CITY OF ELKHART
BOARD OF PUBLIC WORKS MEETING
AGENDA
Common Council Chambers
9:00 A.M., Tuesday, May 4, 2021

https://coei.webex.com/coei/j.php?MTID=m8ee3ff11c1cd8ca87ae25bb9d45a1dcc
Join by phone: 1-415-655-0001
Meeting Number (access code): 160 150 0607
Meeting password: BOW21

I. Roll Call

II. Approve Agenda

III. Open Bids

- #21-19 Fifteen Police Vehicles

IV. Claims

V. Minutes: Special Meeting April 13, & Regular Meeting April 20, 2021

VI. Tabled Items:

- Supplemental Agreement No. 4 Weaver Consultants Group for Brownfields 700 W. Beardsley Project

VII. Engineering

a.) Administration
- PSA with Christopher B. Burke Engineering for Design of Main St. and Middlebury St. Railroad Crossing

b.) Right-of-Way
- Request Quote #21-04 High Street Curb Ramp

c.) Utility
- PSA with Arcadis U.S., Inc. for Water Master Plan Update
- PSA DLZ Indiana, LLC Amendment #2 Main Street Water Main Replacement
- PSA DLZ Indiana LLC Amendment #1 Edgewater Lift Station Replacement

VIII. Utilities

a.) Administration
- Wastewater Treatment Plant MRO March 2021
- Great Lakes Combined Sewer Overflow Annual Notification

b.) Utility Finance
- Payment #21 to Keramida Inc. for 1032 E. Beardsley Ave. Remediation Project
- Payment #23 to Weaver Consultants Group for 700 W. Beardsley Ave. Remediation Project

c.) Environmental Compliance

- Notice of Violation 25% Rule Five Star Dive Bar (F2018-001)
- Notice of Violation 25% Rule Yummy Chinese (F2018-005)
- FOG Variance Request Extension That Guy's Gourmet Ribs 2041 Cassopolis St Suite A

IX. New Business

- 2021 Municipal Band Contract
- Economic Development Partnership Grant Greater Elkhart Chamber of Commerce
- Commercial Broadband Solutions Contract

X. Public Participation

XI. Adjournment

Any person may access the audio recording of this meeting by submitting a written request to the Clerk of the Board.

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.

April 28th ,2021

JAMIE ARCE - CITY CONTROLLER

IN RELIANCE ON THE ABOVE CERTIFICATION, CLAIMS IN THE TOTAL AMOUNT OF **$2,052,734.37**, AS LISTED ON THE REGISTER ATTACHED HERETO **CONSISTING OF 113 PAGES**, ARE HEREBY APPROVED EXCLUDING ANY CLAIMS WITHHELD AS SHOWN ON THE SEPARATE SUMMARY OF PENDING CLAIMS.

EXECUTED THIS 4TH DAY OF MAY, 2021 BY:

PRESIDENT

MICHAEL C. MACHLAN

VICE PRESIDENT

CHAD CRABTREE

MEMBER

JAMIE ARCE

MEMBER

RON DAVIS

MEMBER

ROSE RIVERA

ORIGINAL COPY MUST BE RETAINED IN THE CONTROLLER'S OFFICE

Board of Public Works

Accounts Payable Summary
May 4, 2021

Individual Claims Over $25,000 each:

Fund	Vendor	Description	Amount
201	COMPASS MINERALS AMERICA	ROAD SALT	50,439.45
201	ELKHART COUNTY LANDFILL	STREETS LANDFILL	26,802.20
237	ELKHART COUNTY TREASURER	HUMANE SOCIETY AGREEMENT	63,250.00
460	NORTHERN INDIANA CONST.	JACKSON BRIDGE	122,227.48
496	C & E EXCAVATING	NORTH MARKETPLACE STREETS	73,027.81
608	DLZ	OAKLAND AVE TANK	98,010.00
150	MOTOROLA SOLUTIONS	COMMUNICATION CTR RADIO UPGRADE	45,037.30
249	MOTOROLA SOLUTIONS	HANDHELD RADIOS - POLICE	419,785.39
201	MC EQUIPMENT	UPFITTING EQ FOR DUMP TRUCKS	192,763.00

Total Claims over $25,000	1,091,342.63
Regular Claims under $25,000:	623,917.98
Total Regular Departmental Claims:	**1,715,260.61**

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

526	HEALTH RESOURCES	DENTAL/VISION MAY	30,419.41
460	CITY OF ELKHART	TIF RIVER DISTRICT LEGAL FEES	150,000.00

Total Pre-Approved over $25,000:	180,419.41
Regular Claims under $25,000:	157,054.36
Total Pre-Approved Claims:	**337,473.77**

Payroll and Pension Payments:

Fire & Police Pension
Bi-weekly Payroll

Total Payroll:	-

Total All Claims, Internal Payments, and Payroll:	**$ 2,052,734.38**

(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.

(b) Movement of monies between funds via check issuance and re-deposit. Done primarily for transfer of employer share of health insurance premiums and basic term life insurance premiums (100% employer paid) from various budgeted funds into the Group Insurance Fund (526) where it is combined with the employee share of health insurance premiums to be paid to the provider.

BOARD OF PUBLIC WORKS
Tuesday, April 13, 2021

President Mike Machlan called a special meeting of the Board of Public Works to order at 11:00 a.m., Tuesday, April 13, 2021. Dasha Slater called the roll. Mike Machlan, Rose Rivera, Chad Crabtree, and Jamie Arce attended in person. Ron Davis was absent.

1. Approve Agenda

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

2. Award Bid #21-17 Mishawaka Road Charlotte Avenue and Laura Court Resurfacing

On motion by Jamie Arce, seconded by Chad Crabtree and carried 4-0, the Board awarded the Mishawaka Road, Charlotte Avenue and Laura Court Resurfacing CCMG Project Bid #21-17, P13821 to Rieth-Riley Construction Co., Inc. who was the lowest, responsive and responsible bidder with a contract price in the amount of $389,351.83.

3. Adjournment

On motion by Chad Crabtree, seconded by Jamie Arce and carried 4-0, the Board of Public Works adjourned at 11:08 a.m.

_____Mike Machlan, President

Attest: _____Nancy Wilson, Clerk of the Board.

