	322 Sherman Street	0.00
20-06-05-326-017.000-012	408 Sherman Street	0.00
20-06-05-327-014.000-012	411 Sherman Street	0.00
20-06-05-326-016.000-012	412 Sherman Street	0.00
20-06-05-326-014.000-012	422 Sherman Street	0.00
20-06-05-327-010.000-012	427 Sherman Street	0.00
20-06-05-326-012.000-012	428 Sherman Street	0.00
20-06-05-327-009.000-012	501 Sherman Street	0.00
20-06-05-327-008.000-012	501 Sherman Street	0.00
20-06-05-161-014.000-012	Adj to 550 Sherman Street	0.00
20-06-05-327-001.000-012	Ad to 543 Sherman Street	0.00
20-06-05-327-023.000-012	214 Clyde Street	0.00
20-05-12-226-018.000-006	Gruber Circle	0.00
20-05-12-227-001.000-006	Gruber Circle	0.00
NONE	Aspin St. Circle	0.00
NONE	Aspin St. Triangle	0.00
20-06-09-303-007.000-012	1514 Frances Ave.	0.00
20-06-09-303-008.000-012	1514 Frances Ave.	0.00
20-06-08-284-010.000-012	126 W. Indiana	0.00
20-06-08-429-026.000-012	1501 Prairie St.	0.00
20-06-08-226-001.000-012	100 Middlebury St.	0.00
20-06-08-226-002.000-012	100 Middlebury St.	0.00
20-06-09-126-008.000-012	Adj to 604 Aspenwald	0.00
20-06-09-102-002.000-012	407 Middlebury St.	0.00
20-06-09-133-010.000-012	1030 Princeton	0.00
20-06-10-201-001.000-012	Toledo Road Site	0.00
20-06-07-226-001.000-012	Southshore & Cottage	0.00
20-06-07-483-031.000-012	164 Southshore	0.00
20-06-07-483-032.000-012	Adj to 164 Southshore	0.00
20-06-08-328-017.000-012	Adj to 618 W. Garfield	0.00
20-06-08-328-020.000-012	Adj to 618 W. Garfield	0.00
20-06-08-278-013.000-012	Adj to 1030 S. 3rd St.	0.00
20-06-08-404-019.000-012	1509 Benham Avenue	0.00
20-06-08-404-020.000-012	1513 Benham Avenue	0.00
20-06-05-328-007.000-012	212 N. 3rd St.	0.00
20-06-05-326-026.000-012	Adj to 314 Sherman St	0.00
20-06-05-176-004.000-012	304 Pottawattomi	0.00
20-06-05-306-002.000-012	633 Jefferson St	0.00
20-06-05-306-006.000-012	619 Jefferson St.	0.00
20-06-05-306-007.000-012	Adj. to 619 Jefferson St.	0.00

20-06-05-327-025.000-012	616 Jefferson St.	0.00
20-06-05-327-024.000-012	Adj. to 616 Jefferson St.	0.00
20-06-05-306-010.000-012	601 Jefferson St.	0.00
20-06-05-327-031.000-012	516 Jefferson St.	0.00
20-06-05-329-002.000-012	515 Jefferson St.	0.00
20-06-05-329-001.000-012	Adj to 515 Jefferson St.	0.00
20-06-05-327-035.000-012	500 Jefferson St.	0.00
20-06-05-327-037.000-012	426 Jefferson St.	0.00
20-06-05-331-008.000-012	409 Jefferson St.	0.00
20-06-05-327-046.000-012	326 Jefferson St.	0.00
None	Adj to 2129 Autumn Ridge Lane	0.00
20-06-06-404-001.000-012	Strong & Highland Triangle	0.00
20-06-05-331-041.000-012	123 3rd	0.00
20-06-05-333-023.000-012	111 N 5th	0.00
20-06-05-179-005.000-012	412 3rd	0.00
20-06-08-277-019.000-012	937 S 3rd	0.00
20-06-05-331-008.000-012	413 Jefferson Adj W	0.00
20-06-05-383-013.000-012	505 W High	0.00
20-06-05-326-008.000-012	313 Washington	0.00
20-06-05-161-003.000-012	529 W Washington Adj	0.00
20-06-05-483-025.000-012	229 State	0.00
20-06-05-481-034.000-012	142 State	0.00
20-06-05-328-013.000-012	209 N 2nd	0.00
20-06-05-179-017.000-012	421 N 2nd	0.00
20-06-12-426-007.000-011	CR 17 & Verdant St	0.00
20-07-06-101-001.000-012	CR 17 & Beck Dr	0.00
20-07-06-102-001.000-012	CR 17 & Beck Dr	0.00
20-06-05-176-007.000-012	Pottawattomi Dr.	0.00
Trash Clean up		0.00
INVOICE TOTAL		0.00



City of Elkhart
Community and Redevelopment

Community and Redevelopment
Request for Quote: Property Maintenance Services RFQ#23-09
March 21, 2023

Introduction

The City of Elkhart Department of Development Services is seeking property maintenance services. To fulfill the City of Elkhart's requirement to contract with Section 3 businesses, preference for this contract will be given to a Section 3 business, as described on page 3 of this Request (*see "Evaluation Criteria" below for explanation*).

Scope of Work:

The property maintenance scope of work includes lawn mowing and leaf mulching if leaves are present as described below. The location of lots to be maintained are shown in attachment B

The number of properties to be maintained will be reduced and increased as they are sold or acquired. You will be given notice to discontinue or add maintenance services of those properties.

Provide pricing as follows:

Mowing per occurrence for each lot;
Large item/junk removal per occurrence.

Mowing requirements:

Remove all trash and debris prior to each mowing;
Mow no more than twice a month or as requested by the City to keep grass & weeds less than 8";
Clear grass clippings off sidewalks and streets.

Large item/junk removal:

Provide a price to remove large items from vacant lots such as couches, tables, trash, etc. Items must be taken to an appropriate landfill or recycling facility.

