



City of Elkhart  
Redevelopment Commission

AGENDA FOR ELKHART REDEVELOPMENT COMMISSION MEETING  
MUNICIPAL BUILDING (2<sup>ND</sup> FLOOR), COUNCIL CHAMBERS  
TUESDAY, AUGUST 8, 2023 at 4:00 P.M.

THIS MEETING WILL BE HELD IN-PERSON & ELECTRONICALLY VIA WEBEX

To join, go

<https://coei.webex.com/coei/j.php?MTID=m78b80c201dec37295dad6f56162122c3>  
enter **2302 012 6765** as the event number and **RDC8** as the event password.

To join by phone, call 1-415-655-0001, enter **2302 012 6765 ##**

*Press \* 6 to unmute telephone*

Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to [adam.fann@coei.org](mailto:adam.fann@coei.org) prior to the meeting.

1. Call to Order
2. Approval of Minutes
  - July 11, 2023 Regular Meeting Minutes
3. New Business
  - a) Open Bids
  - b) Approve Ice Miller billing for VRP closure services
    - Approve Ice Miller invoice #01-2215388 for \$225.00 for VRP Closure services through June 30, 2023 and appropriate this amount from the Consolidated South Elkhart Economic Development/Redevelopment TIF Allocation Area Special Fund to cover the cost of these services.
  - c) Niblock Access Agreement
    - Approve request granting Niblock Excavating, Inc. access to Real Estate at 3508 South Main Street to place work trailer and perform services described in the access agreement.
  - d) 511 Division - Lacasa
    - Authorize publication of notice of public hearing to consider the offering of real estate (Alley at 511 Division Street) for sale or grant to Lacasa, Inc. under 36-7-14-22.2

- e) **State Road 19 Improvements**
  - Approve funding for the Cassopolis Street improvements and appropriate \$8,140,000 from the Cassopolis Corridor Economic Development Area Allocation Area Special Fund.
  - Approve Abonmarche contract for engineering oversight of construction of the Cassopolis Street improvements and appropriate \$300,000 from Cassopolis Corridor Economic Development Area Allocation Special Fund to cover the cost of services.
- f) **1701 Sterling Avenue Environmental Remediation Contract**
  - Approve Roberts Environmental Contract and appropriate funds to cover this this service
- g) **1701 Sterling Avenue - Advantix**
  - Approve Transfer of Real Estate and Purchase & Development Agreement with Advantix Development Corporation.
- h) **1101 East Beardsley Settlement Agreement**
  - Approve Settlement Agreements on 1101 East Beardsley environmental clean-up.
- i) **1101 East Beardsley SWPPP Install**
  - Approve contract with Reed Excavating for installing silt fence and temporary drive at 1101 East Beardsley as required by IDEM under the Storm Water Pollution Protection Plan (SWPPP) and appropriate \$10,500 from Foundry Settlement Special Fund to cover the costs of services.
- j) **Lighting Downtown Elkhart Request**
  -
- k) **Community Development Block Grant (CDBG) Program Year 23 Subrecipient Agreement**
  - Boys and Girls Club of Elkhart County, Inc.
  - Council on Aging of Elkhart County
  - Goodwill Industries of Michiana
  - YWCA North Central Indiana
- l) **Lex-Main Forgivable Loan**
  - Approve Assumption Agreement with Lex/Main and JJ Dalton, LLC

4. Staff Updates

5. Other Business

a) Warrick and Boyn Invoice

b) TIF Report

9. Public Comment

10. Adjournment



# City of Elkhart

## Redevelopment Commission

### REGULAR MEETING

#### ELKHART REDEVELOPMENT COMMISSION

LOCATION: CITY HALL, 2<sup>ND</sup>. FLOOR, COUNCIL CHAMBERS

Tuesday, July 11, 2023

4:00 p.m.

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**PRESENT:** Dina Harris, Alex Holtz, Gerry Roberts, Sandi Schreiber, Wes Steffen, Dorisanne Nielsen, Gary Boyn, Adam Fann, Mary Kaczka, Mike Huber, Jacob Wolgamood, Jamie Arce, Sherry Weber (Recording Secretary), Jason Selmer (Baker Tilly), Greg Balsano (Baker Tilly), Brad Hunsberger (Lacasa), Thomas Kulesia II, and Nakeisha Alayna Alexis

**PRESENT BY WEBEX:** Chris Pottratz

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#### **CALL TO ORDER**

This meeting was held in-person, telephonically and virtually through WEBEX. Mrs. Schreiber called the meeting to order at 4:01 pm.

#### **AMENDMENT OF JULY 11, 2023 AGENDA**

Mrs. Schreiber asked for a motion to amend the July 11, 2023 Agenda. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor, motion approved.

#### **APPROVAL OF JUNE 13, 2023 REGULAR MEETING MINUTES**

Mrs. Schreiber asked for a motion to approve the June 13, 2023 Regular Meeting Minutes. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor, minutes approved.

#### **NEW BUSINESS**

##### **A. OPEN OFFERS**

Mr. Adam Fann addressed the commission stating there are no bids to open.

##### **B. ANNUAL TIF REPORT**

Mr. Mike Huber addressed the commission, explained the annual TIF report, how it will be used and answered questions. Jason Selmer and Greg Balsano from Baker Tilly presented the 2022 Annual TIF Report to the Redevelopment Commission and answered their questions.

**C. NELSON LAW GROUP INVOICE #23088**

Mr. Gary Boyn addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the Nelson Law Group invoice #23088 for \$3303.50 for services on 1101 E. Beardsley (Conn-Selmer) through May 2023 and appropriate this amount from the Downtown Allocation Area No. 1 Special Fund to pay this invoice. Moved by Mr. Holtz. Seconded by Mr. Roberts. Voice vote, all in favor, motion approved.

**D. ICE MILLER INVOICE #01-2210660**

Mr. Gary Boyn addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the Ice Miller invoice #01-2210660 for \$315.00 for services on G&W Industries VRP Closure through May 2023 and appropriate this amount from the Consolidated South Elkhart Economic Development/Redevelopment TIF Allocation Area Special Fund to pay this invoice. Moved by Mr. Roberts. Seconded by Ms. Harris. Voice vote, all in favor, motion approved.

**E. TRANSFER OF 535 WEST LEXINGTON TO BOARD OF WORKS**

Mr. Adam Fann addressed the commission and answered questions. Mrs. Schreiber asked for a motion authorizing the transfer of real property to the City of Elkhart Board of Public Works. Moved by Ms. Harris. Seconded by Mr. Roberts. Voice vote, all in favor, motion approved.

**F. ACCEPTANCE OF 511 DIVISION FROM BOARD OF WORKS**

Mr. Adam Fann addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the acceptance of real property from the City of Elkhart Board of Public Works. Moved by Mr. Holtz. Seconded by Mr. Steffen. Voice vote, all in favor, motion approved.

**G. PARKWAY DECLATORY RESOLUTION**

Mr. Mike Huber addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the resolution declaring Parkway at 17 Economic Development Area, approve the Economic Development Area Plan and establish an allocation area for the purpose of tax increment financing. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor, motion approved.

**H. RAILROAD CORRIDOR IMPROVEMENTS**

Mr. Mike Huber addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the railroad corridor improvements project, request that the Board of Works handle all contracts, and supervise all work. Appropriate \$228,000 from Allocation Area No. 1 and \$429,000 from TECH Park Tax Allocation Area to cover the costs with any unused funds to be returned to the appropriate account, and authorizing officers to do all things desirable in furtherance of this resolution. Moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor, motion approved.

**I. RIVER DISTRICT DEVELOPMENT AGREEMENT EXTENSION**

Mr. Mike Huber addressed the commission and answered questions. Mrs. Schreiber asked for a motion to grant EOZ's request to submit a revised Development Plan and propose amendments to the agreement by September 30, 2023 for consideration by the Commission. Moved by Mr. Roberts.

Seconded by Mr. Holtz. Mr. Steffen recused himself from the conversation, as he is an adjacent property owner. Voice vote, all in favor, one recused. Motion approved.

**J. LACASA INC SUBRECIPIENT AGREEMENT FOR REHAB OF 209 N SECOND STREET**

Ms. Mary Kaczka addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the Lacasa sub recipient agreement submitted to the commission for rehabilitation funds for 209 North Second Street. Moved by Mr. Holtz. Seconded by Mr. Steffen. Voice vote, all in favor, motion approved.

**K. 511 DIVISION LACASA ADDITIONAL APPROPRIATION**

Mr. Adam Fann addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approve the resolution appropriating funds to pay for infrastructure improvements for the 511 Division project. Moved by Mr. Roberts. Seconded by Ms. Harris. Mr. Brad Hunsberger from Lacasa answered additional questions. Voice vote, all in favor, motion approved.

**L. SUBORDINATION OF THE CITY LEIN TO IHEDA (CDBG/LACASA) – 146 State Street**

Ms. Mary Kaczka addressed the commission and answered questions. Mrs. Schreiber asked for a motion to approving the execution of subordinating the City lein and consenting to the IHEDA loan which will have priority. Moved by Mr. Holtz. Seconded by Mr. Steffen. Mr. Roberts recused himself from the conversation, as he is an adjoining property owner. Voice vote, all in favor, one recused. motion approved.

**STAFF UPDATES**

Mr. Adam Fann addressed the commission with updates on projects around the city.

- 1000 Block of South Main – Asbestos removal almost complete.
- 1101 Beardstey – Fire Department is currently doing some training on property and will be out there for the next couple of days. Still waiting on SWPP. Once we receive SWPP results, will begin demolition.
- 1045 South Main – POSI work is wrapped up. They did find some left over petroleum. Brownfield asked for more excavation. We should have a clear closure letter soon.
- State Road 19 Improvements – We have been getting many questions and hope to have a competitive bid for the Board of Works meeting on the 18<sup>th</sup>.

**OTHER BUSINESS**

Mr. Boyn stated the current work amount on the Warrick and Boyn invoice is for \$12,647.85. Ms. Schreiber asked for a motion to approve the Warrick and Boyn invoice in the sum of \$12,647.85. Moved by Mr. Roberts. Seconded by Ms. Harris. Voice vote, all in favor, motion approved.

TIF Report was reviewed by the Commission

**PUBLIC COMMENT**

Nekeisha Alayna Alexis addressed the Commission and asked about the structural study done on the Kelby Love mural building. Ms. Alexis thanked Alex Holtz for joining the Benham West screenings on Juneteenth. Adam Fann answered questions about the Kelby Love mural building. A structural analysis has been completed and is turned over to the administration. The City has

contracted to have high-resolution images taken of the Kelby Love mural, which have been turned over to the administration. The City does not have control over the use of the images, that control lies with the family. Whatever happens with the images has to have the consent of Kelby Love's family.

Thomas Kulesia II addressed the Commission. Mr. Kulesia asked questions about the Elkhart community, how to hold developers to a minimum standard, and how to guarantee investments generate the best outcome for the City.

**ADJOURNMENT**

There being no further discussion, Mrs. Schreiber asked for a motion to adjourn the meeting. Moved by Ms. Harris. Seconded by Mr. Holtz. Voice vote, all in favor, motion approved. The meeting adjourned at 5:18 p.m. Next meeting is on Tuesday, August 8, 2023 at 4:00 p.m. in Council Chambers.

\_\_\_\_\_  
**SANDRA SCHREIBER, PRESIDENT**

RESOLUTION NO. 23-R-\_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE  
CITY OF ELKHART, INDIANA, APPROVING ICE MILLER BILLING  
FOR VRP CLOSURE SERVICES AND APPROPRIATING FUNDS

Whereas, The Commission has employed Ice Miller, LLP to seek recovery of City costs and damages arising from the environmental contamination at the G&W Industries, Inc. and for services related to VRP Closure on the site; and

Whereas, the Commission has received and reviewed the attached Invoice 01-2215388 in the amount of \$225.00 for VRP Closure services through June 30, 2023 (the "Invoice"); and

Whereas, the Commission believes it is in the best interest of the City and its inhabitants that the invoice be approved and the funds appropriated to pay the same.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the Invoice for payment in the amount of \$225.00.
2. The Commission appropriates the sum of \$225.00 from the Consolidated South Elkhart Economic Development/Redevelopment TIF Allocation Area Special Fund to pay the Invoice.
3. The Commission authorizes its officers to do all acts which they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8th DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary



One American Square | Suite 2900 | Indianapolis, IN 46282-0200

July 28, 2023

WEBER'S DIRECT NUMBER: (317) 236-5942  
DIRECT FAX: (317) 592-4822  
INTERNET: BRENT.HUBER@ICEMILLER.COM

**VIA E-MAIL**

Sherry Weber  
Development Services  
201 S. 2<sup>nd</sup> Street  
Elkhart, IN 46516  
[ssherry.weber@coci.org](mailto:ssherry.weber@coci.org)

**RE: City of Elkhart/ G & W Industries (VRP Closure- Hourly Matter)  
Our Matter No. 002600.00001**

Dear Sherry:

Enclosed please find our interim statement for services rendered in the above-referenced matter for the period ending June 30, 2023. If you have any questions regarding this statement, please contact me.

Very truly yours,

ICE MILLER LLP

Brent W. Huber

BWH/djj  
Enclosure

cc: Adam Fann  
John Espar  
Gary Boyn



Invoice No. 01-2215388  
July 15, 2023

Attn: John Espar, Gary Boyn, & Dana Donald  
City of Elkhart  
229 S. Second Street  
Elkhart, IN 46516

Re: City of Elkhart v. G&W Industries, et al. VRP Closure  
Our Matter No. 002600.00001

**INVOICE SUMMARY**

For Services rendered through June 30, 2023

Professional Services	\$225.00
<b>Total Current Invoice</b>	<b>\$225.00</b>
Previous Balance Due	\$315.00
Total Balance Due	\$540.00

Thank you for giving Ice Miller the opportunity to serve you. We appreciate your business and the confidence you have placed in us. Please call if we can be of further assistance.



New payment option for you. You can now pay your invoice by E-check.  
Find out more by contacting [PAYICE@icemiller.com](mailto:PAYICE@icemiller.com).

**PROFESSIONAL SERVICES**

Date	Initials	Description	Hours	Rate	Amount
06/20/2023	HUBE B	Telephone conference with IDEM's H. Hack (IDEM Hazardous Waste Section) about manifest reports and evaluated IDEM's request (.1); telephone conference with B. Lewis regarding providing IDEM HWS regarding manifest and investigation derived waste (.2).	0.30	\$450.00	\$135.00
06/28/2023	HUBE B	Reviewed hazardous waste report from IDEM and evaluated.	0.20	\$450.00	\$90.00
<b>Total Professional Services</b>			<b>0.50</b>		<b>\$225.00</b>

**Total Invoice Balance Due** **\$225.00**

**OUTSTANDING INVOICES**

Date	Invoice	Amount	Payments	Balance Due
06/15/23	01-2210660	\$315.00	\$0.00	\$315.00
<b>Total Outstanding Balance Due</b>				<b>\$315.00</b>

**AGED AR**

Current	31-60 days	61-90 days	91-120 days	120 days +	Total
\$540.00	\$0.00	\$0.00	\$0.00	\$0.00	\$540.00

Payment Terms: Net 30. Interest charges may accrue on past due balance.

Questions or concerns, please email [payice@icemiller.com](mailto:payice@icemiller.com).



Attn: John Espar, Gary Boyn, & Dana Donald  
City of Elkhart  
229 S. Second Street  
Elkhart, IN 46516

Invoice No. 01-2215388  
July 15, 2023

Re: City of Elkhart v. G&W Industries, et al. VRP Closure  
Our Matter No. 002600.00001

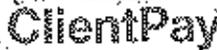
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Professional Services	\$225.00
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**Payment Options**

Online Payments:  
Click the logo below or visit:  
[www.icemiller.com/firm/payment-portal](http://www.icemiller.com/firm/payment-portal)



Wire/ACH Instructions:  
Huntington Bank  
ABA for ACH 074000078  
ABA for Wire 044000024  
Account No. 01401048453  
Swift Code: HUNTUS33  
Please Reference **Invoice No. 01-2215388**

Payment by check

Remit to: Ice Miller LLP  
P.O. Box 68  
Indianapolis, IN 46206-0068

Please include remittance or reference **Invoice No. 01-2215388**

Questions or concerns, please email [payice@icemiller.com](mailto:payice@icemiller.com).

RESOLUTION NO. 23-R-\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE  
CITY OF ELKHART, INDIANA, GRANTING NIBLOCK EXCAVATING, INC.  
ACCESS TO REAL ESTATE AT 3508 SOUTH MAIN STREET

WHEREAS, The Commission has received a request from Niblock Excavating, Inc. for right of access over and upon the Commission's property at 3508 South Main Street to place its work trailer and perform the services described in its attached request letter; and

WHEREAS, the Commission has reviewed the attached Access Agreement (the "Agreement"), finds it to be in proper form, and desires to authorize its execution and delivery.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the request for access to its property designated on the attached Agreement.
2. The Commission approves the form of the Agreement and authorizes its President, and other officers in her absence, to execute and deliver the Agreement.
3. The Officers of the Commission are hereby authorized to do all acts which they deem necessary and appropriate to carry out the terms of this Resolution.

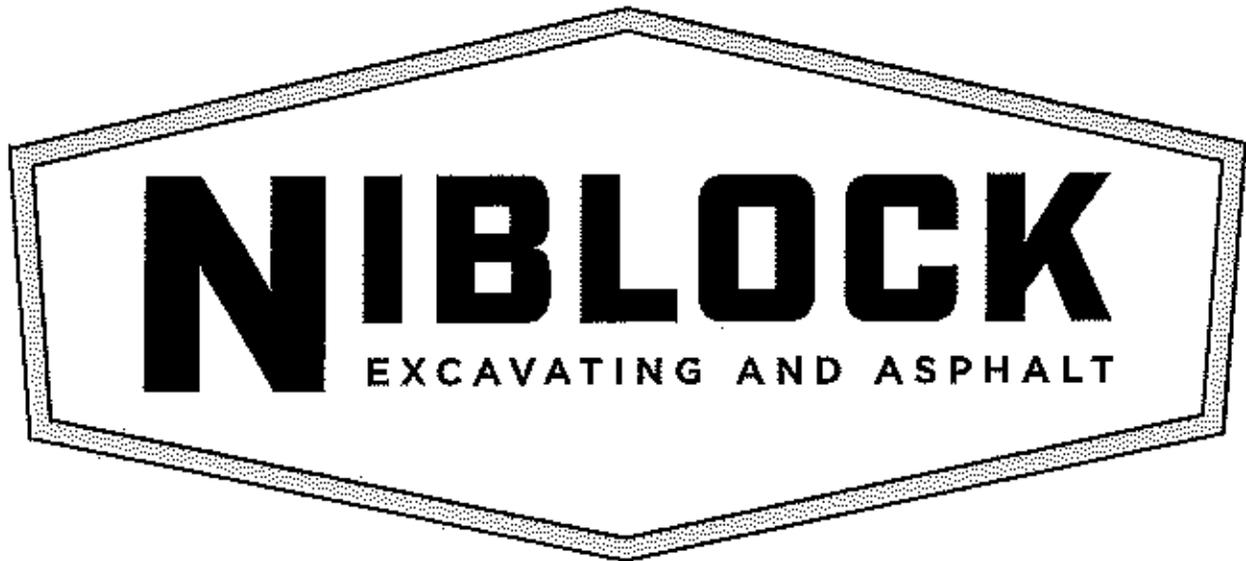
ADOPTED BY MAJORITY VOTE AT A MEETING OF THE COMMISSION THIS 8<sup>TH</sup> DAY OF AUGUST, 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Sandra Schreiber

ATTEST:

By: \_\_\_\_\_  
Alex Holtz, Secretary



Elkhart Redevelopment Commission

Temporary Use Request Letter.

Niblock respectfully request the use of the property at 3508 S. Main Street to temporarily stage a jobsite office trailer for INDOT project R-38158. This project consist of constructing a new double roundabout at the intersection of CR 18/CR 13/CR 115. The jobsite office trailer would be needed from September of 2023 through December of 2024. The site will simply be used for a jobsite office trailer for the INDOT inspector. I appreciate your consideration of this request.

Respectfully,

Kevin Crouch

Project Manager

Niblock Excavating & Asphalt

**ACCESS AGREEMENT**  
(3508 S. Main)

This Agreement is made between the City of Elkhart, Indiana, Department of Redevelopment, acting by and through its Redevelopment Commission, ("City") and Niblock Excavating, Inc. ("Niblock") effective as of September 1, 2023.

WHEREAS, Niblock will be performing work for the installation of a roundabout at the intersection of County Road 18, County Road 13, and County Road 115 ("Project") and desires to enter the City's Property at 3508 S. Main Street (the "Property") to set up its work trailer for the purposes described on the attached temporary use request letter (the "Request"); and

WHEREAS, City believes the project will be of benefit to the City and its inhabitants and agrees to allow Niblock such access and use on the following terms.

NOW, THEREFORE, in consideration of the mutual agreements herein set forth, the parties agree as follows:

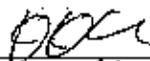
1. The City grants Niblock the right to access the Property to install its work trailer and perform its services from September 1, 2023, through the completion of the Project, which is anticipated to be no later than December 1, 2024, all at Niblock's sole cost and expense.
2. Niblock and its agents will not cause any permanent damage to the Property nor leave materials or debris on the Property during its period of access.
3. Prior to entry, Niblock will photograph the Property and, at the time it vacates the property, restore it to the same condition it was in on September 1, 2023.
4. Niblock will provide City proof of its public liability and property damage insurance coverage, both in amounts deemed adequate by City to cover any risks to persons and property associated with Niblock access and temporary use of the Property. Niblock shall name City as an additional insured on all such insurance policies. Niblock agrees to indemnify, defend, and hold City harmless from any and all claims of injury to persons or property arising from Niblock's access and temporary use of the Property.
5. Niblock will abide by all applicable laws and regulations affecting its use and occupancy of the Property and will maintain the Property in a clean and sightly condition during its access period, which includes debris and trash removal.
6. This Agreement shall be construed in accordance with the laws of the State of Indiana and may only be amended in a writing signed by both parties.

IN WITNESS WHEREOF, the parties executed this Agreement as of the date above set forth.

**City of Elkhart, Indiana,  
Dept. of Redevelopment**

**Niblock Excavating, Inc.**

By: \_\_\_\_\_  
Sandra Schreiber, President  
Elkhart Redevelopment Commission

By:  \_\_\_\_\_  
Kevin Cole, P.M.  
Print name and title

RESOLUTION NO. 23-R-\_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE  
CITY OF ELKHART, INDIANA, AUTHORIZING PUBLICATION OF  
NOTICE OF PUBLIC HEARING TO CONSIDER THE OFFERING OF  
REAL ESTATE FOR SALE OR GRANT UNDER  
36-7-14-22.2

WHEREAS, the Commission holds title to real estate located in the City of Elkhart, Indiana, generally consisting of those parcels commonly known as Alley at 511 Division Street, and more particularly described on Exhibit A hereto, (the "Real Estate") and has determined to hold a public hearing on September 12, 2023, to consider whether the Real Estate shall be offered for sale or grant to LaCasa, Inc. in furtherance of the economic development plan of the Commission and La Casa, Inc for development of the property at 511 Division Street for low and moderate income housing; and

WHEREAS, the Commission has obtained an appraisal on the Property.

NOW, THEREFORE, BE IT RESOLVED:

1. The form of Public Notice of the meeting to determine whether the Commission will sell or grant the parcel of property attached hereto is approved.
2. Notice shall be published in accordance with I.C. 5-3-1.
3. The Officers and staff of the Commission are authorized to take all action necessary, and prepare and execute all documents necessary, to carry out the terms of this Resolution.
4. Adopted by majority vote on the 8th day of August, 2023.

City of Elkhart, Indiana Redevelopment Commission:

By: \_\_\_\_\_  
Sandra Schreiber, President

Attest:

By: \_\_\_\_\_  
Alex Holtz, Secretary

## EXHIBIT A

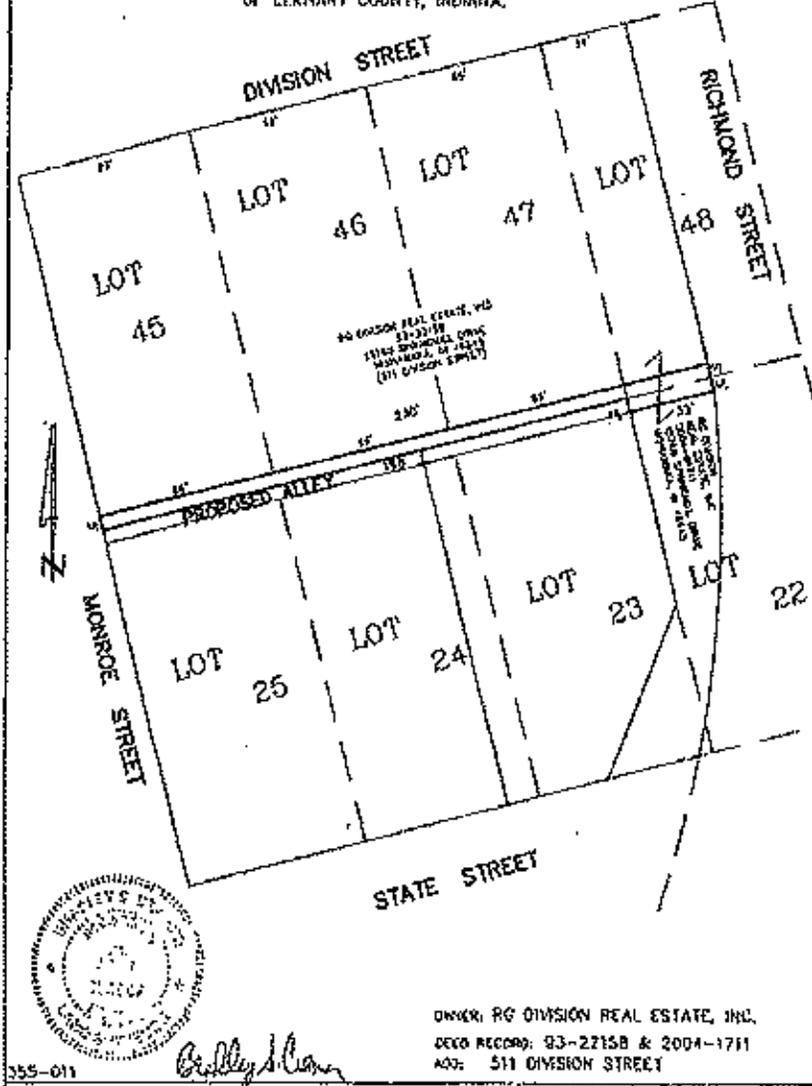
A strip of land located in the City of Elkhart, Elkhart County, State of Indiana, such real estate commonly known as the alley opening South of 511 Division Street (Lots 45, 46, 47 and 48), in and as shown on the sketch attached hereto as Exhibit A and incorporated herein by reference, and more particularly described as follows:

THE NORTH 5 FEET OF THE WEST 32 FEET OF LOT 22 AND THE SOUTH 5 FEET OF THE WEST 32 FEET OF LOT 48 AND THE SOUTH 5 FEET OF LOTS 45, 46, AND 47, ALL IN S.M. BEESON'S ADDITION TO THE CITY OF ELKHART, AS FOUND IN DEED RECORD BOOK 31, PAGE 457 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

SKETCH

SHEET 1 of 1

**LEGAL DESCRIPTION**  
 THE NORTH 5 FEET OF THE WEST 32 FEET  
 OF LOT 22 AND THE SOUTH 5 FEET  
 OF THE WEST 32 FEET OF LOT 49 AND THE SOUTH  
 5 FEET OF LOTS 45, 46 AND 47, ALL IN S.W. BEESON'S  
 ADDITION TO THE CITY OF ELKHART, AS  
 FOUND IN DEED RECORD BOOK 31, PAGE  
 457 IN THE OFFICE OF THE RECORDER  
 OF ELKHART COUNTY, INDIANA.



355-011

*Gregory S. Lane*

OWNER: RG DIVISION REAL ESTATE, INC.  
 DEED RECORD: 83-2715B & 2004-1711  
 ADDR: 511 DIVISION STREET



Progressive Engineering, Inc.