Any person may access the recording of this meeting by submitting a written request to the Clerk.

BOARD OF PUBLIC WORKS
Tuesday, April 20, 2021

President Mike Machlan called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, April 20, 2021. The Clerk of the Board Nancy Wilson called the roll. Mike Machlan, Rose Rivera, Chad Crabtree, Ron Davis, and Jamie Arce attended in person.

1. Approve Agenda

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved the agenda as presented.

3. Claims

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the Claim and Allowance Docket in the amount of $3,430,321.91 consisting of 99 pages as prepared on April 15, 2021 at 4:27 p.m.

4. Minutes Regular Meeting April 6, 2021

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the Regular Minutes of April 6, 2021.

5. Tabled Items

Supplemental Agreement No. 4 with Weaver Consultants Group for Brownfields 700 W. Beardsley Project

No action was taken.

6. Engineering

(A.) Administration

Award Bid #21-10 River District Drive and Riverwalk SE

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded Bid #21-10 River District Drive and Riverwalk to C&E Excavating who was the lowest, responsible, and responsive bidder with a contract price of $1,435,174.00.

City of Elkhart Sewage Works Bond Resolution 21-R-08

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Board of Works Resolution 21-R-08 approving the acquisition, construction, and installation of certain improvements to the sewage works system of the City of Elkhart, the issuance of revenue bonds to provide for the cost thereof, and other matters connected therewith.

City of Elkhart Sewage Works Bond Resolution 21-R-09

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Board of Works Resolution 21-R-09 approving the refunding of the City of Elkhart outstanding sewage works revenue bonds issued in multiple series in 2009, and the issuance of revenue bonds to provide payment thereof.

Request Bid #21-24 Sewer System CCTV

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved the plans and specifications and granted permission to advertise the Sewer Systems CCTV 2021 Project Bid #21-24.

(B.) Right-of-Way

Request Quote #21-03 Elkhart Co. Visitor Center Driveway Project

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board granted permission to quote the Elkhart County Visitor Center driveway project Quote #20-03.

BOARD OF PUBLIC WORKS
Tuesday, April 20, 2021

Award Bid #21-12 South Main Street Streetscape Project

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board awarded the South Main Street Streetscape Project Bid #21-12 to Selge Construction Co. Inc., who was the lowest, responsive and responsible bidder with a contract price in the amount of $2,564,408.75.

Award Bid #21-05 Studebaker Park Asphalt Project

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board awarded the Studebaker Asphalt Path Project Bid #21-05 to Milestone Contractors, Inc., who was the lowest, responsive and responsible bidder with a contract price in the amount of $76,000.00.

(C.) Summary

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

Sewer Assessment Application:

Christopher Ruble
3025 Burr Oak Ave
Elkhart, IN 46517
Property: 3025 Burr Oak Ave
Payment Plan- Form B, $5,935.00

Water Assessment Application:

Victory Driveaway, Inc.
3000 B Windsor Ct
Elkhart, IN 46514
Property: 1815 CR 6 East
Paid in full, $7,327.00

Richard & Donna Allen
W 1539 US 2
St Ignace, MI 49781
Property: 1224 Glenwood Park Dr
Paid in full, $703.80

Damita Calhoun
58668 Stella Drive
Elkhart, IN 46517
Property: 1101 W Garfield Ave
Paid in full, $621.00

Ernesto Moreno
54344 Lilac St
Elkhart, IN 46514
Property: 25671 Modrell Ave
Paid in full, $496.80

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Revocable Permit Application:

#6468, Property Owner: Lex Main LLC/ James Crable
Property: 107 W Lexington Ave
Permit Holder: Ziolkowski Construction
Sidewalk & Curb Closure

Street Light Request:

Removal of multiple lights on Benham Ave (See Authorization forms)

7. Utilities

(A.) Administration

Water Utility MRO for March 2021

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board accepted and placed on file the Water Utility MRO for March 2021.

Utility Disconnect and Penalty Transitional Policy

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved and placed on file the Utility Disconnect and Penalty Transitional Policy for May and June, 2021.

Utility Bill Credits

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved credits for properties in the amounts specified as well as the reversal of any penalties associated with the credits for the following addresses and amounts: 1308 Suwanee $1,090.74, 904 W. Lexington $214.15, 1912 Benham Ave. $194.12, 1826 Frances Ave. $292.67, 401 Marion St. $139.27, and 120 W. Beardsley $27.07.

Notice of Violation for Unauthorized Fire Hydrant- Heavy Metal Scrap

A motion was made by Chad Crabtree and seconded by Rose Rivera to approve the imposition of a maximum fine for $900.00 to Heavy Metal Scrap, Inc. as prescribed in the most current rate tariff for the unauthorized use of a fire hydrant.

Mark Dokey of Heavy Metal Scrap was present to discuss the penalty. He asked the Board why they were being fined $900.00? Mike responded they were using a fire hydrant illegally. Mark said he did not understand that. The fire hydrant sits well over 1,000 feet off the road at the end of a line in the middle of his 40-acre property. In 2013, they bought a fire truck from the City of Osceola that provided them with the equipment and showed them how to use it. He said he has been paying for this hydrant for 11 years, and now he is being told he can't use it. Tim Reecer explained that the fire hydrant on this property is a privately owned fire hydrant that is serviced through the City of Elkhart's water supply. The charges that they receive on their monthly bill is for fire protection, so if they have a fire, the fire department can connect to it, and there is no charge for the unmetered services provided through the hydrant. Tim said the Fire Department notified them there was a hose hooked to the fire hydrant, which is illegal or theft of water that was being used without a meter. Mike asked him what he used the water for. Mark responded the hose is a precautionary measure to fill the fire truck if they need it. He said no one witnessed them using any water. On the day of this infraction, they had two guys wandering around looking for the fire hydrant. He said it was the first time in 11 years anyone came there. Mike told him our utility is not set up to fill stand by tankers on a regular basis. It's called cost of service. It costs the Utility to provide water to the site. It's more of an availability fee as opposed to a take all the water you want fee. He said

they are not taking all the water they want. Mike said if they are using that water and then dumping it multiple times a year, then that is water that is not being used for fires. We don't have a replenishment cost built in. That's how the rates are set up. They have been set up that way for 50-75 years. Mike said he was sorry that no one noticed the hose on that hydrant for 11 years. The Fire Department pointed it out and that is unacceptable and against our rules. There are rules to follow and the City residents and rate payers pay for the water that is used. Mark responded never in a million years would he have dreamed he was doing something illegal. Tim noted the $900.00 tariff is an up to amount, noting there is also a daily allowance fee they did not pursue since they were not aware how long it had been there. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-1, Chad Crabtree against, the Board amended the motion by decreasing the penalty to $450.00 with the stipulation there are no more issues of non-compliance for the next two years. The amended motion carried 4-1.

