

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

Common Council Chambers

9:00 A.M., Tuesday, October 15, 2024

<https://signin.webex.com/join>

Meeting Number (access code): 2307 091 3274 Meeting password: BOW24

Join by phone: 1-415-655-0001

I. Roll Call

II. Approve Agenda

III. Claims & Allowance Docket

IV. Minutes Regular Meeting October 1, 2024

V. Utilities

a.) Administration

- Wastewater MRO for August 2024
- Water MRO for September 2024
- Revised 2024 Transfer Schedule
- Sewage Works Bond Engagement Letter- Barnes and Thornburg
- Water Utility Bond Engagement Letter- Barnes and Thornburg

b.) Pretreatment

- Notice of Violation Elkhart County Regional Sewer District (Heaton Lake)

VI. Engineering

a.) Administration

- Award Bid #24-20 Oakland Avenue Project B: CSO Storage Project
- Change Order #2 Bid #24-08 Hively Avenue Overpass Demolition Contract #4
- Award Quote #24-29 Bypass Road Drainage Improvements (tabled)

b.) Utility

- Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II- QA7634 (tabled)
- Ratify Disbursement #39 for Kleinpeter Consulting Group, LLC Oakland Avenue Forcemain Phase A SA7878
- Ratify Partial Payment #37 to DLZ Oakland Avenue: Project D CSO 6&7 Connection
- Ratify Partial Payment #38 to DLZ Oakland Avenue: Project B Storage Tank Design

c.) Summary

- Water Assessments
- Sewer Assessments
- Revocable Permits
- Driveway Permits
- Release of Bond

VII.

New Business

- Disposal of Fixed Assets- Aviation Department
- Purchase of Toro 4010D from Kenny Machinery- Sourcewell
- 2025 Dental and Vision Plan Renewals
- Permission to Send Items to the Broylin Auction
- Purchase of Ford Transit Passenger Van for the Park Department
- Professional Services Agreement with Baker Tilly for the Public Safety Center Project
- Homer Avenue Subdivision Phase I and Phase II Right of Way Dedication- a Habitat for Humanity Project
- HUD Five Year Consolidated Plan Services Professional Services Contract Award

VIII.

Use & Event Permits

- Premier Arts 5K Run 11/9- Island Park, Public Assembly, Special Exception from Noise
- Winterfest Parade 12/7- ESS, EMS, Golf Cart, Stage, EPS, Temporary Street Closures, Parade & Public Assembly, Special Exception from Noise, Plaza Sign
- Salvation Army 11/6-12/31- Bridge Banners

IX.

Public Participation

X.

Adjournment

Board of Public Works
CLAIM AND ALLOWANCE DOCKET

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

October 9, 2024 
JAIME ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF **\$6,333,470.13** AS LISTED ON THE REGISTER ATTACHED HERETO **CONSISTING OF 31 PAGES**, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 15TH DAY OF OCTOBER 2024 BY:

PRESIDENT _____
MICHAEL C. MACHLAN

VICE PRESIDENT _____
JAMIE ARCE

MEMBER _____
RON DAVIS

MEMBER _____
ROSE RIVERA

MEMBER _____
ANDY JONES

ORIGINAL COPY MUST BE RETAINED IN THE CONTROLLER'S OFFICE

Board of Public Works

Accounts Payable Summary
10.15.24

Individual Claims Over \$25,000 each:

Fund	Vendor	Description	Amount
1101	BENCHMARK SOLUTIONS, LLC	TRACKING SYSTEM	\$ 28,866.26
2235	RIETH-RILEY CONSTRUCTION CO, INC.	Asphalt- 457.27 tons for Simonton	\$ 30,865.81
6203	B L ANDERSON CO INC	INSTALL 4 VFDS	\$ 32,469.00
1101	YODER OIL COMPANY INC	GASOLINE	\$ 33,607.69
2235	RIETH-RILEY CONSTRUCTION CO, INC.	Asphalt- 504.22 tons for Canton- Simonton to North	\$ 34,034.95
2235	RIETH-RILEY CONSTRUCTION CO, INC.	Asphalt- 581.60 tons for Baldwin- Cass to Johnson	\$ 39,258.06
1101	MISHAWAKA-F, LLC	POLICE CID FORD EXPLORER INTERCEPTORS	\$ 49,100.00
1101	MISHAWAKA-F, LLC	POLICE FORD EXPLORER INTERCEPTORS	\$ 49,100.00
1101	R & B SALES	CID SQUAD EQUIPMENT	\$ 50,063.71
1101	MISHAWAKA-F, LLC	POLICE FORD EXPLORER INTERCEPTORS	\$ 52,100.00
1101	MISHAWAKA-F, LLC	POLICE FORD EXPLORER INTERCEPTORS	\$ 52,100.00
7704	EVERSIDE HEALTH LLC	Everside - August and Sept.	\$ 52,980.14
1101	R & B SALES	EQUIPMENT FOR 5 EACH CHEV TAHOES	\$ 75,249.12
4436	PREMIUM CONCRETE SERVICES, INC.	2024 ADA FUNDED CURB RAMP	\$ 85,125.30
2201	MISHAWAKA-F, LLC	2024 F450 chassis 4X4 crew cab	\$ 94,428.00
4436	BORDEN WASTE-AWAY SERVICE, INC.	TRASH SVCS 10/24	\$ 195,405.42
4450	PREMIUM CONCRETE SERVICES, INC.	Cassopolis St Improvements	\$ 371,222.13
6203	SELGE CONSTRUCTION CO INC	CSO 39 SEWER SEPARATIONS PROJECT BID #23-14	\$ 812,195.32

Total Claims over \$25,000	\$2,138,170.91
Regular Claims under \$25,000:	\$ 646,203.53
Total Regular Departmental Claims:	\$2,784,374.44

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

7704	ANTHEM INSURANCE COMPANIES INC	CLAIMS - PHARMACY	\$ 30,893.06
6201	INDIANA MICHIGAN POWER COMPANY	04656645704 1201 S NAPPANEE ST	\$ 30,915.92
1101	ELKHART COUNTY TREASURER PROPERTY TAXES	530 E LEXINGTON 2023 PROPERTY TAXES	\$ 33,233.87
8806	INDIANA PUBLIC RETIREMENT SYSTEM-POLICE	INPRS - POLICE PAYROLL DATE 9.13.2024	\$ 98,976.06
7704	ANTHEM INSURANCE COMPANIES INC	CLAIMS - MEDICAL	\$ 100,860.86
8806	INDIANA PUBLIC RETIREMENT SYSTEM-FIRE	INPRS- FIRE Payroll Date 9.13.2024	\$ 106,513.65
8806	INDIANA PUBLIC RETIREMENT SYSTEM-FIRE	INPRS- FIRE 9.27.2024 PAYROLL	\$ 106,513.65
8806	INDIANA PUBLIC RETIREMENT SYSTEM	INPRS- CIVIL CITY PAYROLL DATE 9.13.2024	\$ 147,084.36

Total Pre-Approved over \$25,000:	\$ 654,991.43
Total Pre-Approved Claims under \$25,000:	\$ 83,463.31
Total Pre-Approved Claims:	\$ 738,454.74

American Rescue Plan Claims:

2474	HRP CONSTRUCTION COMPANY	Benham Ave Water & Sewer	\$ 338,544.38
2474	HEART CITY HEALTH CENTER INC	Elkhart Thrive Neighborhood Hub Initiative	\$ 8,076.92

Total American Resuce Plan Claims:	\$ 346,621.30
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UTILITY REFUNDS

\$ 1,676.06

Payroll and Pension Payments:

Police & Fire Clothing Allowance	\$ 129,918.00
Police & Fire Pension	\$ 382,994.10
Bi-weekly Payroll	\$ 1,949,431.49
Total Payroll:	\$ 2,462,343.59

Total All Claims, Internal Payments, and Payroll:	\$ 6,333,470.13
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(a) Claims with rigid payment deadlines. As provided for in the Elkhart Municipal Code §33.415, certain payments may be made prior to review and approval by the Board of Public Works. Typically such payments include utility bills, credit card bills, central services, association dues, employer-paid benefits, training, and employee reimbursements. Unusual items in excess of \$25,000 are noted in detail.

BOARD OF PUBLIC WORKS
Tuesday, October 1, 2024

Vice-President Jamie Arce called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, October 1, 2024. Clerk of the Board Nancy Wilson called the roll. Andy Jones, Rose Rivera, Jamie Arce, and Ronnie Davis attended in person. Mike Machlan was absent. Jamie noted the time was after 9:00 a.m. and no more bids or quotes would be accepted.

1. Approve Agenda

A motion was made by Rose Rivera and seconded by Ron Davis to approve the agenda. On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the agenda was amended by adding under Engineering VII(a) Award Bid 24-20 Bristol Street Clearing, under New Business VIII Microsoft Contract, and removing Tax Issues 111 W Lexington and Tax Issues Lexington Business Center. The amended agenda carried 4-0.

2. Open Quotes

Bid #24-13 Oakland Avenue Project B: CSO Storage Project

Proof of publication was presented which appeared in The Elkhart Truth on August 24 and August 31, 2024. The following bids were received:

Kokosing Industrial Inc. Submitted a signed and certified bid summary form with all items checked. The base bid was \$43,681,400.00.

Thieneman submitted a signed and certified bid summary form with all items checked. The base bid was \$40,975,400.00.

C&E Excavating submitted a signed and certified bid summary form with all items checked. The base bid was \$40,994,000.00.

Selge Construction submitted a signed and certified bid summary form with all items checked. The base bid was \$36,891,918.14.

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board referred the bids to the staff of Public Works and Utilities for their review and recommendation at a future meeting.

Quote #24-28 Wolf Ave Drainage Improvements

One quote was received for the Wolf Avenue Drainage Improvement project from Premium Services for \$89,822.00. On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the quote was referred to staff to review and award later in the meeting if practical.

Quote #24-29 Bypass Road Drainage Improvements

Three quotes were received for the Bypass Road Drainage Improvement project. John Boettcher Sewer & Excavating quoted \$36,927.20. Selge Construction quoted \$46,066.00. Premium Services quoted \$70,930.00. On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the quotes were referred to staff to review and award later in the meeting if practical.

Proposals- HUD Five Year Consolidated Plan Services

Four proposals were received for the HUD Five-year Consolidated Plan Services. Urban Design submitted a plan totaling \$76,000.00. Community Planning Insights submitted a plan totaling \$75,800.00. Arsh Group submitted a plan totaling \$77,000.00. Abonmarche submitted a plan totaling \$95,000.00. On motion by Andy Jones, seconded by Rose Rivera and carried 4-0, the proposals were given to staff to review and award at a future meeting.

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3. Claims & Allowance Docket

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the claims and allowance docket in the amount of \$4,591,056.60, consisting of 31 pages as prepared on September 24, 2024 at 9:54 a.m.

4. Minutes Regular Meeting September 17, 2024 and Memorandum of Special Meeting in Executive Session September 17, 2024

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the Minutes of the Regular Meeting September 17, 2024. On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the Memorandum of Special Meeting in Executive Session on September 17, 2024.

5. Utilities

(A.) Administration

Amendment No. 1: PSA with DLZ Indiana, LLC Benham West Tower Rehabilitation Project

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Amendment #1 with DLZ Indiana, LLC for the Benham Water Tower Rehabilitation Project, for an increase of \$39,260.00, bringing the current not-to-exceed fee to \$111,860.00.

Revised Water Utility MRO for July 2024

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board accepted and placed on file the revised Water Utility MRO for July 2024.

(B.) Pretreatment

JBS Prepared Foods Permit #2002-01

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the request to extend the JBS Administrative Order deadline by 60 days to November 29, 2024. Steve Brown explained the request. We have been in contract with them since the administrative order was issued in June. The extension is to continue to work together, and for them to come into compliance. Jamie asked if we have had any more issues. Steve said there is an issue that will be brought to the Board at a later date. Jamie mentioned previously there was the possibility of an abatement of their fines, and asked if this extension would affect that. Maggie Marnocha responded that is part of the negotiations they are having with them right now.

Baker's Nook Café 127 Easy Shopping Place FOG Variance Request

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved a FOG Variance from having to install a grease control device for Baker's Nook Café. Steve Brown explained the request to the Board. There have not been any grease issues in the past. The building they are in now is going to be demolished. The owner was present. Jillian Arnold said they took over in June of 2023. She explained that they put the grill waste in the trash every day. She said the entire plaza was sold last year and they do plan to tear it down. Steve said they would continue to do visual monitoring on their outfall.

Elwood's 115 East Lexington Avenue 90 day Extension Request

On motion by Andy Jones, seconded by Rose Rivera and carried 4-0, the Board granted Elwood's a 90-day extension to have the appropriate grease control device installed no later than December 30, 2024. Steve Brown explained the

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request to the Board and said staff supports the extension. The owner David Osborne explained the delays. It took time to find a plumber that could install everything. They are not doing any cooking and have no grease. They do not even serve coffee yet. It is a Historic building so things move a little slower.

BD Industries Permit #88-03

On motion by Rose Rivera, seconded by Ron Davis and carried 4-0, the Board approved BD Industries Permit #88-03 five-year Industrial Wastewater Discharge Permit renewal.

Norfolk Southern Industrial Wastewater Discharge Permit #85-27

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Norfolk Southern Permit #85-27 five-year Industrial Wastewater Discharge Permit renewal. Carlos Medina, Pretreatment Inspector presented the permit renewal to the Board.

Huntington Alloys Industrial Wastewater Discharge Permit #86-07

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Huntington Alloys Permit #86-07 five-year Industrial Wastewater Discharge Permit renewal. Carlos Medina, Pretreatment Inspector presented the permit renewal to the Board.

Accept Communication Bimbo Bakeries Permit #2006-03 Appeal

A motion was made by Andy Jones and seconded by Rose Rivera to accept the email communication received from Bimbo Bakeries. Jonathan Kania, Environmental Manager of Bimbo Bakeries attended the meeting on WebEx. He said he supports 15 BBU Bakeries in the upper Midwest. On July 22, 2024, Elkhart Public Works issued a draft of Bimbo's newest Wastewater Permit. On August 7, 2024 BBU expressed concerns on the new one size fits all permit conditions. The permit increased monitoring and testing for new pollutants. These pollutants included Arsenic, Cadmium, Cyanide, Lead, Nickel, Phenol, Silver, Chromium, and Total Petroleum Hydrocarbons. We requested on August 13, 2024 to test out by demonstrating through sampling its non-applicability. BBU was told by Elkhart Public Works monitoring waivers were not being issued. On August 20, 2024 a new Industrial Wastewater Discharge Permit #2006-03 was issued with no changes or monitoring waivers. On August 27, 2024 an appeal was made by Bimbo Bakeries USA. Bimbo Bakeries Elkhart is a commercial bakery that produces bread, buns, and English muffins for public consumer use. We do not use or process heavy metals in our bakery. In adding heavy metal neurotoxins to our permit, it opens BBU Bakery to scrutiny on social audits from Walmart, and Target for pollutants we do not produce. Our bakeries throughout the upper Midwest test for PH, Ammonia, Oil and Grease, Phosphorous, BOD and TSS with consistency, and was akin to our previous permit. Our nearest sister facility which also produces bread and buns in Grand Rapids, MI tests for these very same parameters. He appreciates the opportunity to express their concerns, and hopes we can come to an agreeable solution with a goal of achieving monitoring waivers for the above mentioned parameters.

Jamie asked Maggie in these situations when we are accepting communication and we allow the Industry to speak to the appeal, is it appropriate for us to engage in discussion or ask questions, or is this similar to public participation when we hear the person speak and then refer them to staff. Maggie responded yes,

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that is correct (similar to public participation). When Steve Brown got the letter, they discussed it needed to go to the Board for discussion. Maggie said one of the things she pointed out also is they understand his concerns, but we also have to refer to the regulations, and Steve and Laura and I will be attending another EPA seminar on Pretreatment. As things come up, it is a good place to hone in on them. This is one of the questions we are going to have for them, because we understand his concerns but reading of the regulation does not allow us to waive because of their Classification. Maggie told Jamie to accept his communication and forward it on to staff for review. Jamie said the Board will leave it to staff to continue to work on it appropriately. The communication was accepted and placed on file.

6. Engineering

(A.) Administration

Driveway Width Variance 4019 Timber Court (tabled)

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board removed the Driveway Width Variance for 4019 Timberstone Court from the table for discussion. A motion was made by Rose Rivera and seconded by Andy Jones to approve the Driveway Width Variance for 4019 Timber Court. Jeff Shaffer said they did a little more investigation after the last Board meeting and looked at it from a more holistic perspective. Jeff said they had discussions with the HOA, and based on those discussions, Tom Graber, the President of the HOA is here to talk about the approach the HOA would like to take on driveways in Timberstone.