38240 State Road 18  
 Gosport, IN 46528  
 Phone (574) 833-4331  
 Fax (574) 833-9756

www.pei.com

SURVEY ORDERED BY: CITY OF ELKHART	
JOB NO: 07-073	DATE OF WORK: 8/30/2007
ENCL. #: BRAD	SCALE: 1" = 40'

NOTICE OF PUBLIC MEETING TO CONSIDER  
GRANT OR SALE OF REAL PROPERTY  
UNDER I.C. 36-7-14-22.2

Notice is hereby given that the Redevelopment Commission of the City of Elkhart, Indiana will on the 12th day of September, 2023, at 4:00 p.m. (EST), at the Common Council Chambers in the Municipal Building, 229 South Second Street, Elkhart, Indiana, conduct a public meeting to consider granting or selling the following real estate located in the City and County of Elkhart, State of Indiana, to wit:

A strip of land located in the City of Elkhart, Elkhart County, State of Indiana, such real estate commonly known as the alley opening South of 511 Division Street (Lots 45, 46, 47 and 48), in and as shown on the sketch thereof available for inspection at the City, and more particularly described as follows:

THE NORTH 5 FEET OF THE WEST 32 FEET OF LOT 22 AND THE SOUTH 5 FEET OF THE WEST 32 FEET OF LOT 48 AND THE SOUTH 5 FEET OF LOTS 45, 46, AND 47, ALL IN S.M. BEESON'S ADDITION TO THE CITY OF ELKHART, AS FOUND IN DEED RECORD BOOK 31, PAGE 457 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Commonly known as: Alley at 511 Division Street.

to La Casa, Inc., a Community Development Corporation, under I.C. 36-7-14-22.2, for redevelopment of the property as residential property for low or moderate income families.

The Commission believes the highest and best use of this property will be for low and moderate income housing to be utilized by an entity that will invest in site improvements to be completed and occupied within five years from date of purchase, meet the requirements of I.C. 36-7-14-22.2(b) and otherwise further the execution of the redevelopment plan and best serve the interest of the community, from the stand point of both human and economic value.

The public is invited to attend the meeting and anyone wishing to speak for or against such proposed transfer of real estate will be heard.

REDEVELOPMENT COMMISSION  
CITY OF ELKHART, INDIANA

By: Sandra Schreiber  
President

(TO ELKHART TRUTH: Publish 1 time not later than September 1, 2023.)

RESOLUTION NO. 23-R-

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA,  
APPROPRIATING FUNDING FOR THE CASSOPOLIS STREET IMPROVEMENTS

Whereas, The Commission has been working with the Board of Public Works to design and bid out plans for improvements to the Cassopolis Street Corridor (the "Project"), and BPW proposes to award the work to Premium Concrete Services, the lowest and most responsive bidder, upon the Commission's appropriation of the funding for the Project as set forth in the attached Memorandum; and

Whereas, the Commission believes it is in the best interest of the City, the Area, and the inhabitants to approve and provide the funding for the construction phase of the Project.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the proposed work for the Project and the funding request of \$8,140,000.
2. The Commission requests the Board of Public Works execute all contracts and take all actions necessary to supervise and complete the Project on its behalf.
3. The Commission appropriates the sum of Eight Million One Hundred Forty Thousand Dollars (\$8,140,000.00) from the Cassopolis Corridor Economic Development Area Allocation Area Special Fund to cover the cost of the Project, with any unused funds to be returned to the appropriate account.
4. The Officers of the Commission are hereby authorized to do all acts which they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8TH DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

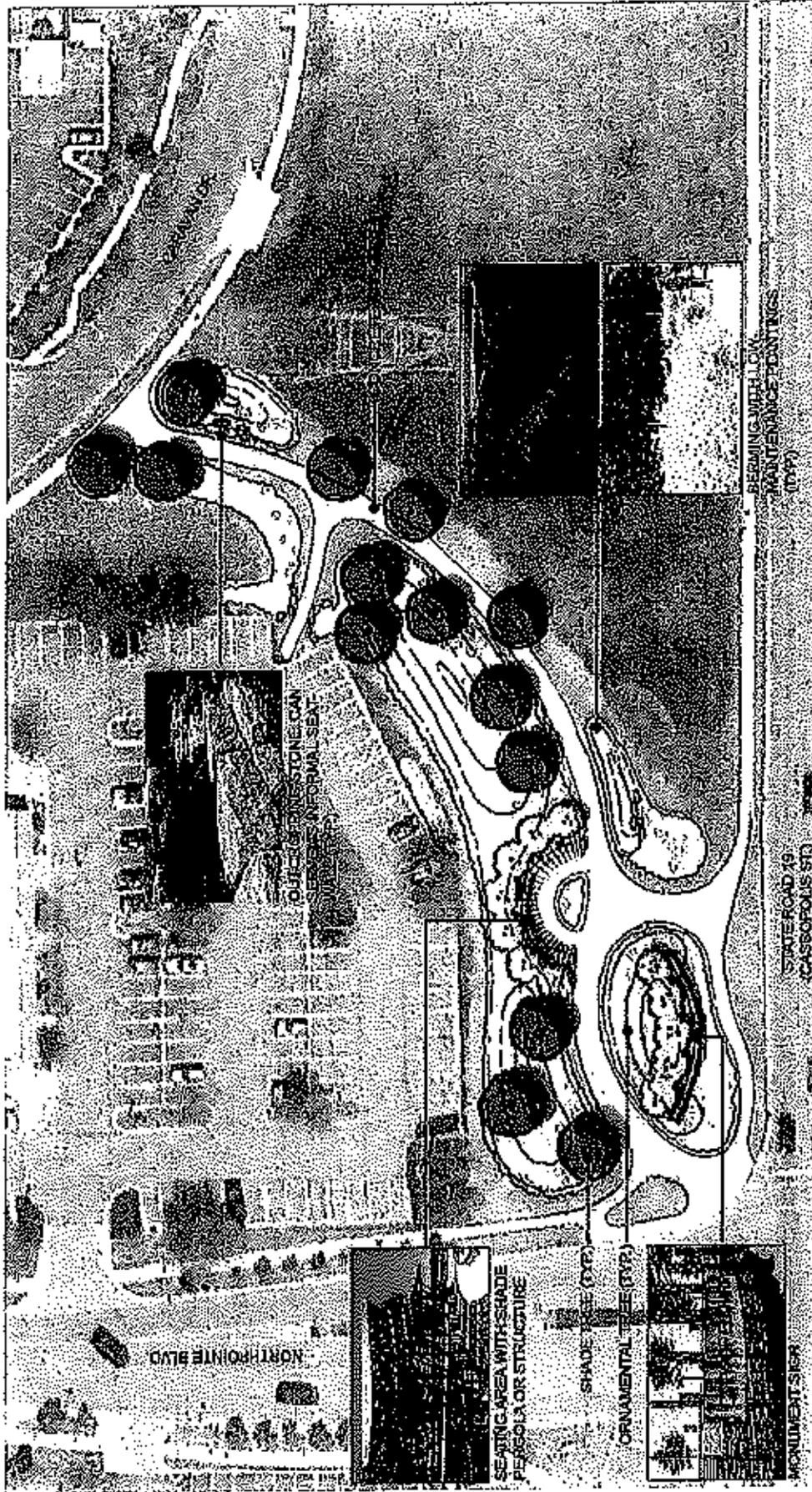
By \_\_\_\_\_  
Alex Holz, Secretary

# Memo

To: Redevelopment Commission Member  
From: Adam Fann  
Date: 7/28/23  
Re: State Road 19 Improvements

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Staff has been working on the design for gateway improvements along State Road 19 (Cassopolis Street) for some time now. The project will consist of new lighting from CR 4 to Windsor Ave., a linear park in front of Cracker Barrel, pedestrian improvements on the West side of the Toll Road bridge including new overlooks and matching non pedestrian overlooks on the East side, new landscaping with irrigation, and new sidewalks where needed. Please see attached renderings. The Board of Public Works bid the project earlier this year and received two competitive bid responses. Premium Concrete Services submitted the lowest responsible and responsive bid at \$7,394,177. The work is scheduled to begin in September of this year and be completed in October of 2024. Staff asks the Commission appropriate the sum of \$8,140,000 from the Cassopolis TIF to cover the cost of the project, this includes a 10 percent contingency.



**LINEAR PARK CONCEPT - REVISED**  
 STATE ROAD 19 CORRIDOR ENHANCEMENTS  
 ELKHART, IN

DATE: JULY 2020



PREPARED BY:  
**ABONMARCHÉ**



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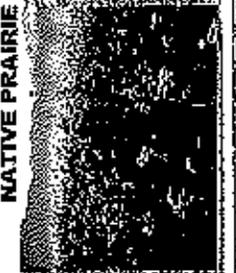
FEATHER REED GRASS



SEA GREEN JUNIPER



NATIVE PRAIRIE



PRAIRIE DROPSEED



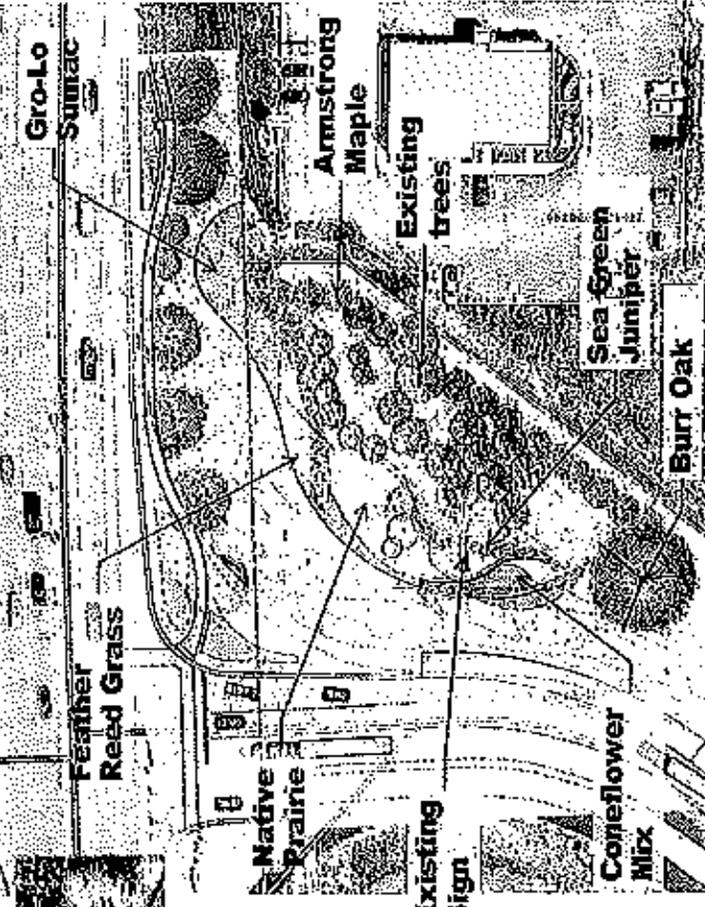
BIG BLUE STEM



RUSSIAN SAGE



CREeping JUNIPER



BLUE SEDUM

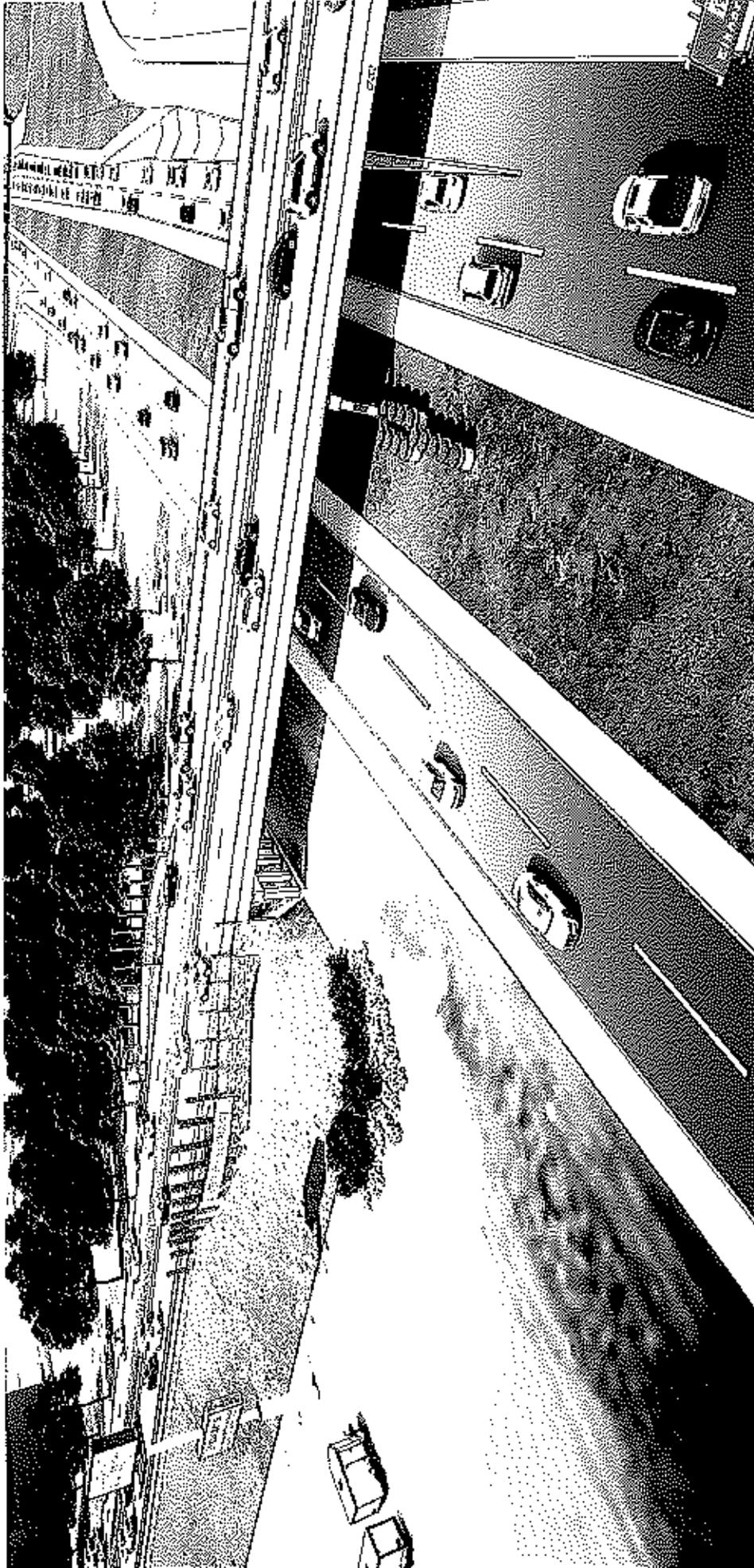


CONEFLOWER MIXTURES



GRO-LO SUMAC

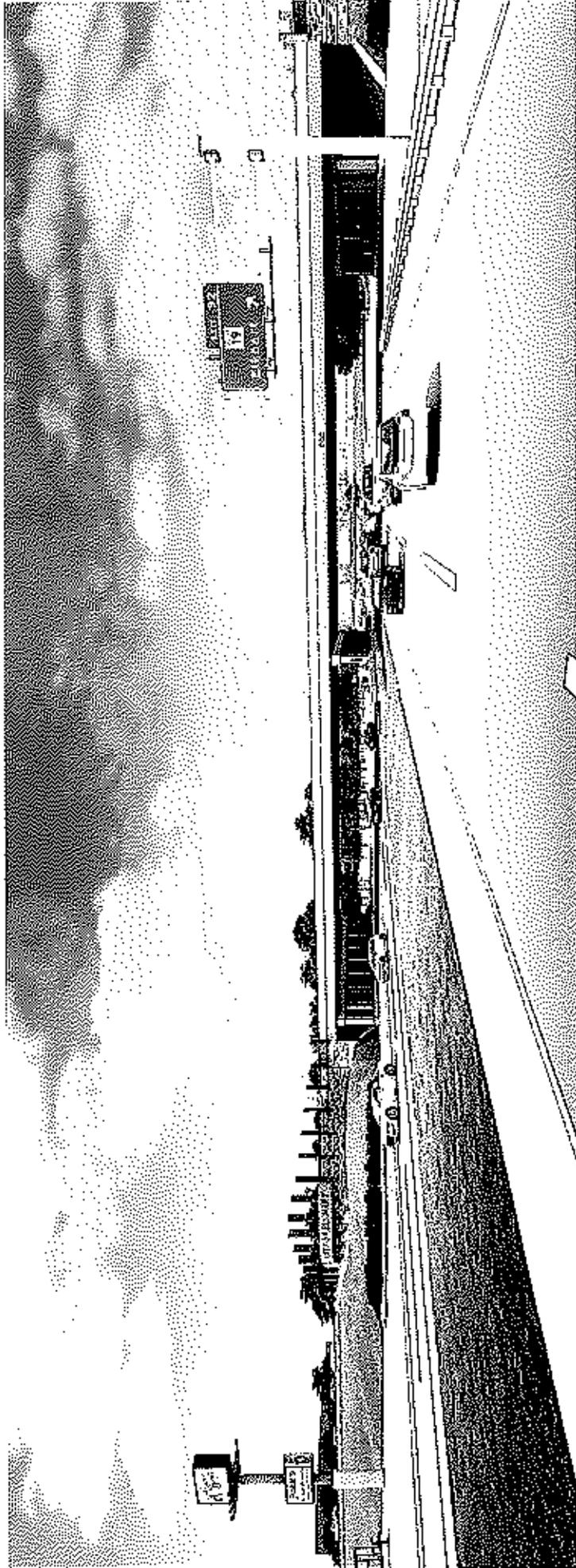
# SR-19 PLACEMAKING



# S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023

 **ABONMARCHÉ**

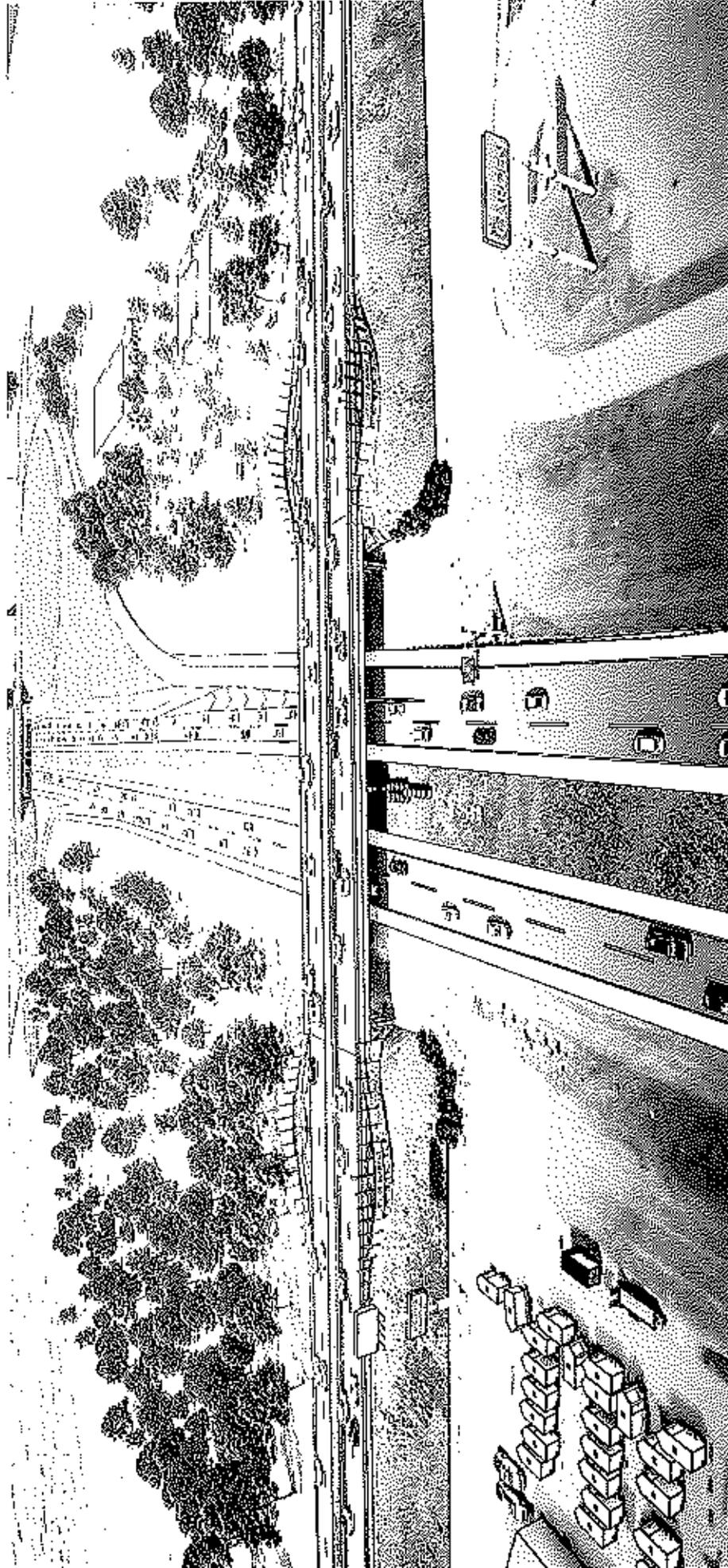


City of Elkhart

## S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023

 **ABONMARCHÉ**



# S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023



City of Elkhart



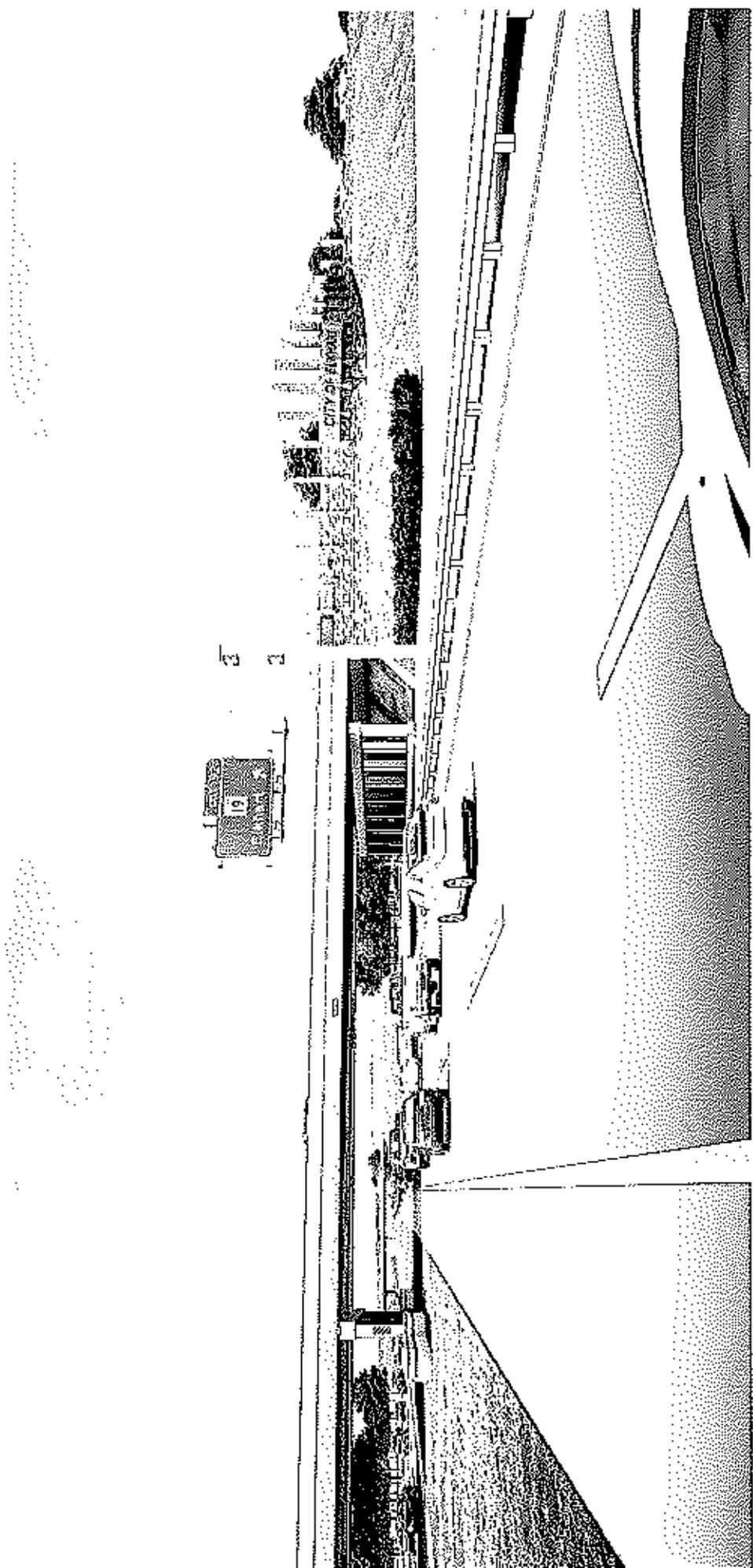


City of Elkhart

## S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023





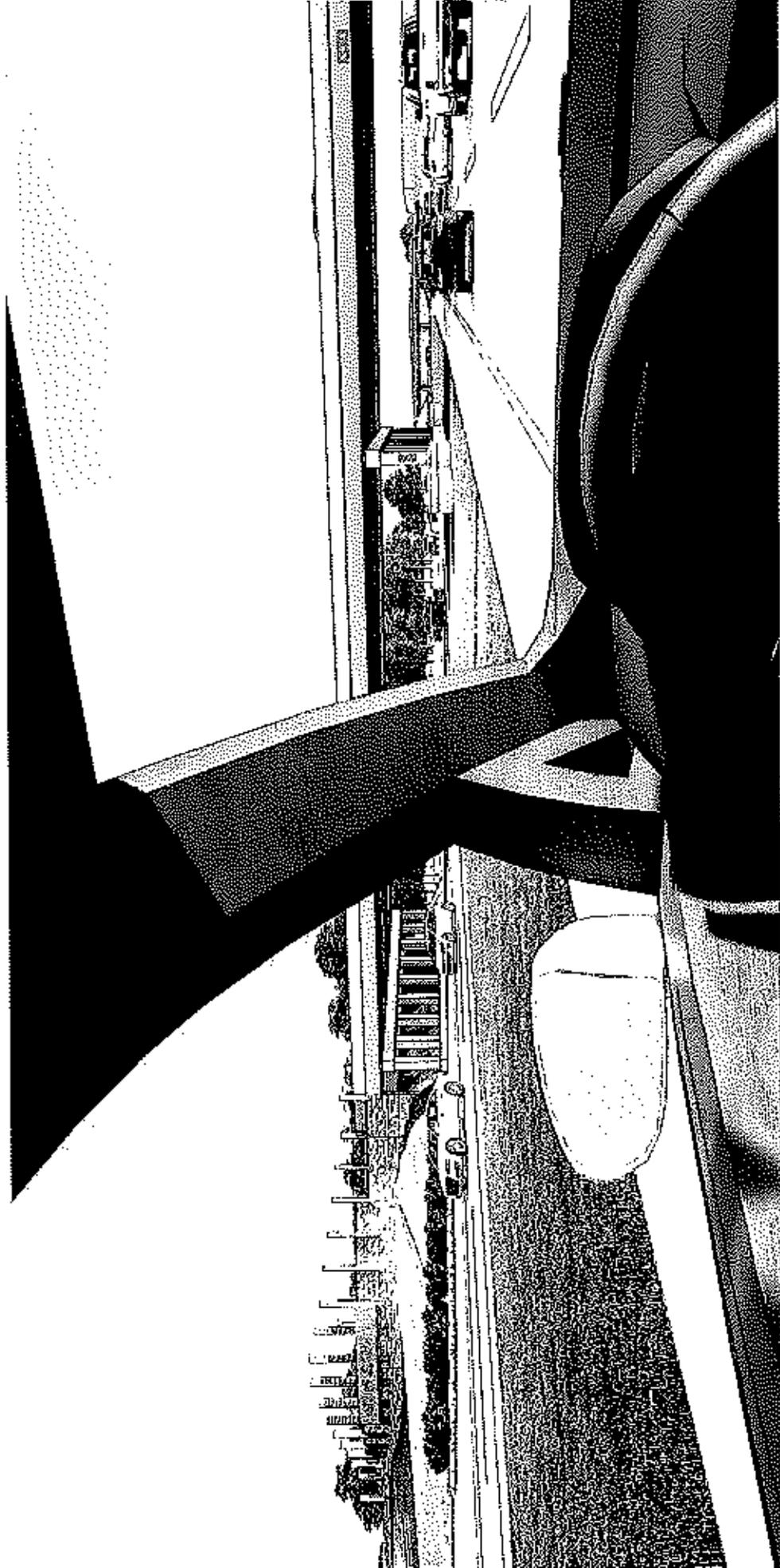
# S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023



City of Elkhart





# S.R. 19 CORRIDOR IMPROVEMENTS

June 21, 2023



RESOLUTION NO. 23-R-\_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA,  
APPROVING ABONMARCHE CONTRACT FOR ENGINEERING OVERSIGHT OF CONSTRUCTION  
OF THE CASSOPOLIS STREET IMPROVEMENTS PROJECT AND APPROPRIATION OF FUNDS

Whereas, The Commission is working with the Board of Public Works to complete construction of Streetscape and Corridor improvements to the Cassopolis Street (SR 19) Corridor (the "Project") and has received a proposed Agreement for Services with Abonmarche Consultants, Inc. for construction inspection services as described in Exhibit A (the "Services") to the attached Standard Form of Agreement for Professional Services (the "Agreement"); and

Whereas, the Commission believes it is in the best interest of the City, the Area, and the inhabitants to approve the Agreement, employ Abonmarche to perform the Services, and appropriate the funding.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the proposed Services as described in the Agreement and the funding therefor.
2. The Commission appropriates the sum of Three Hundred Thousand Dollars (\$300,000.00) from the Cassopolis Corridor Economic Development Area Allocation Area Special Fund (the "Fund") to cover the cost of the Services, with any unused funds to be returned to the Fund as provided by law.
3. The Commission requests the Board of Public Works oversee and coordinate the work of all contractors on the Project.
4. The Officers of the Commission are hereby authorized to execute and deliver the Agreement and all other documents and do all acts which they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8<sup>TH</sup> DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

# Memo

To: Redevelopment Commission Member  
From: Adam Fann  
Date: 7/27/23  
Re: State Road 19 Project Engineering Services

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With the scale and complexity of the State Road 19 improvements, staff would like to hire Abonmarche Consultant Services for Engineering Services oversight for the project. Attached is the contract for these services. Staff asks the Commission to appropriate \$300,000 from the Cassopolis TIF to cover the costs of these services.