(B.) Utility Finance

Utility Financials First Quarter of 2021 & COVID Financial Impact

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board accepted communication from the Utility Accountant Nicolette Kershner with first quarter 2021 Financials and the COVID financial impact.

Additional Appropriation

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved an additional appropriation totaling $16,924.06 to the Water Service-Other Contractual account line 601-5-736-636.0000.

8. New Business

Denton Bingham Greenebaum LLP Engagement Letter

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved an Engagement Letter with Denton Bingham Greenebaum LLP to provide legal services for the Elkhart East Annexation and authorized the Board President to sign the Engagement Letter.

Board of Works Resolution 21-R-07 Title of 526 W. Washington St. and 1101 Taylor St.

On motion by Chad Crabtree, seconded Ron Davis and carried 5-0, the Board approved Resolution 21-R-07 approving and taking the titles for 526 W. Washington St., Elkhart, Indiana and for 1101 Taylor St., Elkhart, Indiana.

Reliance Standard Agreements

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board approved and accepted nine Reliance Standard Agreements for Life, Critical Illness, Short Term, Long Term, Accident and various Life Insurance policies.

CDBG Expenditure Ratio Compliance Request

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved and authorized the Controller to issue payments in advance of the next scheduled Board of Works meeting in an amount not to exceed $286,000.00 for the invoices listed in the memo from Kacey Jackson, Assistant Director of Community and Redevelopment.

Global Access Point Contract

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the

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Board approved a contract with Global Access Point for the installation fees for a cross connection to our fiber installation.

9. Use & Event Permits

On motion by Chad Crabtree, seconded by Ron Davis and carried 5-0, the Board approved Use and Event permits for the following events:

- 2021 Elkhart Indian Motorcycle Events 6/2,7/7,8/4,9/18 Noise Exceptions
- 2021 Farmer's Market Saturdays May-Sept Noise Exception, Public Assembly, Plaza Sign
- Hughes Birthday 6/12 Noise Exception
- 2021 ArtWalk 5/12, 6/9, 7/14, 8/11, 9/8, 10/13 Noise Exception, Public Assembly, Plaza Sign
- 2021 Hoosier Harley Davidson Events Noise Exception
- Compassion Walk 5/1 Public Assembly, Plaza Sign
- Memorial Day Parade 5/31 Noise Exception, Public Assembly, Street Closures, ESS, Plaza Sign
- Heinniefest 7/22,7/23,7/24 Noise Exception
- A Taste of Black Excellence & Community Block Party 5/1 Noise Exception, Public Assembly, Street Closure
- Clean Your Files Day 9/13 Noise Exception, Public Assembly, Plaza Sign

10. Public Participation

Jamie Arce noted that the City receives Stormwater fees bi-annually from property taxes.

11. Adjournment

On motion by Chad Crabtree, seconded by Jamie Arce and carried 5-0, the Board of Public Works adjourned at 10:32 a.m.

_____Mike Machlan, President

Attest: _____Nancy Wilson, Clerk of the Board.

Any person may access the recording of this meeting by submitting a written request to the Clerk.

Tabled

City of Elkhart
Public Works and Utilities

DATE 3/14/21
APPROVED BY CITY OF ELKHART
BOARD OF PUBLIC WORKS

Memorandum

Date: March 16, 2021

To: Board of Public Works

From: Sarah Mitchell, Regulatory Affairs Director SM

RE: Brownfields 700 W. Beardsley Project – Supplemental Agreement No.4 between the City of Elkhart and Weaver Consultants Group, LLC for Professional Services

The Brownfields Program is respectfully requesting that the Board of Works approve the Supplemental Agreement No. 4 between the City of Elkhart and Weaver Consultants Group, LLC for Professional Services for continued environmental assessment at 700 W. Beardsley Ave. The additional work includes an investigation to determine if the off-site properties are contributing to the threat to human health in the form of preferential pathway/indoor air. To accomplish this task Weaver Consultants, LLC will:

1. Order a database report from HIG or the like;
2. Compile List of surrounding properties and download documents for review from the IDEM, Virtual File Cabinet (VFC); and
3. Compile a report of their findings.

The Brownfields Program is respectfully requesting that the Board of Works approve the Supplemental Agreement No. 4 Between City of Elkhart and Weaver Consultants Group, LLC for a total fee not to exceed $5,000.

CITY OF ELKHART, INDIANA

SUPPLEMENTAL AGREEMENT NO. 4
BETWEEN CITY OF ELKHART AND WEAVER CONSULTANTS GROUP, LLC FOR PROFESSIONAL SERVICES

THIS SUPPLEMENTAL AGREEMENT NO. 4 is effective as of March 16, 2021, ("Effective Date") between the City of Elkhart, Indiana, acting by and through its Board of Public Works ("OWNER") and Weaver Consultant Group, LLC ("Service Provider").

For the following Project: 700 W. Beardsley Avenue Project (Brownfield Site (#4120904);
Task 28 – Records Review of Off-Site Properties

The OWNER has requested certain additional services, not included in the original contract dated August 1, 2017 for the 700 W. Beardsley Avenue Project. The additional services include specifically:

A. Work related to coordination of additional services requested by the OWNER.

OWNER and Service Provider agree to amend the above referenced Contract for the 700 W. Beardsley Avenue Project.

I. Agreement Scope of Services, Task 28 – Records Review of Off-Site Properties

Based on the results of the FSI Report dated, August 2020 and later between the COE and the Program, WCG proposes to conduct and database review of adjoining and surrounding properties near the Site that may be contributing to the impacts of TCE at the Site, down gradient and cross gradient from the Site. WCG proposes the following:

a. Order a database report from HIG or the like;
b. Compile List of surrounding properties and download documents for review from the IDEM, Virtual File Cabinet (VFC) and
c. Compile a report of our findings.