Tom Graber gave the Board a map of the Timberstone Development phases 1-5. He said he is here to speak on behalf of Scott Hamilton. Considering the lots, we have 92 lots with an average of 51' frontage, 23 lot and a half lots with an average of 77', and double lots that average 104' wide. Scott's is a double lot and measures 101' wide. His request is for a 40' wide driveway. Tom said he lives two doors down. On the map he pointed out to the Board 66S is Scott's lot. He said his lot is to the left, 66W and 66V that are combined into one now. Tom said his driveway is 43' wide. The HOA Board feels like they need something in their covenants to give the neighborhood direction for the driveway widths. They moved by majority that the single lots would be not more than 30' wide, the lot and a half not more than 35' wide, and the double lots not more than 40' wide. He said they are asking the Board for the Variance, and for future driveway consideration. If you consider the garage doors, he said he has a three-stall garage at his house. The garage door width is about 8.5'. Scott's plan is to build another garage attached to his present house. Allowing him a 40' driveway will allow him to drive straight in to each stall. Jamie thanked him for all of third work he and the HOA board did while the item was tabled. He thanked him for working with the Engineering team to come up with a good resolution.

Jeff Shaffer discussed the definition of a lot with Eric Trotter. Eric said he is confident they can work with the single, lot and a half, and double lots in Timberstone. Jeff said once the covenants and restrictions have been approved by the HOA, they would like to see a document in writing. Jeff said staff supports the driveway width variance and will continue to work with their HOA moving forward. At the conclusion of discussion, Jamie called for the vote. The motion carried 4-0.

Driveway Width Variance 2539 Timberstone Drive East

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A motion was made by Andy Jones and seconded by Rose Rivera to approve the Driveway Width Variance for David Bortner Revocable Trust (owner) and Dynamic Custom Homes (contractor) for a proposed new driveway at 2539 Timberstone Drive East that exceeds 40' in width. Jeff Shaffer let the Board know the driveway permit application that was submitted was for 30' width. If approved, they need documentation from the HOA supporting the width, and a corrected Driveway Permit application. Jeff Showalter, the owner of Dynamic Custom Homes represented the Variance petition. He said they applied for a driveway permit and submitted scale drawings. It was approved. The driveway has been in place 4-6 weeks. At some point, it came to the City's attention it was too wide and we were to halt construction. All we have left to do outside is sidewalks. He asked the Board to grant permission for a 40' driveway. The project is on a double lot and is the biggest home in the neighborhood. He said they have 250' of curb frontage. Jamie pointed to the map that these are lots 177 and 178 in phase 5. Jeff said the Architect puts on every one of his drawings Driveway 30' plus or minus. He said the reason they submit a scale drawing that shows the driveway straight off of a 3-stall garage is that the scale can be used to tell the actual width of the driveway. He said Timberstone is unique and has received a lot of grace. He said they turn in what the homeowner wants, and if it does not pass they try again. Jamie explained that Mr. Graber explained the position of the HOA, and the Board leans on staff's expertise to help them make the decisions. Tom Graber spoke in favor of the variance. The HOA board discussed it and unanimously approved double lots with 40' wide driveways. On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board amended the motion removing exceeds, making it 40' in width. Jamie called for the vote on the amended motion and it carried 4-0.

Award Bid #24-17 SR 19 Access Management Permanent Plan Phase 1

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Bid #24-17 SR 19 Access Management Permanent Plan Phase 1 to Premium Services who submitted the lowest responsive bid with a contract price in the amount of \$286,754.00.

Award Bid #24-18 Hively Avenue Overpass Demolition Contract #5

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Bid #24-18 Hively Avenue Overpass Demolition Contract #5 to John Boettcher Sewer & Excavating who submitted the lowest responsive bid with a contract price of \$186,737.46.

Award Bid #24-19 Hively Avenue Overpass Demolition Contract #6

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Bid #24-19 Hively Avenue Overpass Demolition Contract #6 to John Boettcher Sewer & Excavating who submitted the lowest responsive bid with a contract price of \$83,225.00.

Change Order #1 & Final Bid #24-01 2024 ADA Funded Curb Ramp

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Change Order #1 and Final for Bid #24-01, ADA-funded Curb Ramp Replacement, increasing the contract value by \$7,199.50, resulting in a contract price of \$217,399.50

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Award Bid #24-20 Bristol Street Widening Project-Clearing

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Bid #24-20 Bristol Street Widening Project-Clearing, to Homer Tree Service, who submitted the lowest responsive bid, with a contract price in the amount of \$187,480.00.

(B.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II-QA7634 (tabled)

No action was taken.

Service Line Identification Project: Ratify Partial Payment #4 to Premium Services

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board ratified partial payment #4, retainage in the amount of \$19,977.00 to Premium Services from the allocated SRF Loan for work on the Service Line Identification project.

Ratify Partial Payment #16 to C&E Excavating: Oakland Avenue Forcemain

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board ratified partial payment request #16 in the amount of \$532,723.00 to C&E Excavating from SRF Loan WW22162005 and \$65,636.00 from loan DW22232001 for construction on the Oakland Avenue Forcemain- Phase A project.

Ratify Partial Payment Request #36 to American Structurepoint

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board ratified partial payment request #36 of SRF loan WW22162005 in the amount of \$43,730.00 to American Structurepoint from the allocated SRF loan for professional services on the Oakland Avenue: Project C- Harrison Street Design.

Change Order Request #1: CSO 39 Sewer Separation –SA7913/ WA7914

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved Change Order #1 for the CSO 39 Sewer Separation Project for an increase of \$9,811.25, bringing the current Contract price to \$5,161,907.45.

7. New Business

Tyler Technologies AP Automation Contract

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the Tyler Technologies agreement and authorized the City Controller to execute and sign the agreement.

Uniform Conflict of Interest Disclosure- Annie Klehfoth

On motion by Andy Jones, seconded by Rose Rivera and carried 4-0, the Board accepted and placed on file the Uniform Conflict of Interest Disclosure form from Annie Klehfoth.

Microsoft EA Agreement Revision

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board approved the Microsoft EA Agreement and authorized IT Director James Gerald to sign and execute said agreement.

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8. Award Quotes

Award Quote #24-28 Wolf Avenue Drainage Improvements

On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board awarded Quote #24-28 Wolf Avenue Drainage Improvements to Premium Services who submitted the lowest responsive quote with a contract price in the amount of \$89,822.00.

Award Quote #24-29 Bypass Road Drainage Improvements

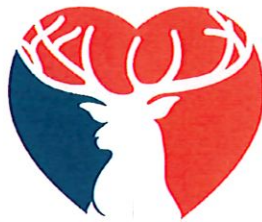
On motion by Rose Rivera, seconded by Andy Jones and carried 4-0, the Board tabled the award of Quote #24-29 to the October 15, 2024 meeting.

9. Adjournment

On motion by Andy Jones, seconded by Ron Davis and carried 4-0, the Board of Works adjourned at 10:49 a.m.

_____ Jamie Arce, Vice-President

Attest: _____ Nancy Wilson, Clerk of the Board



City of Elkhart
Public Works and Utilities

Date Sep 26, 2024
Memo To Board of Public Works
Memo From Laura Kolo, Utility Services Manager *UK*
Subject Wastewater Utility Monthly Report of Operations
for the month of August, 2024

Wastewater MRO Highlights

Parameter	Monthly Avg	Permit Limit
Suspended Solids mg/L	9	30
cBOD5 mg/L	3	25
Phosphorus mg/L	0.84	1.0
Ammonia mg/L	0.06	4.4 (Dec-Apr) 4.2 (May-Nov)
Avg Daily Flow MGD	15.44	Design - 20
Total Monthly Flow MGD	479	Report

Incident Reports Filed

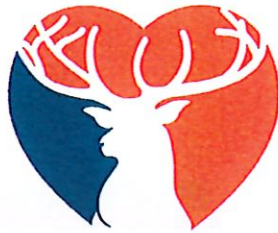
Date	Location	Volume (gal)	Cause
8/19/2024	933 Fieldhouse	unknown	grease and rags

Wet Weather Overflows

Number of Events	Total Overflow Volume (MG)
4	6.5742

Phosphorus sliding scale percent removal violation:

Discharge limit given raw influent monthly average of 3.12 mg/L is 75%, our removal was 73.2%.



City of Elkhart
Public Works and Utilities

Memo To Board of Works
 Memo From Laura Kolo, Utility Services Manager *W*
 Date Oct 07, 2024
 Subject Water Utility Monthly Report of Operations
 for the month of September, 2024

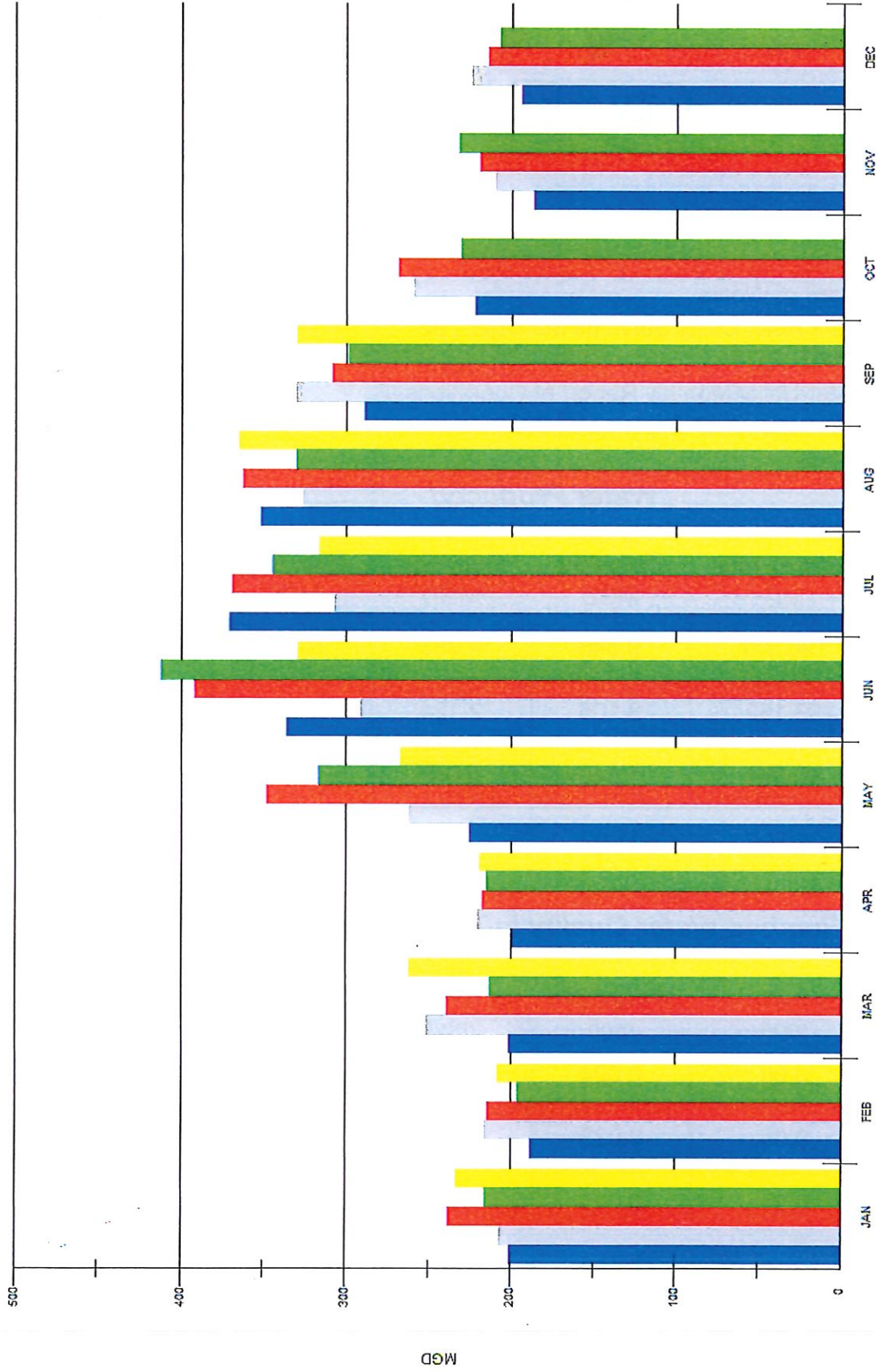
Water Produced

	Monthly Total MG	Daily Avg MGD	Daily Min MGD	Daily Max MGD
North Main	196.377	6.546	4.983	8.198
Northwest	93.152	3.105	2.124	3.818
South	40.394	1.346	0.848	2.054
System	329.92	11.00		

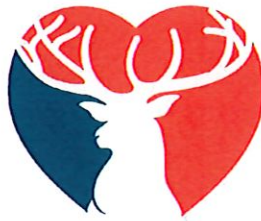
Finished Water Quality Information (Monthly Averages)

	Iron mg/l	Manganese mg/l	Fluoride mg/l	Chlorine mg/l	Orthophosphate mg/l
North Main	0.06	0.024	1.03	1.36	1.59
Northwest	0.05	0.023	1.03	1.42	1.02
South	0.04	0.045	0.96	1.59	1.00
Secondary Std / Target	0.30	0.050	0.8 - 1.0	0.9 - 1.5	0.5 - 1.0

Monthly Water Production Comparison



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2020	201.13	188.69	201.44	199.21	225.63	336.17	370.93	351.87	289.17	222.62	187.43	194.60
2021	206.82	215.47	251.38	220.28	261.41	290.86	306.88	325.29	329.96	258.98	210.32	224.10
2022	238.16	214.80	239.40	217.71	348.16	392.38	369.59	362.66	308.75	269.06	219.61	214.64
2023	215.56	196.63	213.12	215.02	316.61	412.55	344.29	330.06	298.47	230.88	232.45	207.42
2024	233.36	208.78	262.14	219.75	267.32	329.41	316.17	365.23	329.92			



City of Elkhart
Public Works and Utilities

Memo

To: Board of Public Works
From: Timothy D. Reecer; Assistant Director of Public Works *TR*
Date: October 10, 2024
Re: Approval of the revised 2024 Transfer Schedule

In August 6, 2024 the Board approved the first revision to the 2024 Transfer Schedule that was established to facilitate the transfers for the Water, Wastewater, and Stormwater utilities from the respective revenue accounts to their respective expense accounts.

Since the initial approval of the revised schedule, additional appropriations have been approved by the Board to accommodate deficits in the approved 2024 budget requiring the Transfer Schedule to be modified to reflect these additional funds.