All applicants for the property maintenance services contract must:

- Not be listed on GSA's Excluded Parties List System (www.sam.gov) or HUD's Limited Denial of Participation (**LDP**) list.
- Provide a brief resume with years of experience;
- Provide a list of equipment owned (demonstrate the capacity to handle large number of properties);
- Provide a list of references;
- Provide all prices requested.

The Board reserves the right to reject any or all quotes and to disregard any informality in the submittal when, in the Board's opinion, the best interest of the City will be served thereby. The Commission reserves the right to accept any submittal and/or any part thereof.

Evaluation Criteria:

In reviewing and evaluating proposals, the Board of Public Works and Development Services staff will consider the following:

- Completeness of the proposal
- Ability to perform the scope of work as determined by a review of resume and references
- Cost of the services
- *If two proposals are similar, then preference will be given to Section 3 contractors, State of Indiana Certified MBE/WBE, NSP 3 vicinity businesses, and/or City of Elkhart businesses.*

Contract and Terms:

Once the staff reviews and approves a proposal, a contract will be negotiated with the maintenance service provider incorporating the specific elements of the proposal and scope of work. **It is anticipated the contract will be awarded to the selected applicant at the, 2023 Board of Public Works meeting. The contract shall begin with the notice to proceed with the first mowing of the season, and continue through the end of the year or until such time as contractor is notified by the City to cease mowing due to lack of need.**

Proposal Requirements:

Bids will be accepted during the hours of 8:00 A.M. to 5:00 P.M. (ET), up until 9:00 A.M. (ET) Tuesday, April 4, 2023 (the "Deadline"). All bids received by the Clerk of the Board by the Deadline will be opened and read aloud at the meeting of the Board scheduled to start at 9:00 A.M. (ET) on Tuesday, April 4, 2023. Any bid received after the Deadline will be returned to the bidder unopened. After opening the bids, the Board will take all bids under advisement and refer them to City staff for review and tabulation.

Quotes shall be filed with:

Clerk of the Board of Public Works, City of Elkhart
229 South Second St, Third Floor, Elkhart, IN 46516.

Proposals must be complete in all respects; incomplete proposals will not be considered. All materials submitted become the property of the City of Elkhart.

The Board reserves the right to reject any or all proposals and to disregard any informality in the submittal when, in the Board's opinion, the best interest of the City will be served thereby. The Board reserves the right to accept any submittal and/or any part thereof.

What is a Section 3 Business?

Section 3 Business- A business entity formed in accordance with State law, and which is licensed under State, county, or municipal law to engage in the type of business activity for which it was formed **and**: A business that is 51 percent or more owned by Section 3 resident(s); **or** whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents who reside in Elkhart County's Metropolitan Statistical Area, **or** within three years of the date of first employment with the business concern were Section 3 residents; **or** a business that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the ownership or employment qualifications of a Section 3 business (as discussed above).

Your Business is a Section 3 Business if...

Your business was formed in accordance with State law, and licensed to engage in the type of business activity for which it was formed.

AND you can answer yes to **ONE** of the following questions:

- ✓ Is 51% of the business owned by Section 3 Resident(s)?
OR
- ✓ Are 30% of permanent, full-time employees currently Section 3 Residents who reside in the City of Elkhart?
OR
- ✓ Were 30% of the permanent, full-time employees, within 3 years of the date of first employment, Section 3 Residents who reside in the City of Elkhart?
OR
- ✓ Can you provide evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to a Section 3 business that meets the ownership or employment qualifications? (As explained above).
OR
- ✓ Can you provide evidence of commitment to hire section 3 residents, such that they compose at least 30% of all new hires? (As defined by the most updated HUD income requirements, see chart below).

Effective 4/1/2020

AMI \$70,200 Area Median Income	1 Person	2 persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
30%	\$14,750	\$17,240	\$21,720	\$26,200	\$30,680	\$35,160	\$39,640	\$44,120
50%	\$24,600	\$28,100	\$31,600	\$35,100	\$37,950	\$40,750	\$43,550	\$46,350
80%	\$39,350	\$44,950	\$50,550	\$56,150	\$60,650	\$65,150	\$69,650	\$74,150



MEMORANDUM

DATE: 03-13-2023

TO: Board of Public Works

FROM: James Gerald, IT Director

RE: Proposed Ordinance to replace end of life Frontier phone system with Cisco phone system

The current Frontier PRI phone system utilized by City emergency services is failing and end of life. The purchase of the new Cisco phone system will mitigate emergency services losing telephone capabilities. Furthermore, it will consolidate the City as a whole down to one, redundant service instead of several disparate systems saving the City thousands per month financially as well as labor savings with more streamlined billing processes once the City is fully converted. The purchase is \$116,864.33.

It is requested that the Board of Public Works approves the purchase of the Cisco phone system for \$116,864.33.

March 7, 2023

Board of Works

Dear Board Members,

I have placed a contract renewal in your packet for your review and approval. Traci Adams and I have entered into an agreement that will allow her to transcribe City Council Minutes. The current Council Clerk Angie McKee, has suffered a fractured wrist and it makes typing difficult. Traci served in the position for two years and has valuable insight regarding the Council and the procedures that regulate Council meetings.

I am asking the Board of Works for approval of this contract, so that we may move forward with the transcription of City Council minutes.

Thank you in advance,

A handwritten signature in blue ink that reads "Debra D. Barrett". The signature is written in a cursive style with a large, sweeping initial "D".

Debra D. Barrett
Elkhart City Clerk



M E M O R A N D U M

Date March 16, 2023
To Board of Public Works
From Wayne Belock, Human Resources
RE "Personnel Partners Contracts"

From time to time certain departments are in need of temporary or part-time employees. At those times the Board has contracted with Personnel Partners to provide employees to various City departments, requiring individual contracts for each position filled. Each of these individual contracts has been reviewed by the Board's attorney who approves those contracts prior to the Board's execution of the contracts.

The need to fulfill vital City functions with temporary or part-time employees can be unpredictable. As a result, the need to fill these positions cannot always be readily anticipated or scheduled.