Tabled

City of Elkhart
Public Works and Utilities

DATE 3/14/21
APPROVED BY CITY OF ELKHART
BOARD OF PUBLIC WORKS

Memorandum

Date: March 16, 2021

To: Board of Public Works

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1. Order a database report from HIG or the like;
2. Compile List of surrounding properties and download documents for review from the IDEM, Virtual File Cabinet (VFC); and
3. Compile a report of their findings.

The Brownfields Program is respectfully requesting that the Board of Works approve the Supplemental Agreement No. 4 Between City of Elkhart and Weaver Consultants Group, LLC for a total fee not to exceed $5,000.

WCG will prepare a brief written report describing the results of the database review describing our methods of investigations and results obtained. Our report will include, but not be limited to, a narrative description of the work and results obtained and a map illustrating the potentially impacted locations.

SCHEDULE

WCG is prepared to begin our work upon receipt of the contract approval from the City of Elkhart following the Board of Works meeting. Work shall not begin until a contract is fully executed by all parties and WCG receives a notice to proceed from the City of Elkhart.

COST ESTIMATE

WCG proposes to provide the services described herein on a unit rate basis, invoicing only for units actually worked, for a total fee not to exceed **$5,000.00**. WCG will only bill for work completed.

The estimated cost and proposed Scope of Work are based on information available to WCG at this time. If conditions change, work extends beyond the scheduled completion date, unforeseen circumstances are encountered, or work efforts are redirected, the cost estimate may require modification. We fully expect to complete the proposed Scope of Work for the stated sum, which will not be exceeded without your prior authorization. Any additional consultation or services authorized by the Program beyond the Scope of Work presented in this proposal will be billed in accordance with our standard unit rates.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 4.

OWNER: City of Elkhart, Indiana,
acting by and through its Board of Public Works

By:_____

Title: ~~Michael C. Machlan~~ Chad Crabtree
Vice-President of the Board of Public Works

Date Signed: 3-16-21

Attest: Nancy Wilson
Nancy Wilson, Clerk

Address for giving notices:

Elkhart City Board of Public Works
229 S. Second Street
Elkhart, Indiana 46516

SERVICE PROVIDER:

By: Jodi L. E. Slough

Title: Jodi L. E. Slough
Project Environmental Manager

Date Signed: 3/5/2021

Approved as to form and legality
Randall K. Rinato

Address for giving notices:

Weaver Consultants Group, LLC
7121 Grape Road
Granger, IN 46530

City of Elkhart
Engineering

M E M O R A N D U M

DATE: May 4th, 2021

TO: Board of Public Works

FROM: Danielle Garlington, Graduate Engineer

RE: **Request to Award Proposal and to Execute Contract with Christopher B. Burke Engineering for Professional Services**

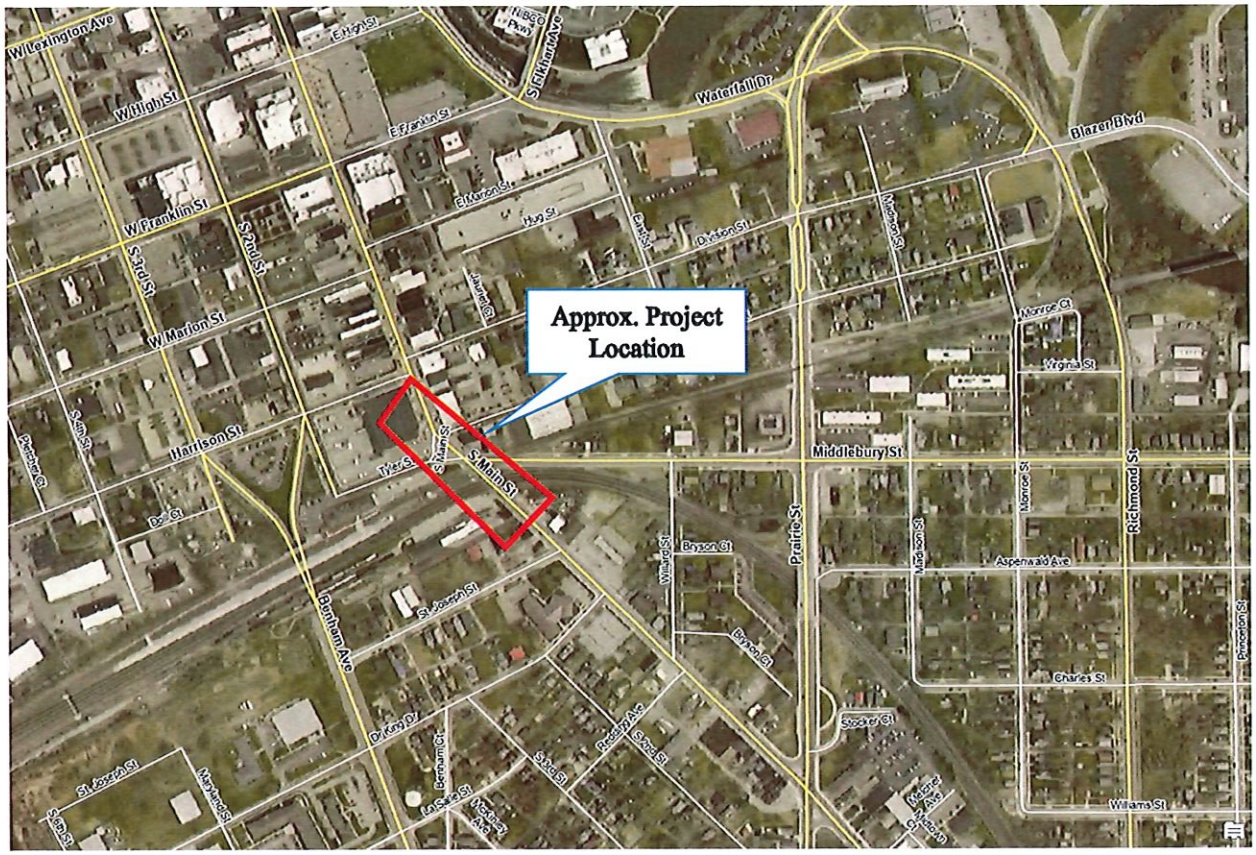
The Engineering group recommends to award proposal to Christopher B. Burke Engineering LLC (CBBEL) for the preliminary design of the Main St and Middlebury St Railroad Crossing. This project is to improve pedestrian safety, vehicle safety, and aesthetics of the railroad crossing. A map of the project area is also attached.