**It is requested that the Board of Public Works:
Approve the revised 2024 Transfer Schedule for Water, Wastewater, and Stormwater funds.**

**City of Elkhart
Monthly Transfers
FY 2024**

6106 Water Revenue

6101-5-731-6750000

Month	Operating Transfer-Out To 6101	Water Depreciation (Capital) Transfer-Out To 6103	Main Extension Transfer-Out To 6105	Tank Maintenance Transfer-Out To 6108	Pilot Transfer-Out To 1101 from 6101	Admin Fees Transfer-Out To 1101 from 6101
Jan	550,000	20,000	-	-	-	166,644.00
Feb	550,000	20,000	-	-	-	-
Mar	550,000	20,000	-	-	-	-
Apr	550,000	20,000	-	-	-	-
May	550,000	20,000	-	-	-	-
Jun	550,000	20,000	-	-	-	-
Jul	550,000	20,000	-	-	-	-
Aug	550,000	20,000	-	-	-	-
Sep	550,000	20,000	-	-	-	-
Oct	550,000	20,000	-	-	-	-
Nov	550,000	20,000	-	-	-	-
Dec	550,000	20,000	-	-	-	-
Annual Total	6,500,000	240,000	-	-	-	166,644

Above Total	6,500,000	240,000	-	-	-	-
1/1/2024	1,785,834	1,457,177	695,359	1,135,925		
2023 Encumbered	(359,322)	(752,682)	(635,000)	(530,100)		
2024 Budget	(7,545,363)	(934,000)	-	(550,000)		
2024 Appropriations	(98,300)	-	-	-		
12/31/24 est Bal	382,848	10,494	60,359	55,825		

Water Revenue Fund 6106	
As of 1/1/2024	
\$ 1,015,989.35	Current Balance
\$ 7,800,767.00	Estimated 2024 Revenue
\$ (6,840,000.00)	Remaining 2024 Transfers
\$ 1,976,756.35	

**City of Elkhart
Monthly Transfers
FY 2024**

6206 Wastewater Revenue

6201-5-811-7750000

Month	Transfer-Out To 6201	Transfer-Out To 6203	Transfer-Out To 6204	Transfer-Out To 6207	Bond and Interest Transfer-Out To 6202	Bond Reserve Transfer-Out To 6208	Pilot Transfer-Out To 1101	Admin Fees Transfer-Out To 1101
Jan	755,000	226,000	-	75,000	316,242	39,609	-	208,305.00
Feb	755,000	226,000	-	75,000	316,242	39,609	-	-
Mar	755,000	226,000	-	75,000	316,242	39,609	-	-
Apr	755,000	226,000	-	75,000	382,052	39,609	-	-
May	755,000	226,000	-	75,000	382,052	39,609	-	-
Jun	755,000	226,000	-	75,000	382,052	39,609	-	-
Jul	755,000	226,000	-	75,000	382,052	39,609	-	-
Aug	755,000	253,000	-	75,000	382,052	39,609	-	-
Sep	755,000	310,000	-	75,000	382,066	39,609	-	-
Oct	755,000	310,000	-	75,000	382,066	39,609	-	-
Nov	755,000	310,000	-	75,000	382,066	39,609	-	-
Dec	755,000	310,000	-	75,000	382,066	39,609	-	-
Annual Total	9,060,000	3,018,000	-	900,000	4,387,236	475,308	-	208,305

Above Total	9,060,000.00	3,018,000	-	900,000	4,387,236	475,308
1/1/2024 Bal	2,687,009	5,845,279	1,011,334	4,485		
2023 Encumbered	(263,797)	(5,616,507)	(324,003)	-		
2024 Budget	(9,596,450)	(1,577,820)	-	(420,000)		
2024 Appropriations	(8,000)	(1,650,981)	-	-		
12/31/24 est Bal	1,878,762	17,972	687,331	484,485		

*Operating fund must remain at 2 months projected disbursements

Wastewater Revenue Fund 6206	
As of 1/1/2024	
\$ 2,222,636.03	Current Balance
\$ 16,045,855.00	Estimated 2024 Revenue
\$ (17,840,544.00)	Remaining 2024 Transfers
\$ 427,947.03	

Operating Fund Reserve	
2024 Budget	9,868,247
2 Months	16.67%
Positive var.	1,644,708
12/31/24 est Bal	234,054
	1,878,762

**City of Elkhart
Monthly Transfers
FY 2024**

6501 Stormwater Revenue		6501-5-931-7750000	
		Admin Fees	
Month	To 6501	Transfer-Out To 6504	Transfer-Out To 1101
Jan	-	-	41,661.00
Feb	-	-	-
Mar	-	-	-
Apr	-	-	-
May	-	-	-
Jun	-	-	-
Jul	-	-	-
Aug	-	-	-
Sep	-	-	-
Oct	-	-	-
Nov	-	-	-
Dec	-	-	-
Annual Total	-	-	41,661

Above Total	-	-
01/01/2024 Bal	1,343,321	921,280
2023 Encumbered	(37,535)	(302,282)
2024 Budget	(967,378)	-
12/31/24 est Bal	338,408	618,997

Stormwater Revenue Fund 6506	
As of 1/1/2024	
\$ 1,343,321.00	Current Balance
\$ 1,011,850.00	Estimated 2024 Revenue
\$ -	Remaining 2024 Transfers
\$ 2,355,171.00	

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services



Public Works &
Utilities Department


Administration, Engineering
& Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

MEMORANDUM

TO: Board of Public Works

FROM: Maggie Marnocha 

DATE: 10/10/24

RE: Sewer Bond Counsel Engagement Letter

Attached please find an engagement letter with regard to the City's retention of Barnes & Thornburg as counsel for 2024 Sewage Works Bonds. This engagement letter has been reviewed by the Legal Department and Corporation Counsel has approved the engagement of this law firm.

Please approve the engagement letter to retain Barnes and Thornburg as counsel for the 2024 Sewage Works Bonds, and authorize Corporation Counsel to sign on the Board's behalf.

BARNES & THORNBURG LLP

201 S. Main Street, Suite 400
South Bend, IN 46601-2130 U.S.A.
(574) 233-1171
Fax (574) 237-1125

www.btlaw.com

Randolph R. Rompola
(574) 237-1244
randy.rompola@btlaw.com

October 8, 2024

John M. Espar, Corporation Counsel
CITY OF ELKHART, INDIANA
229 S. Second Street
Elkhart, Indiana 46516

Re: City of Elkhart, Indiana, Sewage Works Revenue Bonds, Series 2024

Dear John:

The purpose of this letter is to set the terms and conditions under which our Firm will serve as bond counsel to the City of Elkhart, Indiana (the "City") in connection with the proposed issuance of the above-referenced sewage works revenue bonds of the City (the "Bonds") for the purpose of funding improvements to the City's sewage collection system and the payment of the costs of issuance of the Bonds (the "Transaction"). It is our understanding that Baker Tilly Municipal Advisors, LLC will be serving as municipal advisor for the City in the Transaction (the "Municipal Advisor").

I am enclosing our Standard Terms of Engagement for Legal Services (2024), setting forth the standard terms upon which our Firm accepts client engagements. Our engagement by you in this matter will be governed by these standard terms to the extent not expressly modified by this letter. In particular, by signing this letter, you agree that we may represent other clients in certain matters adverse to you as described in the Standard Terms of Engagement for Legal Services under the caption "**Waiver of Certain Potential Conflicts of Interest.**"

Identity of Client

It is important from the outset of our relationship that we have a clear understanding as to the identity of our client. Our only client in this matter is the City, and not any of its agencies, instrumentalities, boards, commissions, officials, officers, employees or other affiliates. You have agreed that our representation of the City in this matter will not give rise to any attorney-client relationship between our Firm and any agency, instrumentality, board, commission, official, officer, employee or other affiliate of the City. You have also agreed that, during the course of our representation of the City in this matter, our Firm will not be given any confidential information regarding any agency, instrumentality, board, commission, official, officer, employee or other affiliate of the City. Accordingly, our Firm's representation of the City in this matter will not give rise to any conflict of interest in the event other clients of our Firm are adverse to any

agency, instrumentality, board, commission, official, officer, employee or other affiliate of the City.

Services

Bond counsel is engaged to render an objective legal opinion with respect to the authorization and issuance of bonds. As bond counsel in the Transaction, we advocate the interests of the City and not any other party to the Transaction. We also assume that the other parties to the Transaction, including, but not limited to any underwriter (the "Underwriter"), will retain such counsel as they deem necessary and appropriate to represent their interests in this Transaction.

As bond counsel, we will provide the following services as and when requested by the City:

1. We will assist the City and the Municipal Advisor in structuring the Transaction, preparing a detailed timetable establishing the duties and obligations of each party to the Transaction and assisting with the representatives of the City in understanding all of the City's financial options for the Transaction.
2. We will prepare the documentation for the Transaction, including all legal notices, ordinances, and resolutions of the Board of Public Works and the Common Council of the City, and related affidavits and certificates.
3. We will assist City officials in preparing for and attending required meetings, including the required public hearings.
4. We will prepare the documentation for the financing, including the necessary resolutions, ordinances and internal working group agenda, all legal notices and related affidavits and certificates.
5. We will attend any meetings, as requested by the City.
6. We will assist the Municipal Advisor in preparing or reviewing certain sections of the official statement or offering circular that may be used to market the Bonds, specifically, the portions that describe the Bonds and other legal documents, federal tax matters, and our legal opinion.
7. We will assist the City in its continuing disclosure undertaking, if necessary, under federal securities law to allow an underwriter to purchase the Bonds.
8. We will prepare or assist in preparing for and participate in any meetings with any rating agency, municipal bond insurer or other credit provider concerning the Transaction.
9. We will coordinate the scheduling and supervise the closing of the Transaction, including preparation of required closing documents.

Subject to the completion of proceedings to our satisfaction with respect to the Bonds, we will render our opinion to the effect that: (i) the Bonds are the valid and binding obligation of the issuer of the Bonds, enforceable against such issuer in accordance with their terms, and (ii) the interest on the Bonds is excludable from gross income for federal income tax purposes and is exempt from taxation in the State of Indiana (all subject to certain limitations which will be expressed in the opinion).

The opinion for the Bonds will be executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us, without undertaking to verify the same by independent investigation.

Upon delivery of the opinion for the Bonds, our responsibilities as bond counsel will be concluded with respect to the Transaction. Specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide continuing advice to the City or any other party concerning any actions necessary to ensure that interest on the Bonds will continue to be excludable from gross income for federal income tax purposes.

As bond counsel, we will not provide the following services in connection with the Transaction:

1. We will not review the financial condition of the City, the feasibility of the projects to be financed with the proceeds of the Bonds or the adequacy of the security provided to owners of the Bonds, and we will express no opinion relating thereto.
2. Except as specifically set forth above, we will not assume or undertake responsibility for the preparation of an official statement or any other disclosure document with respect to the Bonds, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document.
3. We will not provide any other services not specifically set forth above.

Although I will be the lawyer responsible for this matter, I may assign portions of the work to be done to other Firm lawyers. In an effort to effect greater efficiencies and to reduce total fees, I may also ask one or more of our paralegals to assist in this matter as well in the areas of (1) filing certain documents, such as the UCC filing statements, with certain state and local agencies and (2) compiling the executed documents for the transcript.

Municipal Advisor Matters

In connection with the Transaction, it is our understanding that the Municipal Advisor is an independent registered municipal advisor, and the Municipal Advisor will be the entity to whom

the City will primarily look for providing financial advice on the Transaction. In addition, while the Securities and Exchange Commission has recognized that bond counsel services may involve a financial advice component, we (a) provide only the legal services set forth above, (b) do not represent ourselves as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, and (c) are not subject to the fiduciary duty imposed on independent registered municipal advisors by the United States Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Fees

Based upon: (i) our understanding of the terms and structure of the Transaction and the assumptions set forth in this letter, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the remainder of the Transaction, (iv) the responsibilities we assume, and (v) the then current structure of the Transaction, our fee as bond counsel will not exceed \$50,000. In addition to our fixed fee, we anticipate incurring expenses in the transaction (i.e., in connection with any publication of the required notices of public and the preparation of the bond transcript), all of which will be charged to the City. Our fee and expenses are usually paid shortly after the Closing out of the proceeds of the Bonds, and we customarily do not submit any statement until shortly after the Closing unless there is a substantial delay in completing the financing.

E-Verify Participation

In connection with this engagement, we agree that Barnes & Thornburg LLP is enrolled in and will verify the work eligibility status of all newly hired employees through the Federal E-Verify program (unless and until the E-Verify program no longer exists). This letter confirms that, upon request, Barnes & Thornburg LLP will sign and provide to you an affidavit stating that it does not knowingly employ an unauthorized alien.

Conclusion

If you agree to our service as bond counsel in the Transaction upon the terms set forth herein and acknowledge that the statements made in the heading "Municipal Advisor Matters" are accurate and true to your knowledge, please indicate your acknowledgement and agreement on behalf of the City by executing the enclosed copy of this letter in the space provided below and return the executed copy to me.

You may terminate our engagement as bond counsel at any time simply by notifying us. We may terminate our engagement for nonpayment of our fees and other charges and where we are required or permitted to do so by the Rules of Professional Conduct after giving you reasonable notice and allowing time for you to engage successor counsel, if necessary.

John M. Espar, Corporation Counsel
CITY OF ELKHART, INDIANA
October 8, 2024
Page 5

We ask you to acknowledge that, in reviewing and executing this letter, you have not relied on any advice provided by our Firm but instead have acted solely in reliance upon the advice of other legal counsel.

We are pleased to have this opportunity to be of service to you.

Sincerely yours,

BARNES & THORNBURG LLP



Randolph R. Rompola

RRR/bej
Enclosure
cc: Tory S. Irwin, P.E.

AGREED TO AND ACCEPTED:

CITY OF ELKHART, INDIANA

By: _____

Printed: _____

Title: _____

DMS 41768325

BARNES & THORNBURG LLP

BARNES & THORNBURG LLP

TERMS OF ENGAGEMENT FOR LEGAL SERVICES

The following terms are an integral part of our agreement with you and, unless modified expressly in writing by mutual agreement, govern all of our engagements for you. We ask that you review these terms carefully and write us promptly if you have any questions. We suggest that you retain this document in your file together with our engagement letter(s).

Our Client

The person or entity that we represent is the person or entity identified as our client in our engagement letter and does not include any affiliates or relatives of such person or entity. This means that, unless we specifically agree otherwise, we do not have any lawyer-client relationship with:

- Your subsidiaries, parent company or other business entities in a commonly controlled group, without regard to any internal arrangements for the management of affairs between our client and any such affiliate, or any operational commonality among such entities such as consolidated administrative services, common in-house legal functions, or any overlapping officers, directorships or ownership;
- Your owners, shareholders, members, managers, partners, directors, officers, employees, representatives or agents;
- The beneficiaries of a trust administered by a trustee who is our client;
- Your spouse, partner, children or other family members.

Therefore, our representation of you will neither limit nor impair our ability to represent another client with interests adverse to any such affiliated entity, affiliated person or family member without obtaining your consent.

The Scope of Our Work

Our practice with new clients is to describe the scope of our initial engagement in the letter we send accepting employment. With existing and recurrent clients, we may or may not provide a description of new matters depending on the circumstances. In any engagement we limit our services to those you ask us to perform and those we deem reasonably necessary to accomplish the requested services. If you ask us to limit our work to only one or certain aspects of a transaction, matter or case, we will address only what you request, even if full legal representation on such matter would normally be more involved or extensive.

Except to the extent you expressly request in writing that we advise or assist you concerning the following

matters, you agree to take full responsibility yourself for:

- Ascertaining or obtaining insurance coverage that you may have for any claim, potential liability, attorneys' fees or expenses and promptly notifying your carrier(s) as required to invoke any coverage;
- Tax implications of any transaction, settlement or course of action;
- Data security or privacy compliance practices;
- Compliance by you, associated persons or beneficial owners with the Corporate Transparency Act and reporting thereunder.

The outcome of legal matters and proceedings cannot be predicted with certainty. If we offer an assessment of the likely outcome of a matter, that is merely our opinion based on our understanding of the facts and the law at the time. We cannot guarantee results.

Who Will Provide the Services

Each client matter handled by our Firm is assigned to a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Under the supervision of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the Firm.

To help us serve our clients, we employ law clerks (often law students), paralegals, lobbyists, investigators, patent agents, foreign lawyers, research librarians, environmental analysts, translators, draftsmen, ediscovery/litigation support personnel and other technical (non-legal) specialists. Such personnel possess training, experience and skills that enable them to assist our lawyers in discharging their responsibilities, but they are not lawyers. Accordingly, you should not construe or rely upon any communications you receive from such personnel as legal advice.

How Fees Will Be Set

The basis on which our fees will be determined is described in the pertinent engagement letter. Usually the time and effort required are the primary factors on which our fees are based. We will record the time we devote to your work (typically in increments of 1/10th of an hour). This time may include conferences (both in person and over the telephone), negotiations, court appearances, factual and legal research and analysis, document preparation and revision, required travel and other related matters. Peer collaboration and review is an important element of providing quality services, and

so our time records will often include discussions between lawyers within our Firm concerning the matters in which we have been engaged. The hourly rates we charge for our lawyers and service providers are based on their relative experience, skills, reputation, the type of engagement, market factors and similar considerations. We review our hourly rates at least annually and adjust them periodically. Our statements will reflect the applicable rates in effect at the date of the statement even if they exceed the applicable hourly rates in effect on the date the services were performed.

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter on which our fees are hourly or otherwise variable. But fees and costs are often unpredictable. Accordingly, except in those engagements in which we specifically agree in writing to a flat or maximum fee, we make no commitment concerning the maximum fees and costs that will be necessary to resolve or complete the matter, even when we have provided an estimate. The ultimate cost is invariably more or less than the amount estimated. In addition, your obligation to pay the Firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

In instances in which we offer and you accept a flat fee, that flat fee covers only the services within the scope of work specified in the flat fee proposal. Any additional work will be billed at our standard hourly rates unless otherwise agreed in writing.

Other Charges

In addition to our fees we will likely bill you for various charges that we itemize separately. These may include charges or fees for:

- messengers and couriers
- photocopying, desktop publishing or printing
- data storage
- ediscovery data hosting services
- litigation support technology services
- computerized research
- certain clerical services
- filing fees (including electronic filings)
- court reporters
- witnesses
- outside experts and consultants, including for example accountants, appraisers and other legal counsel
- travel
- phone and Web conferencing

Certain of these other charges may represent more than our out-of-pocket cost to contribute toward covering indirect expenses we incur. For example, we establish and adjust from time to time fixed charges for certain services of our managing clerk's office (such as

filings with courts or public agencies), notarial services (including remote notary services), and other services. Such charges reflect the fair value of such services. We incur outside charges on your behalf as your agent. You agree to pay these charges when due. We may require that you pay significant expenses directly or in advance. In some instances when we make advance payment on your behalf as a convenience, we may be entitled to incentives, rebates or rewards from our banks or credit card companies for using their services. Such arrangements lower our overhead and administrative expense and are not passed along to clients.