**CITY OF ELKHART, INDIANA**  
**STANDARD FORM OF AGREEMENT**  
**FOR PROFESSIONAL SERVICES**  
**(Edition 2020)**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”)

between The City of Elkhart, Indiana, acting by and through its Redevelopment

Commission (“Owner”) and Abonmarche Consultants, Inc. (“Engineer”).

For the following Project: (“Project”).

**SR19 CONSTRUCTION INSPECTION SERVICES**

Owner and Engineer agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

*1.01 Scope*

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

*2.01 General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.

C. Owner shall make available to Engineer reports, studies, regulatory decisions, programs, instructions, data, and other written information relating to the Services. Engineer may rely upon said documents without independent verification unless advised by the Owner that verification may be needed such as information from “record drawings” and GIS.

**ARTICLE 3 – DEFINITIONS**

*3.01 Defined Terms*

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

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

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

3. *Conflict of Interest* – Conflict of interest means that because of other activities or relationships with other persons, a person or entity is unable or potentially unable to render impartial assistance or advice to the City, or the person's or entity's objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage.

4. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

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

7. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

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

9. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

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

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

12. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

13. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the construction phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner.

14. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

15. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

16. *Work* – The entire construction or the various identifiable parts required to be provided under the contract documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the contract documents.

#### **ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES**

##### **4.01 Commencement**

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

#### 4.02 Time for Completion

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable. The payment of Engineer's fees as set forth in this Agreement are conditioned upon the completion of all Documents no later than: **December 31, 2024**.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, shall be extended for the period of such delay or Owner shall authorize Engineer to work overtime to make up such lost time, and Engineer's compensation shall be adjusted equitably.

C. If, through no fault of Owner, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services are impaired, or Engineer's services are delayed by reason of any error, inconsistency or omission of Engineer, Engineer shall compensate Owner for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay, but only to the extent such costs, expenses, liabilities or damages exceed ten percent (10%), in the aggregate of Engineer's compensation. In addition, Engineer shall provide all necessary services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay.

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

E. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

### ARTICLE 5 -- INVOICES AND PAYMENTS

#### 5.01 Invoices

A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month along with reasonable supporting detail. Owner shall pay approved amounts no later than 40 days after receipt or as Owner's standard practices allow.

#### 5.02 Payments

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

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

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

D. Engineer's expense records shall be maintained in accordance with generally acceptable accounting principles and shall be available to Owner at mutually convenient times for all services to be compensated on the basis of actual cost.

## **ARTICLE 6 – ESTIMATE OF COST**

### *SECTION NOT APPLICABLE*

## **ARTICLE 7 – GENERAL CONSIDERATIONS**

### *7.01 Standards of Performance*

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

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

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

D. Subject to the standard of care set forth in Paragraph 7.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

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

F. Engineer shall not be required to sign any documents that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

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

L. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other construction phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the bidding phase; (2) Engineer shall have no shop drawing review obligations during construction; (3) Owner assumes all responsibility for contract administration, construction observation and review, and all other necessary construction phase engineering and professional services; and (4) the interpretation of the bid documents remains the Engineer's responsibility.

#### *7.02 Use of Documents*

A. Upon the making of final payment to Engineer, Owner shall receive ownership of the property rights of all of the Documents prepared, provided or procured by Engineer or by

consultants retained by Engineer. All Documents prepared, provided or procured by Engineer or by consultants retained by Engineer shall be distributed to Owner. All Documents whether printed or electronic media format, and including AutoCad drawings, shall be provided to Owner at anytime upon the Owner's request. If this Agreement is terminated pursuant to Paragraph 7.04.B, Owner shall receive ownership of the property rights of the Documents upon payment for all services rendered according to this Agreement, at which time, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

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

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

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

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

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

### *7.03 Insurance*

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

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

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

D. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit D, and a copy of its Professional Liability policy. Such certificates and policy shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement. No policy shall be cancelled or modified without thirty (30) days prior written notice to Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. Engineer and its Professional Liability insurance carrier shall notify Owner within thirty (30) days of any claims made or loss expenses incurred against the Professional Liability policy. Owner shall have the right to notify directly Engineer's Professional Liability insurance carrier of a claim against the policy.

#### *7.04 Suspension and Termination*

##### *A. Suspension.*

1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

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

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

1. For cause,

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

b. By Engineer:

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

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

2. For convenience,

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

*C. Effective Date of Termination.* The terminating party under Paragraph 7.04B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

*D. Payments upon Termination.* In the event of any termination under Paragraph 7.04, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

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

#### 7.05 Controlling Law

A. This Agreement shall be governed by the law of the State of Indiana.

#### 7.06 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 7.06B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

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

C. Unless expressly provided otherwise in this Agreement:

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

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

#### *7.07 Dispute Resolution*

A. Owner and Engineer agree to make a good-faith effort to resolve any claim, dispute or other matter in question arising out of or related to this Agreement by formal negotiation between authorized representatives of each party. Formal negotiations shall take place at a mutually acceptable time and place within fifteen (15) days of notice. Formal negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.

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

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

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

#### *7.08 Environmental Condition of Site*

A. Owner represents to Engineer that to the best of its knowledge, no known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern are located at or near the Site, including type, quantity, and location.

B. If Engineer encounters an undisclosed Constituent of Concern, Engineer shall notify the Owner and the appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

#### *7.09 Indemnification by Engineer*

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

to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

#### 7.10 Conflict of Interest –

A. The Engineer acknowledges and agrees that it does not have a current Conflict of Interest, as defined in Section 3.01, with the Owner and will not have a Conflict of Interest with the Owner during the term of this Agreement, regardless of whether that Conflict of Interest is real or perceived.

B. The Engineer further acknowledges and agrees that the Engineer and its Consultants are not currently providing any services to any third parties and will not provide services for at least 24 months after the Project is completed that will financially benefit the Engineer and/or its Consultants directly or indirectly.

C. The Owner, in its sole discretion, may waive a Conflict of Interest if the Engineer notifies the Owner of the conflict and fully discloses the nature of the conflict before the effective date of this Agreement.

D. If the Engineer fails to disclose a Conflict of Interest before the effective date of this Agreement, the Owner may terminate this Agreement as provided in paragraph 7.04.

E. If the Engineer or its Consultants breach Subsection 7.10(B), the Owner may disqualify the Engineer from bidding or quoting on any future projects by the Owner, or reject any bids or quotes by the Engineer as not responsible.

F. If the Engineer disputes the determination of the Owner's designated representative that the Engineer has a Conflict of Interest, the Engineer may appeal the designated representative's determination to the Redevelopment Commission. The of Public Work's decision on the matter shall be final.

#### 7.11 Miscellaneous Provisions

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

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

C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

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

F. The provisions of this Agreement shall be construed according to the laws of the State of Indiana. Any action arising under this Agreement shall be brought in the Federal District Court for the Northern District of Indiana, or the Circuit or Superior Court of Elkhart County, Indiana.

## **ARTICLE 8 – E-VERIFY REQUIREMENT**

### **8.01 *Terms***

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

### **8.02 *Enrollment and Participation***

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

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

### **8.03 *Affidavit***

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

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

### **8.04 *Subcontractors***

A. Should Engineer subcontract for the performance of any work under this Agreement, the Engineer 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.

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

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

#### 8.05 *Employment of Unauthorized Aliens*

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

B. Should the Engineer or any subcontractor of Engineer 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.

#### 8.06 *When E-Verify is not Required*

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

### **ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS**

#### 9.01 *Exhibits Included*

- A. Exhibit A, "Engineer's Services," consisting of three (3) page(s).
- B. Exhibit B, "Owner's Responsibilities," consisting of one (1) page(s).
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of one (1) page.
- D. Exhibit D, "Insurance," consisting of one (1) page.
- E. Exhibit E, "Affidavit of E-Verify Enrollment and Participation" consisting of one page.
- F. Exhibit F, "Certification Statement Regarding Investments in Iran," consisting of one (1) page.
- G. Exhibit G, "Title VI Notice," consisting of two (2) pages.

#### 9.02 *Total Agreement*

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

#### 9.03 *Designated Representatives*

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

#### *9.04 Suspension and Debarment*

A. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state department or agency. Necessary certification forms shall be provided by the Owner.

#### *9.05 Investments in Iran*

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

#### *9.06 Title VI Notice*

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

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

OWNER: City of Elkhart, Indiana, acting by and through its Redevelopment Commission		ENGINEER: Abonmarche Consultants, Inc.	
By:		By:	Daryl S. Knip
Title:	President	Title:	President / CEO
Date Signed:		Date Signed:	
Attest:		Engineer License or Certification No.:	See Exhibit A
	Clerk	State of:	
<b>Address for giving notices:</b>		<b>Address for giving notices:</b>	
City of Elkhart		Abonmarche Consultants, Inc.	
201 S. Second Street		315 West Jefferson Boulevard	
Elkhart, Indiana 46516		South Bend, Indiana 46601	

<b>Designated Representative:</b>		<b>Designated Representative:</b>	
Michael Huber		Robert A. Nichols	
Title:	Development Services Director	Title:	Transportation Development Manager
Phone Number:	(574) 322-4490	Phone Number:	(574) 232-8700
Facsimile Number:		Facsimile Number:	
E-Mail Address:	Mike.huber@coei.org	E-Mail Address:	rnichols@abonmarche.com

This is **EXHIBIT A**, consisting of three pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

### **Engineer's Services**

#### Scope of Services

Based on the bids received by the City of Elkhart Redevelopment Commission on Tuesday, July 18, 2023 for the SR19 Corridor Improvements Project (PA7663) the Engineer proposes to provide construction inspection for the project with the specific scope as follows:

1. Facilitate and host a pre-construction meeting and subsequent progress meetings as necessary; at least monthly, for the duration of the project.
2. Provide a part time resident project inspector for the duration of the project at the agreed upon fee based on the included manhour justification as included in Exhibit C.
3. Monitor the project for compliance with the contract documents.
4. Provide daily reports of contractor work activity consisting of written or typed daily work records, quantity verification, photographs, and any other pertinent information for project documentation during construction.
5. Review and approval of contractor submittals and shop drawings throughout the construction process.
6. Generate monthly pay applications for the contract in accordance with the contract documents.
7. Perform final walkthrough with the contractor, generate a final punch list, and administer the closeout of the project including all necessary documentation.

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

**Owner's Responsibilities**

Owner shall request services as needed. As part of said request, owner shall do the following:

- 1) Provide any pertinent information as necessary for the project.

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

**Payments to Engineer for Services and Reimbursable Expenses**

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

The LSUM fees shall not exceed the following:

Task 1	Construction Inspection	\$280,384.00
--------	-------------------------	--------------

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

### Insurance

Paragraph 7.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

*Insurance*

A. The limits of liability for the insurance required by paragraph 7.04 of the Agreement for Engineer are as follows:

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

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

**AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION**

I, **Daryl S. Knip**, 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 **Abonmarche Consultants, Inc.** ("Engineer") in the position of **President/CEO**.
3. I am familiar with the employment policies, practices, and procedures of Engineer and have the authority to act on behalf of the Engineer.
4. Engineer 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. Engineer does not knowingly employ any unauthorized aliens.
6. To the best of my information and belief, the Engineer 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Printed: \_\_\_\_\_

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

**CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN**

I, **Daryl S. Knip, President/CEO, Abomarche Consultants, Inc.**, 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 \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

Printed: \_\_\_\_\_

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer 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 2<sup>nd</sup> Street  
Elkhart, Indiana 46516

Voice: (574) 294-5471  
Fax: (574) 293-7658  
TDD: (574) 389-0198  
Email: [titlevicordinator@coei.org](mailto:titlevicordinator@coei.org)

Acceptance by Engineer

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.

Abonmarche Consultants, Inc.

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Signed

Daryl S. Knip, President/CEO

Printed Name

---

Dated

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

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

**August - November 2023**

Person	Rate	Proposed Monthly Hours	TOTAL
CM	\$ 185.00	8	\$ 1,480.00
RPR	\$ 120.00	20	\$ 2,400.00
INSPECTOR 1	\$ 100.00	80	\$ 8,000.00
			\$ -
<b>MONTHLY TOTAL</b>			<b>\$ 11,880.00</b>

TOTAL 2022  
CONTRACT COST  
\$ 55,724.00

TOTAL 2023 CONTRACT  
COST  
\$ 224,660.00

**December 2023 - February 2024**

Person	Rate	Proposed Monthly Hours	TOTAL
CM	\$ 193.00	8	\$ 1,544.00
RPR	\$ 125.00	20	\$ 2,500.00
INSPECTOR 1	\$ 104.00	40	\$ 4,160.00
			\$ -
<b>MONTHLY TOTAL</b>			<b>\$ 8,204.00</b>

Contract Total  
\$ 280,384.00

**March 2024 - October 2024**

Person	Rate	Proposed Monthly Hours	TOTAL
CM	\$ 193.00	16	\$ 3,088.00
RPR	\$ 125.00	20	\$ 2,500.00
INSPECTOR 1	\$ 104.00	160	\$ 16,640.00
<b>MONTHLY TOTAL</b>			<b>\$ 22,228.00</b>

<b>ARCHITECTURE/STRUCTURAL</b>			
REVIEWER	\$ 205.00	40	\$ 8,200.00

RESOLUTION NO. 23-R-\_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART,  
INDIANA, APPROVING CHANGE ORDER FOR ROBERTS ENVIRONMENTAL SOIL  
REMEDATION SERVICES AT 1701 STERLING AVENUE

Whereas, The Commission owns the real estate at 1701 Sterling Avenue in the City of Elkhart (the "Real Estate") which requires contaminated soil removal and disposal and has received a proposed Change Order from Roberts Environmental Services, LLC ("Roberts") to provide engineering services relating thereto all as set forth in the attached Change Order (the "Services"); and

Whereas, the Commission believes it is in the best interest of the City and its inhabitants that the Change Order be approved, and the funds appropriated to pay the cost of the Services.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the employment of Roberts to perform the Services on the Real Estate in accordance with the terms of the Change Order attached hereto.
2. The Commission approves the form of Change Order, and authorizes the President to approve any non-material changes thereto she deems necessary and appropriate prior to execution by the parties.
3. The Commission appropriates the sum of \$18,700.00 from the Consolidated South Elkhart Economic Development/Redevelopment Tax Allocation Area Special Fund to cover the cost of the Services plus the cost of disposal of the impacted soils removed from the site. All unused funds to be returned to the appropriate account.
4. The Officers of the Commission are authorized and directed to execute and deliver the Change Order and such other Agreements as they deem necessary and appropriate in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8th DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

# Memo

To: Redevelopment Commission Member

From: Adam Fann

Date: 8/2/23

Re: 1701 Sterling Soil Removal

---

As part of the demolition process at 1701 Sterling last year Roberts Environmental was asked to oversee the removal of the foundations of the building so testing could be done. During that process some elevated levels were found in the soil at the South West corner of the building, that soil was stockpiled onsite and needs removed. Staff contacted Roberts to guide us in the removal and disposal of the soils, attached is the proposal and costs. Not in the proposal is the cost of disposing of the soils at the landfill, this is estimated on the high end to be roughly \$5,000. Staff requests the Commission appropriate a total of \$18,700 from the Consolidated TIF for oversight, removal, and disposal of impacted soils onsite. Any unused dollars will be returned to the TIF.

# ROBERTS

ENVIRONMENTAL SERVICES, LLC

August 1, 2023

ROBERTS Project No.: 23-10921-10

Adam Fann, Assistant Director of Redevelopment  
City of Elkhart  
201 South Second Street  
Elkhart, IN 46516-3112

**Remediation of Impacted Soils  
Vacant Former Industrial Facility  
1701 Sterling Avenue  
Elkhart, Indiana**

Mr. Fann:

Roberts Environmental Services, LLC ("ROBERTS") is pleased to submit the following proposal to complete the remediation of impacted soils via excavation and disposal at the referenced property in Elkhart, Indiana (hereinafter referred to as the "Site"). The project activities summarized below, will include:

- 1) Preparation and dissemination of project bid documents;
- 2) Oversight of excavation activities on the southeast portion of the Site;
- 3) Soil confirmation sampling (up to 10 samples, plus QA/QC samples), and
- 4) Communication of findings via a brief letter report summarizing the remediation activities and confirmation sampling results.

ROBERTS' proposed activities are limited because the activities will only focus on specific locations and because the proposed analytical parameters will be limited to specific potential contaminants of concern (COCs) and/or select indicator contaminants. As such, these activities may lead to further sampling or other related Site investigation activities. The following work scope describes ROBERTS' planned activities to complete this investigation.

## **INTRODUCTION/BACKGROUND**

The Site consists of a vacant industrial building located at 1701 Sterling Avenue, on the south side of Elkhart, Indiana, which is currently owned by the City of Elkhart. The Site is identified as one (1) parcel of land (Parcel No. 20-06-09-335-008.000-012) totaling approximately 1.35-acres. The Site is located at the southwest corner of Ren Street and Sterling Avenue. The approximate geographic coordinates of the middle of the Site are 41.6707° North and -85.9562° West (NAD83).

Previous sampling and analysis revealed impacts to soils on the far southeast portion of the Site, specifically at former sampling location numbers 34 and 47. These soil samples were collected during building demolition oversight activities under the MACOG Brownfields Assessment Grant. Based on soil screening activities during demolition and previous investigations completed at the Site under MACOG's Brownfields Assessment Grant, these two (2) areas of impacted soil appear to be limited

both horizontally and vertically. The excavation activities will focus on remediation of these impacted areas and also other higher elevation soils/soil piles on the same portion of the Site.

### **SCOPE OF WORK**

**Bid Documents.** ROBERTS prepared bid documents and submitted the documents to four (4) separate excavation subcontractors (Cross Excavating, Jerry Reed Excavating, Ferguson Equipment, and Beer and Sfabough) on July 20, 2023. The bid documents requested costs from subcontractors for the excavation and disposal of impacted soils at Elkhart County Landfill using the City's fee schedule of \$22 per ton (invoiced by the landfill to the City directly. Not included in ROBERTS' cost estimate – estimated 150 cubic yards or 225 tons at \$22 per ton = \$4,950). The lowest bid received by Cross Excavating (Jerry Reed Excavating and Cross Excavating were the only respondents) has been incorporated into ROBERTS' cost estimate presented below.

**Excavation Oversight.** ROBERTS will provide oversight for the excavation activities, which will include guiding the excavation subcontractor, tracking trucks transporting soils to the landfill, and documentation via field notes and photographs. Periodic field screening of soils with a photo-ionization detector (PID) will also occur.

**Confirmation Soil Sampling.** ROBERTS proposes to collect four (4) sidewall samples and two (2) bottom soil samples at each of the two (2) locations for analysis of volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and RCRA Metals. The samples will be collected at/near previous sampling locations 34 and 47 after impacted soils are removed (+/-3.0 to 4.0-feet below grade) and field screening is performed. Samples will be collected using a pre-decontaminated shovel or hand-auger sampling device. Soil samples will be placed in an ice-filled cooler immediately after collection. A trip blank (TB), field duplicate (FD), and matrix spike/matrix spike duplicate (MS/MSD) samples will also be collected and analyzed for VOCs for quality assurance/quality control (QA/QC) purposes.

### **REPORT PREPARATION**

ROBERTS will incorporate our findings and conclusions relative to the demolition activities and laboratory results completed as part of this investigation into a brief letter report. The report will include a laboratory results summary table (if needed), maps, and a photo log that depict Site-specific conditions relative to the project activities. The laboratory results will be compared to the Indiana Department of Environmental Management's (IDEM's) Remediation Closure Guide (RCG) published levels (PLs) using a residential end-use scenario.

### **COST ESTIMATE**

ROBERTS proposes to conduct the services proposed herein on a time-and-expense basis in accordance with ROBERTS' general labor and equipment fee schedules in effect at the time the work is performed. ROBERTS estimates the above activities and reporting can be completed for an estimated cost of \$13,700 (excludes landfill disposal fees). The cost estimate for the specific work activities detailed in this proposal will not be exceeded without prior approval.

ROBERTS does not foresee an exceedance of this estimate for the scope of work described in the

preceding text. However, we will keep you apprised of the project status and budget and will not exceed our estimate without prior authorization. This estimate does not include field contingencies, but primarily reflects costs believed to be representative for completing the work described. Any modifications necessary to complete the proposed work will be discussed prior to providing supplemental services.

### SCHEDULE

ROBERTS will schedule this project immediately upon receipt of authorization to proceed pending the excavation subcontractor's schedule. The work scope proposed by ROBERTS assumes that limited regulatory liaison will be required as part of this task (i.e., telephone calls, e-mails, etc.). Unless otherwise noted, presentations/trips to meet with client and regulatory staff are not included in this budget. ROBERTS' proposal is based on the following assumptions/limitations:

- ROBERTS' cost estimate is based on fieldwork being performed in Level D personal protective equipment. Should Site conditions warrant an increase in personal protection beyond U.S. EPA Level D, additional costs would be incurred.
- Project activities at the Site will not exceed 8-hours/day and will occur Monday through Friday, excluding holidays.

### TERMS AND CONDITIONS

Unless requested otherwise, the work will be performed in accordance with the Agreement for Professional Services between ROBERTS and the City (effective October 14, 2022), which have been incorporated into this proposal by reference. ROBERTS' current labor and equipment & supplies fee schedules are provided as an attachment to this proposal. Please indicate your acceptance of the proposal by providing written authorization to either of the ROBERTS representatives below.

We appreciate this opportunity to offer our services to you. If you have any questions regarding this proposal, please feel free to call us at your convenience.

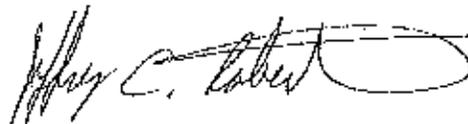
Sincerely,

Roberts Environmental Services, LLC



David D. Jeffers, LPG  
Senior Hydrogeologist

Roberts Environmental Services, LLC



Jeffrey C. Roberts  
President

Attachments: Authorization to Proceed  
ROBERTS' current labor and equipment & supplies fee schedules

**ROBERTS ENVIRONMENTAL SERVICES, LLC**  
**2023 LABOR FEE SCHEDULE**

Principal	\$190.00/hour
Sr. Project Manager/Geologist/Hydrogeologist/Scientist/Engineer	\$136 - \$150/hour
Project Geologist/Scientist/Engineer	\$97 - \$135/hour
Geologist/Environmental Scientist II	\$90 - \$96/hour
Geologist/Environmental Scientist I	\$81 - \$89/hour
Sr. Environmental Geologist/Scientist/Technician	\$76 - \$80/hour
Staff Environmental Geologist/Scientist/Technician	\$68 - \$75/hour
Project Administrator/Specialist	\$62 - \$67/hour

**ROBERTS ENVIRONMENTAL SERVICES, LLC**  
**2023 GENERAL EQUIPMENT, SUPPLIES, AND EXTERNAL EXPENSES FEE**  
**SCHEDULE<sup>1</sup>**

**COMMON EQUIPMENT:**

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Company Vehicle (<100 miles)	\$85.00	Trip
Company Vehicle (>100/<200 miles)	\$120.00	Trip
Photo Ionization Detector (PID)	\$95.00	Day
Dual Phase Interface Probe	\$60.00	Day
Water Level Indicator	\$30.00	Day
Masterflex Peristaltic Pump (MBP)	\$90.00	Day
Mechanical Bladder Pump	\$90.00	Day
Low Flow Submersible Pump	\$90.00	Day
Air Bladder Pump/Controller	\$220.00	Day
Pressure Washer	\$75.00	Day
Surveying Equipment	\$35.00	Day
Pneumatic Drum Vacuum	\$150.00	Day
Temperature/Conductivity Meter	\$15.00	Day
Optical Dissolved Oxygen Meter	\$50.00	Day
Aqua Troll 600 Multi-Parameter/Low Flow cell	\$160.00	Day
Hand-Auger (Various Sizes)	\$25.00	Day

**COMMON SUPPLIES:**

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Bailers, 0.07 to 1.5-inch O.D. Polyethylene	\$10.00	Each
Rigid Polyethylene Tubing	\$0.40	Foot
Decontamination Supplies	\$20.00	Day
Reconditioned 55-Gallon Drum	\$80.00	Each
0.5 Micron In-Line Filter	\$25.00	Each
Nitrile Disposable Gloves	\$0.60	Pair

[Other supplies necessary to complete a specific project will be dependent on nature of work being performed. These supplies will be billed in accordance with specific internal fee schedules or as an external expense, which is simply cost +10%]

**EXTERNAL EXPENSES:**

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
<u>External Expenses</u> (such as, travel, lodging, subcontracted services, equipment rental, expendable materials purchased for project, etc.):	Cost+10%	----
<u>Per Diem</u> (includes food allowance plus nominal personal expenses):	\$55.00	Day
<u>Mileage</u> (company-owned or personal vehicle):	\$0.65	Mile

<sup>1</sup> Due to supply chain issues beyond the control of ROBERTS, all rates are subject to change throughout the year without notice. Rates provided should be considered estimates.

RESOLUTION NO. 23-R-\_\_ \_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART,  
INDIANA, APPROVING TRANSFER OF REAL ESTATE AND PURCHASE AND DEVELOPMENT  
AGREEMENT WITH ADVANTIX DEVELOPMENT CORPORATION

WHEREAS, the Commission holds title to realty commonly known as 1701 Sterling Avenue and adjacent property in the City of Elkhart, the legal descriptions thereof are set forth in the form of a Purchase and Development Agreement attached hereto as Exhibit A (the "Real Estate"); and

WHEREAS, the Commission previously approved a Purchase Agreement for sale of a portion of this property to the Buyer but necessary funding was not approved and it was necessary to revise, and delete certain property from, the development plan; and

WHEREAS, the Commission has been presented for approval the new Purchase and Development Agreement for the Real Estate between the Commission and Advantix Development Corporation ("Buyer") in the form attached hereto as Exhibit A (the "Agreement"); and

WHEREAS, the Commission believes it is in the best interest of the City and its citizens that the Agreement be approved.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the sale of the Real Estate to Advantix Development Corporation for the sum of \$1.00, expressly contingent upon approval of the Affordable Housing Credits in accordance with the terms set forth in the Agreement.
2. The Commission approves the terms of the Agreement, and ratifies the execution of the Agreement by the President which was necessary to meet the timetable for funding applications for the project.
3. The officers of the Commission are authorized to execute the Agreement, all deeds and other documents, and take all action they deem necessary and appropriate to carry out the terms of this Resolution.