We recommend Christopher B Burke be hired to prepare preliminary designs for improvements at this crossing and intersection and present plans to INDOT. CBBEL has prepared plans for the City of Elkhart in the past and has knowledge and experience of projects on the South Main corridor. Christopher Burke Engineering is proposing to prepare preliminary designs for the S Main and Middlebury railroad crossing. Other services to be provided include: gather data, review past quiet zone studies, prepare cost estimate and present design to INDOT staff. Christopher Burke's estimated total fee for these services is $36,000 plus reimbursable expenses. The preliminary designs for this crossing will be presented to INDOT as part of an application for railroad safety funding. The grant funds will be used toward the final design, preparation of bid documents and construction of the project.

Funds have already been appropriated by the Redevelopment Commission for the design of preliminary plans.

This contract has been reviewed by the City's legal staff.

It is requested the Board of Public Works: **Award proposal to Christopher B Burke Engineering for the Main and Middlebury St Railroad Crossing, and to execute contract with Christopher B. Burke Engineering for professional services.**


Approx. Project Location
W Lexington Ave
E High St
W High St
E Franklin St
W Franklin St
S Rikhan Ave
Waterfall Dr
Blazer Blvd
E Marion St
Hug St
Dyson St
W Marion St
S 3rd St
S 2nd St
S 1st St
Harrison St
Tyler St
S Main St
S Main St
Middlebury St
Monroe Ct
Virginia St
Bayon Ct
Prairie St
Aspenwald Ave
Monroe St
Richmond St
St Joseph St
Benham Ave
Charles St
Williams St

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services

City of Elkhart
the city with a heart

Public Works &
Utilities Department

Administration,Engineering & Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

Main St and Middlebury Railroad Crossing Improvements

This Contract, made as of the _____day of _____, 2021 by and between **CHRISTOPHER B. BURKE ENGINEERING, LLC,** organized and existing under the laws of the State of Indiana, ("Consultant"), and the **CITY OF ELKHART, INDIANA**, by its **BOARD OF PUBLIC WORKS**, ("Owner");

The Consultant and the Owner, mutually agree as follows:

UNDERSTANDING OF THE ASSIGNMENT

During the summer of 2017, Norfolk Southern rebuilt the railroad grade crossing at Main Street and Middlebury Street. While the rebuild improved the efficiency of the railroad operations, the crossings are now less pedestrian friendly, did not include enhanced traffic protection measures, and lacked consideration for aesthetic improvements. The City desires to improve both the pedestrian and vehicle safety at the crossings while also improving the visual appeal and aesthetics of the area. The end goal of the improvements would result in the creation of a "quiet zone" from Lusher Avenue to the Robert Young Railyards. This project will include the preparation of preliminary design plans with an opinion of costs for the railroad crossing improvements. The preliminary design plans will be based on available aerial photography, minimal supplemental field measurements, and any additional GIS data available. The preliminary design plans are anticipated to be enough to generate an opinion of probably costs. The preliminary design plans and opinion of probably cost will be presented to INDOT as part of an application for railroad safety funding. The grant funds will be used to complete the final design, prepare bid documents, and construct the project.

SCOPE OF SERVICES

Services to be provided by CBBEL for this work have been identified as follows:

Task 1 – Kick-off Meeting and Data Gathering: CBBEL will work with city staff to schedule a Kick-Off meeting followed by an initial site visit. After the kick-off meeting and initial site visit, CBBEL will begin our data gathering which includes obtaining existing GIS and LiDAR data. Field measurements will be obtained to supplement the GIS and LiDAR data. A topographic survey is not included in this scope of services.

Task 2 – Review of Existing Quiet Zone Studies: CBBEL will coordinate with the city to acquire copies of the two previously completed quiet zone studies for the Main Street and Middlebury Street intersection. CBBEL will review the studies and determine if any of the recommendations should be considered in the preliminary design. We will discuss the findings with the city prior to proceeding

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services

City of Elkhart
the city with a heart

Public Works &
Utilities Department

Administration, Engineering & Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

with the preliminary design.

Task 3 – Preliminary Design and Cost Estimate: CBBEL will use the information and data gathered in tasks 1 to create an existing conditions model. The existing conditions model will be used as the base file for the preliminary design. We will then proceed with the preliminary design utilizing information gathered from task 2, recommendations from the city, additional design components that improve the safety of the traveling public, and aesthetic improvements that complement the safety improvements. CBBEL will then prepare a cost estimate based on the preliminary design.

Task 4 – Preliminary Design Review / Meeting with City: CBBEL will present the draft preliminary design and cost estimate to the city. After the city has completed their review, CBBEL will schedule a meeting with the city to discuss and gather comments.

Task 5 – Finalize Preliminary Design and Cost Estimate: CBBEL will update the preliminary design and cost estimate based on the review comments from the city. A final version of the preliminary design and cost estimate will be delivered to the city in anticipation of a future meeting with the city and INDOT.

Task 6 – Meeting with City and INDOT: CBBEL will join city staff to present the preliminary design and cost estimate to INDOT Railroad staff. The preparation of the Railroad Safety Grant Application is not included in this scope of services.

SCHEDULE

Services by CBBEL for this project will be provided according to the following schedule:

- Task 1 – Complete data gathering one week after kick-off meeting.
- Task 2 – One (1) week after receipt of reports from the city
- Task 3 – Four (4) weeks after completion of tasks 1 and 2
- Task 4 – Scheduled after completion of task 3
- Task 5 – One (1) week after completion of task 4
- Task 6 – Scheduled after completion of task 5

ESTIMATED FEE

We have estimated the total fee for completing this project shall not exceed **$36,000** plus reimbursable expenses. We will bill you monthly, on a time and material basis, for assigned tasks in accordance with our attached standard charges for professional services.