Since the City Controller is available to review Personnel Partners contracts with the Board's attorney and determine the financial feasibility of said contracts it would be beneficial to the effective and efficient operation of the City to authorize the City Controller to be the signatory for the execution of any and all contracts with Personnel Partners provided said contracts are approved by the Board's attorney.

^{23-R-06}
Please approve the attached Resolution authorizing the City Controller to approve contracts with Personnel Partners.

Resolution 23-R-06

A RESOLUTION OF THE BOARD OF PUBLIC WORKS OF THE CITY OF ELKHART, INDIANA, TO DESIGNATE AND AUTHORIZE THE CITY CONTROLLER TO EXECUTE PERSONNEL PARTNER AGREEMENTS

WHEREAS, the City of Elkhart, Indiana, is a municipal corporation;

WHEREAS, the Board of Public Works ("Board") is authorized to enter into contractual agreements on behalf of the City;

WHEREAS, from time to time certain departments are in need of temporary or part-time employees;

WHEREAS, at those times the Board has contracted with Personnel Partners to provide said employees, requiring individual contracts for each position filled;

WHEREAS, the Board's attorney approves those contracts prior to the Board's execution of same; and

WHEREAS, the City Controller is available to review Personnel Partners contracts with the Board's attorney and determine the financial feasibility of said contracts.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF ELKHART, INDIANA, THAT the City Controller, is hereby designated by the Board as the authorized signatory for the execution of any and all contracts with Personnel Partners provided said contracts are approved by the Board's attorney.

RESOLVED this _____ day of _____, 2023.

Michael Machlan, President

Chad Crabtree, Vice President

Ronnie Davis, Member

Jamie Arce, Member

ATTEST:

Rose Rivera, Member

Nancy Wilson, Clerk

Rod Roberson
Mayor



Development Services
229 S. Second Street
Elkhart, IN 46516
574.294.5471
Fax: 574.295.7501
Permit Center Fax:
574.970.1361

February 28, 2023

Michael Machlan
Chad Crabtree
Ronnie Davis
Jamie Arce
Rose Rivera

RE: enFocus Support
Economic Development
City of Elkhart, IN

Dear Board:

The Department of Development Services is diligently working to support our business community and residents within the City of Elkhart. A step toward that goal is to update our zoning ordinance and annexation strategy. As a part of this larger project, we have engaged with enFocus, leaders in civic innovation within our region. They have agreed to provide services related to community engagement, research activities and general support related to the UDO and annexation strategy document.

For the services offered, enFocus agrees that the City shall not pay more than \$80,000. If the services should exceed the estimated price, the Department of Development Services will come back to the Board to make it aware of the change.

The City is requesting that a motion be made limiting the amount the City will pay for services to enFocus to \$80,000. Service will begin immediately upon the Board's approval and an executed contract. Please consider our request to execute this agreement as presented.

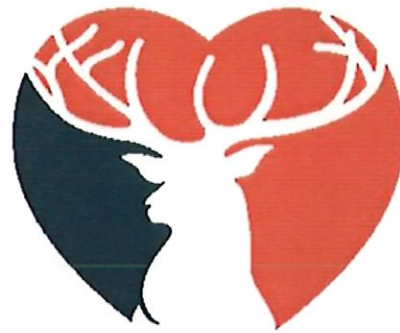
Respectfully,



Kristen Smole



in partnership with:



City of Elkhart

Compiled by:
Gillian Shaw, Director of Projects
June 2022



South Bend
Studebaker Building 113
635 South Lafayette Blvd. Ste 123L
South Bend, IN 46601

Elkhart
ETHOS Innovation Center
1025 North Michigan Street
Elkhart, IN 46514



Exhibit A: Project Summary

Fellow Support and Engagement in City Planning

Background and Community Need

Following a short project engagement researching best practices on feather flag zoning ordinances, the City of Elkhart is interested to engage enFocus Fellows to provide data collection and analysis services to support key city planning initiatives. These initiatives will grow the City of Elkhart's ability to move toward a Unified Development Ordinance (UDO) and inform annexation decisions.

Project Objective

The objective of this project is to support the City of Elkhart in two key city planning initiatives: 1) Public engagement toward development of a UDO and 2) fiscal impact of annexation.

Project Scope and Approach

There are multiple projects that require attention over the timeframe of this engagement. As a result, enFocus will act as a part-time junior planner to support multiple initiatives at the City of Elkhart, contributing a maximum 20 hours/week. Two key initiatives have been preliminarily identified:

- Supporting Public Engagement in UDO Development
- Fiscal Impact Analysis of Annexation

enFocus will support additional city planning activities at the direction of the Project Champions within the hourly weekly constraint. Project tasks for the preliminarily identified initiatives are listed below.

Initiative 1: Supporting Public Engagement in UDO Development

Key Activities - In collaboration with the City of Elkhart's subject matter expert consultant, perform the following:

- Establish calendar of stakeholder meetings which includes both a steering group and public engagement sessions
- Provide project management, to both drive and track progress
- Attend and document stakeholder meetings



- Facilitate primary data collection from the public using qualitative (focus groups) and quantitative (survey) techniques
- Perform supplemental geospatial analysis, utilizing ArcGIS, to identify areas for targeted public engagement and/or a need for amended zoning practices
- Collate and organize data for ease-of-analysis
- Provide analysis summary that identifies trends and themes from the primary data collection
- Support creation of the established contract deliverable for the City of Elkhart's subject matter expert consultant

Initiative 2: Fiscal Impact Analysis of Annexation

Key Activities

- Identify and document historically high-impact areas of annexation
- Define impact metrics for successful historically high-impact areas for annexation
- Determine geospatial data sources and collect information that may guide future areas for annexation
- Create geospatial maps to understand:
 - Distribution of businesses-and high revenue locations
 - Distribution of community support agencies including nonprofit community services, support agencies and community centers
- Perform a financial analysis that considers feasibility, necessary City investment in acquired property, and potential for increased tax revenue
- Establish outcome goals for each annexation
- Present analysis to key stakeholders, which may include public sessions