In some engagements, it is necessary to engage legal counsel in a foreign country. When we engage counsel in a foreign country on your behalf, we are not guarantors or indemnitors for such foreign counsel's work, nor are we in a position to review the adequacy of their legal work or translation of documents. We engage foreign counsel to assist you specifically because we are not licensed or familiar with the applicable legal system and therefore are not in a position to provide those legal services or judge their adequacy.

Terms of Payment

We will bill you on a regular basis, typically monthly, for both fees and other charges. Our fees and charges are due when you receive our statement. Also, if you do not pay us within 30 days of our statement or as otherwise agreed, you agree that we may discontinue providing services immediately and withdraw from representing you after providing reasonable notice of our intention to do so. You also agree that until we are paid in full on all of your legal matters, and except to the extent otherwise prohibited or limited by law, we shall have a lien on all papers and files in our possession related to any of the matters in which we have represented you, and any property recovered or obtained as a result of our work on your behalf. To the extent not prohibited by applicable law or court rule, you agree to pay us finance charges at the rate of six percent (6%) per annum on all fees and charges that you fail to pay within 30 days of our invoice(s) (or, if applicable, a later past due date agreed by us in writing). You agree to pay the costs of collecting your debt to us, including court costs, filing fees and reasonable attorneys' fees.

Security Retainers (Advance Deposits)

New clients of our Firm will ordinarily be asked to deposit a security retainer (an advance deposit) with the Firm. The Firm may also in its sole discretion at any time during our representation require existing clients to provide a security retainer based, for example, on past payment history, creditworthiness, increases in the scope or intensity of our work, or other factors that

may cause the Firm to conclude it is appropriate to do so.

If we require a security retainer from you, we will charge or draw against it for fees and other charges as our legal services are provided. We will issue regular statements to you describing the fees and other charges which have been deducted and the amount which must be paid to replenish the retainer to the agreed level. If the security retainer is insufficient to cover fees and other charges anticipated in the current and following month, or if the scope or intensity of our work is anticipated to increase, we may require that the balance be increased. At the conclusion of our legal representation, once we are fully paid, or at such time as the security retainer is no longer necessary or may appropriately be reduced, the remaining balance, if any, or a portion thereof, will be returned to you.

Funds Held in Our Trust Account

Any security retainer we receive from you will be held in our trust account until it is charged for fees and other charges or is returned to you. No interest is paid on amounts held by us in our trust account. In particular, court rules in jurisdictions in which we practice require that interest earned on pooled client trust accounts is payable to a charitable foundation established in accordance with the court's rule. While your security retainer is held by us in our trust account, it remains your property. You authorize us to apply it to any fees, expenses, or other charges that you owe us.

Other deposits that we receive to cover specific items, and any funds that we recover or receive in representing you, will also be held by us in our general trust account (without interest) and disbursed as provided in our agreement with you, or at your direction or as required by law, and you will be notified from time to time of the amounts applied or withdrawn. You grant us a security interest in any funds we receive and hold in trust for you (including any security retainer) to secure payment of any outstanding fees or other charges you owe us. Any amount remaining after disbursement or application to your account will be returned to you.

Identifying Conflicts of Interest

We maintain an electronic database relating to our client engagements which we use in evaluating and avoiding conflicts of interest. The Rules of Professional Conduct governing lawyers generally prohibit a lawyer or law firm from representing one client in a matter directly adverse to another client unless the affected clients provide informed consent confirmed in writing. To allow us to identify and address potential conflict issues, you represent to us that you have identified for us all persons and entities that are or may become involved in the matter in which we are being engaged,

including all persons and entities affiliated with you whose interests could be affected. You also agree that you will promptly notify us if you become aware of any other persons or entities that are or may become involved in the matter.

Waiver of Certain Potential Conflicts of Interest

As you are aware, we are a large law firm with multiple practices in multiple offices throughout the United States, and we represent many different clients in many different industries and countries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on your representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to a matter in which we represent you. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter adverse to you on behalf of another client in circumstances in which any of your confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any representation adverse to you that we might accept from another client.

In return for our agreement to represent you in this matter and future matters (if any), you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to any matter we undertake on your behalf now or in the future. Such unrelated matters may include, but are not limited to:

- a. Agreements, business contracts, licenses, mergers and acquisitions, joint ventures, loans and financings, and securities offerings, including contract negotiations with you in which we represent another party, and preparation for other clients of contracts or other legal documents to which you will be a party or that may affect your rights or obligations, as well as related negotiations, subsequent amendments or disputes;
- b. Advice regarding the existence, scope or validity of your rights in real, personal or intellectual property and/or concerning the interpretation and application of provisions of contracts or other legal documents to which you may be party or that may affect your legal rights or obligations;
- c. Advice and representation of our other clients regarding the existence or potential existence of legal claims that our other clients may have against you or that you may have against them, in disputes with you of any nature, or in claims our other clients may assert against you or you against them including litigation in a court, agency or other tribunal, and in arbitration or mediation.

- d. Bankruptcies, reorganizations, receiverships or insolvencies (including proceedings under the US Bankruptcy Code or state insolvency proceedings); non-judicial debt restructurings, including representation of creditors, liquidators or other insolvency professionals in domestic or international matters in which you are a creditor, debtor or other party in interest;
- e. Patents, copyrights, trademarks, trade secrets or other intellectual property matters; including advice to other clients regarding the existence, scope or validity of your rights in intellectual property and assistance in securing or protecting other clients' intellectual property in ways that may limit or constrain your rights;
- f. Real estate, zoning and environmental matters in which your interests in real property may be involved or adversely affected, or in which you may face liability for environmental contamination;
- g. Representation and advocacy with respect to legislative issues, policy issues, or regulatory issues, including rulemakings, administrative proceedings and enforcement proceedings; and,
- h. Third-party discovery requests (including subpoenas) to be served on you, and discovery requests (including subpoenas) that have been served by you on others.

If at a later time you withdraw or modify this advance waiver in any respect, you agree and consent to our withdrawal from our representation of you pursuant to these Terms of Engagement and the applicable Rules of Professional Conduct.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. For our part, we commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary. Of course, the foregoing consent does not affect our obligation to protect confidential information you share with us in connection with our representation of you and not to use such information to your detriment.

Our Non-Legal Affiliates

As further described below, you should be aware that our Firm has ownership interests in non-legal services businesses (the "non-legal affiliates"), and the services of such non-legal affiliates may be provided by Firm

personnel or others. Such non-legal affiliates may provide non-legal services to a party that is an adversary of yours in an unrelated matter in which the Firm is representing you. Such a party contracting with a non-legal affiliate is not a client of the Firm, but you should consider that our financial interest in the non-legal affiliate services to such party could give rise to a conflict of interest because of the potential influence on our independent judgment in our legal representation of you. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate providing services to a party adverse to you in a legal representation.

Should you engage a non-legal affiliate for non-legal services, that affiliate will provide its own contract for services to you. Such services are not governed by these Terms of Engagement. No lawyer-client relationship will exist (or could exist) between such entity and you, even if services by such non-legal affiliate are provided by personnel who are employed by or partners of our Firm. You should seek independent counsel to advise you on your contract with such non-legal affiliate. Because of our ownership interest, we will not represent you in entering into that contract. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate you engage for non-legal services.

Electronic Communications and Cloud Storage

We caution you that, to maintain the confidentiality and privilege of electronically stored or transmitted information and communications related to your legal matters, you should not use a computer, other electronic device, network or Internet address that is owned, controlled, or on which your communications may be accessed, by anyone other than you. This warning includes electronic venues provided by a hotel, a library, publicly available Internet, or even a shared home computer or employer-provided technology if you are engaging us as an individual rather than on behalf of your employer. Any device you use to communicate with us should be password protected and not accessible by any third party. You agree to let us know if you are sending any files or documents that contain sensitive or personal information so we can arrange to receive such information via secure file transfer. Additional documents such as a Data Processing Agreement ("DPA") may be required before we can receive or share such information.

You agree that both you and our Firm may use electronic devices and Internet services that are managed by third parties and which allow us to communicate with each other and share documents and information notwithstanding some risk that such communications and documents may be intercepted or

accessed by and disclosed to unauthorized parties. We will also store electronic data relating to our representation of you remotely with cloud-based data storage services managed by third parties. You understand that, while reasonable efforts may be taken to prevent inadvertent or unauthorized disclosure of, or access to, information relating to our representation of you, we cannot guarantee that no unauthorized access will occur. You agree that the benefits of using these technologies outweigh the risks of unauthorized or inadvertent disclosure and that the Firm is not responsible for the unauthorized access of information sent via these services. Our use of such technology may include unencrypted email, messaging, mobile phones, voice over Internet, electronic data/document websites or storage or transfer services, video conferencing, and other technology in which your documents and information are transmitted, stored or processed using off-premises or cloud-based services managed by third parties.

Use of Artificial Intelligence

Artificial Intelligence ("AI") describes computer technology with varied abilities to analyze and generate data to find patterns, reach conclusions and predict future behavior, or to create text or images based on data and inputs provided. We may employ AI or tools that incorporate AI including to increase efficiencies and reduce costs when performing certain legal and non-legal tasks. The Firm has a protocol regarding any use of AI. You agree that we may utilize AI in connection with our representation of you consistent with Firm protocol and the Rules of Professional Conduct.

Privacy Notice and Data Security

During the course of this engagement, the Firm may collect and process personal information relating to the matters in which we are representing you. You agree you have all legal rights necessary to provide any personal information you provide to us for use and processing consistent with the terms of our engagement and agree to execute a DPA and similar compliance agreements with the Firm where required. You agree to provide only the minimum amount of personal information necessary for us to perform our legal services and to take measures to protect and secure all sensitive, confidential, and personal information. Our collection and processing of personal information is further governed by the firm's Privacy Notice at btlaw.com/privacy-policy, as well as applicable privacy and data protection laws, regulations, and codes of professional conduct.

You agree you are responsible for providing all physical, technical, administrative, and organizational safeguards necessary to secure and protect any information under your control relating to our

engagement and are responsible for the breach of any security of information caused via your or your affiliates' or third party service providers' systems. You agree to immediately and without undue delay report and take steps to mitigate any actual or attempted security incident or breach of security of data related to or which could affect you, the Firm, or our representation of you in any manner.

Certain laws may require your consent before we may send you certain electronic communications. These electronic communications include, among others, announcements, briefings on legal developments, and invitations to seminars and other events. In connection with your engaging us to render legal services, you consent to our sending you these electronic communications. You may withdraw your consent (or update your profile information) at any time by using the unsubscribe link in a communication or by notifying us at privacy@btlaw.com.

Certain Client Responsibilities

You agree to cooperate fully with us, to provide promptly and candidly all information (including documents and electronic data) known or available to you that is relevant to our representation. If your engagement involves actual or potential claims or litigation, you have an obligation to preserve potentially relevant information, including electronic data and communications. You must ensure automatic deletions or record retention policies are suspended as necessary to ensure this information is preserved. If you have questions, you should discuss these issues with us at the outset of our engagement involving any claim or litigation or as soon as a dispute or litigation related to any matter on which you have engaged us becomes reasonably foreseeable. You also agree to respond promptly to our requests for direction and other communications and to attend meetings and court proceedings at our request.

Use of Publicly Available Information

We will protect nonpublic, confidential information related to your representation in accordance with our professional obligations. To best serve all of our clients, however, it is helpful for us to be able to describe our experiences in the practice of law to assist others in choosing counsel and for other business reasons. Accordingly, unless you specifically instruct us to the contrary, you authorize us to truthfully disclose or describe to others information related to our representation of you that is otherwise publicly available (e.g., in public filings, government publications, press releases, on the Internet).

Consultations with Firm Legal Counsel

In part because of the number of clients we represent and the complexity of the matters in which we are engaged, issues may arise from time to time that involve questions as to our duties as lawyers, including under the professional conduct rules. Such questions might include, for example, issues raised because of a disagreement between us and a client over the handling of a client's matter. Under normal circumstances when such issues arise, we would seek advice from our in-house legal counsel who have deep experience in such matters. We consider such consultations to be attorney-client privileged communications between firm personnel and legal counsel for the firm. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is helpful to consult with our firm counsel, we may do so on the understanding that you agree that these communications are privileged and confidential to the firm.

Termination and Withdrawal

You may terminate our representation of you at any time without cause simply by notifying us. Your termination of our services will not affect your responsibility for payment of fees and other charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the Rules of Professional Conduct that require or allow us to withdraw from representing a client in various circumstances. These may include any circumstances in which withdrawal can be accomplished without material adverse effect on the interests of the client. Among other circumstances that may give rise to withdrawal, subject to the Rules of Professional Conduct, we may withdraw from representing you if you do not fulfill your obligations to us, including failure to pay our fees and charges, or if we determine that our relationship has become impaired, such as by your failure to follow our advice relating to a representation.

Unless previously terminated, our representation of you in any matter terminates upon our completion of the services you retained us to perform. Generally, this will be indicated by your receipt of our final statement for services rendered on that matter. In general, our representation shall be deemed completed if there is no billable work for a period of six months and there are no ongoing appeals or proceedings.

Except where applicable laws require otherwise, you agree that the following provisions will govern the way we handle materials and records related to our representation of you. We typically store the materials we retain in electronic form. We do not keep our copies of such materials and records indefinitely. We will

discard or delete the materials we retain related to your representation when we believe it is reasonable to do so, without further notice to you. Accordingly, you are strongly encouraged to keep your own files related to our representation, especially important legal documents. So that you can do so, we will provide you with copies of materials we have retained whenever you request them during our representation. Even after your matter is completed, on request we will provide you with copies in electronic form of any materials we still have to which you are entitled. You agree to pay our charges for retrieving and copying materials for you, and any other fees and charges that remain outstanding in connection with our representation of you. You hereby agree that we may require such payment before delivering such materials, to the extent allowed by applicable Rules of Professional Conduct. You authorize us to follow these procedures without providing you further notices or seeking further instructions in the future.

Our representation of you in any matter is limited to that specific matter, and will not give rise to any ongoing attorney-client relationship. After our representation of you in any matter has ended, we may from time to time represent you in such subsequent matters as you may request. However, we are under no obligation to represent you in any subsequent matters, and nothing herein should be construed to give rise to any attorney-client relationship after our representation has concluded or terminated. If we do undertake to represent you in any subsequent matter, the scope and duration of our representation will be limited to that specific subsequent matter and, unless we expressly establish new terms of engagement with you at that time, the terms of engagement stated in this document and our engagement letter will apply.

If our Firm or any of our lawyers or staff are named as a party, or are subpoenaed or otherwise lawfully compelled to respond or produce evidence or appear in a legal proceeding or deposition relating to our services performed for you (excluding claims for lawyer misconduct or negligence), you agree, even after our representation has terminated, to pay us for our lawyers' and non-lawyers' time and other charges and expenses incurred in connection with our defense or participation in such proceeding, on the same basis that applies to our standard hourly fees and charges in effect at the time.

After our representation of you in any matter has ended, changes may occur in applicable laws or regulations that could have an impact upon your rights and liabilities. Unless you subsequently engage us to provide such advice on the same matter, our Firm has no continuing obligation to advise you with respect to future legal developments.

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services



Public Works &
Utilities Department


Administration, Engineering
& Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

MEMORANDUM

TO: Board of Public Works

FROM: Maggie Marnocha 

DATE: 10/10/24

RE: Water Utility Bond Counsel Engagement Letter

Attached please find an engagement letter with regard to the City's retention of Barnes & Thornburg as counsel for 2024 Water Utility Bonds. This engagement letter has been reviewed by the Legal Department and Corporation Counsel has approved the engagement of this law firm.

Please approve the engagement letter to retain Barnes and Thornburg as counsel for the 2024 Water Utility Bonds, and authorize Corporation Counsel to sign on the Board's behalf.

BARNES & THORNBURG LLP

201 S. Main Street, Suite 400
South Bend, IN 46601-2130 U.S.A.
(574) 233-1171
Fax (574) 237-1125

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Randolph R. Rompola
(574) 237-1244
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October 8, 2024

John M. Espar, Corporation Counsel
CITY OF ELKHART, INDIANA
229 S. Second Street
Elkhart, Indiana 46516

**Re: City of Elkhart, Indiana, Forgivable Waterworks Revenue Bond
Anticipation Notes, Series 2024**

Dear John:

The purpose of this letter is to set the terms and conditions under which our Firm will serve as bond counsel to the City of Elkhart, Indiana (the "City") in connection with the proposed issuance of the above-referenced forgivable waterworks revenue bond anticipation notes of the City (the "BANs") for the purpose of funding lead service line replacement improvements to the City's drinking water system and the payment of the costs of issuance of the BANs (the "Transaction"). It is our understanding that Baker Tilly Municipal Advisors, LLC will be serving as municipal advisor for the City in the Transaction (the "Municipal Advisor").