DULY ADOPTED BY MAJORITY VOTE THIS 8<sup>th</sup> DAY OF AUGUST, 2023.

ELKHART REDEVELOPMENT COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

Attest:

By \_\_\_\_\_  
Alex Holtz, Secretary

## PURCHASE AND DEVELOPMENT AGREEMENT

1. **PARTIES:** As of the \_\_\_\_ day of \_\_\_\_\_, 2023, City of Elkhart, Indiana, Department of Redevelopment, an Indiana municipal corporation ("Seller") agrees to sell and convey to Advantix Development Corporation, an Indiana Development Corporation whose address is 500 S.E. 10<sup>th</sup> Street, Evansville, IN 47713 ("Purchaser") and Purchaser agrees to buy from Seller, the following Property for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth.

2. **PROPERTY:** The Property commonly known as 1701 and 1726 Sterling Avenue, and an adjacent vacant property in the City of Elkhart, Elkhart County, Indiana, together with all buildings and permanent improvements and fixtures attached thereto; and all privileges and appurtenances pertaining thereto including any right, title and interest of Seller in and to adjacent alleys, or rights-of-way, all of the above hereinafter collectively called "Property," and whose legal description is contained on Exhibit "A" attached hereto and incorporated herein.

3. **PRICE:** The total purchase price shall be One Dollar (\$1.00) ("Purchase Price").

4. **EARNEST MONEY:** No earnest money is required.

5. **CLOSING:** The closing of the sale (the "Closing Date") shall take place at Commercial Title, LLC, provided this property has been re-zoned for residential use and after satisfaction of the Contingencies and Conditions set forth below, within one hundred fifty (150) days from the date of approval of Purchaser's Application for Low Income Housing Tax Credits for this project by the State of Indiana unless extended in writing signed by both parties hereto, with the costs thereof paid by Purchaser.

6. **POSSESSION:** The possession of the Property shall be delivered to Purchaser at closing in its AS IS condition.

7. **CONTINGENCIES:** The Purchaser's obligations to proceed to Closing shall be conditioned upon and subject to the following contingencies hereinafter set forth. If any of the following contingencies are not satisfied within one hundred twenty (120) days after the date of the LIHTC Award, as defined herein below (the "Inspection Period"), then the parties agree that upon written request of either party, this Agreement shall terminate with neither party having any further liability of the other, except as otherwise expressly provided in this Agreement. The contingencies are as follows:

(a) LIFTC Award. Purchaser must receive the award of Low Income Housing Tax Credits from the Indiana Housing and Development Authority (IHDA), in a form and amount as applied for by Purchaser (the "LIFTC Award"), on or before December 1, 2023, unless otherwise extended in writing by the parties.

(b) Survey. Purchaser shall have the right, at Purchaser's sole cost, to obtain a survey of the Property (the "Survey") to be completed by a surveyor or engineer licensed in Indiana with a current certification attached thereto executed by the surveyor or engineer in the form of the minimum standard detail requirements certificate for land title surveys. The Survey must reflect that there are no easements or other matters which prevent or interfere with the development or improvement of the Property for low income housing in accordance with the plans prepared by Myszak + Partners and entitled The Sterling (hereinafter referred to as "Purchaser's Intended Use"); that the Property has the required access to abutting streets and highways and that all abutting streets have been accepted by the appropriate governmental authority for maintenance. The Survey must further reflect and expressly certify that the Property is not in a designated flood zone and that there are no gaps, gores or spaces between contiguous parcels, and that when taken together all contiguous portions form a single parcel of land.

(c) Title Matters. Purchaser must be able to obtain, at Purchaser's sole cost, a commitment for an owner's policy of title insurance for the Property (together with legible copies of all documents and instruments referred to therein that were not previously provided by Seller to Purchaser) issued by Commercial Title, LLC (herein the "Title Commitment"), in which the Title Company shall agree to insure merchantable title to the Property in the name of Purchaser in the full amount of the Purchase Price. Further, the Title Commitment shall commit the Title Company to ensure that the Property is free and clear of any liens, burdens or encumbrances, except the Permitted Exceptions. The Title Commitment must also affirmatively commit to insure all standard title endorsements as are generally requested by the investors partnering to receive the low income tax credits. All cost associated with the Title Commitment, review of documents and issuance of final title insurance policy shall be borne by Purchaser.

If the Title Company requires entry of a Quiet Title Judgment as a pre-condition to insuring the title, or any issue can be resolved by payment of an additional premium, all costs thereof shall be paid by Purchaser

At Closing, Purchaser shall take title to the Property in its AS IS, WHERE IS, CONDITION WITHOUT WARRANTY, EXPRESS OR IMPLIED

(d) Environmental Audit. Seller will provide Purchaser a copy of any existing environmental review reports on the Property it may possess. Purchaser acknowledges that preliminary environmental studies at 1701 Sterling Avenue have disclosed certain soil and groundwater contaminants, and that further testing of the soil under the existing building foundation is necessary to determine if there is contamination in that area (the "Additional Test"). Seller will disclose the results of the Additional Test and the IDEM remediation requirements, if any, to Purchaser and the projected remediation costs and the parties will use their best efforts to reach a mutually acceptable agreement on a clean-up plan before the expiration of the Inspection Period. Purchaser shall have the right to obtain, at Purchaser's sole cost, a "Phase I" Environmental Assessment reflecting the environmental status of the Property. In the event the aforesaid environmental audit discloses any environmental defect (as defined by federal and state statutes and regulations) or other matters that may cause liability due to the presence of hazardous materials, chemicals, oils, or other items on the Property or would reasonably necessitate any remedial action to cause the Property to be in compliance with all federal, state, and local governmental statutes, laws, regulations, and ordinances, and remediation, the parties are unable to agree on a mutually acceptable plan (the "Remediation Plan") before the expiration of the Inspection Period, either party shall have the right to terminate this Agreement without penalty. Purchaser agrees to keep and hold all information obtained with regard to the environmental condition of the Property confidential and to share such information only with Purchaser's environmental consultants and attorneys. Any remedial action taken must have the prior written approval of IDEM.

(e) Inspections and Due Diligence. All inspections by purchaser shall be completed within the Inspection Period. During the Inspection Period, Purchaser shall have the right to conduct such studies, inquiries, inspections, tests and other investigations that Purchaser deems appropriate to determine whether it is feasible for Purchaser to purchase, develop and construct improvements upon the Property, including, without limitation, state, city or county requirements for on-site or off-site improvements, requirements for storm drainage and retention, the availability of utilities, zoning feasibility, demographic studies, financial feasibility (including financing at a rate and term acceptable to Purchaser), soil studies, including soil compaction, soil

stability and other engineering surveys, environmental audits and flood plain and wetlands jurisdiction determinations. In the event Purchaser determines in its sole discretion that, as a result of matters beyond Purchaser's control it is not feasible for Purchaser to purchase and develop the Property for its Intended Use, the Purchaser may, at any time prior to the end of the Inspection Period, cancel this Agreement by giving written notice thereof to Seller. In the event Purchaser elects to terminate this Agreement pursuant to the provisions of this paragraph, neither party shall have any further liability to the other, except as otherwise expressly provided in this Agreement. Purchaser will leave the property in the same condition as it was in immediately prior to the commencement of the Inspection Period.

(f) Seller shall have provided a ten percent (10%) match of the allowed Credits which credit match consists of and includes the original offering prices of the Property, demolition costs, street improvement costs, environmental review and remediation costs, and other City costs related to the Property allowed by applicable law or regulation.

8. **PROPERTY INSURANCE:** Insurance shall be canceled as of the Closing Date and the Purchaser shall provide its own insurance.

9. **SPECIAL ASSESSMENTS:** Any outstanding special assessments applicable to the Property for municipal improvements previously made to benefit the Property shall be paid by Purchaser. Purchaser will pay all special assessments for municipal improvements which are completed after the date of this Purchase Agreement.

10. **TIMETABLE FOR CONSTRUCTION PLANS, COMMENCEMENT AND COMPLETION OF IMPROVEMENTS, DEED, CERTIFICATE OF COMPLETION:**

(a) Plans for Construction of Improvements. Seller has approved the Purchaser's intended residential use of the Property set forth in Schedule A hereto (the "Intended Use") and the basic construction plan attached hereto as Schedule B (the "Construction Plans"). All work with respect to the improvements to be constructed or provided by the Purchaser on the Property (the "Improvements") shall be in conformity with the Intended Use and Construction Plans as approved by the Seller. Nothing herein shall relieve the Purchaser from its obligation to obtain all required building permits, zoning clearances and comply with other applicable regulatory requirements.

(b) Changes in Intended Use and/or Construction Plans. If the Purchaser desires to make any material change in the Intended Use and/or Construction Plans, the Purchaser shall submit the proposed change in writing to the Seller for its written approval.

(c) Evidence of Equity Capital and Mortgage Financing. No later than sixty (60) days after the date of approval of the LIHTC Award, the Purchaser shall submit to the Seller evidence satisfactory to the Seller that the Purchaser has the equity capital and commitments for mortgage financing necessary for the construction of the Improvements.

(d) Conditions Precedent to Conveyance. The granting of the LIHTC Award for the project, approval of Construction Plans by the Seller, the parties agreement on a Remediation Plan, the Purchaser having entered into a contract for construction of the Improvements, and the submission of evidence of equity capital and commitments for mortgage financing, are conditions precedent to the obligation of the Seller to convey the Property to the Purchaser.

(e) Form of Deed. The Seller shall convey to the Purchaser title to the Property by Limited Warranty Deed substantially in the form attached hereto as Schedule C (hereinafter called "Deed"). Such conveyance and title shall be subject to:

(1) All existing easements and rights-of-way and such easements and dedications as it shall have been necessary, pursuant to the Construction Plans, for the Seller to dedicate or grant, and shall be necessary at the time of the conveyance for the Seller to reserve, for itself or for future dedication or grant, for sewers, drains, water and gas distribution lines, electric, telephone/communication installations, rights-of-way and access, pedestrian and bicycle pathways, linear park area and other public or private utilities and facilities.

(2) Taxes and special assessments which are not shown as existing liens by the public records.

(3) Taxes and other liens and encumbrances to be assumed and paid by the Purchaser pursuant to the terms hereof.

(4) All zoning and subdivision ordinances and other applicable ordinances and regulations of the Seller of Elkhart, Indiana.

(f) Time and Place for Delivery of Deed. The Seller shall deliver the Deed and possession of the Property to the Purchaser at Closing and after Purchaser has entered into a

contract for construction of the Improvements contemplated herein or on such other date as the parties hereto may mutually agree in writing. Conveyance shall be made at the principal office of Commercial Title, LLC (the "Closing Agent") and the Purchaser shall accept such conveyance and pay to the Seller the Purchase Price at such time and place.

(g) Apportionment of Current Taxes. Real Estate taxes, if any, will be prorated to the date of Closing.

(h) Recordation of Deed. The Purchaser shall cause the Closing Agent to promptly file the Deed for the Property for record in the Office of the Recorder of Blkhar County, Indiana. The Purchaser shall pay all costs for recording the deed.

(i) Commencement and Completion of Construction of Improvements. The Deed shall provide that the Purchaser, its successors and assigns, shall begin construction of Improvements to the Property within two (2) months after the date of the Deed and shall complete such Improvements within **twenty-four (24) months** after the date of the Deed. The Deed shall expressly provide that such agreements and covenants shall be covenants running with the land.

(j) Progress Reports. Subsequent to conveyance of the Property to the Purchaser, and until construction of the Improvements has been completed, the Purchaser shall make reports, in such detail and at such times as may reasonably be requested by the Seller, as to the actual progress of the Purchaser with respect to such construction.

(k) Certificate of Completion.

(1) Promptly after completion of the Improvements in accordance with the Agreement, the Seller will furnish the Purchaser with an appropriate instrument so certifying ("Certificate of Completion"). Such certification by the Seller shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in the Deed with respect to the obligations of the Purchaser, and its successors and assigns, to construct the Improvements.

(2) With respect to any parts or parcels of the Property which the Purchaser may convey or lease as the Improvements to be constructed thereon are completed, the Seller will, upon completion, certify to the Purchaser that such Improvements have been made in accordance with the provisions of the Agreement. Such certification shall mean, and the Deed shall state, (1) that any party purchasing or leasing such individual part or parcel shall not incur any obligation with respect to the construction

of the Improvements relating to such part or parcel or to any other part or parcel of the Property; and (2) that neither the Seller nor any other party shall thereafter have or be entitled to exercise with respect to any such individual part or parcel so sold (or, in the case of lease, with respect to the leasehold interest) any rights or remedies as a result of a default or breach of any provisions of the Agreement or the Deed.

(3) Each certification shall be in recordable form. If the Seller shall refuse or fail to provide any certification in accordance with the provisions of this Section, the Seller shall, within thirty (30) days after written request by the Purchaser, provide the Purchaser with a written statement, indicating in what respects the Purchaser has failed to complete the Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Seller, for the Purchaser to take or perform in order to obtain such certification.

#### 11. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER:

(a) Redevelopment Purpose. The Purchaser represents and agrees that it is acquiring the Property for the purpose of redevelopment and not for speculation in land holding. Purchaser shall record as covenants governing the use of the Property all such commitments, declarations, and covenants as are required by JHCDA in connection with the JHHC Award.

(b) Prohibition Against Transfer of Shares of Stock. The Purchaser represents and agrees for itself and its stockholders, and their successors in interest, that: Prior to completion of the Improvements as certified by the Seller, and without the prior written approval of the Seller, (a) there shall be no voluntary or involuntary transfer of stock of Purchaser by any person owning 10 percent or more of the stock in the Purchaser, (b) nor shall there be any significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the identity of the parties in control of the Purchaser or the degree thereof, by any other method or means, whether by increased capitalization, merger, issuance of additional or new stock change of classification of stock, or otherwise. With respect to this provision, the Purchaser and the parties signing the Agreement on behalf of the Purchaser represent that they have the authority of all of its existing stockholders to agree to this provision on their behalf and to bind them with respect thereto.

(c) Prohibition Against Transfer of Property and Assignment of Agreement. The Purchaser represents and agrees for itself, and its successors and assigns, that:

(1) Except only

(a) by way of security for, (i) the purpose of obtaining financing necessary to enable the Purchaser or any successor in interest to acquire the Property or perform its obligations with respect to making the Improvements under the Agreement, and (ii) any other purpose authorized by the Agreement, and

(b) as to any individual parts or parcels of the Property on which the Improvements to be constructed have been completed, and which, by the terms of the Agreement, the Purchaser is authorized to convey or lease as such Improvements are completed, the Purchaser (except as so authorized) has not made or created, and will not, prior to the issuance of the Certificate of Completion, make or create, any sale, assignment, conveyance, lease, trust, power, or transfer of or with respect to the Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Seller: Provided, that, prior to the issuance by the Seller of the Certificate of Completion, the Purchaser may enter into an agreement to sell, lease, or otherwise transfer, the Property or any part thereof or interest therein, which agreement shall not provide for payment of or on account of the purchase price or rent for the Property, or transfer of title, prior to the issuance of the Certificate of Completion.

(2) The Seller shall be entitled to require as condition to any such approval, that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Seller, necessary and adequate to fulfill the obligations undertaken in the Agreement by the Purchaser (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).

(b) Any proposed transferee, shall, in writing, for itself, its successors and assigns, assume all of the obligations of the Purchaser under the Agreement and agree to be subject to all the conditions and restrictions to which the Purchaser is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part).

(c) There shall be submitted to the Seller for review all instruments and other legal documents involved in effecting transfer; and if approved by the Seller, its approval shall be indicated to the Purchaser in writing.

(d) The consideration payable for the transfer by the transferee shall not exceed the actual cost (including carrying charges) to the Purchaser of the Property (or allocable to the part thereof or interest therein transferred) and the Improvements, if any, theretofore made by it; it being the intent of this provision to preclude assignment of the Agreement or transfer of the Property for profit prior to the completion of the Improvements and to provide that in the event any such assignment or transfer is made (and is not canceled), the Seller shall be entitled to increase the Purchase Price to the Purchaser by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this subdivision, and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the Seller.

(e) The Purchaser and its transferee shall comply with such other conditions as the Seller may find desirable in order to achieve and safeguard the purposes of L.C. 36-7-14 and the Construction Plan. Provided, that in the absence of specific written agreement by the Seller to the contrary, no such transfer or approval by the Seller shall be deemed to relieve the Purchaser, or any other party bound in any way by the Agreement, from any of its obligations with respect to construction of the Improvements.

(d) Information As. to Stockholders/Members/Partners. During the period between execution of the Agreement and completion of the Improvements as certified by the Seller, (1) the Purchaser will promptly notify the Seller of any and all changes in the ownership of 10% or more of the stock, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such stock or in the relative distribution thereof, or with respect to the identity of the parties in control of the Purchaser or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information; and (2) the Purchaser shall, on request, furnish the Seller with a complete statement, setting forth all of the

stockholders of the Purchaser and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such stock, their names and the extent of such interest.

12. **MORTGAGE FINANCING; RIGHTS OF MORTGAGEES:**

(a) Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, as certified by the Seller, neither the Purchaser nor any successor in interest to the Property shall engage in any financing or any other transaction creating any mortgage, encumbrance or lien upon the Property, whether by express agreement or operation of law, except for the purposes of obtaining (a) funds necessary for making the Improvements and (b) to pay the Purchase Price to the Seller. The Purchaser (or successor in interest) shall notify the Seller in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, and of any encumbrance or lien that has been created on or attached to the Property.

(b) Mortgagee Not Obligated to Construct. The holder of any mortgage authorized by the Agreement or purchaser on foreclosure shall not be obligated by the provisions of the Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder.

(c) Copy of Notice of Default to Mortgagee. Whenever the Seller shall deliver any notice or demand to the Purchaser with respect to any breach or default by the Purchaser under the Agreement, the Seller shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement at the last address of such holder shown in the records of the Seller.

(d) Mortgagee's Option to Cure Defaults. After any breach or default, each mortgagee shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage: Provided, that if the breach or default is with respect to construction of the Improvements, a mortgagee may not undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made) without first having assumed the obligation to the Seller, by written agreement satisfactory to the Seller, to complete, in the manner provided in the Agreement, the Improvements on the Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Improvements

relating to the Property or applicable part thereof shall be entitled, upon written request made to the Seller, to a certification of completion.

(e) Seller's Option to Pay Mortgage Debt or Purchase Property. In any case, where, subsequent to default or breach by the Purchaser (or successor in interest) under the Agreement, the holder of any mortgage on the Property or part thereof

(1) has, but does not exercise, the option to construct or complete the Improvements relating to the Property or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or

(2) undertakes construction or completion of the Improvements but does not complete such construction within the period as agreed upon by the Seller and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the Seller so to do, the Seller shall (and every mortgage instrument made prior to completion of the Improvements with respect to the Property by the Purchaser or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the Seller shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Property; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

(f) Seller's Option to Cure Mortgage Default. In the event of a default or breach prior to the completion of the Improvements by the Purchaser, or any successor in interest,

of any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, the Seller may at its option cure such default or breach, in which case the Seller shall be entitled to reimbursement from the Purchaser or successor of all costs and expenses incurred by the Seller in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement: Provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Property authorized by the Agreement.

(g) Mortgage and Holder. For the purposes of the Agreement: The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

### 13. **REMEDIES:**

(a) In General. Except as otherwise provided in the Agreement, in the event of any default in or breach of the Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance.

(b) Termination Prior to Conveyance. In the event that:

(1) The Purchaser's application for Low Income Housing Tax Credits is not approved within the time specified in Paragraph 7(a); or

(2) the Seller does not tender conveyance of the Property, or possession thereof, in the manner and condition, and by the date provided in the Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Purchaser; or

(3) the Purchaser shall furnish evidence to the Seller that it has been unable, after and despite diligent effort for a period of sixty (60) days after approval by the

Seller of the Construction Plans, to obtain mortgage financing for the construction of the Improvements and the Purchaser shall, after having submitted such evidence and if so requested by the Seller, continue to make diligent efforts to obtain such financing for a period of sixty (60) days after such request, but without success; then the Agreement shall, automatically terminate, and, neither the Seller nor the Purchaser shall have any further rights against or liability to the other under the Agreement.

(c) Termination by Seller Prior to Conveyance. In the event that:

(1) prior to conveyance of the Property to the Purchaser and in violation of the Agreement

(a) the Purchaser (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein, or in the Property, or

(b) there is any change in the ownership or distribution of the stock of the Purchaser or with respect to the identity of the parties in control of the Purchaser or the degree thereof; or

(2) the Purchaser does not obtain approval of any material changes to the Intended Use and/or Construction Plans, as required by the Agreement, or evidence that it has the necessary equity capital and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in the Agreement therefor; or

(3) the Conditions Precedent to Conveyance specified in Paragraph 10(d) have not been met; or

(4) the Purchaser does not pay the Purchase Price and take title to the Property upon tender of conveyance by the Seller pursuant to the Agreement, and if any default or failure referred to shall not be cured within thirty (30) days after the date of written demand by the Seller,

then the Agreement, and any rights of the Purchaser, or any assignee or transferee, in the Agreement, shall, at the option of the Seller, be terminated by the Seller, and neither the Purchaser (or assignee or transferee) nor the Seller shall have any further rights against or liability to the other under the Agreement.

(d) Revesting Title in Seller Upon Happening of Event Subsequent to Conveyance to Purchaser. In the event that subsequent to conveyance of the Property or any part thereof to the Purchaser and prior to completion of the Improvements as certified by the Seller

(1) the Purchaser (or successor in interest) shall default in or violate its obligations with respect to the construction of the Improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months, if the default is with respect to the date for completion of the Improvements) after written demand by the Seller so to do; or

(2) the Purchaser (or successor in interest) shall fail to pay Property taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Seller made for such payment, removal, or discharge, within ninety (90) days after written demand by the Seller so to do; or

(3) there is, in violation of the Agreement, any transfer of the Property or any part thereof, or any change in the ownership or distribution of the stock of the Purchaser, or with respect to the identity of the parties in control of the Purchaser or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by the Seller to the Purchaser, then the Seller shall have the right to re-enter and take possession of the Property and to terminate (and revert in the Seller) the estate conveyed by the Deed to the Purchaser, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Property to the Purchaser shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Purchaser specified in subdivisions (b)(1), (2) and (3), failure on the part of the Purchaser to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the Seller at its option may declare a termination in favor of the Seller of the title, and of all the rights and interests in and to the Property conveyed by the Deed to the Purchaser, and that such title and all rights and interests of the Purchaser, and any assigns or successors in interest to and in the

Property, shall revert to and revest in the Seller: Provided, that such condition subsequent and any reversioning of title as a result thereof in the Seller

(a) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages; and

(b) shall not apply to individual parts or parcels of the Property (or, in the case of parts or parcels leased, the leasehold interest) on which the Improvements to be constructed thereon have been completed in accordance with the Agreement and for which a certificate of completion is issued therefor.

(e) Resale of Reacquired Property; Disposition of Proceeds. Upon the reversioning in the Seller of title to the Property or any part thereof, the Seller shall use its best efforts to resell the Property as soon and in such manner as the Seller shall find feasible, to a qualified purchaser who will assume the obligation to make or complete the Improvements or such other improvements in their stead as shall be satisfactory to the Seller. Upon such resale of the Property, the proceeds thereof shall be applied:

(i) First, to reimburse the Seller, on its own behalf or on behalf of the City of Wilkxhart, for all costs and expenses incurred by the Seller and the City, including but not limited to salaries of personnel, and attorney's fees, in connection with the recapture, management, and resale of the Property or part thereof (but less any income derived by the Seller from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the Seller, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversioning of title thereto in the Seller or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Purchaser, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part

thereof; and any amounts otherwise owing the Seller by the Purchaser and its successor or transferee; and

(2) Second, to reimburse the Purchaser, its successor or transferee, up to the amount equal to (a) the sum of the purchase price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by it in making any of the Improvements on the Property or part thereof, less (b) any gains or income withdrawn or made by it from the Agreement or the Property. Any balance remaining after such reimbursements shall be retained by the Seller as its property.

(f) Other Rights and Remedies of Seller; No Waiver by Delay. The Seller shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including the right to execute and record a written declaration of the termination of all the right, title, and interest of the Purchaser, and except for such individual parts or parcels upon which construction of that part of the Improvements required to be constructed thereon has been completed, in accordance with the Agreement, and for which a certificate of completion is to be delivered, and subject to approved mortgage liens and leasehold interests in the Property, and the reversioning of title thereto in the Seller: Provided, that any delay by the Seller in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way, nor shall any waiver in fact made by the Seller with respect to any specific default by the Purchaser under this Section be considered or treated as a waiver of the rights of the Seller with respect to any other defaults by the Purchaser under this Section or with respect to the particular default except to the extent specifically waived in writing.

(g) Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of the Agreement, neither the Seller nor the Purchaser, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of

subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Seller with respect to the preparation of the Property for redevelopment or of the Purchaser with respect to construction of the Improvements, as the case may be, shall be extended for the period of the enforced delay as determined by the Seller: Provided, that the party seeking the benefit of the provisions of this Section shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

(h) Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party.

(i) Party in Position of Surety With Respect to Obligations. The Purchaser, for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, including, without limitation, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

#### 14. **NOTICES AND DEMANDS:**

A notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, served by fax, or delivered personally, and

(1) In the case of the Purchaser, is addressed to or delivered personally to the Purchaser at the address set forth herein, and

(2) In the case of the Seller, is addressed to or delivered personally to the Seller at Municipal Building, 201 South Second Street, Elkhart, Indiana 46514; or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

**15. SPECIAL PROVISIONS:**

The Purchaser shall:

(1) provide and pay for any and all insurance which shall be deemed necessary by the Seller in order to insure it against any and all liability which might arise out of the construction of any Improvements on the Property in limits commensurate with the exposure of the Seller to liability considering the type of improvements being constructed thereon and the Purchaser will provide the Seller with a certificate of insurance indicating the same to be in full force and effect.

(2) construct the Improvements on the Property in accordance with the Construction Plans and Design Specifications for the Property established by the Seller which Design Specifications are annexed hereto and made a part hereof as Schedule A.

**16. PROVISIONS NOT MERGED WITH DEED.** None of the provisions of the Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from the Seller to the Purchaser or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

**17. PURCHASER'S CONDITIONS TO CLOSING:**

(a) Purchaser's obligations under this Agreement are expressly conditioned upon the occurrence of the following events:

(1) The Property has been re-zoned for residential use and Purchaser shall have received the LIHTC Award;

(2) The paragraph 7 contingencies have been satisfied;

(3) Seller shall have provided a ten percent (10%) match of the allowed Credits which credit match consists of and includes the original offering prices of the properties, demolition costs, street improvement costs, environmental review and remediation costs, and other City costs related to the Property allowed by applicable law or regulation;

(4) The Title Company shall be ready, willing and able to issue the Title Policy in the form required as of the Closing Date;

(5) Seller shall be ready, willing and able to deliver to Purchaser on the Closing Date the fully executed Limited Warranty Deed, as required hereunder; and

(6) Purchaser and/or the Title Company shall have received such other documents as, in the opinion of the title insurer, are necessary to complete the transactions contemplated by this Agreement, including without limitation a fully executed Indiana Disclosure of Sales form.

(b) In the event that satisfaction of any of the conditions described in (a)(2) through (5) in this Paragraph shall not have timely occurred, Purchaser shall have the option to waive such condition and thereupon remain obligated to perform this Agreement; or terminate this Agreement. In the event the condition set forth in (a)(1) in this Paragraph shall not have timely occurred, this Agreement shall automatically terminate. Except as otherwise herein specifically provided, upon termination of this Agreement by Purchaser pursuant to this Paragraph, neither party shall thereafter be under any further liability to the other.

**18. SELLER'S CONDITIONS TO CLOSING:**

(a) Seller's obligations under this Agreement are expressly conditioned upon the occurrence of the following events: (1) the Conditions Precedent to Conveyance specified in Paragraph 10(d) have been met; and (2) Purchaser shall have delivered to the Closing Agent the Purchase Price on the Closing Date, and all other documents required by the title company.