Additional City Planning Support

To provide the most value, enFocus will support ongoing city planning activities at the direction of the Project Champions within the hourly weekly constraint. Such activities may include:

- Conducting research in priority project areas
- Designing and presenting analysis reports
- Identifying community challenges and opportunities in specific City of Elkhart neighborhoods that could be addressed with community planning
- Evaluating City of Elkhart resources to address current and projected community needs
- Recommending priorities, schedules, and funding sources to implement suggested improvements



Project Timeline

This project will begin on January 1st, 2023 and end on December 31, 2023. The enFocus Fellow will prioritize and execute on project activities in each initiative area, as appropriate. The figure below provides a preliminary timeline of effort by initiative, anticipating ebbs and flows in project work. Additional City Planning support will be provided as new project needs arise and to ensure enFocus time is consistent at 20 hours/week.

Project Cost

The fee for this engagement is \$80,000. The City of Elkhart will be invoiced monthly on the first Friday business day with invoices equal to \$5,000.

Team and Resources

enFocus will be taking a team approach to completing this project. An Innovation Fellow and Project Manager will be assigned to this project. These two will work together to quickly complete activities, contributing a total of 20 hours per week throughout the engagement. Additionally, enFocus's Director of Projects will provide oversight and advice to the team. Project resources, interns, and mentors will be added to the project on an as needed basis.

Sponsor Project Champions:

- Eric Trotter, eric.trotter@coei.org,
- Kristen Smole, Kristen.Smole@coei.org

The Project Champions will be responsible for determining when milestones have been completed and will play a role in managing the engagement and execution.

Communications Management Plan

To ensure seamless communication throughout the project, enFocus proposes that communications be carried out as detailed below:

- Ad-hoc communication: As necessary, Project Lead will communicate with the Project Champions via email, telephone communications, and update meetings.
- Deliverable validation: Meeting at the completion of each project phase to review deliverables.

Project Updates and Communication

Regular, recurring project update meetings near the middle of each project milestone establishes an effective communication strategy to set expectations for all relevant teams



and to align resources accordingly. During these meetings the Project Champion will be briefed on project status and any required amendments to project deliverables or timeline.

Pivots

enFocus places value on our entrepreneurial focus and approach to projects. We have had historical success for sponsors when we reserve the option to initiate conversation with the sponsor for a project pivot when we see a better path or opportunity to pursue that can lead to greater success. This is not meant to negate the project responsibility of enFocus, but rather to create a scenario that will produce the most valued outcome for all parties. enFocus and the sponsor will agree to any project pivot(s) in advance.



Letter of Engagement

enFocus Company Sponsorship Terms

We want you to understand the basis under which we offer our services to you and determine our fees, as well as to clarify the relationship and responsibilities between your organization and enFocus. These terms are part of our engagement letter and apply to all future services, unless a specific engagement letter is entered for those services. Each of these terms shall survive and apply after termination of this agreement.

CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is entered into on as of January 2023, by and between the City of Elkhart, having its principal offices at 229 S Second St, Elkhart, IN 46516 (hereinafter referred to as "Sponsor"), and enFocus, a 501 c (3) organization, having its principal offices at 635 S Lafayette Boulevard, South Bend, IN 46601 (hereinafter referred to as "Consultant").

WHEREAS, the Sponsor desires to obtain the services of Consultant on its own behalf and on behalf of all existing and future Affiliated Companies (defined as any corporation or other business entity or entities that directly or indirectly controls, is controlled by, or is under common control with the Sponsor), and Consultant desires to provide consulting services to the Sponsor upon the terms and conditions in this Agreement.

AGREEMENT

SECTION 1 - CONSULTING PERIOD

(a) Term - The Sponsor hereby retains the Consultant and Consultant agrees to render to the Sponsor those services described in the enFocus Project Summary, Exhibit A, incorporated by reference and attached hereto, for the period (the "Consulting Period") commencing on January 1, 2023 and ending on December 31, 2023

(b) Termination - At any time, either party may terminate, without liability, the Consulting Period for any reason, with or without cause, by giving 60 days advance written notice to the other party. The Sponsor shall pay Consultant the compensation to which the Consultant is entitled pursuant to Exhibit A.



SECTION 2 - DUTIES AND RESPONSIBILITIES

(a) Consultant hereby agrees to provide and perform for the Sponsor those services set forth in Exhibit A.

(b) Sponsor hereby agrees to provide compensation and reimbursement for travel and other reasonable business expenses incurred by Consultant under the scope of this agreement if and only if negotiated in advance with the Sponsor.

SECTION 3 - COMPENSATION, PAYMENT, BENEFITS

(a) Compensation in consideration of the services to be rendered hereunder, including, without limitation, services to any Affiliated Company, Sponsor shall pay a project fee of \$80,000 dollars to Consultant and reimburse travel incurred by the Consultant, as detailed in Exhibit A.

(b) Payment Terms. Sponsor agrees to pay dollars to Consultant, as detailed in Exhibit A. Invoices shall be presented at agreed upon project intervals (detailed in Exhibit A) based on project progress and payments are due within 30 days.

(c) Benefits. Other than the compensation specified in Sections 3(a), Consultant shall not be entitled to any direct or indirect compensation for services performed hereunder.

SECTION 4 - CONFIDENTIAL INFORMATION

(a) "Confidential Information" means:

- (1) any information given to enFocus by Sponsor and clearly marked, in writing as confidential; and
- (2) any information given to enFocus by Sponsor orally that, at the time given, is stated to be confidential, and reduced to writing within thirty (30) days.

(b) enFocus agrees to keep Confidential Information confidential for a period of five (5) years from date given to enFocus, not to give in any form, to a third party, and to only give to enFocus employees who have a need to know.

(c) The confidentiality, as stated in SECTION 4 (b), will not apply to information which:

- (1) is at the time of receipt public knowledge, or after receipt becomes public knowledge through no act of omission on the part of enFocus;
- (2) was known to enFocus, as shown by written records, prior to disclosure by Sponsor;
- (3) is received by enFocus from a third party who did not obtain the information from Sponsor; or



(4) is required by law.