I am enclosing our Standard Terms of Engagement for Legal Services (2024), setting forth the standard terms upon which our Firm accepts client engagements. Our engagement by you in this matter will be governed by these standard terms to the extent not expressly modified by this letter. In particular, by signing this letter, you agree that we may represent other clients in certain matters adverse to you as described in the Standard Terms of Engagement for Legal Services under the caption "**Waiver of Certain Potential Conflicts of Interest.**"

Identity of Client

In connection with the Transaction, it is our understanding that the Municipal Advisor is an independent registered municipal advisor, and the Municipal Advisor will be the entity to whom the City will primarily look for providing financial advice on the Transaction. In addition, while the Securities and Exchange Commission has recognized that bond counsel services may involve a financial advice component, we (a) provide only the legal services set forth above, (b) do not represent ourselves as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, and (c) are not subject to the fiduciary duty imposed on

independent registered municipal advisors by the United States Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Services

Bond counsel is engaged to render an objective legal opinion with respect to the authorization and issuance of bonds or bond anticipation notes. As bond counsel in the Transaction, we advocate the interests of the City and not any other party to the Transaction. We also assume that the other parties to the Transaction, including, but not limited to any underwriter (the "Underwriter"), will retain such counsel as they deem necessary and appropriate to represent their interests in this Transaction.

As bond counsel, we will provide the following services as and when requested by the City:

1. We will assist the City and the Municipal Advisor in structuring the Transaction, preparing a detailed timetable establishing the duties and obligations of each party to the Transaction and assisting with the representatives of the City in understanding all of the City's financial options for the Transaction.
2. We will prepare the documentation for the Transaction, including all legal notices, ordinances, and resolutions of the Board of Public Works and the Common Council of the City, and related affidavits and certificates.
3. We will assist City officials in preparing for and attending required meetings, including the required public hearings.
4. We will prepare the documentation for the financing, including the necessary resolutions, ordinances and internal working group agenda, all legal notices and related affidavits and certificates.
5. We will attend any meetings, as requested by the City.
6. We will assist the Municipal Advisor in preparing or reviewing certain sections of any offering document that may be used to market the BANs, specifically, the portions that describe the BANs and other legal documents, federal tax matters, and our legal opinion.
7. We will assist the City in its continuing disclosure undertaking, if necessary, under federal securities law to allow an underwriter to purchase the BANs.
8. We will prepare or assist in preparing for and participate in any meetings with any rating agency, municipal bond insurer or other credit provider concerning the Transaction.

9. We will coordinate the scheduling and supervise the closing of the Transaction, including preparation of required closing documents.

Subject to the completion of proceedings to our satisfaction with respect to the Bonds, we will render our opinion to the effect that: (i) the BANs are the valid and binding obligation of the issuer of the Bonds, enforceable against such issuer in accordance with their terms, and (ii) the interest on the Bonds is excludable from gross income for federal income tax purposes (if the BANs are issued on a tax-exempt basis) and is exempt from taxation in the State of Indiana (all subject to certain limitations which will be expressed in the opinion).

The opinion for the BANs will be executed and delivered by us in written form on the date the BANs are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us, without undertaking to verify the same by independent investigation.

Upon delivery of the opinion for the BANs, our responsibilities as bond counsel will be concluded with respect to the Transaction. Specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide continuing advice to the City or any other party concerning any actions necessary to ensure that interest on the BANs will continue to be excludable from gross income for federal income tax purposes.

As bond counsel, we will not provide the following services in connection with the Transaction:

1. We will not review the financial condition of the City, the feasibility of the projects to be financed with the proceeds of the BANs or the adequacy of the security provided to owners of the BANs, and we will express no opinion relating thereto.
2. Except as specifically set forth above, we will not assume or undertake responsibility for the preparation of an official statement or any other disclosure document with respect to the BANs, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document.
3. We will not provide any other services not specifically set forth above.

Although I will be the lawyer responsible for this matter, I may assign portions of the work to be done to other Firm lawyers. In an effort to effect greater efficiencies and to reduce total fees, I may also ask one or more of our paralegals to assist in this matter as well in the areas of (1) filing certain documents, such as the UCC filing statements, with certain state and local agencies and (2) compiling the executed documents for the transcript.

Municipal Advisor Matters

In connection with the Transaction, it is our understanding that the Municipal Advisor is an independent registered municipal advisor, and the Municipal Advisor will be the entity to whom the City will primarily look for providing financial advice on the Transaction. In addition, while the Securities and Exchange Commission has recognized that bond counsel services may involve a financial advice component, we (a) provide only the legal services set forth above, (b) do not represent ourselves as a financial advisor or financial expert regarding the issuance of municipal securities or municipal financial products, and (c) are not subject to the fiduciary duty imposed on independent registered municipal advisors by the United States Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Fees

Based upon: (i) our understanding of the terms and structure of the Transaction and the assumptions set forth in this letter, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the remainder of the Transaction, and (iv) the responsibilities we assume, our fee as bond counsel will not exceed \$36,000. In addition to our fixed fee, we anticipate incurring expenses in the transaction (i.e., in connection with the publication of any required notices and the preparation of the bond transcript), all of which will be charged to the City. Our fee and expenses are usually paid shortly after the Closing out of the proceeds of the Bonds, and we customarily do not submit any statement until shortly after the Closing unless there is a substantial delay in completing the financing.

E-Verify Participation

In connection with this engagement, we agree that Barnes & Thornburg LLP is enrolled in and will verify the work eligibility status of all newly hired employees through the Federal E-Verify program (unless and until the E-Verify program no longer exists). This letter confirms that, upon request, Barnes & Thornburg LLP will sign and provide to you an affidavit stating that it does not knowingly employ an unauthorized alien.

Conclusion

If you agree to our service as bond counsel in the Transaction upon the terms set forth herein and acknowledge that the statements made in the heading "Municipal Advisor Matters" are accurate and true to your knowledge, please indicate your acknowledgement and agreement on behalf of the City by executing the enclosed copy of this letter in the space provided below and return the executed copy to me.

You may terminate our engagement as bond counsel at any time simply by notifying us. We may terminate our engagement for nonpayment of our fees and other charges and where we are required or permitted to do so by the Rules of Professional Conduct after giving you reasonable notice and allowing time for you to engage successor counsel, if necessary.

John M. Espar, Corporation Counsel
CITY OF ELKHART, INDIANA
October 8, 2024
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We ask you to acknowledge that, in reviewing and executing this letter, you have not relied on any advice provided by our Firm but instead have acted solely in reliance upon the advice of other legal counsel.

We are pleased to have this opportunity to be of service to you.

Sincerely yours,

BARNES & THORNBURG LLP


Randolph R. Rompola

RRR/bej
Enclosure
cc: Tory S. Irwin, P.E.

AGREED TO AND ACCEPTED:

CITY OF ELKHART, INDIANA

By: _____

Printed: _____

Title: _____

DMS 44640328.1

BARNES & THORNBURG LLP

BARNES & THORNBURG LLP

TERMS OF ENGAGEMENT FOR LEGAL SERVICES

The following terms are an integral part of our agreement with you and, unless modified expressly in writing by mutual agreement, govern all of our engagements for you. We ask that you review these terms carefully and write us promptly if you have any questions. We suggest that you retain this document in your file together with our engagement letter(s).

Our Client

The person or entity that we represent is the person or entity identified as our client in our engagement letter and does not include any affiliates or relatives of such person or entity. This means that, unless we specifically agree otherwise, we do not have any lawyer-client relationship with:

- Your subsidiaries, parent company or other business entities in a commonly controlled group, without regard to any internal arrangements for the management of affairs between our client and any such affiliate, or any operational commonality among such entities such as consolidated administrative services, common in-house legal functions, or any overlapping officers, directorships or ownership;
- Your owners, shareholders, members, managers, partners, directors, officers, employees, representatives or agents;
- The beneficiaries of a trust administered by a trustee who is our client;
- Your spouse, partner, children or other family members.

Therefore, our representation of you will neither limit nor impair our ability to represent another client with interests adverse to any such affiliated entity, affiliated person or family member without obtaining your consent.

The Scope of Our Work

Our practice with new clients is to describe the scope of our initial engagement in the letter we send accepting employment. With existing and recurrent clients, we may or may not provide a description of new matters depending on the circumstances. In any engagement we limit our services to those you ask us to perform and those we deem reasonably necessary to accomplish the requested services. If you ask us to limit our work to only one or certain aspects of a transaction, matter or case, we will address only what you request, even if full legal representation on such matter would normally be more involved or extensive.

Except to the extent you expressly request in writing that we advise or assist you concerning the following

matters, you agree to take full responsibility yourself for:

- Ascertaining or obtaining insurance coverage that you may have for any claim, potential liability, attorneys' fees or expenses and promptly notifying your carrier(s) as required to invoke any coverage;
- Tax implications of any transaction, settlement or course of action;
- Data security or privacy compliance practices;
- Compliance by you, associated persons or beneficial owners with the Corporate Transparency Act and reporting thereunder.

The outcome of legal matters and proceedings cannot be predicted with certainty. If we offer an assessment of the likely outcome of a matter, that is merely our opinion based on our understanding of the facts and the law at the time. We cannot guarantee results.

Who Will Provide the Services

Each client matter handled by our Firm is assigned to a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Under the supervision of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the Firm.

To help us serve our clients, we employ law clerks (often law students), paralegals, lobbyists, investigators, patent agents, foreign lawyers, research librarians, environmental analysts, translators, draftsmen, ediscovery/litigation support personnel and other technical (non-legal) specialists. Such personnel possess training, experience and skills that enable them to assist our lawyers in discharging their responsibilities, but they are not lawyers. Accordingly, you should not construe or rely upon any communications you receive from such personnel as legal advice.

How Fees Will Be Set

The basis on which our fees will be determined is described in the pertinent engagement letter. Usually the time and effort required are the primary factors on which our fees are based. We will record the time we devote to your work (typically in increments of 1/10th of an hour). This time may include conferences (both in person and over the telephone), negotiations, court appearances, factual and legal research and analysis, document preparation and revision, required travel and other related matters. Peer collaboration and review is an important element of providing quality services, and

so our time records will often include discussions between lawyers within our Firm concerning the matters in which we have been engaged. The hourly rates we charge for our lawyers and service providers are based on their relative experience, skills, reputation, the type of engagement, market factors and similar considerations. We review our hourly rates at least annually and adjust them periodically. Our statements will reflect the applicable rates in effect at the date of the statement even if they exceed the applicable hourly rates in effect on the date the services were performed.

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter on which our fees are hourly or otherwise variable. But fees and costs are often unpredictable. Accordingly, except in those engagements in which we specifically agree in writing to a flat or maximum fee, we make no commitment concerning the maximum fees and costs that will be necessary to resolve or complete the matter, even when we have provided an estimate. The ultimate cost is invariably more or less than the amount estimated. In addition, your obligation to pay the Firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

In instances in which we offer and you accept a flat fee, that flat fee covers only the services within the scope of work specified in the flat fee proposal. Any additional work will be billed at our standard hourly rates unless otherwise agreed in writing.

Other Charges

In addition to our fees we will likely bill you for various charges that we itemize separately. These may include charges or fees for:

- messengers and couriers
- photocopying, desktop publishing or printing
- data storage
- ediscovery data hosting services
- litigation support technology services
- computerized research
- certain clerical services
- filing fees (including electronic filings)
- court reporters
- witnesses
- outside experts and consultants, including for example accountants, appraisers and other legal counsel
- travel
- phone and Web conferencing

Certain of these other charges may represent more than our out-of-pocket cost to contribute toward covering indirect expenses we incur. For example, we establish and adjust from time to time fixed charges for certain services of our managing clerk's office (such as

filings with courts or public agencies), notarial services (including remote notary services), and other services. Such charges reflect the fair value of such services. We incur outside charges on your behalf as your agent. You agree to pay these charges when due. We may require that you pay significant expenses directly or in advance. In some instances when we make advance payment on your behalf as a convenience, we may be entitled to incentives, rebates or rewards from our banks or credit card companies for using their services. Such arrangements lower our overhead and administrative expense and are not passed along to clients.

In some engagements, it is necessary to engage legal counsel in a foreign country. When we engage counsel in a foreign country on your behalf, we are not guarantors or indemnitors for such foreign counsel's work, nor are we in a position to review the adequacy of their legal work or translation of documents. We engage foreign counsel to assist you specifically because we are not licensed or familiar with the applicable legal system and therefore are not in a position to provide those legal services or judge their adequacy.

Terms of Payment

We will bill you on a regular basis, typically monthly, for both fees and other charges. Our fees and charges are due when you receive our statement. Also, if you do not pay us within 30 days of our statement or as otherwise agreed, you agree that we may discontinue providing services immediately and withdraw from representing you after providing reasonable notice of our intention to do so. You also agree that until we are paid in full on all of your legal matters, and except to the extent otherwise prohibited or limited by law, we shall have a lien on all papers and files in our possession related to any of the matters in which we have represented you, and any property recovered or obtained as a result of our work on your behalf. To the extent not prohibited by applicable law or court rule, you agree to pay us finance charges at the rate of six percent (6%) per annum on all fees and charges that you fail to pay within 30 days of our invoice(s) (or, if applicable, a later past due date agreed by us in writing). You agree to pay the costs of collecting your debt to us, including court costs, filing fees and reasonable attorneys' fees.

Security Retainers (Advance Deposits)

New clients of our Firm will ordinarily be asked to deposit a security retainer (an advance deposit) with the Firm. The Firm may also in its sole discretion at any time during our representation require existing clients to provide a security retainer based, for example, on past payment history, creditworthiness, increases in the scope or intensity of our work, or other factors that

may cause the Firm to conclude it is appropriate to do so.

If we require a security retainer from you, we will charge or draw against it for fees and other charges as our legal services are provided. We will issue regular statements to you describing the fees and other charges which have been deducted and the amount which must be paid to replenish the retainer to the agreed level. If the security retainer is insufficient to cover fees and other charges anticipated in the current and following month, or if the scope or intensity of our work is anticipated to increase, we may require that the balance be increased. At the conclusion of our legal representation, once we are fully paid, or at such time as the security retainer is no longer necessary or may appropriately be reduced, the remaining balance, if any, or a portion thereof, will be returned to you.

Funds Held in Our Trust Account

Any security retainer we receive from you will be held in our trust account until it is charged for fees and other charges or is returned to you. No interest is paid on amounts held by us in our trust account. In particular, court rules in jurisdictions in which we practice require that interest earned on pooled client trust accounts is payable to a charitable foundation established in accordance with the court's rule. While your security retainer is held by us in our trust account, it remains your property. You authorize us to apply it to any fees, expenses, or other charges that you owe us.

Other deposits that we receive to cover specific items, and any funds that we recover or receive in representing you, will also be held by us in our general trust account (without interest) and disbursed as provided in our agreement with you, or at your direction or as required by law, and you will be notified from time to time of the amounts applied or withdrawn. You grant us a security interest in any funds we receive and hold in trust for you (including any security retainer) to secure payment of any outstanding fees or other charges you owe us. Any amount remaining after disbursement or application to your account will be returned to you.

Identifying Conflicts of Interest

We maintain an electronic database relating to our client engagements which we use in evaluating and avoiding conflicts of interest. The Rules of Professional Conduct governing lawyers generally prohibit a lawyer or law firm from representing one client in a matter directly adverse to another client unless the affected clients provide informed consent confirmed in writing. To allow us to identify and address potential conflict issues, you represent to us that you have identified for us all persons and entities that are or may become involved in the matter in which we are being engaged,

including all persons and entities affiliated with you whose interests could be affected. You also agree that you will promptly notify us if you become aware of any other persons or entities that are or may become involved in the matter.

Waiver of Certain Potential Conflicts of Interest

As you are aware, we are a large law firm with multiple practices in multiple offices throughout the United States, and we represent many different clients in many different industries and countries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on your representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to a matter in which we represent you. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter adverse to you on behalf of another client in circumstances in which any of your confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any representation adverse to you that we might accept from another client.