(b) In the event that satisfaction of any of the conditions set forth in (a)(1) in this Paragraph shall not have timely occurred in this Agreement shall automatically terminate if the conditions in (a)(2), described in this Paragraph, shall not have timely occurred through no fault of Seller, Seller shall have the option to waive such condition and thereupon remain obligated to perform this Agreement; or terminate this Agreement. Except as otherwise herein specifically provided, upon termination of this Agreement by Seller pursuant to this Paragraph, neither party shall thereafter be under any further liability to the other.

**19. SALES EXPENSES:** Purchaser agrees to pay all costs associated with this transaction, and all closing costs and expenses, in cash prior to or at the Closing.

**20. ATTORNEY'S FEES:** Any signatory to this Agreement who is the prevailing party in any legal or equitable proceeding against any other signatory brought under or with relation to the Agreement or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

**21. DUTIES OF PURCHASER AND SELLER AT CLOSING:**

(a) At the closing, Seller shall deliver to Purchaser, at Purchaser's sole cost and expense, the following:

(1) A duly executed and acknowledged Limited Warranty Deed conveying title in fee simple to all of the Property, subject to the conditions herein set forth, and execute a Vendor's Affidavit;

(2) Execute all other necessary documents to close this transaction.

(b) At the closing, Purchaser shall perform the following:

(1) Pay the cash portion of the Purchase Price; and

(2) Execute all other necessary documents to close this transaction.

**22. CONDEMNATION:** If prior to Closing Date condemnation proceedings are commenced against any portion of the Property, Purchaser may, at its option, terminate this Agreement by written notice to Seller within ten (10) days after Purchaser is advised of the commencement of condemnation proceedings, or Purchaser shall have the right to appear and defend in such condemnation proceedings, and any award in condemnation shall become the property of Seller.

**23. STATUTORY REQUIREMENTS:** The Property is being conveyed under I.C. 36-7-14-22 and the Purchaser agrees to the following:

(a) The Purchaser will develop the Property as Lease to Own town homes to provide low and moderate income housing for families (the "Development");

(b) The Purchaser will complete the Development within the time specified in this Agreement;

(c) The Purchaser will develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the Purchaser.

**24. MISCELLANEOUS:**

(a) Any notice required or permitted to be delivered hereunder, shall be deemed received when personally delivered or sent by United States mail, postage prepaid, certified and return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below the signature of such party hereto.

(b) During the term of this Agreement, Seller shall entertain no competing offers nor shall it negotiate with any third person or entity for the sale of this Property.

(c) Both Purchaser and Seller agree that there are no brokers involved in this Agreement.

(d) Purchaser reserves the right to assign its interest in this Agreement to affiliates of Purchaser without recourse to the Purchaser. In the event of such assignment, Purchaser shall have no personal liability to the Seller or to any third party on account of this Agreement. In the event of assignment, all Purchasers' rights under this Agreement will transfer to the Assignee.

(e) This Agreement shall be construed under and in accordance with the laws of the State of Indiana.

(f) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

(g) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(h) This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the transaction and cannot be changed except by their written consent.

(i) Time is of the essence of this Agreement.

(j) Words of any gender used in this Agreement shall be held and constructed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

(k) All rights, duties and obligations of the signatories hereto shall survive the passing of title to, or an interest in, the Property.

(l) This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

"PURCHASER"

Advantix Development Corporation

By: Timothy L. Martin

Timothy Martin, COO

Purchaser's Taxpayer I.D. #

"SELLER"

City of Elkhart, Indiana,  
Department of Redevelopment

By: Sandra Schreiber, President  
Elkhart Redevelopment Commission  
201 S. Second St.  
Elkhart, IN 46516

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, Gary D. Boyn, a Notary Public within and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, came the City of Elkhart, Department of Redevelopment, by Sandra Schreiber and Alex Holtz, President and Secretary, respectively, of its Redevelopment Commission, who as such President and Secretary, for and on behalf of the City of Elkhart, Department of Redevelopment, acknowledged the execution of the foregoing Agreement.

WITNESS my hand and official seal.

(Signature) \_\_\_\_\_  
(Printed)    Gary D. Boyn

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, \_\_\_\_\_, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary of Advantix Development Corporation, and acknowledged the execution of the foregoing Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public

This Instrument was prepared by Gary D. Boyn of the law firm of Warrick & Boyn, LLP, 861 Parkway Avenue, Elkhart, Indiana 46516. 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. Gary D. Boyn

Exhibit A  
Legal Description

Parcel 1:

Legal Description for 1701 Sterling Avenue:

Lots Numbered 44, 45, 46, 47, 48, 49 and 50 as the said Lots are known and designated on the recorded Plat of Hudson -- Sterling Addition to the City of Elkhart, Indiana; said Plat being recorded in Decd Record 115, page 413 in the Office of the Recorder of Elkhart County, Indiana.

ALSO: the vacated 16 foot alley abutting and adjoining the above described real estate.

ALSO: a 33 foot strip of land lying between the Westerly extension of the South line of Lot 44 in Hudson -- Sterling Addition to the City of Elkhart, and the Westerly extension of the North line of Lot 50 in said Addition bounded on the West by the Eastern line of the right-of-way of the New York Central Railroad Company and on the East by the Western line of a vacated 16 foot alley.

Subject to covenants, restrictions and easements of record.

Tax ID No. 20-06-09-335-001-000-012  
20-06-09-335-002-000-012  
20-06-09-335-003-000-012  
20-06-09-335-004-000-012  
20-06-09-335-005-000-012  
20-06-09-335-006-000-012  
20-06-09-335-007-000-012  
20-06-09-329-036-000-012

Parcel 2:

Tract B as the said Lot is known and designated on the Recorded Replat of Lots 51-78 Hudson Sterling Addition to the City of Elkhart; said plat being Recorded in Plat Book 33 page 90 as Instrument No. 2011-18408 in the Office of the Recorder of Elkhart County, Indiana

Tax ID No. 20-06-09-329-003.000-012

Parcel 3:

Lot Numbered 114 in Hudson Sterling Addition to the City of Elkhart, Indiana, said Plat being recorded in Deed Record 115, page 413 in the Office of the Recorder of Elkhart County, Indiana.

Commonly known as: Adj. NW of 1726 Sterling Avenue, Elkhart, Indiana 46516

Tax ID Number: 20-06-09-406-007.000-012

SCHEDULE A

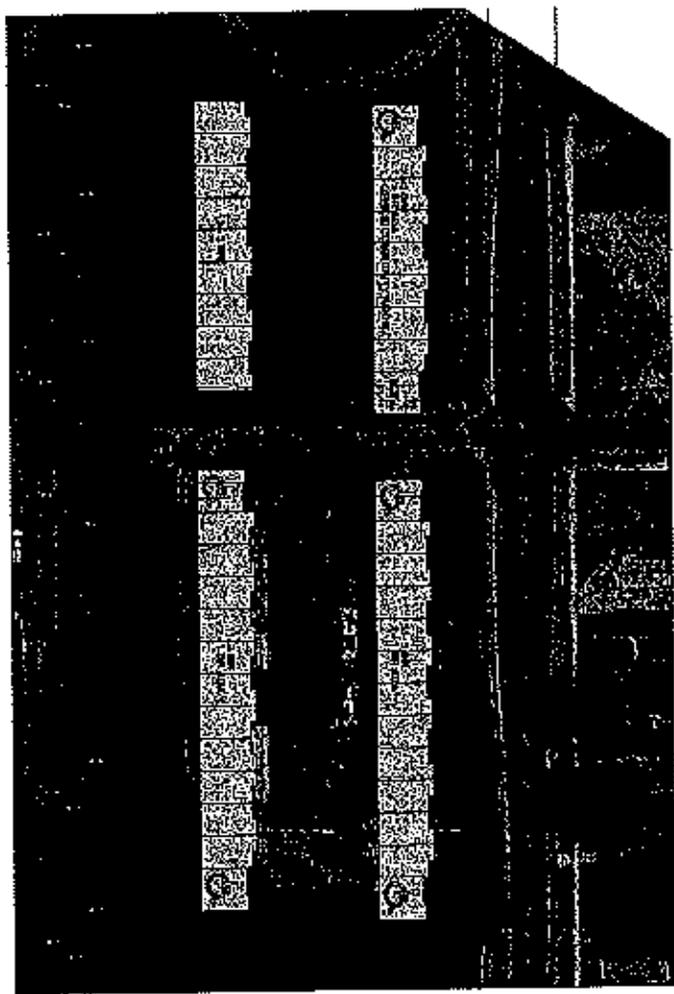
DESIGN SPECIFICATIONS

The Intended Use consists of 39 townhomes and 1 single family residence to be constructed by Purchaser ("Project"), as shown on the attached Architectural Site Plans.

The Project façade and plans will be substantially as shown in the attached Schedule B drawings.

The Project will incorporate a business center with free wi-fi, dog park and playground.

The site plans are subject to revision and final approvals as set forth in the Agreement.



**ARCHITECTURAL SITE PLAN**

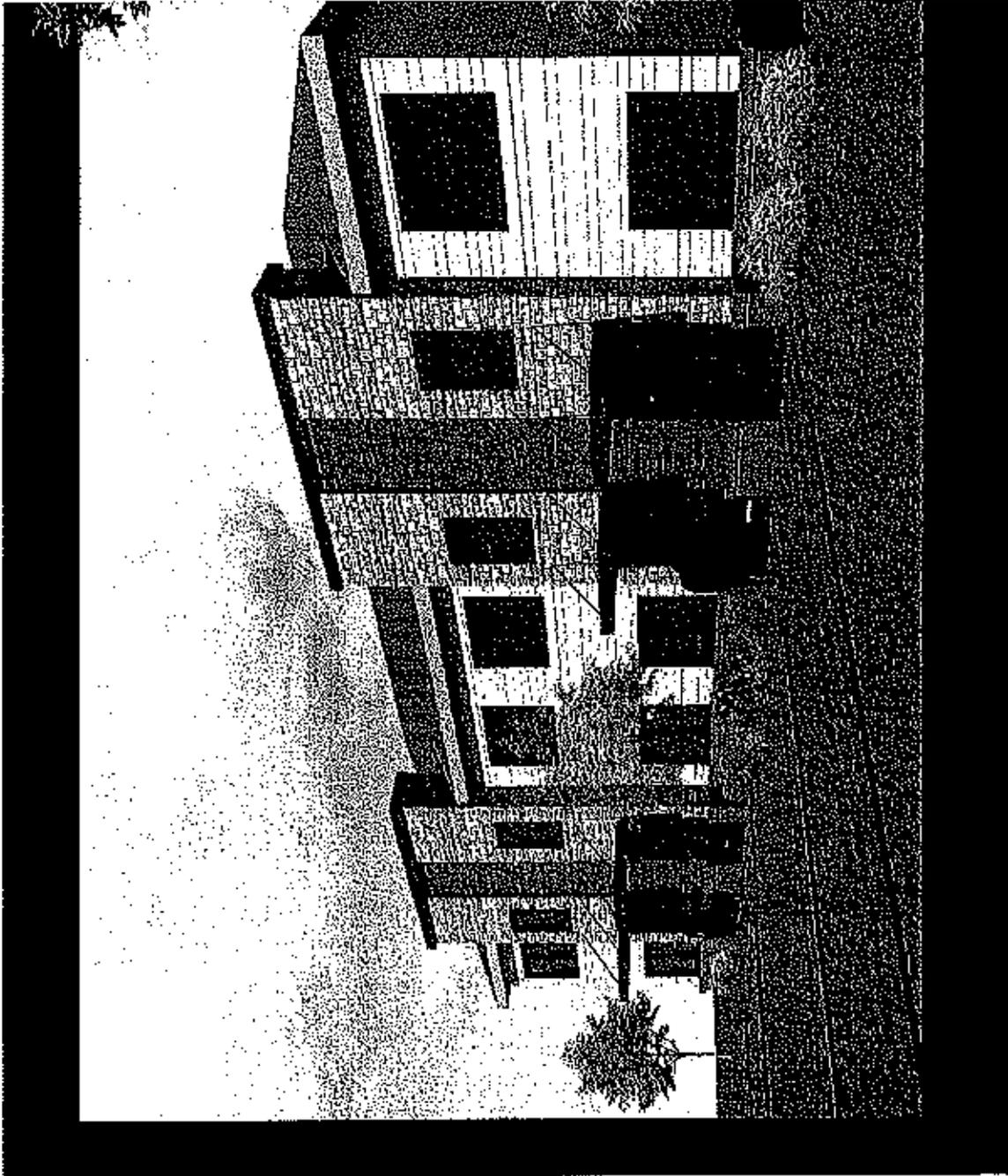
SCALE: 1/8"=1'-0"





SCHEDULE B

SITE PLAN





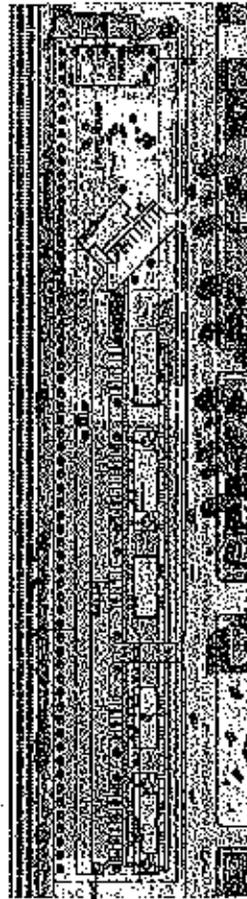
5-3 BED  
SIDE ELEVATION



4-3 BED ADA  
SIDE ELEVATION



4-3 BED  
SIDE ELEVATION



SEE EXHIBIT 1 FOR  
GENERAL NOTES TO THE PLAN

ARCHITECTURAL SITE PLAN  
SCALE: 1/8" = 1'-0"



OFFICE/COMMUNITY BUILDING  
SIDE ELEVATION

SCHEDULE C

Grantor's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mail Tax Statements To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, that the City of Elkhart, Indiana, for and on behalf of its Department of Redevelopment, whose address is 229 South Second Street, Elkhart, Indiana 46516, ("Grantor"), sells and conveys to \_\_\_\_\_, whose address is \_\_\_\_\_, Indiana \_\_\_\_\_ ("Grantee"), for and in consideration of One and 00/100 Dollars (\$1.00), and other valuable consideration, the receipt whereof is hereby acknowledged, all Grantor's rights, privileges, appurtenances, and immunities, and warrants the following described real estate, in the City of Elkhart, County of Elkhart, State of Indiana, is free and clear from any encumbrances done or suffered by Grantor, and it shall defend Grantee against lawful claims and demands of all persons claiming by, under, or through Grantor, to-wit:

All that certain parcel or parcels of land located in the City of Elkhart, County of Elkhart, State of Indiana, more particularly described as follows:

LEGAL:

Tax ID Numbers:

\_\_\_\_\_  
(hereinafter referred to as the "Property")

SECTION 1.

This Deed is subject to the covenants, conditions, restrictions and provisions of an agreement entered into between the Grantor and the Grantee on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, identified as "Purchase and Development Agreement by and between the City of Elkhart, Department of Redevelopment and \_\_\_\_\_" (hereinafter referred to as the "Agreement"). None of the provisions of the Agreement shall be deemed merged in this Deed. The Grantee shall not convey this Property, or any part thereof, without the consent of the Grantor until a certificate of completion releasing the Grantee from the obligations of said Agreement as to this Property, or such part thereof then to be conveyed, has been placed of record.

The Grantor shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the improvements thereon, as provided in the Agreement. Such construction shall in any event be begun no later than \_\_\_\_\_, 20 \_\_\_\_, and be completed within \_\_\_\_ (\_\_\_\_) months from such date.

The above and foregoing agreements and covenants pertaining to the construction of the improvements as provided in the Agreement and the commencement and completion thereof shall be covenants running with the land, and they shall be binding, to the fullest extent permitted by law and equity, for the benefit of and in favor of the community and the Grantor, and enforceable by the Grantor, its successors and assigns, against the Grantee, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein.

Promptly after completion of construction of the Improvements and satisfaction of the requirements for occupancy and use as set forth in the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligations of the Grantee, and its successors and assigns, to construct the Improvements and use the premises.

All certifications provided for herein shall be in such form as will enable them to be recorded with the Recorder of Elkhart County, Indiana. If the Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, the Grantor shall, within ninety (90) days after written request by the Grantee, provide the Grantee with a written statement indicating in adequate detail in what respects the Grantee has failed to complete the improvements in accordance with the provisions of the Agreement or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Grantor, for the Grantee to take or perform in order to obtain such certification.

## SECTION 2.

In the event the Grantee herein shall, prior to the recording of the certificate of completion, hereinabove referred to:

(a) Default in or violate its obligations with respect to the construction of the improvements provided for in this Deed and the Agreement, or shall abandon or substantially suspend construction work, and any default or violation, abandonment or suspension shall not be cured, ended or remedied within three (3) months (six (6) months if the default is with respect to the date for the completion of the improvements) after written demand by the Grantor so to do; or

(b) Fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the Agreement with the Grantor, or shall suffer any levy or attachment to be made, or any materialmen's or mechanic's liens, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid or the encumbrance or lien removed or discharged, or provisions satisfactory to the Grantor made for such payments, removal or discharge, within ninety (90) days after written demand by the Grantor so to do; or

(c) There is, in violation of the Agreement or of this Deed, any transfer of the Property, or any part thereof, and such violation shall not be cured within sixty (60) days after written demand by the Grantor to the Grantee;

then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Grantor the estate conveyed by this Deed to the Grantee, its assigns or successors in interest.

### SECTION 3.

This Deed is also given subject to the following:

(a) SUBJECT TO, easements of record and to all utilities located on the Property.

(b) SUBJECT TO, taxes and special assessments which are liens against the property.

(c) SUBJECT TO, all zoning and subdivision ordinances and other applicable ordinances and regulations of the City of Elkhart, Indiana.

(d) SUBJECT TO, the conditions and restrictions in the Downtown Urban Renewal Disposition Plan, as amended.

### SECTION 4.

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly elected officers of Grantor and have been fully empowered by proper resolution of the Elkhart Redevelopment Commission, to execute and deliver this Deed. That Grantor has full capacity as a municipal corporation to convey the real estate described herein and that all necessary corporate action for the making of such conveyance has been taken and done.

[Signature page to follow]

IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed on its behalf by its President and Secretary and has caused its seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

CITY OF ELKHART  
DEPARTMENT OF REDEVELOPMENT

By: \_\_\_\_\_

(SEAL)

Sandra Schreiber, President  
of its Redevelopment Commission

ATTEST:

\_\_\_\_\_  
Alex Holtz, Secretary  
of its Redevelopment Commission

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, a Notary Public in and for said County and State, on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, came the City of Elkhart, Department of Redevelopment, by Sandra Schreiber, President of its Redevelopment Commission and Alex Holtz, Secretary of its Redevelopment Commission, who as such President and Secretary, respectively, for and on behalf of the City of Elkhart, Department of Redevelopment, acknowledged the execution of the foregoing Deed and the affixing thereto of the Seal of said Department.

WITNESS my hand and official seal.

(Signature) \_\_\_\_\_  
(Printed) \_\_\_\_\_  
Notary Public

The undersigned, being first duly sworn, states that the foregoing instrument was signed in my presence by Sandra Schreiber, known by me and known to be a duly authorized President of its Redevelopment Commission and Alex Holtz, Secretary of its Redevelopment Commission. I further state that I am not a party to the transaction described in the instrument and I will not benefit from that transaction.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF ELKHART                )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the above named WITNESS to the foregoing instrument, who, being known or proved to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me deposes and says that the foregoing instrument was executed and delivered by Sandra Schreiber, President of Redevelopment Commission and Alex Holtz, Secretary of its Redevelopment Commission in the foregoing subscribing witness' presence.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

The Grantee above named hereby agrees to be bound by all the terms, conditions and agreements contained in the above Limited Warranty Deed and all documents and instruments referred to therein though not fully set forth and fully agree to abide by and carry out the same, for itself, and its successors and assigns, and every successor in interest to the Property.

By: \_\_\_\_\_  
\_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ELKHART    )

Before me, \_\_\_\_\_, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, came \_\_\_\_\_ who, being duly authorized so to do, acknowledged the execution of the foregoing Limited Warranty Deed for the uses and purposes therein set forth.

WITNESS my hand and official seal.

(Signature) \_\_\_\_\_  
(Printed)        \_\_\_\_\_  
Notary Public

The undersigned, being first duly sworn, states that the foregoing instrument was signed in my presence by \_\_\_\_\_, known by me and known to be a duly authorized representative of \_\_\_\_\_. I further state that I am not a party to the transaction described in the instrument and I will not benefit from that transaction.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the above named WITNESS to the foregoing instrument, who, being known or proved to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me deposes and says that the foregoing instrument was executed and delivered by \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ in the foregoing subscribing witness' presence.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Signature) \_\_\_\_\_  
(Printed) \_\_\_\_\_  
Notary Public

Drafted by the law firm of Warrick & Boyn, LLP by Gary D. Boyn, 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. Gary D. Boyn.

RESOLUTION NO. 23-R-

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE  
CITY OF ELKHART, INDIANA APPROVING SETTLEMENT AGREEMENTS  
ON 1101 E. BEARDSLEY ENVIRONMENTAL CLEAN-UP LITIGATION

Whereas, the Commission has employed Nelson Law Group ("NLG") to pursue claims against prior owners of contaminated property at 1101 E. Beardsley Avenue (the "Real Estate") to recover the remediation and site clean-up costs; and

Whereas, the remaining parties to the lawsuit have reached agreements outlining terms of settlement of the litigation which will enable the Commission to expedite and finalize a Voluntary Remediation Program with DDTM and redevelopment of the site, and believes it will be in the best interest of the City and its inhabitants to approve the Agreement reached with Camsaw, Inc. and the separate Agreement reached with All American Group Holdings, LLC and H.I.G. Capital, LL attached hereto (collectively the "Agreements").

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the respective terms of settlement outlined in the Agreements, subject to any final revisions the President deems necessary and appropriate, and authorizes legal counsel to take all actions, including dismissal of the lawsuit, required to effectuate the terms of settlement as set forth in the Agreements.
2. The Officers of the Commission are hereby authorized to execute and deliver the Agreements, and do all acts, which they deem necessary and desirable to carry out the terms of this Resolution.

ADOPTED BY MAJORITY VOTE AT A MEETING OF THE COMMISSION THIS 8<sup>th</sup> DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") dated August \_\_, 2023 (the "Effective Date") is made and entered into by and between the following parties (hereinafter collectively the "Parties"):

- (1) City of Elkhart Redevelopment Commission, for the City of Elkhart ("Elkhart");
- (2) All American Group Holdings, LLC, a Delaware limited liability company ("AAG Holdings"); and
- (3) H.I.G. Capital, LLC, a Delaware limited liability company ("HIG").

### WITNESSETH:

**WHEREAS**, Elkhart is plaintiff in certain lawsuits filed in Elkhart County, Indiana bearing Cause Nos. 20D02-2008-CT-000170 and 20D02-2108-CT-000173 (hereinafter collectively referred to as the "Litigation") against defendants Camsaw, Inc. ("Camsaw"), Conn-Selmer, Inc. ("Conn-Selmer"), All American Group, Inc. f/k/a Coachmen Industries, Inc. ("AAG"), AAG Holdings, and HIG;

**WHEREAS**, the Litigation pertains, in pertinent part, to alleged environmental liability concerning real property located in Elkhart, Indiana including, without limitation, a parcel located at or near 1101 E. Beardsley Avenue, Elkhart, Indiana (the "Site");

**WHEREAS**, AAG Holdings and HIG (hereinafter collectively referred to as the "HIG/AAG Defendants") deny any and all liability and assert, among other things, affirmative defenses to Elkhart's claims and a third-party claim for common law indemnity against Conn-Selmer related to the facts and circumstances at issue in the Litigation;

**WHEREAS**, the Parties here have each independently determined to avoid the cost of preparing for trial and the uncertainties of trial in the Litigation and to enter into a private compromise of the various claims, both presently asserted and those that could be asserted in the future in relation to the Litigation, according to the terms and conditions hereinafter set forth in this Agreement; and

**NOW, THEREFORE**, for and in consideration of the premises, the releases and covenants contained herein and for such other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by each of the parties hereto, it is mutually agreed as follows:

1. **Settlement Payment.** The HIG/AAG Defendants collectively shall pay to Elkhart the sum of Seventy-five Thousand and 00/100 Dollars (\$75,000.00) (the "Settlement Payment"). The Settlement Payment shall be made in immediately available funds by cashier's check or wire transfer in accordance with instructions circulated herewith not more than seven (7) business days after the execution of this Agreement.

2. **Dismissal and Indemnity.** Elkhart shall within two (2) business days of receiving the Settlement Payment file in the Litigation a dismissal *with prejudice* of all claims against the HIG/AAG Defendants. Elkhart further agrees to utilize its best efforts through trial to resolve its claims against Camsaw, Conn-Selmer, and any other third-party defendant. In the event that the Litigation proceeds through trial and judgment is entered in favor of Elkhart against Camsaw, Conn-Selmer, or any third-party defendant (collectively, the "Adverse Judgment Parties"), then Elkhart agrees to indemnify the HIG/AAG Defendants from any and all contribution claim amounts thereafter awarded to the Adverse Judgment Parties by the Court. The gross amount of this indemnity is limited to and shall not exceed the Settlement Payment.

3. **Public Nature of Settlement.** The Parties understand that this Agreement will be voted upon by Elkhart at a public meeting and this Agreement will be a public record. This Agreement is not binding on the City unless and until duly approved at a public meeting by the Elkhart Redevelopment Commission, and the Agreement will not be executed unless and until such approval is given.

4. **Releases.** In consideration of the payment, nonmonetary obligations, and releases contained herein, the Parties agree as follows:

a. *Release of Elkhart.* The HIG/AAG Defendants, their successors, assigns and legal representatives, jointly and severally, hereinafter forever release, acquit and discharge Elkhart, its successors, assigns, legal representatives managers, officers, directors, employees, agents, independent contractors, and related business entities from any and all claims, demands or causes of action, recognized at law or in equity founded upon statute, common law or administrative regulation, known or unknown, disclosed or undisclosed, mature or not yet mature that the HIG/AAG Defendants may now possess or in the future possess, asserted or unasserted, which relates in any way to, or arises out of, any fact or inference set forth within the Litigation, or that could have been brought in the Litigation. Notwithstanding the foregoing, this Section 4 does not bar the HIG/AAG Defendants from, if necessary, seeking from Elkhart indemnity pursuant to the terms of Section 2 of this Agreement.

b. *Release of the HIG/AAG Defendants.* Elkhart, its successors, assigns and legal representatives, jointly and severally, hereinafter forever releases, acquits and discharges the HIG/AAG Defendants, their successors, assigns, parent companies, subsidiaries, affiliates, legal representatives managers, officers, directors, employees, agents, independent contractors, and related business entities from any and all claims, demands or causes of action, recognized at law or in equity founded upon statute, common law or administrative regulation, known or unknown, disclosed or undisclosed, asserted or unasserted, mature or not yet mature that Elkhart may now possess or in the future possess which relates in any way or arises out of any fact or inference set forth within the Litigation, or that could have been brought in the Litigation.

c. *Release of Adverse Interest Parties.* The HIG/AAG Defendants, their successors, assigns and legal representatives, jointly and severally, agree to release any of the Adverse Interest Parties which enter into a settlement agreement with Elkhart, to the same extent that the other Adverse Interest Parties release the HIG/AAG Defendants.

5. **Representations and Warranties.** The Parties to this Agreement represent and warrant to each other that:

(i) This Agreement represents a compromise of disputed claims, the liability for which each party hereto has expressly denied. The execution of this Agreement by any party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Agreement;

(ii) The consideration provided in this Agreement is all the consideration any party hereto shall receive and there are no promises, written or oral, express or implied, for the receipt or payment of any additional consideration made by any Party so as to induce any other party hereto to execute this Agreement;

(iii) Each Party to this Agreement has had an opportunity to review this Agreement with their own independent legal counsel prior to executing this Agreement. By executing this Agreement each Party acknowledges that it has acted upon the reliance and advice of its own independent legal counsel and has not relied upon any conversation, writing or remark of any other Party or legal counsel acting on behalf of any other Party hereto;

(iv) There is no person, entity or organization which owns or can claim to own any interest, in whole or in part, in any of the claims being released or assigned herein;

(v) Each of the Parties hereto is under no disability or contractual agreement that would limit its ability to enter into this Agreement and be fully bound to each of the terms contained within this Agreement;

(vi) The corporations and limited liability companies that are Parties to this Agreement have authorized the individuals signing this Agreement to so execute this Agreement so as to bind those entities to all of the terms and conditions contained herein; and

(vii) Each Party represents and warrants that as of the date of this Agreement it does not intend to voluntarily file a petition for relief under the United States Bankruptcy Code 11 U.S.C. § 101 *et seq.* within 91 days of the Effective Date.