Consultant hereby acknowledges and agrees that all property, including, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof, that is produced under this Agreement is Proprietary Information (as defined herein), and equipment furnished to or prepared by Consultant in the course of or incident to rendering of services to the Sponsor, belong to the Sponsor and shall be promptly returned to the Sponsor upon request.

(d) Consultant agrees to hold all Sponsor's Proprietary Information in strict confidence and trust for the sole benefit of the Sponsor and not to, disclose, use, copy, publish, summarize, or remove from Sponsor's premises any Proprietary Information (or remove from the premises any other property of the Sponsor) during the Consulting Period except (i) to the extent necessary to carry out Consultant's responsibilities under this Agreement or (ii) after termination of the Consulting Period or (iii) when the information falls within the guidelines of this agreement.

SECTION 5 - NOTICES

All notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the Sponsor at:

ATTN: Kristen Smole / Eric Trotter, Assistant Director of Economic Development / Assistant Director of Planning and Zoning
City of Elkhart
229 S Second St, Elkhart, IN 46516

or to the Consultant at:

ATTN: Gillian Shaw, Director of Projects
enFocus Inc.
635 S Lafayette Boulevard
Suite 105L
South Bend, IN 46601

Notice of change of address shall be effective only when done in writing and sent in accordance with the provisions of this Section.



SECTION 6 - AMENDMENTS AND WAIVERS

This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by a duly authorized representative of the Sponsor and the Consultant. By an instrument in writing similarly executed, either party may waive compliance by the other party with any provision of this Agreement that such other party was or is obligated to comply with or perform, provided, however, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity.

SECTION 7 - INTERRUPTION OF SERVICE

Either party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, acts of war, fire, insurrection, laws proclamations, edicts, ordinances or regulations, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the parties' respective obligations hereunder shall resume.

SECTION 8 - SEVERABILITY, ENFORCABILITY

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

SECTION 9 - GOVERNING LAW

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of Indiana.

SECTION 10 - INDEPENDENT CONTRACTOR

The Consultant shall operate at all times as an independent contractor of the Sponsor. This Agreement does not authorize the Consultant to act for the Sponsor as its agent or to make commitments on behalf of the Sponsor. The Sponsor shall not withhold payroll taxes, and Consultant shall not be covered by health, life, disability, or worker's compensation insurance of the Sponsor.



SECTION 11 – ABILITY TO ENTER INTO CONTRACT

Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered and that the performance of its obligations under this Agreement does not conflict with any order, law, rule or regulation or any agreement or understanding by which such party is bound.

SECTION 12 – INSURANCE, INDEMNIFICATION, AND LIMITATION OF LIABILITY

(a) Consultant agrees to defend, indemnify, and save harmless the City of Elkhart, Indiana and its elected officials, officers, appointees, employees, agents and representatives from any and all claims, demands, actions, and causes of action of any nature whatsoever which may arise from or be attributable to Consultant's, or any of its subcontractor's, performance, non-performance, breach, or violation of this Agreement or which may arise from or be attributable to the actions and omissions of Consultant's, or any of its subcontractor's, employees, agents, and representatives. Consultant will maintain comprehensive commercial liability insurance and vehicle liability insurance, each in a minimum amount of One Million Dollars (\$1,000,000), along with worker's compensation and employer's liability insurance in amounts required in the State of Indiana. Consultant warrants that it shall maintain such liability insurance in effect during the term of this Agreement and provide proof of such insurance to the City of Elkhart.

(b) As a professional organization, Consultant will perform the services described in Exhibit A to the best of its ability, striving to ensure great quality work and minimize errors or omissions. The nature of the Consultant organization is a Fellowship program designed to give employees their first professional work experience. As a result, all project deliverables will be reviewed by the City of Elkhart and implemented at the City of Elkhart's discretion. The Consultant shall not be liable for any loss incurred in the performance of services hereunder beyond the liability limits of its liability insurance.

SECTION 13 – ENTIRE AGREEMENT

The terms of this Agreement are intended by the parties to be in the final expression of their agreement with respect to the retention of Consultant by the Sponsor and may not be contradicted by evidence of any prior or contemporaneous agreement.

SECTION 14 - E-VERIFY REQUIREMENT

Consultant 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. Consultant shall provide Owner with documentation that it is enrolled and



participating in the E-Verify program. Consultant 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.

This Agreement shall not take effect until said affidavit is signed by Consultant and delivered to Owner along with the documentation of the E-Verify program enrollment and participation. Should Consultant subcontract for the performance of any work under this Agreement, the Consultant 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.

Consultant shall maintain a copy of such certification for the duration of the term of any subcontract. Consultant shall also deliver a copy of the subcontractor certification to the Owner within seven days of the effective date of the subcontract.

If Consultant, or any subcontractor of Consultant, knowingly employs or contracts with any unauthorized alien, or retains an employee or contract with a person that the Consultant or subcontractor subsequently learns is an unauthorized alien, Consultant shall terminate the employment of or contract with the unauthorized alien within thirty (30) days. Should the Consultant or any subcontractor of Consultant 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.

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

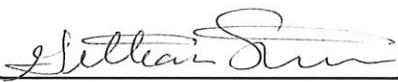


The parties have duly executed this Agreement as of the date first written above:

SPONSOR: BOARD OF PUBLIC WORKS SEAL

CONSULTANT:

Name: Gillian Shaw

Signature: 

Title: Director of Projects

Date: 03/07/2023

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


AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION

I, Gillian Shaw, 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 enFocus, Inc ("Consultant") in the position of Director of Projects.
3. I am familiar with the employment policies, practices, and procedures of Consultant and have the authority to act on behalf of the Consultant.
4. Consultant 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. Consultant does not knowingly employ any unauthorized aliens.
6. To the best of my information and belief, the Consultant 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 27th day of February, 2023.