It shall be emphasized that any requested additional meetings or additional services that are not included in the preceding Fee will be billed at the attached hourly rates.

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services

City of Elkhart
the city with a heart

Public Works &
Utilities Department

Administration, Engineering & Laboratory
574.293.2572

Utility Billing
574.264.4273

1201 S. Nappanee St.
Elkhart, Indiana 46516

If this proposal meets with your approval, please sign where indicated and return an executed original to us as our notice to proceed. The executed proposal, along with the estimated fee, and the attached standard charges for professional services and general terms and conditions constitute the whole of our agreement. Any modification to any part of this agreement without prior acknowledgement and consent by CBBEL will make null and void this agreement. Any time commitment made by CBBEL as part of the agreement does not begin until CBBEL has received an executed original.

CBBEL affirms under penalties for perjury that the Consultant does not knowingly employ an unauthorized alien.

THIS PROPOSAL, ESTIMATED FEE, STANDARD CHARGES FOR PROFESSIONAL SERVICES AND GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY CITY OF ELKHART:

BOARD OF PUBLIC WORKS
CITY OF ELKHART, INDIANA

By: _____
Michael Machlan, President

By: _____
Chad Crabtree, Vice President

By: _____
Ron Davis, Member

By: _____
Jamie Arce, Member

By: _____
Rose Rivera, Member

ATTEST:

_____

Nancy Wilson, Clerk

Board of Public Works

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
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1201 S. Nappanee St.
Elkhart, Indiana 46516

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) original copies on the day and year first above-written:

CHRISTOPHER B. BURKE ENGINEERING

Signature: _____

Name (Printed): _____

Title: _____

ATTEST(Witness): _____

Name(Printed): _____

BOARD OF PUBLIC WORKS
CITY OF ELKHART, INDIANA

By: _____
Michael Machlan, President

By: _____
Chad Crabtree, Vice President

By: _____
Ron Davis, Member

By: _____
Jamie Arce, Member

By: _____
Rose Rivera, Member

ATTEST:

_____

Nancy Wilson, Clerk

Board of Public Works

Rod Roberson
Mayor

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AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION

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

1. I am over eighteen (18) years of age and am competent to testify to the facts contained herein.
2. I am now and at all times relevant herein have been employed by _____ ("Service Provider") in the position of _____.
3. I am familiar with the employment policies, practices, and procedures of Service Provider and have the authority to act on behalf of the Service Provider.
4. Service Provider is enrolled and participates in the federal E-Verify program. Documentation of this enrollment and participation is attached as Exhibit "A" and incorporated herein.
5. Service Provider does not knowingly employ any unauthorized aliens.
6. To the best of my information and belief, the Service Provider does not currently employ any unauthorized aliens.

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

EXECUTED on the _____day of _____, 2021.

Signature: _____

Printed:_____

Rod Roberson
Mayor

Laura Kolo
Environmental Resources

Tory Irwin, P.E.
Engineering Services

City of Elkhart
the city with a heart

Public Works &
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Elkhart, Indiana 46516

CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN

I, _____, certify to the following:

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

EXECUTED THIS _____ DAY OF _____, 2021.

Signature: _____

Printed:_____

Standard Charges for Professional Services, January 2021

Personnel	($/Hr)
Engineer VI	216
Engineer V	197
Engineer IV	172
Engineer III	144
Engineer I/II	113
Resource Planner V	160
Resource Planner IV	150
Resource Planner III	130
Resource Planner I/II	105
Engineering Technician IV	155
Engineering Technician III	139
Engineering Technician I/II	105
CAD II	130
CAD I	107
GIS Specialist IV	155
GIS Specialist III	139
GIS Specialist I/II	100
Environmental Resource Specialist V	151
Environmental Resource Specialist IV	139
Environmental Resource Specialist III	125
Environmental Resource Specialist I/II	105
Environmental Resource Technician	99
Administrative	75
Engineering Intern	60
Information Technician I/II	75

Direct Costs	
Outside Copies, Blueprints, Messenger, Delivery Services, Mileage	Cost + 12%

**Charges include overhead and profit*

Christopher B. Burke Engineering, LLC reserves the right to increase these rates and costs by 5% if the contract is executed after December 31, 2021.

1. **Relationship Between Engineer and Client:** Christopher B. Burke Engineering, LLC (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

   Furthermore, causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. **Responsibility of the Engineer:** Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

   Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. **Changes:** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.

4. **Suspension of Services:** Client may, at any time, by written order to Engineer (Suspension of Services Order), require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. **Termination:** This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.

6. **Documents Delivered to Client:** Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

   When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

   It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

   The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

   The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. **Reuse of Documents:** All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

   The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. **Standard of Practice:** The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.

9. **Compliance with Laws:** The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

   With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

   Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. **Indemnification:** Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

    Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client.

    In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. **Opinions of Probable Cost:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

12. **Governing Law and Dispute Resolutions:** This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the State of Indiana.

    Any claim, dispute or other matter in question arising out of or related to this Agreement, which cannot be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

    The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

    The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. **Successors and Assigns:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.

14. **Waiver of Contract Breach:** The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

15. **Entire Understanding of Agreement:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

16. **Amendment:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement."

17. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.

18. **Force Majeure:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

19. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.

20. **Access and Permits:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.

21. **Designation of Authorized Representative:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.

22. **Notices:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.

23. **Limit of Liability:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this

limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. **Client's Responsibilities:** The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. **Information Provided by Others:** The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer

shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. **Payment:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

    Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

    Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. **Indemnity Clause:** When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and the Client agrees not to modify or delete it:

    Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees and acknowledges that Engineer shall be considered a third party beneficiary of those contracts into which this clause has been incorporated; and agrees to assume the entire liability for all personal injury claims suffered by its employees, including without limitation, claims asserted by persons allegedly injured on the Project; waives any limitation of liability defense based on the Workers' Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees, and consultants (the "Indemnitees") from and against any such loss, expense, damage or injury, including attorneys' fees and costs that the Indemnitees may sustain as a result of such claims.