6. **Construction of Agreement.** This Agreement shall be construed and enforced according to the laws of the State of Indiana. Each of the parties hereto has independently had the opportunity to fully negotiate the terms of this Agreement and modify the draftsmanship of this Agreement. The terms of this Agreement shall be construed and interpreted without any presumption, inference or rule of law requiring the construction or interpretation of any provision of this Agreement against the interest of the party causing this Agreement to be drafted.

7. **Integrated Agreement and Amendments.** This is a fully integrated Agreement. This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter of the settlement and final compromise of the litigation and all claims of the Parties to this Agreement. This Agreement supersedes all negotiations, preliminary agreements and all prior and

contemporaneous discussions and understandings of the Parties hereto in connection with the subject matter contained within this Agreement. No amendment, waiver, change or modification of any of the terms, provisions or conditions to this Agreement shall be effective, unless made in writing and signed or initiated by all of the parties hereto or that Party's duly authorized agent. A waiver of any provision of this Agreement shall not be deemed a waiver of future compliance herewith and such provisions subject to a claim of waiver shall remain in full force and effect until a court of competent jurisdiction issues a final determination that a waiver has occurred.

8. **Severability.** Should any provision of this Agreement be deemed illegal, invalid or otherwise unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Additionally, any provision found to be illegal, invalid or otherwise unenforceable may by court order be redrafted by the court so as to comply with existing law.

9. **Waiver of Jury Trial and Remedy for Breach.** In the event of any dispute between the parties hereto concerning the performance or breach of any provision of this Agreement, the parties hereto agree that they shall submit such dispute exclusively to the state and federal courts with jurisdiction in Elkhart, IN and that those courts shall have exclusive subject matter and personal jurisdiction with regard to any such dispute; provided, however, in the event a dispute between the Parties arises in connection with either Party being made a party to a lawsuit by a third-party, the Parties agree to submit to the jurisdiction of the court where such lawsuit is being tried. Each Party hereto additionally, irrevocably and unconditionally waives any right to have a trial by jury with regard to any such dispute concerning the enforcement of or remedy by reason of a breach of this Agreement.

In the event of any litigation initiated due to a breach of this Agreement or claim of nonperformance of this Agreement, the prevailing party(ies) shall be entitled to recover from the losing party(ies) their reasonable attorneys' fees and costs.

10. **Further Assurances.** Each party hereto agrees to execute all such further instruments and documents and to take all such further action as any other Party may reasonably require in order to give effect to the provisions and purposes of this Agreement.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, all of which together shall constitute one agreement. In the making of proof thereon, it shall not be necessary to produce or account for more than one such counterpart for each Party hereto. The execution and delivery of the signature pages appended hereto by electronic delivery shall be deemed the same as an original signature hereto.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

[ SIGNATURE PAGE FOLLOWS ]

**City of Elkhart Redevelopment Commission,  
for the City of Elkhart**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**All American Group Holdings, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**H.I.G. Capital, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") dated August \_\_, 2023 (the "Effective Date") is made and entered into by and between the following parties (hereinafter collectively the "Parties" and each individually a "Party"):

- (1) City of Elkhart Redevelopment Commission, for the City of Elkhart ("Elkhart"); and
- (2) Camsaw, Inc., a Delaware corporation.

### WITNESSETH:

**WHEREAS**, Elkhart is plaintiff in certain lawsuits filed in Elkhart County, Indiana bearing Cause Nos. 20D02-2008-CT-000170 and 20D02-2108-CT-000173 (hereinafter collectively referred to as the "Litigation") against defendants Camsaw, Inc. ("Camsaw"), Conn-Selmer, Inc. ("Conn-Selmer"), All American Group, Holdings LLC f/k/a Coachmen Industries, Inc. ("AAG") and H.I.G. Capital, LLC ("HIG") (AAG and HIG are collectively referred to as the "HIG/AAG Defendants");

**WHEREAS**, the Litigation pertains, in pertinent part, to alleged environmental liability concerning real property located in Elkhart, Indiana including, without limitation, a parcel located at or near 1101 E. Beardsley Avenue, Elkhart, Indiana (the "Site");

**WHEREAS**, Camsaw denies any and all liability and asserts, among other things, affirmative defenses to Elkhart's claims;

**WHEREAS**, the Parties here have each independently determined to avoid the cost of preparing for trial and the uncertainties of trial in the Litigation and to enter into a private compromise of the various claims, without any admission of wrongdoing, both presently asserted and those that could be asserted in the future in relation to the Litigation, according to the terms and conditions hereinafter set forth in this Agreement; and

**NOW, THEREFORE**, for and in consideration of the premises, the releases and covenants contained herein and for such other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by each of the parties hereto, it is mutually agreed as follows:

1. **Settlement Payment.** In full and final settlement of the claims released pursuant to this Agreement and in consideration of the release, representations and covenants granted in this Agreement, Camsaw shall make a one-time aggregate payment to Elkhart in the sum of Eighty Thousand and 00/100 Dollars (\$80,000.00) (the "Settlement Payment"). Without any admission of liability by Camsaw, Elkhart asserts that the Settlement Payment represents the total amount for which Camsaw is or could be liable for with respect to Elkhart's claims in the Litigation with respect to the Site. The Settlement Payment shall be made in immediately available funds by cashier's check or wire transfer (in accordance with instructions and a Form W-9 to be provided by Elkhart upon execution) not more than thirty (30) business days after the full execution of this Agreement by both Parties.

2. **Dismissal and Indemnity.** Elkhart, within two (2) business days of receiving the Settlement Payment, shall file in the Litigation a dismissal *with prejudice* of all claims against Camsaw. Elkhart further agrees to utilize its best efforts to resolve through settlement or judgment (including trial and dispositive motion) its claims against the HfG/AAG Defendants, Conn-Selmer, and any other third-party defendant (collectively "Other Defendants" and each individually an "Other Defendant"). In the event that Elkhart resolves its claims against any of the Other Defendants through settlement, it shall require as a condition of the settlement with such Other Defendant that the Other Defendant release any claims it may have against Camsaw for contribution or indemnity arising out of such settlement or the claims asserted in the Litigation. In the event that the Litigation proceeds through judgment entered in favor of Elkhart against any of the Other Defendants, then Elkhart agrees that its recovery against any of the Other Defendants shall be limited to the damages, liability and costs attributed to the Other Defendants (not Camsaw) and agrees to indemnify Camsaw from any and all contribution claim amounts thereafter that may nevertheless be awarded to any of the Other Defendants by the Court. The gross amount of this indemnity is limited to and shall not exceed the Settlement Payment.

3. **Public Nature of Settlement.** The Parties understand that this Agreement will be voted upon by Elkhart at a public meeting and this Agreement will be a public record. This Agreement is not binding on the City unless and until duly approved at a public meeting by the Elkhart Redevelopment Commission, and the Agreement will not be executed unless and until such approval is given.

4. **Releases.** In consideration of the payment, promises, nonmonetary obligations, and releases contained herein, the Parties agree as follows:

a. ***Release of Elkhart.*** Camsaw, its successors and assigns jointly and severally, hereinafter forever release, relieve, acquit and forever discharge and covenant not to sue Elkhart, its successors, assigns, managers, officers, directors, employees, and agents from any and all claims, contentions, debts, liabilities, costs and expenses (including reasonable attorneys' fees), damages, obligations, demands, actions or causes of action, recognized at law or in equity founded upon statute, common law or administrative regulation, known or unknown, disclosed or undisclosed, asserted or unasserted, whether accrued or not yet accrued, mature or not yet mature, that Camsaw may now possess or in the future possess, which relates in any way to, or arises out of, any fact or inference set forth within the Litigation, or that could have been brought in the Litigation. Notwithstanding the foregoing, this Section 4 does not bar Camsaw from, if applicable, seeking from Elkhart indemnity pursuant to the terms of Section 2 of this Agreement.

b. ***Release of Camsaw.*** Elkhart, its successors, and assigns, jointly and severally, hereinafter forever release, relieve, acquit and forever discharge and covenant not to sue Camsaw, its successors, assigns, parent companies, trustees, subsidiaries, affiliates, managers, officers, directors, employees, and agents from any and all claims, contentions, debts, liabilities, costs and expenses (including reasonable attorneys' fees), damages, obligations, demands, actions or causes of action, recognized at law or in equity founded upon statute, common law or administrative regulation, known or unknown, disclosed or undisclosed, asserted or unasserted, whether accrued or not yet accrued, mature or not yet mature that Elkhart may now possess or in

the future possess, which relates in any way to or arises out of any fact or inference set forth within the Litigation, or that could have been brought in the Litigation.

c. *Release of Other Defendants.* Camsaw, its successors and assigns, jointly and severally, agree to release any of the Other Defendants that enter into a settlement agreement with Elkhart, which settlement resolves Elkhart's claims against such Other Defendants, if and to the same extent that such Other Defendants release Camsaw pursuant to the terms of their respective settlement agreements with Elkhart.

5. **Representations and Warranties.** The Parties to this Agreement represent and warrant to each other that:

a. This Agreement represents a compromise of disputed claims, the liability for which each Party hereto has expressly denied. The execution of this Agreement by any Party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Agreement;

b. The consideration provided in this Agreement is all the consideration any Party hereto shall receive and there are no promises, written or oral, express or implied, for the receipt or payment of any additional consideration made by any Party so as to induce any other party hereto to execute this Agreement;

c. Each Party to this Agreement has had an opportunity to review this Agreement with their own independent legal counsel prior to executing this Agreement. By executing this Agreement each Party acknowledges that it has acted upon the reliance and advice of its own independent legal counsel and has not relied upon any conversation, writing or remark of any other Party or legal counsel acting on behalf of any other Party hereto, and that each of the individuals executing this Agreement on behalf of each of the respective Parties has the full and exclusive authority to enter into and execute this Agreement on behalf of each respective Party;

d. There is no person, entity or organization which owns or can claim to own any interest, in whole or in part, in any of the claims being released or assigned herein;

e. Each of the Parties hereto is under no disability or contractual agreement that would limit its ability to enter into this Agreement and be fully bound to each of the terms contained within this Agreement;

f. The corporations and limited liability companies that are Parties to this Agreement have authorized the individuals signing this Agreement to so execute this Agreement so as to bind those entities to all of the terms and conditions contained herein;

g. Each Party shall bear its own costs, including without limitation attorneys' fees and expenses, with respect to all matters relating to the Litigation and this Agreement; and

h. Each Party represents and warrants that as of the date of this Agreement it does not intend to voluntarily file a petition for relief under the United States Bankruptcy Code 11 U.S.C. § 101 *et seq.* within 91 days of the Effective Date.

6. **Construction of Agreement.** This Agreement shall be construed and enforced according to the laws of the State of Indiana. Each of the Parties hereto has independently had the opportunity to fully negotiate the terms of this Agreement and modify the draftsmanship of this Agreement. The terms of this Agreement shall be construed and interpreted without any presumption, inference or rule of law requiring the construction or interpretation of any provision of this Agreement against the interest of the Party causing this Agreement to be drafted.

7. **Integrated Agreement and Amendments.** This is a fully integrated Agreement. This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter of the settlement and final compromise of the Litigation and all claims of the Parties to this Agreement. This Agreement supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the Parties hereto in connection with the subject matter contained within this Agreement. No amendment, waiver, change or modification of any of the terms, provisions or conditions to this Agreement shall be effective, unless made in writing and signed or initialed by all of the Parties hereto or that Party's duly authorized agent. A waiver of any provision of this Agreement shall not be deemed a waiver of future compliance herewith and such provisions subject to a claim of waiver shall remain in full force and effect until a court of competent jurisdiction issues a final determination that a waiver has occurred.

8. **Severability.** Should any provision of this Agreement be deemed illegal, invalid or otherwise unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law to effect the purpose of this settlement. Additionally, any provision found to be illegal, invalid or otherwise unenforceable may by court order be redrafted by the court so as to comply with existing law.

9. **Waiver of Jury Trial and Remedy for Breach.** In the event of any dispute between the Parties hereto concerning the performance or breach of any provision of this Agreement, the Parties hereto agree that they shall submit such dispute exclusively to the state and federal courts with jurisdiction in Elkhart, Indiana and that those courts shall have exclusive subject matter and personal jurisdiction with regard to any such dispute. Each Party hereto additionally, irrevocably and unconditionally waives any right to have a trial by jury with regard to any such dispute concerning the enforcement of or remedy by reason of a breach of this Agreement.

In the event of any litigation initiated due to a breach of this Agreement or claim of nonperformance of this Agreement, the prevailing party(ies) shall be entitled to recover from the losing party(ies) their reasonable attorneys' fees and costs.

10. **Further Assurances.** Each Party hereto agrees to execute all such further instruments and documents and to take all such further action as any other Party may reasonably require in order to give effect to the provisions and purposes of this Agreement.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, all of which together shall constitute one agreement. In the making of proof thereon, it shall not be necessary to produce or account for more than one such counterpart for each Party hereto. The execution and delivery of the signature pages appended hereto by electronic delivery shall be deemed the same as an original signature hereto.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

[ SIGNATURE PAGE FOLLOWS ]

**City of Elkhart Redevelopment Commission,  
for the City of Elkhart**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Camsaw, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RESOLUTION NO. 23-R-\_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA,  
APPROVING SWPPP CONTRACT FOR 1101 E. BEARDSLEY

Whereas, The Commission owns the property at 1101 East Beardsley Street and has received and reviewed the proposal of Jerry Reed's Excavating ("Reed's Excavating") for installation of a silt fence and temporary drive at the property at a cost of \$10,500 as required under the Storm Water Pollution Protection Plan approved by IDEM (the "Services"); and

Whereas, the Commission believes it is in the best interest of the City, the Area, and the inhabitants to approve the Contract for the Services.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the employment of Reed's Excavating to perform the Services.
2. The Commission appropriates the sum of \$10,500.00 from the Foundry Settlement special fund to cover the cost of the Services.
3. The Officers of the Commission are authorized to execute the Contract for Services and do all acts which they deem necessary and desirable in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8<sup>TH</sup> DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

# Memo

To: Redevelopment Commission Member  
From: Adam Fann  
Date: 8/1/23  
Re: 1101 Beardsley SWPPP Installation

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As part of the demolition of 1101 East Beardsley, a Storm Water Pollution Protection Plan needs to be in place. The plan was completed, submitted, and accepted by the State and now needs to be implemented. The plan includes installing silt fencing around the perimeter of the property as well as the installation of a temporary drive. Please see attached quote, staff asks the Commission appropriate \$10,500 from the Foundry Settlement fund to cover the cost of the work.

# JERRY REED'S EXCAVATING

Quote

15401 New Road MISHAWAUMI  
 IN 46544  
 Cell Phone 574-294-1361  
 JREED597@GMAIL.COM

DATE July 31, 2023  
 Quote 1001

Name; City-Elkhart  
 Address 201 South 2<sup>nd</sup> Street Elkhart In  
 Phone# 574-294-5471  
 Email adam.fann@coei.org



Work order change for 1101 East Beardsley Ave. Demo to SPPP Plan		
Install Silt Fence around Propert		
Solm water catch basin protection		8,000.00
Build temp. Drive for entrance access.		2,500.00
	<b>TOTAL</b>	

THANK YOU FOR YOUR BUSINESS!

**August 1, 2023**

# Memo

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**To**  
Elkhart Redevelopment  
Commission

**Comments:**

**From**  
Mary K Kaczka

Presenting the following HUD CDBG Public Service funded sub recipients for approval:

**Re**  
Sub recipient agreements

- YWCA Safe Haven- utilities
- Council on Aging --senior transportation
- Goodwill-job training
- Boys and Girls Club – membership



Community Development Block Grant Program  
2023 CDBG Annual Action Plan

Subrecipient Agreement

Between the

*City Of Elkhart Community Development  
Elkhart, Indiana  
and  
Boys and Girls Club of Elkhart County, Inc*

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Program Managed by the Community Development Department  
City of Elkhart, Indiana

Project Name: KidsCare Program  
Project Type: Public Services  
Subrecipient ID: 35-1033735  
FAIN: B23MC1-80015  
Federal Award Date: June 28, 2023  
Federal Award Amount: \$713,272.00  
Research & Development Award: No  
Environmental Status: Exempt per 24 CFR 58.34(a) and 58.35 (b)  
Other Fed Requirements: None  
CDFA Number: 14.218  
Account Number: 2226-5-631-4314272  
IDIS Number: 977  
Project Amount: \$143,200 Total  
    \$ 13,200 - CDBG  
    \$ 30,000 - In-Kind  
    \$ 100,000 - Other

## CDBG SUBRECIPIENT AGREEMENT

Between the City of Elkhart  
Community Development AND  
BOYS AND GIRLS CLUB OF  
ELKHART COUNTY, INC FOR  
2023 CDBG PROGRAM YEAR

THIS AGREEMENT, entered this August 8th, 2023 by and between the CITY OF ELKHART COMMUNITY DEVELOPMENT (herein called the "Grantee") and BOYS AND GIRLS CLUB OF ELKHART COUNTY, INC (herein called the "Subrecipient")

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and  
WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds; NOW, THEREFORE, it is agreed between the parties hereto that;

### 1. SCOPE OF SERVICE

#### A. Activities

The Subrecipient will be responsible for administering a CDBG Year 2023 KidsCare Program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

#### **Program Delivery**

**Activity:** Recipient will use the CDBG funding to cover the participation fee for 30 children within the City limits of Elkhart. The Boys and Girls Club seeks to benefit low to moderate income by providing safe after school that children can attend while their guardians are at work.

#### **General Administration**

Daily operations of KidsCare is overseen by Dustin Newcomer, Area Director and the Program Managers who are assigned to the Elkhart Community Schools and Concord Community Schools programs sites. Each site is staffed by a Program Coordinator and Program Assistant. A minimum of two program staff are at each location. Depending on program size and need, additional program staff are added.

The Area Director with guidance from the Grant Manager will ensure that all Federal Guidelines are followed and met. Financial tracking of the scholarships will be monitored through the accounting office of Boys & Girls Clubs of Elkhart County and the Finance Manager.

Daily program attendance and participant demographics are tracked in the Youth Enrollment System (YES) - the online member management system. YES allows for real time attendance tracking and reports to be generated for grant reporting or program reporting to board members, donors, and Club leadership. Scholarship applications that are received are reviewed by KidsCare leadership and the Finance Manager to ensure program eligibility. All scholarship applications and supporting documentation is kept in secure files.

**B. National Objectives**

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity carried out under this Agreement will meet benefit low- and moderate-income persons National Objective. The Boys and Girls Club will be providing 30 8-week scholarships to children in the City of Elkhart to assist their parents who may be experiencing financial hardships.

**C. Levels of Accomplishment – Goals and Performance Measures**

The Subrecipient agrees to provide the following levels of program for the persons served during the program year:

- Provide childcare scholarships for 30 Persons
- Document eligible expenses for reimbursement from the City of Elkhart

NOTE: The term Beneficiary means person served one time

**D. Staffing**

<b>Staff Member</b>	<b>Responsibilities</b>
Tami Hicks	President and CEO
Cristina Rheinheimer	Grants Manager
Mandy Miller	Grants Coordinator

"Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee."

**E. Performance Monitoring**

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time of 14 days after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Subrecipient shall start on the 1st day of July, 2023 and end on the 31st day of May, 2024.

Funds will not be available to the Subrecipient from the Community Development Block Grant Program (B-23-MC-1800015) after the completion date, unless otherwise approved by Grantee.

**III. BUDGET**

<u>Line Item</u>	<u>Amount:</u>
KidsCare Scholarships	<u>\$13,200</u>

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

**IV. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed:  
Thirteen Thousand Two Hundred Dollars and no cents      \$13,200

Draw Requests for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 2 CFR 200.

**V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

GRANTEE

Elkhart Community Development  
201 S. Second Street  
Elkhart, Indiana 46516  
574-322-4431

SUBRECIPIENT

BOYS AND GIRLS CLUB OF ELKHART COUNTY, INC. Inc.  
102 W. Lincoln Avenue, Suite 240  
Goshen, Indiana 46526  
574-534-5933 x 203

VI. **SPECIAL CONDITIONS**

N/A

VII. **GENERAL CONDITIONS**

A. **General Compliance**

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. **"Independent Contractor"**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. **Hold Harmless**

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. **Workers' Compensation**

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. **Insurance & Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.



## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

Records providing a full description of each activity undertaken;

Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

Records required to determine the eligibility of activities;

Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

Financial records as required by 24 CFR 570.502, and 2 CFR 200; and

Other records necessary to document compliance with Subpart K of 24 CFR 570.

#### 2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### **3. Client Data**

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### **4. Disclosure**

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### **5. Close-outs**

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### **6. Audits & Inspections**

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub-recipient audits and 2 CFR 200.

## **c. Reporting and Payment Procedures**

### **1. Program Income**

The activity does not generate program income as defined at 24 CFR 570.500(a).

## **2. Indirect Costs**

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

## **3. Payment Procedures**

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

## **4. Progress Reports**

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Grantee reserves the right to require the Subrecipient to submit additional reports in the form, content, and frequency specified by the Grantee.

The Subrecipient is required to submit an annual report and supporting beneficiary form within 14 days of the final draw request or within 14 days after the grant agreement ends whichever is first. This report must provide all required data regarding beneficiaries and the services provided to them in accordance with the Scope of Service.

## **D. Procurement**

### **1. Compliance**

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### **2. OMB Standards**

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.

### 3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

### E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

### IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

**1. Approved Plan**

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Women- and Minority-Owned Businesses (W/MBE)**

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an Independent Investigation.

**3. Access to Records**

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

**4. Notifications**

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

## **6. Subcontract Provisions**

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

## **C. Employment Restrictions**

### **1. Prohibited Activity**

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

### **2. Labor Standards**

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

### **3. "Section 3" Clause**

#### **a. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these

requirements shall subject the Grantee, the Subrecipient, and any of the Subrecipient's sub-recipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

**b. Notifications**

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**c. Subcontracts**

The Subrecipient will include this Section 3 clause in every subcontract and will take

appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

**1. Assignability**

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**2. Subcontracts**

**a. Approvals**

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

**b. Monitoring**

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**c. Content**

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

**d. Selection Process**

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

### **3. Hatch Act**

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **4. Conflict of Interest**

The Subrecipient agrees to abide by the provisions of 2 CFR 200 and 570.61.1, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

### **5. Lobbying**

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any 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 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, it will complete and submit Standard Form-LLL, "Disclosure Form to

Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or materials for governmental purposes.

## 7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

# XI. ENVIRONMENTAL CONDITIONS

## A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended.

## B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management

Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment, and/or abatement may be conducted.

**D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

On behalf of

Redevelopment Commission  
City of Elkhart, Indiana

BOYS AND GIRLS CLUB OF ELKHART COUNTY, INC

By \_\_\_\_\_  
Sandra Schreiber, President

By \_\_\_\_\_  
Tami Hicks, President and CEO

**CERTIFICATION REGARDING INVESTMENT WITH IRAN, EMPLOYMENT ELIGIBILITY VERIFICATION AND NON-DISCRIMINATION COMMITMENT**

*When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.*

STATE OF Indiana )  
 ) §  
COUNTY OF \_\_\_\_\_ )

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any successor to, nor an affiliate of, Contractor, engaged in investment activities in Iran.
  - a. For purposes of this Certification, "Iran" means the government of Iran and any agency or instrumentality of Iran, or as otherwise defined at Ind. Code § 5-22-16.5-5, as amended from time-to-time.
  - b. As provided by Ind. Code § 5-22-16.5-8, as amended from time-to-time, a Contractor is engaged in investment activities in Iran if either:
    - i. Contractor, its successor or its affiliate, provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran; or
    - ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.
2. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program shall be included or provided upon request; and
3. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of Elkhart, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.
4. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of Elkhart through its agencies, boards, or commissions shall not discriminate against any

employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work. Breach of this provision may be regarded as material breach of contract.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing affidavit are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature of Person Authorized to sign on behalf of  
Contractor

\_\_\_\_\_  
Printed Name and Title

## PY 2023 CDBG SUBRECIPIENT DRAW REQUEST SUBMISSION SCHEDULE

<b>Project:</b>	Elkhart CDBG Public Service	<b>Contact Phone</b>	574-322-4431
<b>Program Grant Year:</b>	July 1, 2023 – May 31, 2024	<b>Contact Email</b>	dana.donald@coei.org

In an effort to expend HUD CDBG funds in a timely manner this program year; we are asking each Subrecipient to submit their requests for reimbursement according to the schedule below:

	Months of CDBG Work	Request for Reimbursement between:
Draw Request Number 1	July & August, 2023	August 31, 2023 - September 14, 2023
Draw Request Number 2	September & October, 2023	October 31, 2023 - November 14, 2023
Draw Request Number 3	November & December, 2023	December 31, 2023 - January 14, 2024
Draw Request Number 4	January & February, 2024	February 29, 2024 - March 14, 2024
Draw Request Number 5	March & April, 2024	April 30, 2024 - May 14, 2024
Draw Request Number 6	May 2024	May 31, 2024 - June 14, 2024



Community Development Block Grant Program  
2023 CDBG Annual Action Plan

Subrecipient Agreement

Between the

*City Of Elkhart Community Development  
Elkhart, Indiana  
and  
Council on Aging of Elkhart County*

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Program Managed by the Community Development Department  
City of Elkhart, Indiana

Project Name: Senior Transportation  
Project Type: Public Services  
Subrecipient ID: 5f-0178910  
FAIN: B23MC1-80015  
Federal Award Date: June 28, 2023  
Federal Award Amount: \$713,272.00  
Research & Development Award: No  
Environmental Status: Exempt per 24 CFR 58.34(a) and 58.35 (b)  
Other Fed Requirements: None  
CDFA Number: 14.218  
Account Number: 2226-5-631-4314140  
IBIS Number: 973  
Project Amount: \$633,100 Total  
    \$ 25,000 - CDBG  
    \$ 79,200 - TITLE III B  
    \$213,500 - MEDICAID  
    \$100,000 - Elkhart County Commissioners  
    \$257,000 - Approximate annual in-kind donations

**CDBG SUBRECIPIENT AGREEMENT**  
**Between the City of Elkhart**  
**Community Development AND**  
**COUNCIL ON AGING OF ELKHART**  
**COUNTY FOR**  
**2023 CDBG PROGRAM YEAR**

THIS AGREEMENT, entered this \_\_\_\_\_ by and between the CITY OF ELKHART COMMUNITY DEVELOPMENT (herein called the "Grantee") and COUNCIL ON AGING OF ELKHART COUNTY (herein called the "Subrecipient"),

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and  
WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds; NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICE**

**A. Activities**

The Subrecipient will be providing transportation services this CDBG Program Year 2023 for aging or disabled persons to access medical care, pharmacy, nutritional services, banking services, and other personal business needs. Services will be conducted in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

**Program Delivery**

Activity: Recipient will use the CDBG funding to assist senior citizens that are low and moderate income with transportation services to medical appointments and important destinations. Council on Aging seeks to improve availability/accessibility to seniors living within the City of Elkhart.

**General Administration**

The Transportation Program offers the aging and disabled the opportunity to successfully attain services which are integral to the State and Federal governments desire to pursue "Aging in Place", which is an initiative that works to help seniors find the resources and services necessary to remain in their home environment for as long as possible. To accommodate the diminishing capabilities of our clients, our services are designed to assist each of them from their front door to the transport vehicle, secure them in their seat and escort them to the reception desk of their destination. Clients are provided appointment reminders one day prior to the trip date. Each person transported is provided the name of the driver and time at which that driver will return to transport them home, which offers them assurance in safety. All transport vehicles are wheelchair accessible.

To further client safety, drivers are trained through the Indiana Department of Transportation (INDOT) and RTAP program oriented toward safety of passengers (Passenger Assistance Training, Defensive Driving, Emergency Evacuation courses), CPR and first aid certification through Goshen Health, and a

multi-day hands-on course supervised by the Transportation Manager. Annual updates on training and certification are required, along with passenger licensing endorsement by the Bureau of Motor Vehicles.