Printed: Gillian Shaw

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

CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN

I, Gillian Shaw, certify to the following:

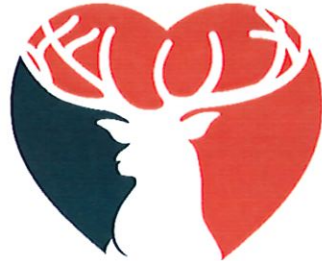
1. Pursuant to Indiana Code 5-22-16.5 *et seq.*, I am not now engaged in investment activities in Iran.
2. I understand that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

EXECUTED THIS 27th DAY OF February, 2023.



Printed: Gillian Shaw

This is **EXHIBIT F**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Consultant 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 on the grounds 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 Consultant

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 duration of this Agreement with the City of Elkhart.



Signed

Gillian Shaw

Printed Name

February 27th, 2023

Dated

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

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

Memo

To: Members of the Board of Public Works

From: Rose Rivera, City Attorney

Date: March 16, 2023

Re: Lease with Elkhart Art League

The Elkhart Art League has requested to renew their lease at the Depot. The City has provided a lease with substantially similar terms as the previous year. The lease is for one year with the option to renew. The City may unilaterally terminate the lease at any time with 180 days notice. Attached is the agreement covering the 2023 year. The lease requires the Art League pay rent in the amount of \$10 per year in addition to \$200 per month as reimbursement for utilities.

I am requesting that the Board approve the **LEASE AGREEMENT WITH THE ELKHART ART LEAGUE.**

LEASE AGREEMENT

(Depot - 1B)

This Lease Agreement ("Lease") is made and entered into on this ____ day of _____ 2023, by and between the City of Elkhart, Indiana acting by and through its Board of Public Works (hereinafter "City") and the Elkhart Art League, Inc., a non-profit corporation (hereinafter "Tenant").

In consideration of the mutual promises contained herein, City hereby agrees to and does lease to Tenant, and Tenant hereby agrees to and does lease from City, the western portion of the first floor, more commonly known as Suite 1B, located at the Depot, 131 Tyler Street, Elkhart, Indiana, upon the following covenants, terms and conditions:

1. **Term**- The initial term of this lease shall be for one (1) year and shall begin on January 1, 2023, and end on December 31, 2023. Tenant may elect to terminate this Lease prior to December 31, 2023, by giving notice of such election to the City at least 180 days prior to the effective date of such election and paying damages in the amount of Two Hundred Dollars (\$200.00) for each month remaining in the initial term. Notwithstanding any other provision of this Lease, this Lease may be terminated at any time by the written mutual agreement of City and Tenant. Notwithstanding any other provision of this Lease, the City may at any time unilaterally terminate this lease by providing Tenant with 180 days notice of intent to terminate this Lease agreement. Subject to the City's right to terminate, Tenant shall have the option of renewing this Lease for successive one (1) year terms provided that notice of the renewal is given by the Tenant to the City at least 120 days before the end of the then current term. The maximum term of this Lease (including renewals) is four (4) years ending on December 31, 2027.

2. **Payment of Rent**- As rent for the said premises for the one (1) year term, Tenant agrees to pay and City agrees to accept the sum of \$10.00 per year, without relief from valuation or appraisal laws, at the Office of the Controller, 229 S. Second Street, Elkhart, IN 46516, or any other such place as City should designate in writing. The first rental payment is due and payable on or before January 1, 2023. Thereafter, the rental payment for each year shall be due and payable in advance on the first day of each year of this lease (including renewals).

3. **Fee for Late Payment of Rent**- Should Tenant fail to pay any rental payment required herein by the fifth day following its due date, a penalty in the amount of ten percent (10%) of the rental payment shall be due and payable in addition to such rental payment. The late payment penalty shall be tendered at the same time as the late rental payment.

4. **Utilities**- City will pay all charges for public utilities services to the premises during the term of this Lease, subject to Tenant's agreement to reimburse the City for those charges. Such utilities shall include, but not be limited to, water, electric, gas, sewer, trash, and recycling. Tenant shall pay the monthly sum of Two Hundred Dollars (\$200.00) as reimbursement for utility services paid by the City. Tenant shall contract for telephone services in its name.

5. **Condition of Premises**- Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises, or with respect to the suitability of the Premises for the conduct of Tenant's business. Tenant acknowledges that (a) it is fully familiar with the condition of the Premises and agrees to take the same in its condition "as is" as of the Term Commencement Date and (b) Landlord shall have no obligation to alter, repair or otherwise prepare the Premises for Tenant's occupancy or to pay for or construct any improvements to the Premises. Tenant's taking of possession of the Premises shall, except as otherwise agreed to in writing by Landlord and Tenant, conclusively establish that the Premises, the Building and the Project were at such time in good, sanitary and satisfactory condition and repair. Tenant further agrees to keep said premises in a good, clean condition, to commit no waste, to repay the City the cost of all repairs necessitated by the negligent or careless use of said premises and to surrender the premises at the termination of this Lease in like condition as when taken, less reasonable wear and tear and acts of God.

6. **Use of Premises**- Tenant shall use the premises exclusively for Tenant's non-profit activities, and only as such uses are permitted by the Elkhart City Zoning Code, and for no other purpose. Tenant warrants that Tenant will not use or allow third parties to use the premises for any unlawful activities, or engage in or allow third parties to engage in any unlawful conduct on or about the premises. Tenant shall comply with all local, state and federal laws. Tenant shall not use or allow others to use the premises in such a manner as to adversely affect the peaceful enjoyment of real property by neighboring occupants.

7. **Alteration of Premises**- Tenant shall not make, nor cause to be made, alterations, additions, or improvements to the premises, nor incur any expenses for these matters, without the prior written consent of City. In the event City permits alterations, additions, or improvements, unless otherwise agreed, the same shall remain on the premises upon the termination of the Lease and become the property of the City. However, nothing in this provision shall prevent the installation or removal of Tenant's trade fixtures. Tenant shall be responsible for payment of all costs necessary to repair the damage caused by the removal of any trade fixtures.