In return for our agreement to represent you in this matter and future matters (if any), you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to any matter we undertake on your behalf now or in the future. Such unrelated matters may include, but are not limited to:

- a. Agreements, business contracts, licenses, mergers and acquisitions, joint ventures, loans and financings, and securities offerings, including contract negotiations with you in which we represent another party, and preparation for other clients of contracts or other legal documents to which you will be a party or that may affect your rights or obligations, as well as related negotiations, subsequent amendments or disputes;
- b. Advice regarding the existence, scope or validity of your rights in real, personal or intellectual property and/or concerning the interpretation and application of provisions of contracts or other legal documents to which you may be party or that may affect your legal rights or obligations;
- c. Advice and representation of our other clients regarding the existence or potential existence of legal claims that our other clients may have against you or that you may have against them, in disputes with you of any nature, or in claims our other clients may assert against you or you against them including litigation in a court, agency or other tribunal, and in arbitration or mediation.

- d. Bankruptcies, reorganizations, receiverships or insolvencies (including proceedings under the US Bankruptcy Code or state insolvency proceedings); non-judicial debt restructurings, including representation of creditors, liquidators or other insolvency professionals in domestic or international matters in which you are a creditor, debtor or other party in interest;
- e. Patents, copyrights, trademarks, trade secrets or other intellectual property matters; including advice to other clients regarding the existence, scope or validity of your rights in intellectual property and assistance in securing or protecting other clients' intellectual property in ways that may limit or constrain your rights;
- f. Real estate, zoning and environmental matters in which your interests in real property may be involved or adversely affected, or in which you may face liability for environmental contamination;
- g. Representation and advocacy with respect to legislative issues, policy issues, or regulatory issues, including rulemakings, administrative proceedings and enforcement proceedings; and,
- h. Third-party discovery requests (including subpoenas) to be served on you, and discovery requests (including subpoenas) that have been served by you on others.

If at a later time you withdraw or modify this advance waiver in any respect, you agree and consent to our withdrawal from our representation of you pursuant to these Terms of Engagement and the applicable Rules of Professional Conduct.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. For our part, we commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary. Of course, the foregoing consent does not affect our obligation to protect confidential information you share with us in connection with our representation of you and not to use such information to your detriment.

Our Non-Legal Affiliates

As further described below, you should be aware that our Firm has ownership interests in non-legal services businesses (the "non-legal affiliates"), and the services of such non-legal affiliates may be provided by Firm

personnel or others. Such non-legal affiliates may provide non-legal services to a party that is an adversary of yours in an unrelated matter in which the Firm is representing you. Such a party contracting with a non-legal affiliate is not a client of the Firm, but you should consider that our financial interest in the non-legal affiliate services to such party could give rise to a conflict of interest because of the potential influence on our independent judgment in our legal representation of you. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate providing services to a party adverse to you in a legal representation.

Should you engage a non-legal affiliate for non-legal services, that affiliate will provide its own contract for services to you. Such services are not governed by these Terms of Engagement. No lawyer-client relationship will exist (or could exist) between such entity and you, even if services by such non-legal affiliate are provided by personnel who are employed by or partners of our Firm. You should seek independent counsel to advise you on your contract with such non-legal affiliate. Because of our ownership interest, we will not represent you in entering into that contract. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate you engage for non-legal services.

Electronic Communications and Cloud Storage

We caution you that, to maintain the confidentiality and privilege of electronically stored or transmitted information and communications related to your legal matters, you should not use a computer, other electronic device, network or Internet address that is owned, controlled, or on which your communications may be accessed, by anyone other than you. This warning includes electronic venues provided by a hotel, a library, publicly available Internet, or even a shared home computer or employer-provided technology if you are engaging us as an individual rather than on behalf of your employer. Any device you use to communicate with us should be password protected and not accessible by any third party. You agree to let us know if you are sending any files or documents that contain sensitive or personal information so we can arrange to receive such information via secure file transfer. Additional documents such as a Data Processing Agreement ("DPA") may be required before we can receive or share such information.

You agree that both you and our Firm may use electronic devices and Internet services that are managed by third parties and which allow us to communicate with each other and share documents and information notwithstanding some risk that such communications and documents may be intercepted or

accessed by and disclosed to unauthorized parties. We will also store electronic data relating to our representation of you remotely with cloud-based data storage services managed by third parties. You understand that, while reasonable efforts may be taken to prevent inadvertent or unauthorized disclosure of, or access to, information relating to our representation of you, we cannot guarantee that no unauthorized access will occur. You agree that the benefits of using these technologies outweigh the risks of unauthorized or inadvertent disclosure and that the Firm is not responsible for the unauthorized access of information sent via these services. Our use of such technology may include unencrypted email, messaging, mobile phones, voice over Internet, electronic data/document websites or storage or transfer services, video conferencing, and other technology in which your documents and information are transmitted, stored or processed using off-premises or cloud-based services managed by third parties.

Use of Artificial Intelligence

Artificial Intelligence ("AI") describes computer technology with varied abilities to analyze and generate data to find patterns, reach conclusions and predict future behavior, or to create text or images based on data and inputs provided. We may employ AI or tools that incorporate AI including to increase efficiencies and reduce costs when performing certain legal and non-legal tasks. The Firm has a protocol regarding any use of AI. You agree that we may utilize AI in connection with our representation of you consistent with Firm protocol and the Rules of Professional Conduct.

Privacy Notice and Data Security

During the course of this engagement, the Firm may collect and process personal information relating to the matters in which we are representing you. You agree you have all legal rights necessary to provide any personal information you provide to us for use and processing consistent with the terms of our engagement and agree to execute a DPA and similar compliance agreements with the Firm where required. You agree to provide only the minimum amount of personal information necessary for us to perform our legal services and to take measures to protect and secure all sensitive, confidential, and personal information. Our collection and processing of personal information is further governed by the firm's Privacy Notice at btlaw.com/privacy-policy, as well as applicable privacy and data protection laws, regulations, and codes of professional conduct.

You agree you are responsible for providing all physical, technical, administrative, and organizational safeguards necessary to secure and protect any information under your control relating to our

engagement and are responsible for the breach of any security of information caused via your or your affiliates' or third party service providers' systems. You agree to immediately and without undue delay report and take steps to mitigate any actual or attempted security incident or breach of security of data related to or which could affect you, the Firm, or our representation of you in any manner.

Certain laws may require your consent before we may send you certain electronic communications. These electronic communications include, among others, announcements, briefings on legal developments, and invitations to seminars and other events. In connection with your engaging us to render legal services, you consent to our sending you these electronic communications. You may withdraw your consent (or update your profile information) at any time by using the unsubscribe link in a communication or by notifying us at privacy@btlaw.com.

Certain Client Responsibilities

You agree to cooperate fully with us, to provide promptly and candidly all information (including documents and electronic data) known or available to you that is relevant to our representation. If your engagement involves actual or potential claims or litigation, you have an obligation to preserve potentially relevant information, including electronic data and communications. You must ensure automatic deletions or record retention policies are suspended as necessary to ensure this information is preserved. If you have questions, you should discuss these issues with us at the outset of our engagement involving any claim or litigation or as soon as a dispute or litigation related to any matter on which you have engaged us becomes reasonably foreseeable. You also agree to respond promptly to our requests for direction and other communications and to attend meetings and court proceedings at our request.

Use of Publicly Available Information

We will protect nonpublic, confidential information related to your representation in accordance with our professional obligations. To best serve all of our clients, however, it is helpful for us to be able to describe our experiences in the practice of law to assist others in choosing counsel and for other business reasons. Accordingly, unless you specifically instruct us to the contrary, you authorize us to truthfully disclose or describe to others information related to our representation of you that is otherwise publicly available (e.g., in public filings, government publications, press releases, on the Internet).

Consultations with Firm Legal Counsel

In part because of the number of clients we represent and the complexity of the matters in which we are engaged, issues may arise from time to time that involve questions as to our duties as lawyers, including under the professional conduct rules. Such questions might include, for example, issues raised because of a disagreement between us and a client over the handling of a client's matter. Under normal circumstances when such issues arise, we would seek advice from our in-house legal counsel who have deep experience in such matters. We consider such consultations to be attorney-client privileged communications between firm personnel and legal counsel for the firm. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is helpful to consult with our firm counsel, we may do so on the understanding that you agree that these communications are privileged and confidential to the firm.

Termination and Withdrawal

You may terminate our representation of you at any time without cause simply by notifying us. Your termination of our services will not affect your responsibility for payment of fees and other charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the Rules of Professional Conduct that require or allow us to withdraw from representing a client in various circumstances. These may include any circumstances in which withdrawal can be accomplished without material adverse effect on the interests of the client. Among other circumstances that may give rise to withdrawal, subject to the Rules of Professional Conduct, we may withdraw from representing you if you do not fulfill your obligations to us, including failure to pay our fees and charges, or if we determine that our relationship has become impaired, such as by your failure to follow our advice relating to a representation.

Unless previously terminated, our representation of you in any matter terminates upon our completion of the services you retained us to perform. Generally, this will be indicated by your receipt of our final statement for services rendered on that matter. In general, our representation shall be deemed completed if there is no billable work for a period of six months and there are no ongoing appeals or proceedings.

Except where applicable laws require otherwise, you agree that the following provisions will govern the way we handle materials and records related to our representation of you. We typically store the materials we retain in electronic form. We do not keep our copies of such materials and records indefinitely. We will

discard or delete the materials we retain related to your representation when we believe it is reasonable to do so, without further notice to you. Accordingly, you are strongly encouraged to keep your own files related to our representation, especially important legal documents. So that you can do so, we will provide you with copies of materials we have retained whenever you request them during our representation. Even after your matter is completed, on request we will provide you with copies in electronic form of any materials we still have to which you are entitled. You agree to pay our charges for retrieving and copying materials for you, and any other fees and charges that remain outstanding in connection with our representation of you. You hereby agree that we may require such payment before delivering such materials, to the extent allowed by applicable Rules of Professional Conduct. You authorize us to follow these procedures without providing you further notices or seeking further instructions in the future.

Our representation of you in any matter is limited to that specific matter, and will not give rise to any ongoing attorney-client relationship. After our representation of you in any matter has ended, we may from time to time represent you in such subsequent matters as you may request. However, we are under no obligation to represent you in any subsequent matters, and nothing herein should be construed to give rise to any attorney-client relationship after our representation has concluded or terminated. If we do undertake to represent you in any subsequent matter, the scope and duration of our representation will be limited to that specific subsequent matter and, unless we expressly establish new terms of engagement with you at that time, the terms of engagement stated in this document and our engagement letter will apply.

If our Firm or any of our lawyers or staff are named as a party, or are subpoenaed or otherwise lawfully compelled to respond or produce evidence or appear in a legal proceeding or deposition relating to our services performed for you (excluding claims for lawyer misconduct or negligence), you agree, even after our representation has terminated, to pay us for our lawyers' and non-lawyers' time and other charges and expenses incurred in connection with our defense or participation in such proceeding, on the same basis that applies to our standard hourly fees and charges in effect at the time.

After our representation of you in any matter has ended, changes may occur in applicable laws or regulations that could have an impact upon your rights and liabilities. Unless you subsequently engage us to provide such advice on the same matter, our Firm has no continuing obligation to advise you with respect to future legal developments.



M E M O R A N D U M

Date October 7, 2024
To Mike Machlan, Board of Works President
From Steve Brown, Pretreatment Manager
RE Elkhart County Regional Sewer District (Heaton Lake) – Notice of Violation

Elkhart County Regional Sewer District (ECRSD) - (Heaton Lake) has a self-monitoring requirement to monitor TSS, cBOD5, COD, pH, Ammonia, Total Phosphorus, Cadmium, Chromium, Copper, Lead, Nickel, Silver, Zinc, Molybdenum, and Mercury on a bi-annually frequency at both of their north and south lift stations.

Bi-Annually (2 times per year) means sampling once during:

- 1st Half: Jan, Feb, Mar, Apr, May, Jun
- 2nd Half: Jul, Aug, Sep, Oct, Nov, and Dec

Pretreatment Office did not receive ECRSD's self-monitoring report for the 1st Half of 2024. Elkhart Public Works and Utilities Wastewater Utility Enforcement Response Plan recommends a penalty of \$100 for each limit that is violated. The total recommended penalty for this offense is \$3,000.

Please find Elkhart County Regional Sewer District (Heaton Lake) in violation of its requirement to self-monitor both their north and south lift stations for the first half of 2024 and assign penalties. Per the City of Elkhart Enforcement Response Plan, a total penalty of \$3,000 is recommended.

This memo has previously been reviewed by legal.



INNOVATIVE IDEAS
EXCEPTIONAL DESIGN
UNMATCHED CLIENT SERVICE

October 9, 2024

Mr. Tory Irwin
City of Elkhart - Utility Engineer
1201 S. Nappanee Street
Elkhart, Indiana 46516

RE: Oakland Avenue – Project B: CSO Storage
City Project No. WA7957 & SA 7956
City Bid No. 24-13
DLZ Account # 2361-5983-90

Dear Mr. Irwin,

On October 1st, 2024, a total of **four (4)** bids were received for the Oakland Avenue – Project B: CSO Storage Project. The total bid includes the Base Bid (Division I and II) for the project, Voluntary Bid Alternate No. 1, and Voluntary Bid Alternate No. 2. The results are summarized below:

Bidder	Base Bid Division I	Base Bid Division II	Base Bid (Division I and II) Total	Voluntary Bid Alternate No. 1	Voluntary Bid Alternate No. 2
1 C&E Excavating	\$40,728,435.00	\$265,565.00	\$40,994,000.00	None submitted	None submitted
2 Selge Construction	\$36,615,968.14	\$275,950.00	\$36,891,918.14	None submitted	None submitted
3 Thieneman Construction	\$40,696,330.00	\$279,070.00	\$40,975,400.00	None submitted	None submitted
4 Kokosing Industrial	\$43,306,014.10	\$273,700.00	\$43,579,714.10	None submitted	None submitted

All four companies are well qualified to perform the work. Upon review of the submitted bids some anomalies were found within the bid submittals of C&E Excavating and Kokosing. The missing or incorrect documents are noted in the attached Bid Tabulation. In addition, Kokosing Industrial’s Base Bid Division I Total was added incorrectly on their Itemized Proposal. The Division I bid listed in Kokosing’s bid package is \$43,407,700.00. Upon review it was determined that the corrected Division I bid for Kokosing, based on the submitted unit prices, is \$43,306,014.10. This discrepancy does not affect the lowest bid. This calculated value was placed in the results summary above.

Based on our review, Selge Construction was the lowest responsive bidder. The Engineer’s Opinion of Probable Construction Cost for the Total Base Bid is \$38,598,000.00. Selge Construction has submitted all necessary supporting documents with their proposal.



INNOVATIVE IDEAS
EXCEPTIONAL DESIGN
UNMATCHED CLIENT SERVICE

Oakland Avenue – Project B: CSO Storage
Bid Recommendation
Page 2 of 2

No bids were received for Voluntary Bid Alternate No. 1 and Alternate No. 2 for this project.

Selge Construction submitted post bid documentation as requested, including a major subcontractor and supplier list, project schedule, and work experience for the concrete subcontractor. This documentation is attached for reference.

It is our recommendation that the City of Elkhart *conditionally award, subject to financing*, the contract for the Oakland Avenue – Project B: CSO Storage Project, for the total Base Bid (Division I and Division II), to Selge Construction for the amount of \$36,891,918.14.

Included with this letter is a copy of the signed bid tab for the project. If you have any questions, comments, or require any additional information, please contact our office.

Sincerely,

Jamie Poczekay, P.E.
Project Manager

Attachments: Bid Tabulation
Post Bid Documentation

CC: Elkhart: Jeff Schafer, Jason Simnick
JCZ, BLG, ACL, File


X:\Projects\2023\2361\598390 Elkhart Oakland Prj B\05_Bidding\Bid Tab



MEMORANDUM

DATE: October 15, 2024

TO: Board of Public Works

FROM: Jeffrey Schaffer, Engineering 

RE: **Change Order #2 for Bid #24-08, Hively Avenue Overpass – Demolition Contract #4**

Change Order #2 for Bid #24-08, Hively Avenue Overpass – Demolition Contract #4, is adding work to remove asbestos that was found in the basement of 1815 East Hively Avenue during demolition.

The net total increase in the contract price due to the two Change Orders is \$13,447.00, which is 6.0% of the original contract price of \$225,773.00.

The action requested by the Board of Public Works is as follows:

Approve Change Order #2 for Bid #24-08, Hively Avenue Overpass – Demolition Contract #4, increasing the contract value by \$3675.00, resulting in a contract price of \$239,220.00.