As a priority, maintenance of vehicles is provided by a licensed mechanic. Vehicle Inspection is conducted by the Indiana Department of Transportation.

**B. National Objectives**

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the benefitting low-and moderate-income persons National Objective by making services available to limited clientele older persons.

**C. Levels of Accomplishment – Goals and Performance Measures**

The Subrecipient agrees to provide the following levels of program for the persons served during the program year:

- Provide transportation services to 80 Persons
- Document eligible expenses for reimbursement from the City of Elkhart

NOTE: The term Beneficiary means person served one time

**D. Staffing**

<b>Staff Member</b>	<b>Responsibilities</b>
David Toney	CEO
Tina Fraley	CFO

"Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee."

**E. Performance Monitoring**

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time of 14 days after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Subrecipient shall start on the 1st day of July, 2023 and end on the 31<sup>st</sup> day of May, 2024.

Funds will not be available to the Subrecipient from the Community Development Block Grant Program (B-23-MC-1800015) after the completion date, unless otherwise approved by Grantee

III. BUDGET.

<u>Line Item</u>	<u>Amount:</u>
Reimbursement for Senior Transportation	\$25,000

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed:  
Twenty Five Thousand Dollars and no cents \$25,000

Draw Requests for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 2 CFR 200.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

GRANTEE

Elkhart Community Development  
201 S. Second Street  
Elkhart, Indiana 46516  
574-322-4431

SUBRECIPIENT

Council on Aging of Elkhart County  
131 W. Tyler Street, Suite 1A  
Elkhart, Indiana 46516  
574-295-1820 x 222

**VI. SPECIAL CONDITIONS**

N/A

**VII. GENERAL CONDITIONS**

**A. General Compliance**

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

**B. "Independent Contractor"**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation insurance, as the Subrecipient is an independent contractor.

**C. Hold Harmless**

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

**D. Workers' Compensation**

The Subrecipient shall provide Workers' Compensation insurance coverage for all of its employees involved in the performance of this Agreement.

**E. Insurance & Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR 200, Bonding and Insurance.

**F. Grantee Recognition**

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**G. Amendments**

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

**H. Suspension or Termination**

In accordance with 2 CFR 200, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

Records providing a full description of each activity undertaken;

Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

Records required to determine the eligibility of activities;

Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

Financial records as required by 24 CFR 570.502, and 2 CFR 200; and

Other records necessary to document compliance with Subpart K of 24 CFR 570.

#### 2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### **3. Client Data**

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### **4. Disclosure**

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### **5. Close-outs**

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### **6. Audits & Inspections**

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub-recipient audits and 2 CFR 200.

## **c. Reporting and Payment Procedures**

### **1. Program Income**

The activity does not generate program income as defined at 24 CFR 570.500(a).

### **2. Indirect Costs**

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

### **3. Payment Procedures**

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

### **4. Progress Reports**

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Grantee reserves the right to require the Subrecipient to submit additional reports in the form, content, and frequency specified by the Grantee.

The Subrecipient is required to submit an annual report and supporting beneficiary form within 14 days of the final draw request or within 14 days after the grant agreement ends whichever is first. This report must provide all required data regarding beneficiaries and the services provided to them in accordance with the Scope of Service.

## **D. Procurement**

### **1. Compliance**

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### **2. OMB Standards**

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.

### **3. Travel**

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

**E. Use and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

**IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

**1. Approved Plan**

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Women- and Minority-Owned Businesses (W/MBE)**

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

**3. Access to Records**

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

**4. Notifications**

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

## **6. Subcontract Provisions**

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

## **c. Employment Restrictions**

### **1. Prohibited Activity**

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

### **2. Labor Standards**

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to Journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

### **3. "Section 3" Clause**

#### **a. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these

requirements shall subject the Grantee, the Subrecipient, and any of the Subrecipient's sub-recipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

**b. Notifications**

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**c. Subcontracts**

The Subrecipient will include this Section 3 clause in every subcontract and will take

appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 1.35 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

**1. Assignability**

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**2. Subcontracts**

**a. Approvals**

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

**b. Monitoring**

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**c. Content**

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

**d. Selection Process**

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

### 3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### 4. Conflict of interest

The Subrecipient agrees to abide by the provisions of 2 CFR 200 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

### 5. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any 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 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, it will complete and submit Standard Form-LLI, "Disclosure Form to

Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 6. Copyright.

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or materials for governmental purposes.

## 7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

# XI. ENVIRONMENTAL CONDITIONS

## A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended.

## B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management

Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment, and/or abatement may be conducted.

**D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

On behalf of  
Redevelopment Commission  
City of Elkhart, Indiana

COUNCIL ON AGING OF ELKHART COUNTY

By \_\_\_\_\_  
Sandra Schreiber, President

By \_\_\_\_\_  
David Toney, CEO

**CERTIFICATION REGARDING INVESTMENT WITH IRAN, EMPLOYMENT ELIGIBILITY VERIFICATION AND NON-DISCRIMINATION COMMITMENT**

*When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.*

STATE OF Indiana )  
 ) §  
COUNTY OF \_\_\_\_\_ )

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any successor to, nor an affiliate of, Contractor, engaged in investment activities in Iran.
  - a. For purposes of this Certification, "Iran" means the government of Iran and any agency or instrumentality of Iran, or as otherwise defined at Ind. Code § 5-22-16.5-5, as amended from time-to-time.
  - b. As provided by Ind. Code § 5-22-16.5-8, as amended from time-to-time, a Contractor is engaged in investment activities in Iran if either:
    - i. Contractor, its successor or its affiliate, provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran; or
    - ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.
2. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program shall be included or provided upon request; and
3. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of Elkhart, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

4. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of Elkhart through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work. Breach of this provision may be regarded as material breach of contract.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing affidavit are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature of Person Authorized to sign on behalf of  
Contractor

\_\_\_\_\_  
Printed Name and Title

## PY 2023 CDBG SUBRECIPIENT DRAW REQUEST SUBMISSION SCHEDULE

<b>Project:</b>	Elkhart CDBG Public Service	<b>Contact Phone</b>	574-322-4431
<b>Program Grant Year:</b>	July 1, 2023 – May 31, 2024	<b>Contact Email</b>	dana.donald@coel.org

In an effort to expend HUD CDBG funds in a timely manner this program year; we are asking each Subrecipient to submit their requests for reimbursement according to the schedule below:

	Months of CDBG Work	Request for Reimbursement between:
Draw Request Number 1	July & August, 2023	August 31, 2023 - September 14, 2023
Draw Request Number 2	September & October, 2023	October 31, 2023 – November 14, 2023
Draw Request Number 3	November & December, 2023	December 31, 2023 – January 14, 2024
Draw Request Number 4	January & February, 2024	February 29, 2024 – March 14, 2024
Draw Request Number 5	March & April, 2024	April 30, 2024 – May 14, 2024
Draw Request Number 6	May 2024	May 31, 2024 – June 14, 2024



Community Development Block Grant Program  
2023 CDBG Annual Action Plan

Subrecipient Agreement

Between the

*City Of Elkhart Community Development  
Elkhart, Indiana  
and  
Goodwill Industries of Michiana*

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Program Managed by the Community Development Department  
City of Elkhart, Indiana

Project Name: B.O.S.S. (Beating the Odds to Self-Sufficiency)  
Project Type: Public Services  
Subrecipient ID: 35-1093073  
FAIN: B23 MC1-80015  
Federal Award Date: June 28, 2023  
Federal Award Amount: \$713,272.00  
Research & Development Award: No  
Environmental Status: Exempt per 24 CFR 58.34(a) and 58.35 (b)  
Other Fed Requirements: None  
CDFA Number: 14.218  
Account Number: 2226-5-631-4314281  
IDIS Number: 976  
Project Amount: \$14,313.00 Total  
    \$ 6,300 - CDBG  
    \$ 2,862.60 -Goodwill

**CDBG SUBRECIPIENT AGREEMENT**  
**Between the City of Elkhart**  
**Community Development AND**  
**Goodwill Industries of Michiana**  
**FOR**  
**2023 CDBG PROGRAM YEAR**

THIS AGREEMENT, entered this August 8, 2023 by and between the CITY OF ELKHART, COMMUNITY DEVELOPMENT (herein called the "Grantee") and GOODWILL INDUSTRIES OF MICHIANA (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds; NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICE**

**A. Activities**

The Subrecipient will be responsible for administering a CDBG Year 2023 Beating the Odds to Self-Sufficiency (B.O.S.S.) Program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

**Program Delivery**

Activity: Recipient will use the CDBG funding to cover tuition costs of low to moderate income persons as defined in 24 CFR 570.208 to obtain job training in the following areas - Commercial Driver's License program, Certified Nursing Assistance program, Welding program, or Qualified Medication Aide program. The B.O.S.S. Program seeks to increase economic opportunities for individuals living in the City of Elkhart.

**General Administration**

The Program Coordinator, Tyuch Sherry, has been with GIM since 2018. She conducts intake interviews to collect initial paperwork and determine preliminary eligibility. She will develop individual program plans for clients, enroll them into certification classes, issue vouchers, provide job readiness, skills training, job search, and job retention components to clients, and submit required billing and reports to City regarding the grant. The Facilitator, Mary Ellen Albaugh, has been with GIM since 2006. She also provides Life skills and Job Readiness training components on an as needed basis. The Grant Accountant, Taresa Walker, has been with GIM since 2021. She will oversee the accounting side of the grant. She will process client vouchers and check requests in order to prepare and submit grant invoices on a monthly basis.

**B. National Objectives**

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity carried out under this Agreement will meet the benefitting low-and moderate- income persons National Objective by targeting limited clientele who are interested and willing to learn a new skill.

**C. Levels of Accomplishment -- Goals and Performance Measures**

The Subrecipient agrees to provide the following levels of program for the persons served during the program year:

- Cover Job Training Tuition and necessary clothing and test fees for 4 Persons
- Document eligible expenses for reimbursement from the City of Elkhart

NOTE: The term Beneficiary means person served one time

**D. Staffing**

<b>Staff Member</b>	<b>Responsibilities</b>
Ja'Liza Prophet	Divisional Director
Teresa DeMauro	Director of Workforce Development Services
Tyuch Sherry	WDS Program Coordinator
Melissa Bennett	Account Receivable Analyst

"Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee."

**E. Performance Monitoring**

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time of 14 days after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Subrecipient shall start on the 1st day of July, 2023 and end on the 31st day of May, 2024.

Funds will not be available to the Subrecipient from the Community Development Block Grant Program (B-23-MC-1800015) after the completion date, unless otherwise approved by Grantee.

III. BUDGET

<u>Line Item</u>	<u>Amount:</u>
Tuition reimbursement	<u>\$6,300</u>

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed:

Six Thousand Three Hundred Dollars and no cents      \$6,300

Draw Requests for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 2 CFR 200.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

GRANTEE

Elkhart Community Development  
201 S. Second Street  
Elkhart, Indiana 46516  
574-322-4431

SUBRECIPIENT

Goodwill Industries of Michiana, Inc.  
2001 W. Franklin Street  
Elkhart, Indiana 46516  
574-296-2884 x 8142

VI. SPECIAL CONDITIONS

N/A

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR 200, Bonding and Insurance.

**F. Grantee Recognition**

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**G. Amendments**

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

**H. Suspension or Termination**

In accordance with 2 CFR 200, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

Records providing a full description of each activity undertaken;

Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

Records required to determine the eligibility of activities;

Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

Financial records as required by 24 CFR 570.502, and 2 CFR 200; and

Other records necessary to document compliance with Subpart K of 24 CFR 570.

#### 2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### **3. Client Data**

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### **4. Disclosure**

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### **5. Close-outs**

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### **6. Audits & Inspections**

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub-recipient audits and 2 CFR 200.

## **c. Reporting and Payment Procedures**

### **1. Program Income**

The activity does not generate program income as defined at 24 CFR 570.500(a).

## **2. Indirect Costs**

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

## **3. Payment Procedures**

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

## **4. Progress Reports**

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Grantee reserves the right to require the Subrecipient to submit additional reports in the form, content, and frequency specified by the Grantee.

The Subrecipient is required to submit an annual report and supporting beneficiary form within 14 days of the final draw request or within 14 days after the grant agreement ends whichever is first. This report must provide all required data regarding beneficiaries and the services provided to them in accordance with the Scope of Service.

## **D. Procurement**

### **1. Compliance**

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### **2. OMB Standards**

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.

### **3. Travel**

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

### **E. Use and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

### **IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

**1. Approved Plan**

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Women- and Minority-Owned Businesses (W/MBE)**

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

**3. Access to Records**

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

**4. Notifications**

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

## **6. Subcontract Provisions**

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

## **C. Employment Restrictions**

### **1. Prohibited Activity**

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

### **2. Labor Standards**

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

### **3. "Section 3" Clause**

#### **a. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 1.35, and all applicable rules and orders issued hereunder prior to the execution of this contract shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these

requirements shall subject the Grantee, the Subrecipient, and any of the Subrecipient's sub-recipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

**b. Notifications**

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**c. Subcontracts**

The Subrecipient will include this Section 3 clause in every subcontract and will take

appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

**1. Assignability**

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**2. Subcontracts**

**a. Approvals**

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

**b. Monitoring**

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**c. Content**

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

**d. Selection Process**

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

### **3. Hatch Act**

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **4. Conflict of interest**

The Subrecipient agrees to abide by the provisions of 2 CFR 200 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

### **5. Lobbying**

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any 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 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, it will complete and submit Standard Form-LLL, "Disclosure Form to

Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management

Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment, and/or abatement may be conducted.

**D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected there-by and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

On behalf of

Redevelopment Commission  
City of Elkhart, Indiana

Goodwill Industries of Michiana

By \_\_\_\_\_  
Sandra Schreiber, President

By \_\_\_\_\_  
Ja'Liza Prophet, Divisional Director

**CERTIFICATION REGARDING INVESTMENT WITH IRAN, EMPLOYMENT ELIGIBILITY VERIFICATION AND  
NON-DISCRIMINATION COMMITMENT**

*When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.*

STATE OF Indiana )  
 ) §  
COUNTY OF \_\_\_\_\_ )

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any successor to, nor an affiliate of, Contractor, engaged in investment activities in Iran.
  - a. For purposes of this Certification, "Iran" means the government of Iran and any agency or instrumentality of Iran, or as otherwise defined at Ind. Code § 5-22-16.5-5, as amended from time-to-time.
  - b. As provided by Ind. Code § 5-22-16.5-8, as amended from time-to-time, a Contractor is engaged in investment activities in Iran if either:
    - i. Contractor, its successor or its affiliate, provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran; or
    - ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.
2. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program shall be included or provided upon request; and
3. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of Elkhart, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.
4. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of Elkhart through its agencies, boards, or commissions shall not discriminate against any

employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work. Breach of this provision may be regarded as material breach of contract.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing affidavit are true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature of Person Authorized to sign on behalf of  
Contractor

\_\_\_\_\_  
Printed Name and Title

## PY 2023 CDBG SUBRECIPIENT DRAW REQUEST SUBMISSION SCHEDULE

<b>Project:</b>	Elkhart CDBG Public Service	<b>Contact Phone</b>	574-322-4431
<b>Program Grant Year:</b>	July 1, 2023 – May 31, 2024	<b>Contact Email</b>	dana.donald@coei.org

In an effort to expend HUD CDBG funds in a timely manner this program year; we are asking each Subrecipient to submit their requests for reimbursement according to the schedule below:

	Months of CDBG Work	Request for Reimbursement between:
Draw Request Number 1	July & August, 2023	August 31, 2023 - September 14, 2023
Draw Request Number 2	September & October, 2023	October 31, 2023 – November 14, 2023
Draw Request Number 3	November & December, 2023	December 31, 2023 – January 14, 2024
Draw Request Number 4	January & February, 2024	February 29, 2024 – March 14, 2024
Draw Request Number 5	March & April, 2024	April 30, 2024 – May 14, 2024
Draw Request Number 6	May 2024	May 31, 2024 – June 14, 2024



## Community Development Block Grant Program 2023 CDBG Annual Action Plan

### Subrecipient Agreement

Between the

*City Of Elkhart Community Development  
Elkhart, Indiana  
and  
YWCA North Central Indiana*

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Program Managed by the Community Development Department  
City of Elkhart, Indiana

Project Name: Safe Haven Domestic Violence Emergency Shelter Operations  
Project Type: Public Services  
Subrecipient ID: 35-0868226  
EAIN: B23MGI-00015  
Federal Award Date: June 28, 2023  
Federal Award Amount: \$713,272.00  
Research & Development Award: No  
Environmental Status: Exempt per 24 CFR 58.34(a) and 58.35 (b)  
Other Fed Requirements: None  
CDEA Number: 14.218  
Account Number: 2226-5-631-4314200  
IDIS Number: 974  
Project Amount: \$717,735 Total  
    \$ 15,000 - CDBG  
    \$ 200,735 - HUD: ICJI; IHGDA; ARP  
    \$157,000 - ICJI; SCAN  
    \$145,000 - Lilly; United Way; Elkhart Com foundation  
    \$170,000 - Approximate annual in-kind donations  
    \$25,000 - DCS; IFFSA

**CDBG SUBRECIPIENT AGREEMENT**  
**Between the City of Elkhart**  
**Community Development AND**  
**YWCA NORTH CENTRAL INDIANA**  
**FOR**  
**2023 CDBG PROGRAM YEAR**

THIS AGREEMENT, entered this August 8<sup>th</sup>, 2023 by and between the CITY OF ELKHART COMMUNITY DEVELOPMENT (herein called the "Grantee") and YWCA NORTH CENTRAL INDIANA (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and  
WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds; NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICE**

**A. Activities**

The Subrecipient will be responsible for administering a CDBG Year 2023 Safe Haven Domestic Violence Emergency Shelter Operations in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

**Program Delivery**

Activity: Recipient will use the CDBG funding to cover current utility bills -electric, heat, and water. The Safe Haven Shelter seeks to provide a suitable living environment for persons facing trauma and violence within the City of Elkhart.

**General Administration**

Safe Haven staff will provide individualized case management, helping victims develop a plan for the future to secure permanent housing, child care, reliable transportation, and employment. The YWCA tracks all client demographic and program information through ClientTrack, an online data system.

All staff and volunteers who will provide long-term volunteer services at YWCA Safe Haven must complete 40 hours of domestic violence training. The training addresses the various types of abuse, the control tactics of abusers, the effects of domestic violence on children, shelter operations/procedures, and other community services that benefit residents.

All staff must train in CPR and basic first aid; they must obtain a minimum of 10 hours of domestic violence-specific training each year to ensure that they have the most current information regarding domestic violence issues. This standard, set by the Indiana Criminal Justice Institute (ICJI), must be achieved to remain in full compliance with the criteria for domestic violence programs in the state.

**B. National Objectives.**

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the benefitting low-and moderate-income persons National Objective by making services available to a limited clientele of battered persons seeking emergency shelter.

**C. Levels of Accomplishment – Goals and Performance Measures**

The Subrecipient agrees to provide the following levels of program for the persons served during the program year:

- Provide emergency shelter for 550 Persons
- Document eligible expenses for reimbursement from the City of Elkhart

NOTE: The term Beneficiary means person served one time

**D. Staffing**

<b>Staff Member</b>	<b>Responsibilities</b>
Susan Tybon	President and CEO
Kelly Sanford	VP of Grants Administration
Autumn McCully	Director of Empowerment Services
Amber Gill	Grants Manager

"Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee."

**E. Performance Monitoring**

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time of 14 days after being notified by the Grantee, contract suspension or termination procedures will be initiated.

**II. TIME OF PERFORMANCE**

Services of the Subrecipient shall start on the 1st day of July, 2023 and end on the 31st day of May, 2024.

Funds will not be available to the Subrecipient from the Community Development Block Grant Program (B-23-MC-1800015) after the completion date, unless otherwise approved by Grantee.

III. BUDGET

<u>Line Item</u>	<u>Amount:</u>
Utility reimbursement	<u>\$15,000</u>

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed:

Fifteen Thousand Dollars and no cents     \$15,000

Draw Requests for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 2 CFR 200.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

GRANTEE

Elkhart Community Development  
201 S. Second Street  
Elkhart, Indiana 46516  
574-322-4431

SUBRECIPIENT

YWCA NORTH CENTRAL INDIANA, Inc.  
132 State Street  
Elkhart, Indiana 46516  
574-233-9491 x 305

VI. SPECIAL CONDITIONS

N/A

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR 200, Bonding and Insurance.

**F. Grantee Recognition**

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**G. Amendments**

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

**H. Suspension or Termination**

In accordance with 2 CFR 200, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

Records providing a full description of each activity undertaken;

Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

Records required to determine the eligibility of activities;

Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

Financial records as required by 24 CFR 570.502, and 2 CFR 200; and

Other records necessary to document compliance with Subpart K of 24 CFR 570.

#### 2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### **3. Client Data**

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### **4. Disclosure**

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### **5. Close-outs**

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

### **6. Audits & Inspections**

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub-recipient audits and 2 CFR 200.

## **c. Reporting and Payment Procedures**

### **1. Program Income**

The activity does not generate program income as defined at 24 CFR 570.500(a).

### **2. Indirect Costs**

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

### **3. Payment Procedures**

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

### **4. Progress Reports**

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Grantee reserves the right to require the Subrecipient to submit additional reports in the form, content, and frequency specified by the Grantee.

The Subrecipient is required to submit an annual report and supporting beneficiary form within 14 days of the final draw request or within 14 days after the grant agreement ends whichever is first. This report must provide all required data regarding beneficiaries and the services provided to them in accordance with the Scope of Service.

## **D. Procurement**

### **1. Compliance**

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### **2. OMB Standards**

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.

### **3. Travel**

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

**E. Use and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

**IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

## X. PERSONNEL & PARTICIPANT CONDITIONS

### A. Civil Rights

#### 1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### 2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

#### 3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

#### 4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

**1. Approved Plan**

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Women- and Minority-Owned Businesses (W/MBE)**

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

**3. Access to Records**

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

**4. Notifications**

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

## **6. Subcontract Provisions**

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

## **c. Employment Restrictions**

### **1. Prohibited Activity**

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

### **2. Labor Standards**

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

### **3. "Section 3" Clause**

#### **a. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these

requirements shall subject the Grantee, the Subrecipient, and any of the Subrecipient's sub-recipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

**b. Notifications**

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**c. Subcontracts**

The Subrecipient will include this Section 3 clause in every subcontract and will take

appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

**1. Assignability**

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**2. Subcontracts**

**a. Approvals**

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

**b. Monitoring**

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

**c. Content**

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

**d. Selection Process**

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

### **3. Hatch Act**

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **4. Conflict of Interest**

The Subrecipient agrees to abide by the provisions of 2 CFR 200 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

### **5. Lobbying**

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any 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 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, it will complete and submit Standard Form-LLL, "Disclosure Form to

Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**6. Copyright**

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or materials for governmental purposes.

**7. Religious Activities**

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**XI. ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management

Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment, and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment, and/or abatement may be conducted.

**D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

**XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected there- by and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

Date \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

On behalf of

Redevelopment Commission

City of Elkhart, Indiana

YWCA NORTH CENTRAL INDIANA

By \_\_\_\_\_

Sandra Schreiber, President

By \_\_\_\_\_  
Susan Tybon, President and CEO



employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work. Breach of this provision may be regarded as material breach of contract.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing affidavit are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature of Person Authorized to sign on behalf of  
Contractor

\_\_\_\_\_  
Printed Name and Title

## PY 2023 CDBG SUBRECIPIENT DRAW REQUEST SUBMISSION SCHEDULE

<b>Project:</b>	Elkhart CDBG Public Service	<b>Contact Phone</b>	574-322-4431
<b>Program Grant Year:</b>	July 1, 2023 – May 31, 2024	<b>Contact Email</b>	dana.donald@coei.org

In an effort to expend HUD CDBG funds in a timely manner this program year; we are asking each Subrecipient to submit their requests for reimbursement according to the schedule below:

	Months of CDBG Work	Request for Reimbursement between:
Draw Request Number 1	July & August, 2023	August 31, 2023 - September 14, 2023
Draw Request Number 2	September & October, 2023	October 31, 2023 – November 14, 2023
Draw Request Number 3	November & December, 2023	December 31, 2023 – January 14, 2024
Draw Request Number 4	January & February, 2024	February 29, 2024 – March 14, 2024
Draw Request Number 5	March & April, 2024	April 30, 2024 – May 14, 2024
Draw Request Number 6	May 2024	May 31, 2024 – June 14, 2024

RESOLUTION NO. 23-R- \_\_\_\_\_

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA, APPROVING ASSUMPTION AGREEMENT

WHEREAS, The Commission, on March 23, 2021, made a \$25,000 five-year forgivable façade improvement loan to Lex/Main LLC, which was collateralized by a Mortgage, and Lex/Main desires to enter into a Land Contract to sell the mortgaged property to JJ Dalton, LLC, a first floor tenant in the building; and

WHEREAS, the Commission is willing to consent to the sale and waive any default that might occur as a result of the transfer of equitable title so long as Lex/Main and Dalton agree to be mutually bound by all the obligations of the Loan and Mortgage, agree that the use of the building shall remain unchanged for the remainder of the term of the loan, and enter into the attached Loan and Mortgage Assumption Agreement (the "Agreement"); and

WHEREAS, the Commission has reviewed the Agreement and believes it is in the best interest of the City and its inhabitants to approve the terms thereof and authorize its execution and delivery.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission approves the form and content of the Agreement.
2. The Officers of the Commission are hereby authorized to execute and deliver the Agreement and do all acts which they deem necessary and desirable in furtherance of this Resolution.

ADOPTED BY MAJORITY VOTE THIS 8<sup>th</sup> DAY OF AUGUST 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

## ASSUMPTION OF LOAN AND MORTGAGE AGREEMENTS

This Assumption of Loan and Mortgage Agreements is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by LEX/MAIN LLC AKA LEX/MAIN, LLC, an Indiana limited liability company, whose address is 107 W. Lexington Avenue, Elkhart, Indiana 46514 ("Lex/Main"), JJ Dalton Group, LLC, whose address is 55900 Jayne Drive, Elkhart, Indiana 46514 ("Dalton"), and the City of Elkhart, Indiana, Department of Redevelopment, a municipal corporation, 201 South Second Street, Elkhart, Indiana 46514 ("City").

### RECITALS

Lex/Main executed and delivered to City a Façade Loan Program Reimbursement Agreement (the "Agreement") and a Secured Promissory Note (the "Note") on March 23, 2021, pursuant to which it obtained a \$25,000 five-year forgivable property improvement façade loan, which was collateralized by that certain Warranty Mortgage of the same date and recorded May 25, 2023, as Document Number 2023-08235 in the office of the Elkhart County Recorder (the "Mortgage").

The Mortgage provides that the Note will be forgiven at the rate of 1/60<sup>th</sup> of the principal amount each month so long as Lex/Main, during the term of the underlying Agreement and Note of even date, retains legal and equitable title to the mortgaged property described on Exhibit A hereto (the "Property").

Dalton desires to purchase the Property from Lex/Main under a Land Contract, and upon the agreement of each that the use of the Property after purchase shall remain unchanged as first floor retail and second floor office and/or residential space for the remainder of the term of the Agreement and Note, City is willing to consent to the transfer of equitable title and waive any default arising from the execution of the Land Contract.

Dalton, as owner of equitable title, is willing to assume the Agreement, Note and Mortgage (collectively, the "Loan Documents") and become subject to and personally liable for performance of all the terms thereof along with Lex/Main as owner of the legal title.

### CONSIDERATION

NOW THEREFORE, in consideration of the mutual agreements herein contained, and Dalton's purchase of the Property and City's consent thereto, the parties agree as follows:

ASSUMPTION

1. The Recitals set forth above are incorporated herein as part of the Agreement.
2. Dalton and Lex/Main agree that the Property shall continue to be used as first floor retail and second floor office and/or residential space, which was the original use of the Property on the date of the Loan Documents, during the remaining term of the loan.
3. Dalton assumes, adopts, and agrees to be bound by all the terms and conditions of the Agreement, Note and Mortgage as though each had been originally executed and delivered by Dalton.
4. City accepts Dalton as an additional Obligor under the Agreement and Note and as an additional Mortgagee under the Mortgage, waives any default arising from the execution and delivery of the land contract and transfer of equitable title to Dalton, and consents to the sale of the Property to Dalton. Notwithstanding the foregoing, this consent to transfer shall not be deemed to be a waiver of the right of the City under the Agreement, Note and Mortgage, as modified hereby, to prohibit any future transfers of the Property, or any interest therein, or to deny consent to any such transaction in the future in accordance with the provisions of the Loan Documents as modified.
5. Lex/Main shall continue as an Obligor under the Agreement, Note and Mortgage during the remaining term thereof.
6. In all other respects, the Agreement, Note and Mortgage remain unchanged and operative according to their original terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above set forth.