28. **Job Site Safety/Supervision and Construction Observation:** The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of

construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involves the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. **Insurance and Indemnification:** The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. **Hazardous Materials/Pollutants:** Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or

disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is an operation, maintenance and repair activity for which the Engineer is not responsible.

City of Elkhart
Engineering

M E M O R A N D U M

DATE: April 29, 2021

TO: Board of Public Works

FROM: Ryan Clussman, Right-of-Way Engineer TI

RE: **Request for Quotes - High Street Curb Ramps - Quote #21-04**

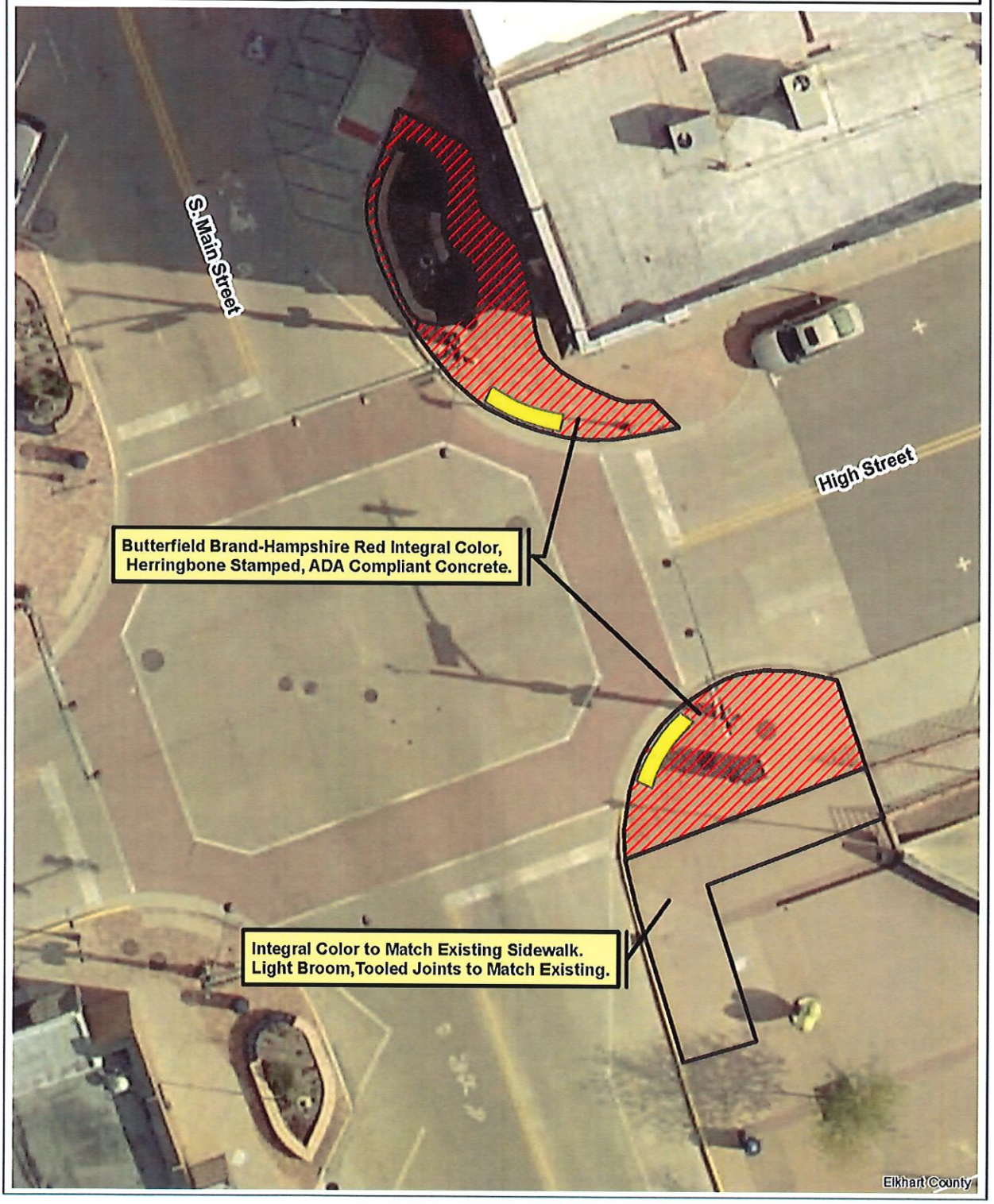
The engineering department received a complaint from a citizen that had fallen from a tripping hazard on the sidewalk at the intersection of Main Street and High Street. The tripping hazard is from the bricks along the sidewalk and curb ramps shifting and settling over time.

As a result of this complaint the engineering department would like to remove the brick work and replace with colored and stamped concrete. See attached aerial.

This project will be funded through ADA funds.

It is recommended the Board of Public Works:
Approve the Request for Quotes for the High Street Curb Ramps Replacement Project Quote #21-04.

High Street Sidewalk Repair



City of Elkhart
Engineering

M E M O R A N D U M

DATE: April 28, 2020

TO: Board of Public Works

FROM: Edgar Moreno, Utility Engineer EM

RE: **Elkhart Water Master Plan Update PSA Agreement**

The Department of Public Works requests approval of the attached Professional Services Agreement to update the "Master Plan for Water Supply and Distribution" (Master Plan).

The City of Elkhart (City) last updated their Water Master Plan in 2011. A distribution model was developed as part of the original Water Master Plan in 2002 to assist in identifying when additional system facilities are needed and help with capital improvements planning efforts. This model was converted to EPANET in 2015 but has not been calibrated or otherwise updated since 2002. The City also embarked on an asset management program, and developed plans for their distribution system and their facilities in 2020 to comply with the IFW SRF Loan Program Asset Management requirements. At this time, the City wishes to review the recommendations of the previous Master Plan, evaluate recent demand trends and update future demand projections, and re-prioritize their capital improvements plan and marry it with the latest asset management plan.

Attached is the Professional Service Agreement (PSA) with Arcadis U.S., Inc. for professional services on the Master Plan. The PSA includes various services including project management, data collection and analysis, future demand projections and hydraulic model updates and calibration.

It is requested to use the appropriated water engineering contractual money as well as remaining water engineering asset management capital funds, which was then designated for the N. Main Street Water Replacement, to cover the design costs.