CITY OF ELKHART

PUBLIC WORKS & UTILITIES

Change Order No. Two
Dated 10/8/2024

Project: Hively Avenue Overpass - Demolition Contract #4 Contract No. 24-08

To: C&E Excavating
Contractor

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

City of Elkhart

By _____
President, Board of Public Works

Dated _____

Nature of Changes

Additional asbestos removal in basement of 1815 East Hively Avenue \$3,675.00

TOTAL \$ 3,675.00

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

Original Contract Price	\$ <u>225,773.00</u>
Contract Price Prior to this Change Order	\$ <u>235,545.00</u>
Net change resulting from this Change Order	\$ <u>3,675.00</u>
Current Contract Price including this Change Order	\$ <u>239,220.00</u>
Current Contract Price % Change from Original Price	<u>6.0%</u>
Contract Time prior to this Change Order	<u>103 days</u> (Days or Time)
Net Time change resulting from this Change Order	<u>1 day</u> (Days)
Current Contract Time including this Change Order	<u>104 days</u> (Days or Time)

The above changes are approved:

Public Works & Utilities

BY: 
Engineer

10/08/2024

DATE

The above changes are accepted:

By: 
Contractor

10/9/24

DATE



September 24, 2024

City of Elkhart
1201 S Nappanee St.
Elkhart, IN 46516

RE: Hively Avenue Overpass - Demolition Contract #4
Change Order Request No.2
Asbestos Abatement

This change order request is reflective of the following proposed scope to remove found seam tape. Availability of abatement crews for this scope will begin immediately upon approval and will be completed within one day.

1815 East Hively Avenue

Scope Of Work :

Remove ~30 square foot of asbestos containing seam tape material discovered in the basement on the HVAC System located in the basement of the structure while doing the contracted asbestos work located at the referenced project site.

****Estimated 1 Day Abatement Duration – this property.***

Change Order Total:	\$3,675.00
Time Extension Requested:	None

Authorized Signature:

Date: September 24, 2024

Tim Bonadies
Project Manager/Estimator
C&E Excavating, Inc.

C & E Excavating, Inc.
53767 CR 9
Elkhart, IN 46514

Office (574) 262-4346

Fax (574) 262-9251

TO BE AWARDED AT THE END OF THE OCTOBER 1, 2024 MEETING.



DATE 10/1/24 **TABLED**
APPROVED BY CITY OF ELKHART
BOARD OF PUBLIC WORKS
Pan D'gini
Andy Jones
Joe
Joe Kim

MEMORANDUM

DATE: October 1, 2024
TO: Board of Public Works
FROM: Jeffrey Schaffer, Engineering JSS
RE: Award Quote #24-29, Bypass Road Drainage Improvements

At the October 1, 2024, Board of Public Works meeting, bids were opened for Quote #24-29, Bypass Road Drainage Improvements. The results are as follows:

Contractor	Bid
Premium Services	\$ 70,930.00
Selge Construction	\$ 46,066.00
John Boettcher S&E	\$ 36,927.20

The project is to be funded by the 2024 Common Council Appropriation for Small Drainage Projects.

The action requested by the Board of Public Works is as follows:

~~Award Quote #24-29, Bypass Road Drainage Improvements, to~~ John Boettcher
~~who submitted the lowest responsive quote, with a contract price in the amount of~~ Sewer & Excavating

~~who submitted the lowest responsive quote, with a contract price in the amount of~~
\$ 36,927.20. Table to October 15 Meeting.



M E M O R A N D U M

DATE: October 4, 2024

TO: Board of Public Works

FROM: Jason Simnick, Project Manager JS

RE: **Oakland Avenue Forcemain – Phase A – SA7878: Ratify SRF Disbursement #39 for Kleinpeter Consulting Group, LLC**

Please see the attached invoice from Kleinpeter Consulting for Davis Bacon labor standard services provided for the Oakland Avenue Forcemain – Phase A project. This invoice, is in the amount of \$4500.00, and covers labor standard work through May 8, 2024. This payment is for the Kleinpeter contract total of \$42,500, and it will be paid for through the Oakland SRF loan for this project.

To date, including this payment, we will have paid \$28,500.00, or 67.1% of the contract amount.

It is requested that the BOW:

ratify SRF Disbursement #39 in the amount of \$4,500.00 to Kleinpeter Consulting, LLC from the allocated SRF loan #WW22162005 for labor services on the Oakland Avenue Forcemain – Phase A project.



Kleinpeter Consulting Group LLC
P.O. Box 37
Whiteland, IN 46184
(812) 525-7080
mike@kleinpeterconsulting.com

Invoice 888

BILL TO
City of Elkhart
229 S 2nd St
Elkhart, IN 46516



DATE	PLEASE PAY	DUE DATE
09/30/2024	\$4,500.00	10/30/2024

DATE	ACTIVITY	AMOUNT
09/24/2024	Labor Standards 4th invoice for conducting Labor Standards on the Oakland Ave Project that is funded by SRF. Time includes verifying fringe benefits and reviewing certified payrolls.	4,500.00

TOTAL DUE **\$4,500.00**

THANK YOU.

APPROVED FOR PAYMENT

DATE: 10-4-2024

DESCRIPTION: Labor standards Services

ACCOUNT LINE:

SRF

PO NO:

APPROVED BY: Paul N Wawerlin



M E M O R A N D U M

DATE: September 27, 2024
TO: Board of Public Works
FROM: Jason Simnick, Project Manager JS
RE: **Oakland Avenue: Project D – CSO 6 & 7 Connection**
Approval of Partial Payment Request SRF#37 to DLZ

Please see the attached invoice #601900 from DLZ for professional services provided for the Oakland Avenue Project D Design for work performed between May 21, 2024 and July 5, 2024. This payment of \$66,560.00 has been rounded as required by the SRF and represents the 37th cost incurred from the SRF loan.

To date, including this payment, we have paid \$66,560.00 or 4.50% of the original contract price of \$1,479,000.00.

It is requested that the BOW:
ratify partial payment request SRF #37 of SRF loan WW22162005 in the amount of \$66,560.00 to DLZ from the allocated SRF loan for professional services on the Oakland Avenue: Project D – CSO 6 & 7 Connection Design.



M E M O R A N D U M

DATE: October 4, 2024
TO: Board of Public Works
FROM: Jason Simnick, Project Manager JS
RE: Oakland Avenue: Project B Storage Tank Design
Ratify Partial Payment Request SRF#38 to DLZ Consulting

Please see the attached invoice #9 from DLZ Consulting for professional services provided for the Oakland Avenue Project B Design for work performed between July 6, 2024 and August 30, 2024. This payment of \$95,950.00 has been rounded as required by the SRF and represents the 33rd cost incurred from the SRF loan.

To date, including this payment, we have paid \$2,386,613.00 or 91.42% of the contract original contract price of \$2,610,500.

It is requested that the BOW:

ratify partial payment request SRF #38 of SRF loan WW22162005 in the amount of \$95,950.00 to DLZ Consulting from the allocated SRF loan for professional services on the Oakland Avenue: Project B Storage Tank Design.

B.O.W. SUMMARY

October 15, 2024

Water Assessment:

Renee Mansfield
2307 Aurora Ave
Elkhart, IN. 46517
Property: 2307 Aurora Ave
Paid in full, \$1220.10

Guadalupe Garcia.
1334 Concord Ave
Elkhart, IN. 46516
Property: 1334 Concord Ave
Paid in Full, \$1413.30

Albert Reasonover
56974 Ash Rd
Osceola, IN. 46561
Property: 56974 Ash Rd
Paid in full, \$2289.60

Glenn Henderson
16338 CR 20
Goshen, IN. 46528
Property: 463 James St.
Paid in full, \$1302.90

Sewer Assessment:

Saul Soto Martinez
810 Fairway St.
South Bend, IN. 46619
Property: 2329 Aurora Ave
Paid in Full, \$6880.00

Rafael Cardenas Ramos
1328 County Rd 6 West
Elkhart, IN. 46514
Property: 1328 County Rd. 6 West
Paid in Full, \$7000.00

Glenn Henderson
16338 CR 20
Goshen, IN. 46528
Property: 463 James St.
Paid in Full, \$6760.00

Revocable Permit:

#6585, Placed by: First Presbyterian Church
Property: 200 E. Beardsley
Permit Holder: First Presbyterian Church
Description: Yard signs in Parkway @ Beardsley Ave.

#6586, Placed by: Brad Shroyer
Property: 107 W. Franklin St.
Permit Holder: DJ Construction
Description: Shut down alley @ 107 & 121 W. Franklin St/Dumpster

#6587, Place by: Glenn Peterson-Centier Bank
Property: 100 S. Main St.
Permit Holder: Centier Bank
Description: 3 Parking spots

#6588, Placed by: Jeff Roberts
Property: 1101 East Beardsley Ave
Permit Holder: Roberts Environmental Services, LLC
Description: Install of 6 ground water monitoring wells

#6589, Placed by: Glen Kauffmann
Property: 2101-2111 S. Main St.
Permit Holder: Ancon Construction
Description: Close sidewalks to allow construction of building

Driveway Permit:

#5131, Owner: Wilmer Medrano
Property: 700 W. Hively Ave
Contractor: N/A
\$400 Cash bond

#5143, Owner: Valarie Smith
Property: 3231 Kelsey Ave
Contractor: Clutter & Ritchie, Concrete LLC
\$600 Cash Bond

Release of Bond:

#5131, Wilmer Medrano
Property: 700 W. Hively Ave
\$400.00 bond

#5143, Contractor: Clutter & Ritchie Concrete
Property: 3231 Kelsey Ave
\$600.00 bond



Rod Roberson
Mayor

Andy Jones
Airport Director

Elkhart Municipal Airport
1211 CR 6 W
Elkhart, Indiana 46514

Administration Office:
(574) 264.5217
FAX (574) 264.0915

MEMO

To: Board of Public Works

From: Andy Jones; Elkhart Municipal Airport Director

Date: October 10, 2024

Re: Declaration of surplus & permission for disposal

Below, is a description of the items the Airport would like to declare surplus and given permission to move forward with the disposal of the items.

- 1) 15 year old pilot's lounge furniture, consisting of a sofa, 2 easy chairs & an ottoman

The Elkhart Municipal Airport respectfully requests that these items be declared surplus and given permission to move forward with disposal.

Thank you,

Andy Jones – Airport Director

Elkhart Municipal Airport

Cell: 574-903-4815

CITY OF ELKHART

DISPOSAL OR TRANSFER-TO OF FIXED ASSET

DESCRIPTION OF ASSET old Pilot's Lounge Furniture
LOCATION OF ASSET Aviation Dept
TYPE OF FIXED ASSET:

LAND IMPROVEMENTS OTHER THAN BLDG
 BUILDING MACHINERY & EQUIPMENT
 CONSTRUCTION-IN-PROGRESS INFRASTRUCTURE
C.I.P. # _____
C.I.P. LOCATION _____

SERIAL NUMBER OR VIN _____
DESCRIPTION/COMMENTS 1 Couch, 2 easy chairs, 1 ottoman - about 15 years old
BRAND OR MAKE _____ MODEL# _____
YEAR _____ LICENSE# _____

DISPOSAL METHOD: SOLD \$ _____ TRADED \$ _____

JUNKED SCRAPPED END-OF-LEASE STOLEN/WRECKED
TRANSFERRED TO: _____ (ATTACH PD REPORT)

DATE BOARD APPROVED 09-25-24 DATE COUNCIL APPROVED _____
(ATTACH COPY OF MINUTES) (REAL PROPERTY VALUE > \$9,999.)

DATE MAYOR APPROVED _____ SIGNATURE _____
(REAL PROPERTY ONLY)

DATE CONTROLLER APPROVED 9/27/2024 SIGNATURE Jac

SIGNATURE OF PERSON RESPONSIBLE _____
PRINTED NAME Andy Jones

SIGNATURE OF DEPARTMENT HEAD Andy Jones

IF TRANSFERRED:
RECEIVING PERSON'S SIGNATURE _____
PRINTED NAME _____

CONTROLLER'S USE ONLY

RECEIVED _____ FIXED ASSET ENTERED _____

INSURED _____ CONTROLLER'S INITIAL _____



M E M O R A N D U M

From: Josh Holt, City of Elkhart Fleet Manager

Date: October 10th, 2024

To: Elkhart Board of Works

RE: Request for Purchase of Toro 4010D from Kenny Machinery

Dear Board Members,

I am requesting permission to purchase a new Toro 4010D mower and attachments from Kenny Machinery for our Buildings & Grounds Dept. This purchase will be made through the Sourcewell Cooperative Purchasing program, ensuring it has already been approved under the co-op's guidelines.

The new unit will replace a similar 2009 model that has reached the end of its service life. We will be trading in the old unit as part of this purchase. After the trade-in, the final cost of the new Toro 4010D will be \$107,366.68. These funds have been approved by the council last year as part of Buildings & Grounds normal 2024 budget.

I kindly request the Board's approval to proceed with this acquisition.

Thank you for your consideration.

Sincerely,

Joshua J. Holt, City of Elkhart Fleet Manager

A handwritten signature in blue ink, appearing to read "Joshua J. Holt".

Rod Roberson
Mayor

Wayne J. Belock
Director of Human Resources



Human Resources
201 S. Second St.
Elkhart, IN 46516
Office 574-296-9167
Fax 574-296-7541

To: Board of Works
From: Human Resources Department
Re: Dental and Vision insurance renewals
Date: October 10, 2024

Attached for your review, consideration and approval are documents pertaining to the City's renewal of its dental and vision insurance plans.



Memo from the Elkhart city Central Garage

To: Board of Works

From: Josh Holt

Date: October 3rd, 2024

RE: Auction

Dear Board Members,

I am requesting permission to send the following units to auction through Bryolin's Auction Company and Brightstar Auction Services. These units have exceeded their useful life, been replaced, or are beyond repair. The auctions will be advertised both locally and worldwide online.

List of units to be auctioned:

- 1993 Kubota tractor, unit# BG-507 (Buildings and Grounds) – transmission is bad, unit replaced.
- 2007 Ford Ranger, unit# 717 (Public Works) – past its useful life, already replaced.
- 2009 Snapper Snow blower, unit# BG-53303.
- 2009 Freightliner plow/dump truck, unit# ST-363 – replaced and beyond its life cycle.
- 2017 Ferris Z-turn mower, unit# BG-53451 – right drive unit case broken, replaced.
- 2010 Kubota side by side, unit# BG-53409 – transmission is bad, cost to repair exceeds value.
- 2007 J.B. Utility trailer, unit# BG-5522 – axle broken, past its lifecycle.
- 2007 J.B. Utility trailer, unit# BG-5521 – past its lifecycle, already replaced.
- 2007 Griffen dump trailer, unit# BG-5519 – past its lifecycle, already replaced.
- 2010 Snapper snow blower, unit# BG-53304 – past useful life, replaced.
- 2010 Husqvarna push mower, unit# BG-53307.
- 2016 Toro 20" push mower, unit# BG-53305.
- 1993 Sweetwater Pontoon boat BG5034
- 2015 Ford Taurus retired police car PD2215
- 2016 Toro Commercial push mower, unit# BG-53341.
- 2018 Toro Recycler push mower, unit# BG-55344.
- 98 picnic tables from the Buildings and Grounds Department.
- 4 aluminum and 1 steel-style bleacher units.
- 32 cafeteria-style tables.
- 80 folding chairs and a rack for storage.
- Laminated wood beam measuring 32' x 18" x 1 ¾".
- 6 decorative light assemblies.
- 2006 Ford E-450 passenger van, unit# PK-501 – beyond mechanical limits, requires extensive floor repair, brake line work, and other critical repairs.
- 2009 Freightliner ambulance, unit# MED-27 (Fire Dept) – past its lifecycle, replaced.

Thank you for your consideration. Please let me know if you need further details regarding these units.

Sincerely,

Joshua J. Holt

Elkhart Central Garage & Fleet Manager



M E M O R A N D U M

From: Josh Holt, City of Elkhart Fleet Manager

Date: October 9th, 2024

To: Elkhart Board of Works

RE: Request for Purchase of Ford Transit Passenger Van for Parks Department

Dear Board Members,

I am requesting permission to purchase a new Ford Transit passenger van for the Parks Department from Fox Ford in Grand Rapids, Michigan. The van will be a valuable addition to the department, providing reliable transportation for various needs. The total purchase price is \$55,990.

I kindly ask for the Board's approval to proceed with this acquisition.

Thank you for your consideration.

Joshua J. Holt, City of Elkhart Fleet Manager

Memorandum

To: Mike Machlan, President
From: Jamie Arce, CPA, Controller
Date: August 12, 2024
Regarding: Professional Services Agreement – Baker Tilly

The purpose of this memo is to request approval of a professional services agreement with Baker Tilly to serve as the municipal financial advisor for the proposed debt issuance associated with the new public safety center project.

Project Overview

On June 17th, 2024, the City Council approved an appropriation in the amount of \$3,125,000 for the purchase of the building located at 121 W Franklin St that will serve as public safety center. The new public safety center will house the police department, fire department administration, and 911 communications. It is expected that final closing on the property will occur by the end of August. As part of the renovation of the existing space the City will need to issue bonds of which proceeds will serve as the necessary capital to complete the project.