**LEX/MAIN, LLC**

By: \_\_\_\_\_  
Paula Killough,  
Member/Manager

**CITY OF ELKHART, INDIANA  
DEPARTMENT OF REDEVELOPMENT**

By: \_\_\_\_\_  
Sandra Schreiber, President  
Elkhart Redevelopment Commission

**JJ DALTON GROUP, LLC**

By: \_\_\_\_\_  
Rees Rogier, President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ELKHART    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Paula Killough, known to me to be the Member/Manager of Lex/Main, LLC, and acknowledged the execution of the foregoing instrument this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County  
State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ELKHART    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Sandra Schreiber, known to me to be the President of the Elkhart Redevelopment Commission, and acknowledged the execution of the foregoing instrument this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County  
State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Rees Rogier, known to me to be the President of JJ Dalton Group, LLC, and acknowledged the execution of the foregoing instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County  
State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

This Instrument was prepared by the law firm of Warrick & Boyn, J.J.P, 861 Parkway Avenue, Elkhart, Indiana 46516, by Gary D. Boyn. 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. /s/ Gary D. Boyn

EXHIBIT A

File No. 511502110

A PART OF LOT NUMBER SIXTY-ONE (61) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF THE FIRST ADDITION, OR CONTINUATION OF THE VILLAGE OF ELKHART, IN CONFORMITY TO THE ORIGINAL PLAT, NOW AN ADDITION TO THE CITY OF ELKHART, AND USUALLY KNOWN AS BEARDSLEY'S FIRST ADDITION TO THE CITY OF ELKHART, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING TWENTY-FIVE (25) FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT NUMBER SIXTY-ONE (61); THENCE WESTWARDLY, PARALLEL WITH THE NORTH LINE OF SAID LOT, SEVENTY-SIX (76) FEET; THENCE SOUTHERLY, PARALLEL WITH THE EAST LINE OF SAID LOT, TWENTY (20) FEET; THENCE EASTERLY, PARALLEL WITH THE NORTH LINE OF SAID LOT, TO THE EAST LINE OF SAID LOT; THENCE NORTHERLY ON SAID EAST LINE, TO THE PLACE OF BEGINNING.

ALSO, TWO AND ONE-HALF (2-1/2) FEET IN WIDTH OFF THE SOUTH SIDE OF THE FOLLOWING DESCRIBED TRACT OR PARCEL OF LAND: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT NUMBER SIXTY-ONE (61); THENCE WEST ALONG THE NORTH LINE OF SAID LOT, NINETY-FIVE AND ONE-HALF (95-1/2) FEET; THENCE SOUTH AT RIGHT ANGLES WITH SAID NORTH LINE, TWENTY-FIVE (25) FEET; THENCE EAST, PARALLEL WITH THE SAID NORTH LINE OF SAID LOT NINETY-FIVE (95) FEET, TO THE EAST LINE OF SAID LOT; THENCE NORTH ON SAID EAST LINE, TWENTY-FIVE (25) FEET TO THE PLACE OF BEGINNING, EXCEPTING AND RESERVING THE RIGHT TO AN OPEN, PERPETUAL CART WAY ACROSS THE WEST END OF SAID TRACT HEREBY CONVEYED, OF NOT LESS THAN FIFTEEN AND ONE-HALF (15-1/2) FEET IN WIDTH.

ALSO; PART OF VACATED SOUTH MAIN STREET AS SHOWN IN ORDINANCE NO. 3612 DATED FEBRUARY 25, 1985 AND APPROVED FEBRUARY 28, 1985.



Warrick & Boyn, LLP  
 861 Parkway Avenue  
 Elkhart, Indiana 46516  
 Telephone 574-294-7491  
 Fax 574-294-7284

thefirm@warrickandboyn.com

www.warrickandboyn.com

Taxpayer I.D. 35-1036189

Elkhart Redevelopment Commission  
 ATTN: Sherry Weber  
 229 S. Second Street  
 Elkhart IN 46516

Page: 1  
 July 31, 2023  
 Account No: 26399-000M  
 Statement No: 177567

Attn: Sherry Weber

Re: General Services

*Payments received after 07/31/2023 are not included on this statement.*

Previous Balance \$41,017.30

Fees

		Hours	
07/03/2023	CTP Review La Casa Sub-Recipient Agreement re: 209 N. SECOND	0.50	148.75
07/05/2023	CTP Draft deed and resolutions of Commission and BPW re: transfer of 535 W. LEXINGTON	1.00	297.50
	CTP Revise and compile letters to Plan Commission and Council re: PARKWAY ON 17	0.40	119.00
	GDB Review Sub-Recipient Agreement and respond to Mary re: LA CASA CDBG GRANT	0.50	159.38
	GDB E-mails with Jason Simler re: financing short-fall. Teleconf with Baker Tilly re: low assessment and TIF revenue re: HOTEL ELKHART/500 S. MAIN	0.60	191.25
	GDB Teleconf with Mary K. re: request for Subordination Agreement re: 146 STATE	0.20	63.75
	GDB Review B. Huber's e-mail re: defendant's request for access for studies and forward to Mike H., Sandy and Wes re: ICE/C & W	0.30	95.63
	GDB Review draft of Agenda. Conference re: items	0.30	95.63
	GDB Review memorandum and tax deed. Conference re: preparation of Resolution and deed re: 535 W. LEXINGTON	0.30	95.63
	GDB Review NLG bill. Draft Resolution and e-mail for packet re: NLG/1101 W. BEARDSLEY	0.70	223.13
	GDB Review bill for VRP work. Draft Resolution and e-mail for packet re: ICE/C & W	0.70	223.13
	GDB Review Jamie's e-mail re: new budget requirements for TIF areas re: ANNUAL FUNDING REPORT	0.30	95.63
	GDB E-mail Brad Hunsberger for information re: requested Subordination Agreement re: STATE ST. (LA CASA)	0.30	95.63
	GDB E-mail extended loan documents to Jason		

Re: General Services

			Hours	
		Similar. Review terms and e-mail Mike, Adam and Jamie re: need to notify borrower of 1/15/24 deposit due re: 500 MAIN/HOTEL ELKHART and TIF PROJECTIONS	1.50	478.13
	GDB	Review loan documents, title report and form of Subordination Agreement. Mark up draft re: CDBG/146 STATE	0.70	223.13
07/06/2023	GDB	Review valuation and tax bills re: 500 S. MAIN/HOTEL ELKHART	0.30	95.63
	GDB	Review May Appropriation Resolution and respond to Mary K. re: CDBG Grant to LaCasa re: 209 N. 2ND	0.30	95.63
	GDB	Review June/July resolutions re: follow-up required	0.40	127.50
	GDB	Revise draft of Subordination Agreement and liens re: 146 STATE/LA CASA	0.70	223.13
07/07/2023	GDB	Attend Pre-Agenda meeting	1.60	510.00
	GDB	Update Resolution with Plan. Finalize letters to Planning Commission and Council with attachments, and have same delivered to Mike and Sherry re: PARKWAY @ 17	0.70	223.13
	GDB	Draft Resolution accepting transfer from BPW and e-mailing for packet re: 511 DIVISION	0.50	159.38
	GDB	Draft Resolution extending date for Development Agreement and e-mailing for packet re: 80% ZONE 1	0.40	127.50
	GDB	Draft Resolution appropriating \$44,100 to cover increased LFI costs and e-mail for July packet re: 511 DIVISION	0.60	191.25
	GDB	Review memorandum and draft and send Resolution appropriating funds for Crossing improvements re: RAILROAD CROSSING/DOWNTOWN AND CONSOLIDATED TIFs	0.70	223.13
07/10/2023	CTP	Conference re: Osborn properties. Research process for real estate options re: DOWNTOWN TIF	2.60	773.50
	CTP	Review closing documents for 1560 S Main - CONSOLIDATED TIF	0.40	119.00
	GDB	Review and revise Subordination Agreement re: 146 STATE	0.30	95.63
	GDB	Revise, re-print and send Resolution for meeting re: RAILROAD CROSSING	0.30	95.63
	GDB	Final revisions to Subordination Agreement. Draft e-mail to Brad Hunsberger, Mike H. and Mary K. re: LA CASA/146 STATE	0.50	159.38
	GDB	Review latest Agenda. Draft e-mail re: adding 511 Division additional appropriation re: 511 DIVISION	0.30	95.63
	GDB	Draft e-mail to E. Bradley, et al. re: loan repayment for 2024 and TIF funds available re: 500 S. MAIN	0.70	223.13
	GDB	Conference re: potential purchase and		

Re: General Services

		Hours	
	third-party project re: OSBORN/FRONT STREET - DOWNTOWN 'PI'	0.40	127.50
GDB	Review Declaratory Resolution and review timetable re: PARKWAY AT 17	0.50	159.38
07/11/2023	GDB Review B. Hunsberger's revisions to Subordination Agreement. Print for signature and respond. Draft e-mails to Sherry re: addition to Agenda re: 146 STATE	0.70	223.13
GDB	Review B. Shields' e-mails re: revisions to agreement to Develop. E-mails with Adam for further information and request legals from Meridian Title. Revise contract re: ADVANTIX (STERLING AVENUE)	2.60	828.75
GDB	Review Baker Willy report	1.00	318.75
GDB	Attend meeting re: AURORA	0.40	127.50
GDB	Attend meeting	1.80	573.75
07/12/2023	CTP Compile closing documents re: 1560 1/2 S. Main Street. Telephone call to S. Schreiber re: same.	0.60	178.50
GDB	Draft e-mail to Sherry, et al. re: follow-up to June Agenda and follow-up on items	1.10	350.63
GDB	Notarize Deed and get back to Sherry for City's signatures re: 535 W. LEXINGTON	0.30	95.63
GDB	Revise Agreement to Subordinate and mail to Brad. Draft form of Subordination Agreement for closing re: LA CASA (146 STATE)	1.60	510.00
GDB	Revise legal description to agreement and exhibits. Review site information from title company re: ADVANTIX (STERLING/ARCH STREET)	0.50	159.38
07/13/2023	GDB E-mails with Mary and Sherry re: Grant Agreement and Sandy's signature re: CDBG/LA CASA	0.30	95.63
GDB	E-mails with J. Kearns re: bad debt re: AURORA	0.20	63.75
07/14/2023	GDB Revise re-draft of Purchase and Development Agreement. Review and e-mail to parties re: ADVANTIX (STERLING AVENUE)	1.00	318.75
CTP	Conference re: RIVER DISTRICT CARVE-OUT	0.40	119.00
CTP	Telephone call with J. Kearns re: PJ Limes. Review loan documents. Prepare and send demand letter to PJ Limes re: Aurora	0.80	238.00
CTP	Email M. Huber re: Osborn properties	0.30	89.25
GDB	Draft Subordination Agreement for LaCasa HGDA loan closing. E-mail to Brad re: 146 STATE	0.50	159.38
GDB	Review statute on buying/selling realty and e-mail Mike and Adam re: OSBORNE/FREIGHT STREET	1.00	318.75
GDB	Check files on Kao's and Around the Art and e-mail J. Kearns re: probable need to renew UCC filings. Request Continuation Statement on Arts. Advise Jerry re: AURORA	0.50	159.38

Re: General Services

			Hours	
07/17/2023	MRY	Renew Financing Statement on-line. Docket deadline to renew again re: AURORA CAPITAL DEVELOPMENT	0.40	60.00
	MRY	Update Docket re: 500 S. MAIN STREET	0.30	45.00
	GDB	Review Note and Mortgage re: proposed land contract sale and respond to Mary re: LEX/MAIN	0.80	255.00
07/18/2023	CTP	Email M. Huber re: Council resolution for Parkway at 17.	0.30	89.25
	CTP	Revise Deed and email same to M. Marnocha re: 535 W. Lexington	0.50	148.75
	GDB	Review e-mails with T. Shubert. Check statute and respond re: YORK STREET PARCELS/INDIANA AVENUE LOTS	0.40	127.50
	GDB	Review timetable and Baker Tilly Report. Review Development Plan for retail/townhouses and parking re: R02 - ZONE 1	0.70	223.13
07/19/2023	GDB	Review Information Sheet to Council re: PARKWAY AT 17	0.20	63.75
	GDB	Review e-mails re: closing on purchase. Review Development Agreement and exhibits. Update Deed and two MSP agreements re: 209 N. 2ND	0.80	255.00
	GDB	Conference and work on form of Assumption Agreement and Resolution. E-mails with Mary re: LEX/MAIN	2.50	796.88
	CTP	Review resolutions creating TIF areas. Research property taxes of successors to designated taxpayers. Email M. Huber re: same RE: TIF REPORTS	2.80	833.00
	GDB	Review list of Baker Tilly requests re: DOWNTOWN TIF AREA 3	0.40	127.50
07/20/2023	CTP	Draft resolution and Access Agreement for Niblock re: 3508 S. Main Street	1.10	327.25
	GDB	Review Resolution and Agreement and print same. E-mail to Sherry re: NIBLOCK ACCESS AGREEMENT (3508 S. MAIN)	0.20	63.75
	GDB	Review TIF Area map and respond to Jamie re: issue re: BAKER TILLY	0.20	63.75
	GDB	Review e-mails re: status of LaSalle Grille lease re: LEXINGTON BUSINESS CENTER	0.20	63.75
	GDB	Review and revise Assumption Agreement. E-mail with Resolution for packet and e-mail Mary for address and review by parties re: LEX/MAIN	0.80	255.00
07/21/2023	GDB	Review update re: new soil sampling re: ICE MILLER/LA BOUR PUMP	0.20	63.75
	GDB	Teleconf with Mike H. re: revising agreement re: new construction plan re: R02	0.20	63.75
07/24/2023	CTP	Review statute on transfer to CDC. Conference re: same re: 511 DIVISION	0.90	267.75

Re: General Services

		Hours	
	CTP Review Summary Judgment Order and correspondence from M. Nelson re: Conn-Selmer litigation	0.50	148.75
	GDB Review e-mails re: transfer of alley to CDC. Review file and statute and respond re: process and timetable and need for one appraisal re: LA CASA/511 DIVISION	1.30	414.38
	GDB Draft Notice, Agreement and Resolutions re: LA CASA/511 DIVISION	2.30	733.13
	GDB E-mail Mary re: proposed revision to Assumption Agreement re: LEX/MAIN	0.20	63.75
07/25/2023	GDB Teleconf with Mary. Revise Assumption Agreement and e-mail to all re: LEX/MAIN	0.40	127.50
	GDB Teleconf with Mary re: issues with LaCasa and HUD guideline requirements, public bidding, etc. re: 209 N. 2ND	0.20	63.75
	GDB Review and revise August and September Resolutions and Agreement re: 511 DIVISION	0.50	159.38
	GDB Review e-mail, Court's Summary Judgment Order on Conn-Selmer and latest draft of Settlement Agreement. Respond to Mike Nelson re: NLG/1101 E. BEARDSLEY	1.50	478.13
	GDB Respond to Mike H., et al. re: PARKWAY @ 17	0.30	95.63
	GDB Respond to Mike H., et al. re: steps to do in August and September -- need for legal description and Plan preparation re: ROZ ZONE 1 CARVE-OUT	0.30	95.63
	GDB E-mail to Sherry, Mike, Adam and Brad H. the August and September Resolutions and publication notice and draft of Development Agreement re: The Alley donation. Review the documents. E-mail Brad re: number of signatories and getting their signatures by September meeting re: 511 DIVISION	0.80	255.00
	GDB Review signed agreement and request copy of executed Notary page from Advantix re: ADVANTIX	0.30	95.63
	GDB Make final revisions to Alley Development Agreement and re-send re: 511 DIVISION	0.30	95.63
07/26/2023	GDB Print agreement for signature. E-mail to Sandy to come sign re: ADVANTIX/STERLING	0.30	95.63
	GDB Review M. Nelson's response to settlement agreement questions and respond re: NLG/1101 E. BEARDSLEY	0.30	95.63
	GDB Scan and e-mail signed agreement and exhibits to D. Weaver per request re: ROZ	0.30	95.63
	GDB Draft Resolution approving new Development Agreement and e-mail for review and packet re: ADVANTIX/STERLING	0.50	159.38
	GDB Work on timetable and documents to Carve-Out Allocation Area 4 re: ROZ ZONE 1 CARVE-OUT	3.90	1,243.13
	GDB Draft Resolution approving two settlement agreements and e-mail for review and packet		

Re: General Services

		Hours	
	re: NLG/1101 E. BEARDSLEY	0.60	191.25
07/27/2023	GDB Review memorandum. Draft and e-mail Resolution for appropriation of funds for project and whether to add more detail of scope of work. Draft second Resolution to hire Abon Marche and appropriate funds. Conference with Sandy and e-mail Adam to discuss with Commissioners/officers. Review contract. Review revised memorandum and scope of work information re: STATE ROAD 19 (CASSOPOLIS TIF)	2.70	860.63
	GDB Conference with Sandy re: signing agreement. Forward signed/notarized copy to Brandon Shields and for packet. Copy and attach contract to Resolution re: ADVANTIX/1701 STERLING	0.90	286.88
	GDB Teleconf with J. Hughey re: City's agreement to pay for title insurance per NSP guidelines re: 209 N. 2ND	0.30	95.63
	GDB Review drafts of carve-out resolutions, etc. and statutes re: ZONE 1 (EOZ)	1.50	478.13
07/28/2023	CTP Video conference with M. Huber re: River District Zone 1	1.20	357.00
	CTP Research limitations on use of TIF for public safety	0.60	178.50
	GDB Teleconf with Mike H. re: deadline for confirming Resolution and need to Tax Impact Statement and Public Notice by October meeting re: W 78	0.30	95.63
	GDB Teleconf with Mike H. re: revised construction plan and schedule, City's LPI pledge, TIF project and CPKA pledge amending Development Agreement. Consider potential agreement revisions re: LPI funding, etc. re: EOZ ZONE 1 - CARVE-OUT	1.60	510.00
07/29/2023	CTP Research extending TIF areas re: Cassopolis	0.80	238.00
07/31/2023	GDB Draft and e-mail Resolution to pay June VRP bill re: ICE/G & W	0.40	127.50
	GDB Review updated Agenda and e-mail all re: additional information needed for three items	0.50	159.38
	CTP Review and revise Amendment to Development Agreement re: EOZ.	1.30	386.75
	GDB E-mails with Adam re: status of remediation quota and contract re: 1701 STERLING	0.20	63.75
	GDB Review contract and draft Amendment No. 1. Revise draft of Carve-Out Resolution for Area 4 re: EOZ - ZONE 1	3.00	956.25
	For Current Services Rendered	80.10	25,052.75

Re: General Services

Expenses

07/11/2023	Payment to Elkhart Truth re: publication of Notice of Public Meeting re: Purchase of Real Property. Ad No. 70694104. Ad ran 6/15 and 6/22. Re: Lots 51-56 HUDSON-STERLING	79.38
	Total Expenses	<u>79.38</u>

Advances

07/17/2023	On-line filing fee re: UCC Continuation re: AURORA CAPITAL DEVELOPMENT	14.00
07/19/2023	Online legal research - June services re: ADVANTIX	76.97
07/19/2023	Online legal research - June services	45.26
07/19/2023	Online legal research - June services re: PARKWAY @ 17	<u>31.71</u>
	Total Advances	167.94

Total Current Work ..... 25,300.07

Payments

07/07/2023	Fcc Payment - ACH payment	-28,303.97
07/07/2023	Expense Payment - ACH payment	-10.48
07/07/2023	Advance Payment - ACH payment	-15.00
07/07/2023	Expense Payment - ACH payment	<u>-40.60</u>
	Total Payments	-28,369.45

Balance Due \$37,947.92

Aged Due Amounts					
<u>0-30</u>	<u>31-60</u>	<u>61-90</u>	<u>91-120</u>	<u>121-180</u>	<u>181+</u>
25,260.07	12,687.85	0.00	0.00	0.00	0.00

Please Remit \$37,947.92

A finance charge of 18% per annum, or the highest rate permitted by law, whichever is less, will be assessed on all accounts past due 30 days.

City of Elkhart  
TIF Budget Summary  
As of June 30th, 2023  
(Unaudited)

	4445 - Downtown		4446 - Pierre Moran		4447 - Southwest	
	Current Month	Year to Date	Current Month	Year to Date	Current Month	Year to Date
<b>Beginning Cash</b>		<b>4,652,673.38</b>		-		-
<b>Revenues</b>						
Spring Property Taxes	1,683,912.51	1,683,912.51	178,813.69	178,813.69	704,388.95	704,388.95
Fall Property Taxes	-	-	-	-	-	-
State Grants	-	-	-	-	-	-
Miscellaneous	-	43,738.94	-	-	-	-
Rent Income	-	-	-	-	-	-
Sale of Property	-	-	-	-	-	-
Transfers (In)	-	-	-	-	-	-
<b>Total Revenue</b>	<b>1,683,912.51</b>	<b>1,727,651.45</b>	<b>178,813.69</b>	<b>178,813.69</b>	<b>704,388.95</b>	<b>704,388.95</b>
<b>Expenses</b>						
Personnel Services	6,771.46	21,091.71	-	-	-	-
Supplies	-	-	-	-	-	-
Professional Services	29,355.70	45,916.62	-	-	-	-
Debt Service (Principle)	-	495,000.00	-	-	-	-
Major Moves Loan Payment	-	-	-	-	-	-
Interest Expense	-	238,911.13	-	-	-	-
Admin & Trustee Fee	-	-	-	-	-	-
Brownfield Services	-	3,072.75	-	-	-	-
State Grant Expense	-	-	-	-	-	-
Other Services & Charges	15,411.85	234,061.59	-	-	-	-
Contract Services	-	281,603.00	-	-	-	-
Infrastructure	-	200,574.25	-	-	-	-
Transfers (Out)	-	-	178,813.69	178,813.69	704,388.95	704,388.95
<b>Total Expenses</b>	<b>51,539.01</b>	<b>1,520,231.05</b>	<b>178,813.69</b>	<b>178,813.69</b>	<b>704,388.95</b>	<b>704,388.95</b>
<b>Ending Cash</b>		<b>4,860,093.78</b>		-		-
Less: Encumbrances		109,691.00		-		-
<b>Estimated Ending Cash</b>		<b>4,750,402.78</b>		-		-

City of Elkhart  
 TIF Budget Summary  
 As of June 30th, 2023  
 (Unaudited)

	4448 - Aeroplex		4449 - Sterling		4450 - Caspools	
	Current Month	Year to Date	Current Month	Year to Date	Current Month	Year to Date
<b>Beginning Cash</b>		<b>1,407,076.75</b>		-		<b>12,412,196.31</b>
<b>Revenues</b>						
Spring Property Taxes	242,634.60	242,634.60	187,693.81	187,693.81	1,870,718.32	1,870,718.32
Fall Property Taxes	-	-	-	-	-	-
State Grants	-	-	-	-	-	-
Miscellaneous	-	-	-	-	-	-
Rent Income	-	-	-	-	-	-
Sale of Property	-	-	-	-	-	-
Transfers (In)	-	-	-	-	-	-
<b>Total Revenue</b>	<b>242,634.60</b>	<b>242,634.60</b>	<b>187,693.81</b>	<b>187,693.81</b>	<b>1,870,718.32</b>	<b>1,870,718.32</b>
<b>Expenses</b>						
Personnel Services	-	-	-	-	-	-
Supplies	-	-	-	-	-	-
Professional Services	-	-	-	-	-	-
Debt Service (Principle)	-	-	-	-	-	-
Major Moves Loan Payment	-	-	-	-	-	-
Interest Expense	-	-	-	-	-	-
Admin & Trustee Fee	-	-	-	-	-	-
Brownfield Services	-	-	-	-	-	-
State Grant Expense	-	696.65	-	-	-	-
Other Services & Charges	-	-	-	-	32,609.56	319,451.34
Contract Services	-	-	-	-	-	-
Infrastructure	-	-	-	-	-	866,556.07
Transfers (Out)	-	-	187,693.81	187,693.81	-	-
<b>Total Expenses</b>	<b>-</b>	<b>696.65</b>	<b>187,693.81</b>	<b>187,693.81</b>	<b>32,609.56</b>	<b>1,186,007.41</b>
<b>Ending Cash</b>		<b>1,649,014.70</b>		-		<b>13,096,907.22</b>
Less: Encumbrances		2,695.60		-		1,726,713.40
Estimated Ending Cash		<b>1,646,319.10</b>		-		<b>11,370,193.82</b>

City of Elkhart  
TIF Budget Summary  
As of June 30th, 2023  
(Unaudited)

	4451 - Tech Park		4452 - Main Gateway		4453 - Consolidated	
	Current Month	Year to Date	Current Month	Year to Date	Current Month	Year to Date
<b>Beginning Cash</b>		996,801.90		-		6,791,100.64
<b>Revenues</b>						
Spring Property Taxes	143,190.15	143,190.15	190,702.06	190,702.06	16,545.70	16,545.70
Fall Property Taxes	-	-	-	-	-	-
State Grants	-	-	-	-	-	-
Miscellaneous	-	-	-	-	-	500.00
Rent Income	-	-	-	-	-	-
Sale of Property	-	-	-	-	-	-
Transfers (In)	-	-	-	-	1,261,598.51	1,261,598.51
<b>Total Revenue</b>	143,190.15	143,190.15	190,702.06	190,702.06	1,278,144.21	1,278,644.21
<b>Expenses</b>						
Personnel Services	-	-	-	-	-	-
Supplies	-	-	-	-	-	-
Professional Services	-	-	-	-	7,605.00	8,478.00
Debt Service (Principle)	-	-	-	-	-	-
Major Moves Loan Payment	-	-	-	-	-	-
Interest Expense	-	-	-	-	-	-
Admin & Trustee Fee	-	-	-	-	-	-
Brownfield Services	-	-	-	-	-	-
State Grant Expense	-	-	-	-	-	193,966.96
Other Services & Charges	591.25	3,391.92	-	-	6,362.97	316,184.77
Contract Services	-	200.00	-	-	317,433.06	318,003.06
Infrastructure	-	-	-	-	-	-
Transfers (Out)	-	-	190,702.06	190,702.06	-	-
<b>Total Expenses</b>	591.25	3,591.92	190,702.06	190,702.06	331,401.03	836,632.79
<b>Ending Cash</b>		1,136,400.13		-		7,733,112.06
Less: Encumbrances		137,087.60		-		1,565,464.68
Estimated Ending Cash		999,312.53		-		5,667,647.38

City of Elkhart  
 TIF Budget Summary  
 As of June 30th, 2023  
 (Unaudited)

	4692 - Downtown Capital		2532 - Redevelopment	
	Current Month	Year to Date	Current Month	Year to Date
<b>Beginning Cash</b>		<b>68,478.32</b>		-
<b>Revenues</b>				
Spring Property Taxes	-	>	-	-
Fall Property Taxes	-	-	-	-
State Grants	-	-	-	-
Miscellaneous	-	-	-	-
Rent Income	-	-	-	-
Sale of Property	-	-	>	44,057.50
Transfers (In)	-	-	>	-
<b>Total Revenue</b>	-	-	-	<b>44,057.50</b>
<b>Expenses</b>				
Personnel Services	-	-	-	-
Supplies	-	-	-	-
Professional Services	-	-	-	-
Debt Service (Principle)	-	-	-	-
Major Moves Loan Payment	>	-	-	-
Interest Expense	-	-	-	-
Admin & Trustee Fee	-	-	-	-
Brownfield Services	-	-	-	-
State Grant Expense	-	-	-	-
Other Services & Charges	-	-	177.88	440.88
Contract Services	-	-	-	-
Infrastructure	-	-	-	-
Transfers (Out)	-	-	-	-
<b>Total Expenses</b>	-	-	<b>177.88</b>	<b>440.88</b>
<b>Ending Cash</b>		<b>68,478.32</b>		<b>43,616.62</b>
Less: Encumbrances		39,451.72		>
<b>Estimated Ending Cash</b>		<b>29,026.60</b>		<b>43,616.62</b>