8. **Maintenance and Repair**- Tenant shall, at his own expense, maintain the premises in as good order and repair as they are in on the date of this Lease, excepting normal wear and tear and acts of God. City shall be responsible for any maintenance of mechanical items and for any repairs necessary to the premises resulting from normal wear and tear. Tenant shall notify City within twenty-four (24) hours of any defect to the premises requiring immediate attention. Tenant shall exercise reasonable care to ensure that any improvements on the premises are not damaged by Tenant or third parties. The City will provide and maintain a minimum of two A-B-C Fire Extinguishers.

9. **Assignment and Sublease**- This Lease shall not be assigned by Tenant nor shall these premises be sublet by Tenant. City reserves the right to assign its interest under this Lease and any sums owing hereunder on the sale or transfer of the leased premises.

10. **Security Deposit**- There shall be no Security Deposit required.

11. **Liability and Indemnification**- Tenant assumes all risks and responsibilities for accidents, injuries, and death to persons or damage to property occurring on, about or near the premises. City shall not be liable for damage caused by hidden defects or for failing to keep the premises in good order and repair. City shall not be liable for any injury to the Tenant or third parties occurring on, about, or near the premises, irrespective of whether the injury is caused by a defect in the premises needing repairs or arising from any other cause whatsoever; nor shall City be liable for damage to Tenant's property or to the property of any other person which may be located on, about, or near the premises. Tenant agrees to indemnify and hold harmless City and City's agents, successors, and assigns from any and all claims, liabilities, losses, costs, and expenses, including attorney fees, arising from, or in connection with, the condition, use, or control of the premises, including the improvements on the premises, no matter how caused, and for any action done by Tenant, or any agent, invitee, or license of Tenant, or any other party.

12. **Insurance**- Tenant shall procure and maintain at its expense a policy of insurance with a responsible company or companies approved by City, indemnifying and protecting City against loss, claims, actions, suits or damage or damages, including exemplary or punitive damages, claimed to be directly or indirectly, in whole or in part, related to the lease of these premises. Such insurance shall have maximum coverage limits of Two Million Dollars (\$2,000,000.00) for bodily injury to any one person, Five Million Dollars (\$5,000,000.00) in the aggregate, and Three Hundred Thousand Dollars (\$300,000.00) for damage to property. Concurrently with the execution of this Lease, Tenant shall deliver to City, Certificates of Insurance that evidence the insurance and coverage required herein is in effect. As City shall not be responsible for any damage to Tenant's and third party property located on, about or near the premises caused by or resulting from fire, windstorm, lightning or other casualty, Tenant shall be responsible for obtaining appropriate insurance to cover the full replacement cost of all property that may be damaged or destroyed in such event. Tenant assumes any risk of loss for failing to obtain such insurance coverage or an adequate amount of insurance coverage. The City will be responsible for any damage caused by a failure of any of the mechanicals being maintained by the City.

13. **Total Destruction of Premises**- In the event the building is totally destroyed by fire, windstorm, lightning, or other casualty so as to render the premises unusable, this Lease shall terminate. The premises shall be deemed "totally destroyed" when the total cost of rebuilding the premises as determined by the City exceeds eighty percent (80%) of the fair market value of the premises as of the date of the loss.

14. **Partial Destruction of Premises**- In the event the building is partially damaged or destroyed by fire, windstorm, lightning or other casualty so as to render the premises partially unusable, Tenant shall pay a ratable portion of the rental payment for that part of the premises still considered usable, as determined by an independent third party agency acceptable to both City and Tenant, until the damaged or destroyed portion of the premises is restored to its former condition at which time Tenant shall resume paying the full monthly installment. Tenant shall continue paying the monthly utility services reimbursement, regardless of any partial damage to

the premises.

15. **Default**- Upon an event of default by Tenant, Tenant shall deliver possession of the premises to Landlord within five days of receiving written notice from City to surrender premises, and City shall have the right to terminate this Lease. However, Tenant shall remain liable for any unpaid rental, penalty or utility services reimbursement. In the event of Tenant's failure to peaceably surrender possession of the premises, City shall have the lawful right to re-enter the premises, at its sole discretion, without being liable to Tenant for such entry, damages or any other payment of any kind whatever. Upon such re-entry, City, either with or without process of law may, (1) expel and remove Tenant or any third party occupying the premises, using such force as may be necessary, and (2) repossess and use the premises as before this Lease, including subletting the premises to a third party, without prejudicing any of the City's remedies which otherwise might be used for arrears of rent or for breach of any covenants, terms and conditions. The following shall constitute events of default:

- a. Failure by Tenant to pay any rental payment, accrued late payment penalty or utility services reimbursement on or before the fifteenth day of any month.
- b. Institution of insolvency proceedings against Tenant, or the adjustment, liquidation, extension or composition or arrangement of debts of Tenants or for any other relief under any insolvency law relating to the relief of debtors; or Tenant's assignment for the benefit of creditors or admission in writing of his inability to pay his debts as they become due; or, administration by a receiver or similar officer of any of the Tenant's property.
- c. Desertion or abandonment by Tenant of any portion of the premises for a period of twenty (20) consecutive days.
- d. Assignment or sublease of the premises to a third party.
- e. Actual or threatened alteration, demolition, waste, or removal of any improvement now or hereafter located on the premises, except as permitted by this Lease.
- f. Dissolution (administratively or voluntarily) of Tenant.
- g. Failure by Tenant to cure any default in the performance of any covenant, term or condition of this Lease within five days after written notice of any default.

16. **Inspection**- Tenant agrees to permit City, its agents or employees, to enter the premises at any reasonable hour for the purpose of inspection, maintenance, repair, alteration, or improvement of the premises.

17. **Signs**- No sign placed upon the property by Tenant shall be in violation of

provisions of the Elkhart Zoning or Building Codes. In the event Tenant gives notice to terminate the Lease, City or its agents may install or display a "For Rent" sign on the premises. Tenant agrees to permit City, or its agents, to show the premises to prospective tenants at any reasonable hour.