Municipal Advisory Services

Baker Tilly will serve the role as financial advisor providing both general municipal advisory services and securities issuance assistance as described in the scope of work include as part of this request.

Funding

All fees associated with Baker Tilly's services as expected to be paid from the proceeds of the bonds.

Recommendation

It is recommended that you **approve the professional services agreement with Baker Tilly to engage their services as municipal financial advisor for the public safety center debt issuance.**

RE: Municipal Advisory Services - Debt Issuance - Proposed Public Safety Center Project

DATE: May 7, 2024

This Scope Appendix is attached by reference to the above-named engagement letter (the Engagement Letter) between the City of Elkhart, Indiana, (the Client) and Baker Tilly US, LLP and relates to services to be provided by Baker Tilly Municipal Advisors, LLC.

SCOPE OF WORK

Baker Tilly Municipal Advisors, LLC (BTMA) agrees to furnish and perform the following services for the Client.

A. General Municipal Advisory Services

Unless otherwise agreed to by the parties, in connection with any request for services relative to any financial topic, new project concept planning or other financially related topic or project (each referred to herein as a Project), BTMA shall perform the following services, as applicable:

1. Provide general financial advice relative to a Project.
2. Survey the resources available to determine the financial feasibility of a Project.
3. Assist in the development of a plan including alternative approaches for a particular Project that may be available and appropriate for such Project.
4. Assist the Client in selecting an approach for a Project.
5. Advise the Client generally on current market conditions, financial impacts of federal, state or other laws, and other general information and economic data that might be relevant to a Project.
6. Assist Client, as requested, in identifying other professional services that may be necessary to a Project.
7. Assist Client in coordinating the activities of the working group for a Project as needed.
8. Assist with the review of documents provided that are relevant to the development of a plan and alternative approaches for a Project.
9. Assist the Client with other components of a Project as requested and agreed upon.

B. Securities Issuance

Unless otherwise agreed to by the parties, in connection with any request for services relative to any debt issuance including modifying or refunding of a prior issuance or other financings (each referred to herein as a Transaction), BTMA shall perform the following services, as applicable:

1. Develop a preliminary estimate of project costs and provide a financial feasibility to assist the Client in its determination of what type of financing is most suitable to meet the needs of the Client for the issuance (the Debt Obligation).
2. Assist the Client in determining an appropriate method of sale for the Debt Obligation (e.g., competitive, negotiated, private placement.)
3. Provide for the Client's consideration an amount, the security, maturity structure, call provisions, estimated pricing, and other terms and conditions of the Debt Obligation.
4. Advise the Client on current market conditions, financial impacts of federal, state, or other laws, and other general information and economic data that might normally be expected to influence the ability to borrow or interest rates of the Debt Obligation.

**SCOPE APPENDIX to
Engagement Letter dated: March 1, 2021
Between the Elkhart Redevelopment Commission, Indiana, and
Baker Tilly US, LLP**

5. Assist the Client in the analysis of advisability of securing a credit rating, and the selection of a credit rating firm or firms for the Debt Obligation and further assist in the development and presentation of information to obtain a credit rating or credit ratings for the Debt Obligation.
6. Assist the Client in the analysis of utilizing credit enhancement and aid in seeking such credit enhancement if such credit enhancements would be advantageous to the Client.
7. Assist Client in coordinating the financing activities between various parties to any Transaction as needed.
8. Assist Client in identifying other professional services that may be necessary for the issuance or post -issuance requirements of the Debt Obligation.
9. Assist the Client in connection with the preparation, composition, review, and distribution of an offering document (e.g., Preliminary and Final Official Statement, Offering Circular, Term Sheet, or Private Placement Memorandum, as applicable) of the type and nature generally prepared in connection with the sale of municipal securities, which will disclose technical data, information and schedules relating to the Client, the project, and the Debt Obligation.
10. Provide relevant information for and assist with the review of other primary financing documents, including but not limited to the relevant governing body issuance resolutions/ordinances, bond purchase agreement, and official notice of sale.
11. Communicate with potential underwriters or investors, as appropriate to any Transaction, to ensure that each is furnished with information the Client has deemed to be material to render an independent, informed purchase or investment decision concerning the Client's proposed financing.
12. Facilitate the sale of Debt Obligations through receipt and analysis of bids in a competitive sale or analysis of pricing and terms offered by an underwriter or purchaser in a negotiated or private placement sale.
13. Coordinate with the proper parties to ensure the efficient delivery of the Debt Obligations to the applicable purchaser and receipt of proceeds.

COMPENSATION AND INVOICING

BTMA's fees for services set forth in Section A, will be billed at BTMA's standard billing rates based upon the actual time and expenses incurred.

BTMA's fees for services set forth in Section B, will provide a separate agreement once the structure of the financing has been determined.

Standard Hourly Rates by Job Classification
12/1/2023

Title	Hourly Rate
Partners / Principals / Directors	\$400 - \$600
Managers / Senior Managers	\$275 - \$400
Consultants / Analysts / Senior Consultants	\$175 - \$275
Support / Paraprofessionals / Interns	\$110 - \$175

**Billing rates are subject to change periodically due to changing requirements and economic conditions. Baker Tilly will notify Client thirty (30) days in advance of any change to fees. If Client does not dispute such change in fees within that thirty (30) day period, Client will be deemed to have accepted such change. The fees billed will be the fees in place at the time services are provided. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

The above fees shall include all expenses incurred by BTMA except for direct, project-related expenses such as travel costs and charges of other entities such as rating agencies, bond and official statement printers, couriers, newspapers, bond insurance companies, bond counsel and local counsel, and electronic bidding services, including Parity®.

BILLING PROCEDURES

Normally, you will receive a monthly statement showing fees and costs incurred in the prior month. Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement.

Nonattest Services

As part of this engagement, we will perform certain nonattest services. For purposes of the Engagement Letter and this Scope Appendix, nonattest services include services that the *Government Auditing Standards* refers to as nonaudit services.

We will not perform any management functions or make management decisions on your behalf with respect to any nonattest services we provide.

In connection with our performance of any nonattest services, you agree that you will:

- > Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to you.
- > Designate an employee with suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services we perform.

- > Evaluate the adequacy and results of the nonattest services we perform.
- > Accept responsibility for the results of our nonattest services.
- > Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

Conflicts of Interest

Attachment A to the Engagement Letter contains important disclosure information that is applicable to this Scope Appendix.

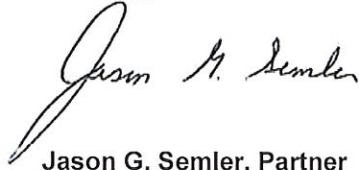
We are unaware of any additional conflicts of interest related to this Scope Appendix that exist at this time.

Termination

This Scope Appendix will terminate according to the terms of the Engagement Letter.

If this Scope Appendix is acceptable, please sign below and return one copy to us for our files. We look forward to working with you on this important project.

Sincerely,



Jason G. Semler, Partner

Signature Section:

The services and terms as set forth in this Scope Appendix are agreed to on behalf of the Client by:

Name: _____

Title: _____

Date: _____


Rod Roberson
Mayor



Planning & Development
Community Development
Economic Development
Planning Services
229 S. Second St.
Elkhart, IN 46516
574.294.5471
Fax: 574.970.1165

M e m o r a n d u m

To: Board of Public Works

From: Eric Trotter 

Date: October 9, 2024

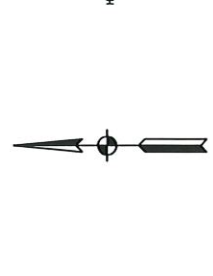
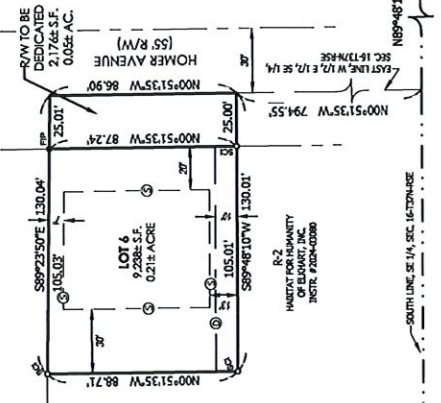
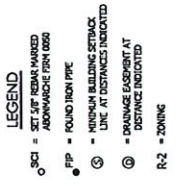
RE: **Homer Avenue Subdivision, Phase I and Phase II - Right of Way Dedication – a Habitat for Humanity project**

On August 5, 2024, the Plan Commission gave preliminary approval of a ten (10) lot residential subdivision on Homer Avenue.

The secondary approval for the first two lots was approved on October 9, 2024 by the Elkhart City Plat Committee. The remainder of the project will be submitted as Phase III once the final engineering work has been completed. This interim step will allow two families the ability to occupy the homes while the consultant continues to work with staff on the next phases of the overall development.

The Board of Works is being asked to accept the 25 foot right of way adjacent to lots part of Phase I and Phase II on Homer Avenue.

HOMER AVENUE SUBDIVISION - PHASE 2
 A PART OF THE SOUTHEAST QUARTER OF SECTION 16,
 TOWNSHIP 37 NORTH, RANGE 5 EAST,
 CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA.
 OWNER: HABITAT FOR HUMANITY OF ELKHART COUNTY INC.
 TAX ID#: 20-06-16-47-6-013.000-012



FLOOD NOTE
 THIS PROJECT DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA (SFHA) (100 YEAR FLOOD BOUNDARY) AS SHOWN AND DEPICTED ON THE FEMA/FIRM COMMUNITY PANEL #180600329B, EFFECTIVE MAP DATE: AUGUST 7, 2011.

LEGAL DESCRIPTION PER INSTR. #2024-03080

ASSUMING THE EAST LINE OF THE WEST ONE-HALF (1/2) OF THE SOUTHWEST QUARTER (1/4) OF SECTION THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST TO BE THE CORNER AND 200' COMMENCING AT AN IRON STAKE ON THE QUARTER (1/4) OF SAID SECTION THIRTY-SEVEN (37) NORTH, THIRTY (30) FEET WEST AND ONE THOUSAND NINE HUNDRED SIXTY-ONE (1961.61) FEET SOUTH OF THE NORTH-EAST CORNER OF LOT NUMBER TWENTY (20) IN CITY CARDS AS THE SAME AS SHOWN ON THE PLAT OF SAID SECTION THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST TO AN IRON STAKE BEARING NORTH EIGHTY-FOUR (84) DEGREES FIFTY-SIX (56) MINUTES WEST APPROXIMATELY SIX HUNDRED FORTY-FIVE (645) FEET TO THE CENTER OF THE COUNTY DITCH, THENCE SOUTHWESTWARDLY ALONG THE CENTER OF SAID DITCH TO THE POINT OF BEGINNING, THENCE SOUTH SOUTHWESTWARDLY (80) DEGREES WEST (4) MINUTES EAST APPROXIMATELY SIX HUNDRED SEVENTY-FIVE (675) FEET TO THE PLACE OF BEGINNING, BEING PART OF THE SOUTHWEST QUARTER OF SAID SECTION THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST IN ELKHART COUNTY, INDIANA, CONTAINING 3.45 ACRES, MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.

CERTIFICATE OF APPROVAL

BE IT RESOLVED BY THE CITY OF ELKHART PLAT COMMITTEE, ELKHART, INDIANA THAT THIS PLAT IS HEREBY APPROVED AND ACCEPTED THIS _____ DAY OF _____ 20____

JEFFREY D. SCHAFFER, CHAIR _____ TORY IRWIN, MEMBER _____ ERIC TROTTER, MEMBER _____

AUDITOR

DULT ENTERED FOR TAXATION THIS _____ DAY OF _____ 20____

PATRICA A. FICKENS _____ ELKHART COUNTY AUDITOR.

RECORDER

RECEIVED FOR RECORD THIS _____ DAY OF _____ 20____

AT _____ AND RECORDED IN PLAT BOOK _____ PAGE _____

SEE: _____ MAHA BAKER _____ ELKHART COUNTY RECORDER

DRAINAGE MAINTENANCE STATEMENT

THE MAINTENANCE OF ALL DRAINAGE FACILITIES INCLUDING CURBS AND SWALES, SHALL BE THE RESPONSIBILITY OF THE OWNER OF SAID FACILITIES. THE CITY OF ELKHART, INDIANA, SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ANY SUCH FACILITIES BECOME DAMAGED OR IN DISREPAIR, IT SHALL BE THE RESPONSIBILITY OF THE LOT OWNER TO REPAIR SUCH FACILITIES AT OWNERS EXPENSE. IN THE EVENT OF OWNERS FAILURE TO MAINTAIN SUCH DRAINAGE FACILITIES IN GOOD ORDER AND REPAIR, THE CITY OF ELKHART, INDIANA, SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF SAID FACILITIES AND INVOKE THE COSTS OF SUCH REPAIR TO THE LAST. THE CITY OF ELKHART, INDIANA, IS GRANTED AN EASEMENT ACROSS A LOT OWNERS REAL ESTATE FOR THE PURPOSES OF REPAIRING ANY DRAINAGE FACILITIES ON SAID LOT OWNERS REAL ESTATE. THE AMOUNT OF ANY ASSESSMENT FOR THE COSTS OF SUCH REPAIR AS ASSESSED AGAINST SAID LOT OWNERS REAL ESTATE SHALL BE PROPORTIONATE TO THE AREA OF SAID LOT. THE CITY OF ELKHART, INDIANA, IS FURTHER GRANTED A RIGHT OF ACTION FOR THE COLLECTION OF SAID MORTGAGES ARE FORECLOSED UNDER THE LAWS OF THE STATE OF INDIANA, ANY SUCH COLLECTION AND/OR ENFORCEMENT SHALL BE CONSIDERED TO BE A MATTER OF PUBLIC CONCERN AND SHALL BE COMMENCED IN THE CITY OF ELKHART, INDIANA.

BOARD OF PUBLIC WORKS AND SAFETY

APPROVED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF ELKHART, INDIANA, THAT THIS PLAT IS HEREBY APPROVED AND ACCEPTED THIS _____ DAY OF _____ 20____

MICHAEL C. MACHAN, PRESIDENT _____ JAMIE ARCE, VICE-PRESIDENT _____

ANDY JONES, MEMBER _____ RON DAVIS, MEMBER _____ ROSE RIVERA, MEMBER _____

SURVEYORS CERTIFICATE

STATE OF INDIANA) SS:
 COUNTY OF ELKHART)
 I, CAMERON L. BERON, HEREBY CERTIFY THAT I AM A LAND SURVEYOR, LICENSED IN THE STATE OF INDIANA, AND THAT I HAVE PERSONALLY AND INDEPENDENTLY EXAMINED THE PLAT AND RECORDS REFERRED TO IN THIS PLAT, AND TO THE BEST OF MY KNOWLEDGE, CORRECTLY REPRESENTS THE SAID SURVEY AND SUBDIVISION IN EVERY DETAIL. I HAVE NOTICED THAT THE PLAT IS IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA SURVEYING ACT AND THE INDIANA LAND SURVEYING BOARD. I HAVE NOTICED THAT THE PLAT IS IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA SURVEYING ACT AND THE INDIANA LAND SURVEYING BOARD. I HAVE NOTICED THAT THE PLAT IS IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA SURVEYING ACT AND THE INDIANA LAND SURVEYING BOARD.

DATED THIS 4TH DAY OF OCTOBER 2024

CAMERON L. BERON, P.S. #21900005



NOTARY PUBLIC CERTIFICATE

STATE OF INDIANA) SS:
 COUNTY OF ELKHART)
 BEFORE ME, THE UNDERSIGNED, NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY CALK CREGG CONRAD, PRESIDENT/EXECUTIVE DIRECTOR ON BEHALF OF HABITAT FOR HUMANITY OF ELKHART COUNTY, INCORPORATED AND ACKNOWLEDGED THE EXECUTION OF THIS PLAT.

WITNESS MY HAND AND SEAL THIS _____ DAY OF _____ 20____

NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____

M. HIRE _____ COMMISSION NUMBER _____

RESIDENT OF ELKHART COUNTY, INDIANA _____



ABONMARCHÉ

OWNER/DEVELOPER
 HABITAT FOR HUMANITY OF
 ELKHART COUNTY INC.
 300 River Plaza Drive, Unit 206
 Elkhart, IN 46527
 1-574-533-9911
 abonmarche.com
 CONTACT: BOB L. ABONMARCHÉ CONSULTANTS, INC.
 Engineering, Architecture, Land Surveying

Benjamin Harbor
 South Bend
 Grand Haven
 Hobart
 Lafayette
 South Haven
 Valparaiso
 South Haven