18. **Surrender of Premises-** At the expiration or termination of this Lease, or any renewal term thereof, Tenant shall quit and surrender the leased premises in as good a state and condition as they were at the commencement of this Lease, excepting normal wear and tear and acts of God. Tenant shall:

- (1) pay for all telephone services due, up to and including the final day of possession, and have them discontinued,
- (2) ensure that the premises are swept out and adequately cleaned,
- (3) remove all trash or other refuse from the premises,
- (4) lock all doors and windows, and
- (5) return any keys to City or its agent.

19. **Liquidated Damages for Holdover-** In the event that Tenant remains in possession after the termination of this Lease, such holdover period shall constitute a month-to-month tenancy. For such holdover period, Tenant shall pay as liquidated damages Thirty Five Dollars (\$35.00) per day plus the then current utility services reimbursement for each month or part thereof that Tenant remains in possession of the premises, plus costs and expenses incurred by City during the holdover period. This provision shall not be construed as a waiver by City of any right of re-entry nor as an election not to proceed under the remedies provided by this Lease.

20. **General Agreements-**

- a. This Lease shall bind, and inure to the benefit of, the parties and their heirs, personal and legal representatives, and successors and assigns.
- b. This Lease shall be interpreted by the laws of the State of Indiana and any venue for any action related to this Lease shall be in Elkhart County.
- c. Headings are for reference only, and do not affect the provisions of this Lease. Where appropriate, the masculine gender shall include the feminine or the neuter, and the singular shall include the plural.
- d. In the event of Tenant's failure to perform or observe any of the covenants, terms or conditions in this Lease, Tenant shall pay City's attorney fees, costs and expenses, including expenses of preparing any notice of delinquency request for performance, whether or not any legal action is instituted, including by reason of enforcing City's rights hereunder.

- e. City's failure to enforce any of its rights or remedies upon Tenant's breach of any of the covenants, terms or conditions of this Lease shall not be deemed a waiver of those rights or remedies, nor shall its failure bar or abridge any of its rights or remedies upon any subsequent default.
- f. Any notice, request, instruction, legal process or other document to be given hereunder shall be in writing and deemed sufficiently given when (1) personally served on the person to be notified, or (2) mailed via certified mail.

<u>Tenant</u>	<u>City</u>
Elkhart Art League	Clerk, Board of Public Works
131 Tyler Street, Suite 1B	229 South Second Street
Elkhart, Indiana 46516	Elkhart, Indiana 46516

- g. In computing a time period prescribed in this Lease, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period.
- h. If any covenants, terms or conditions are held invalid or unenforceable by a court, the remaining covenants, terms or conditions shall not be affected by such an occurrence. Each covenant, term and provision of this Lease shall be given effect and enforced against the breaching party to the fullest extent permitted by law.
- i. This Lease constitutes the entire agreement between the parties and may not be modified except in writing, signed by both parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.
- j. No provisions in this Lease shall in any way be construed to require City to repair, restore, or rebuild the premises after a fire, windstorm, lightening or other casualty.

(Signature Page Follows)

IN WITNESS WHEREOF, the City, by its Board of Public Works, and Tenant, by its authorized representative(s) execute this Lease Agreement on this _____ day of April, 2023.

**CITY OF ELKHART
BOARD OF PUBLIC WORKS**

Michael Machlan, President

Chad Crabtree, Vice-President

Ronnie Davis, Member

Jamie Arce, Member

Rose Rivera, Member

ATTEST:

Nancy Wilson, Clerk

TENANT:

ELKHART ART LEAGUE, INC.

By: Karin Frey

Printed: KARIN FREY

Title: PRESIDENT

By: _____

Printed: _____

Title: _____

Use & Event Permits: Event Committee 3-14-23, BOW 3-21-23

- Gateway Mile Autofest 7/14 & 7/15- ESS,EFD, Stage, EPD, Water, Electric, City Plaza, Temporary Street Closures, Special Exception from Noise Ordinance, Public Assembly, Plaza Sign
- Color for Kids Family Fun Run 6/3- ESS, EMS, EPD, Temporary Street Closures, Public Assembly, Central Green Stage, Special Exception from Noise, Plaza Sign
- Compassion Walk 5/20- Island Park, Public Assembly, Plaza Sign
- Peace Officers Memorial Service 5/17-Kardzhali Park, chairs, podium, Plaza Sign, Public Assembly, Special Exception from Noise
- Iechyd Da Tent Party 6/3- Temporary Street Closures (Alley behind Iechyd Da), Special Exception from Noise Ordinance
- Elite Aesthetic pre-St. Patty Party 3/16-Special Exception from Noise Ordinance
- Elite Aesthetic Spring Event 4/20- Special Exception from Noise
- Salute to Veterans WWII Reenactment & Airshow 5/20-5/21- Fencing, Event Trailer, ESS, EMS. Golf Cars, EPD, Public Assembly, Special Exception from Noise, Plaza Sign
- Crossroads Recovery in the Park 6/27- Central Green Stage, Special Exception from Noise Ordinance, Public Assembly, Plaza Sign
- Elkhart Juneteenth Celebration 6/19-- Temporary Street Closure, Public Assembly, Plaza Sign, Roosevelt Park, EFD, EPD, Special Exception from Noise,
- Hoosier Harley Davidson 2023 events- Special Exception from Noise Ordinance
- Cinco De Mayo 5/6- Central Green Stage, Civic Plaza, Fencing, EPD, Temporary Street Closure, Public Assembly, Special Exception from Noise, Plaza Sign
- ADEC Picture Possibilities 7/29- City Plaza, Temporary Street Closure, Public Assembly, Special Exception from Noise, Water, Electric. Plaza Sign
- EnviroFest 8/12- Island Park, Stage, Fencing, ESS, EMS, Event Trailer, P/A System, Golf Cars, EPD, Water, Electric, Plaza Sign, Bridge Banners (Johnson and Main) Special Exception from Noise, Public Assembly