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

It is requested the Board of Public Works:
approve the Professional Service Agreement between the City and Arcadis U.S., Inc. for the Water Master Plan Update, in an amount not to exceed $84,500.00.

CITY OF ELKHART, INDIANA

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES (Edition 2020)

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

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

("Owner") and **Arcadis U.S., Inc.** ("Engineer").

For the following Project: Water Master Plan Update ("Project").

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

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

B. Owner shall pay Engineer as set forth in Exhibit C.

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

ARTICLE 3 – DEFINITIONS

3.01 *Defined Terms*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES

4.01 *Commencement*

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

4.02 *Time for Completion*

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

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

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

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

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

ARTICLE 5 – INVOICES AND PAYMENTS

5.01 *Invoices*

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

5.02 *Payments*

A. Prior to final payment to Engineer, Engineer shall furnish evidence satisfactory to Owner that there are no claims, obligations or liens outstanding in connection with its services.

Acceptance of final payment shall constitute a waiver of all claims by Engineer for compensation for its services.

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

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

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

~~**ARTICLE 6 – ESTIMATE OF COST**~~

~~6.01 *Construction Cost Estimate*~~

~~A. Engineer's estimate of the Construction Cost is made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry.~~

~~6.02 *Designing to Construction Cost Limit*~~

~~A. Owner and Engineer agree to a Construction Cost limit in the amount of _____ Dollars ($ _____).~~

~~B. The written acceptance by Owner at any time during Basic Services of a revised estimate of the Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~

~~C. If the Bidding has not commenced within three months after completion of the final design phase, the established Construction Cost limit will not be binding on Engineer. In such case, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the final design phase and the date on which proposals or Bids are sought.~~

~~D. If the lowest responsible and responsive proposal or Bid exceeds the established Construction Cost limit by more than thirty percent (30%), Owner may (1) give written approval to increase such Construction Cost limit, or (2) authorize rebidding the Project within a~~

~~reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall make recommendations to Owner describing ways to proceed within Owner's budget and modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. All services of Engineer in respect of this Paragraph shall be at the sole expense of Engineer.~~

ARTICLE 7 – GENERAL CONSIDERATIONS

7.01 *Standards of Performance*

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer agrees to indemnify and hold Owner harmless from all losses and damages resulting from Engineer's failure to meet the Standard of Care. Engineer shall be responsible to Owner for the costs of any errors or omissions of the Engineer or of consultants retained by Engineer.

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

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

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

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

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

~~H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security~~

~~or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.~~

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

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

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

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

7.02 *Use of Documents*

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

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

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

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

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

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

7.03 *Insurance*

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

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

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

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

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

7.04 *Suspension and Termination*

A. *Suspension.*

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

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

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

1. For cause,

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

b. By Engineer:

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

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

2. For convenience,

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

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

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

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

7.05 *Controlling Law*

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

7.06 *Successors, Assigns, and Beneficiaries*

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

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

C. Unless expressly provided otherwise in this Agreement:

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

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

7.07 *Dispute Resolution*

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

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

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

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

7.08 *Environmental Condition of Site*

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

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

7.09 *Indemnification by Engineer*

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

B. Neither Party shall be liable to the other Party for any special, incidental, consequential, or punitive losses or damages (including but not limited to lost profits) even if a Party has been advised of the possibility of such damage.

7.10 Conflict of Interest –

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

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

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

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

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

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

7.11 *Miscellaneous Provisions*

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

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

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

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

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

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

G. Neither Party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by forces beyond its reasonable control, including without limitation, actions or inactions of any governmental agencies, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third-parties, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics. If a Party is so impacted, in whole or in part, such Party will promptly notify the other Party in writing, explaining the reason for the delay. In the event of a force majeure event the time and costs of performance will be modified.

ARTICLE 8 – E-VERIFY REQUIREMENT

8.01 *Terms*

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

8.02 *Enrollment and Participation*

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

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

8.03 *Affidavit*

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

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

8.04 *Subcontractors*

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

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

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

8.05 *Employment of Unauthorized Aliens*

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

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

8.06 *When E-Verify is not Required*

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

ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS

9.01 *Exhibits Included*

A. Exhibit A, "Engineer's Services," consisting of 9 pages.
B. Exhibit B, "Owner's Responsibilities," consisting of 1 page.
C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 page.
D. Exhibit D, "Insurance," consisting of one page.
E. Exhibit E, "Affidavit of E-Verify Enrollment and Participation" consisting of one page.
F. Exhibit F, "Certification Statement Regarding Investments in Iran," consisting of one page.

9.02 *Total Agreement*

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

9.03 *Designated Representatives*

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

9.04 *Suspension and Debarment*

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

9.05 *Investments in Iran*

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

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

OWNER: City of Elkhart, Indiana, acting by and through its Board of Public Works			ENGINEER:
By:		By:	Amy E. Smitley
Title:		Title:	Vice President
Date Signed:		Date Signed:	04/27/2021
Attest:		Engineer License or Certification No.:	Not Applicable
Clerk		State of:	
Address for giving notices:			**Address for giving notices:**
Elkhart City Board of Public Works			Arcadis U.S., Inc.
229 S. Second Street			150 West Market Street, Suite 728
Elkhart, Indiana 46516			Indianapolis, Indiana 46204

By: _____
Rod Roberson, Mayor

	Designated Representative: Tory S. Irwin, PE		**Designated Representative:** Amy E. Smitley, PE
Title:	City Engineer	Title:	Vice President
Phone Number:	574-293-2572 Ext. 2287	Phone Number:	317-236-2844
E-Mail Address:	Tory.Irwin@coei.org	E-Mail Address:	Amy.Smitley@arcadis.com

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the
Agreement between Owner and Engineer for Professional Services

Engineer's Services

The City of Elkhart (City) last updated their Water Master Plan in 2011. A distribution model was developed as part of the original Water Master Plan in 2002 to assist in identifying when additional system facilities are needed and help with capital improvements planning efforts. This model was converted to EPANET in 2015 but has not been calibrated or otherwise updated since 2002. The City also embarked on an asset management program, and developed plans for their distribution system and their facilities in 2020 to comply with the IFW SRF Loan Program Asset Management requirements. At this time, the City wishes to review the recommendations of the previous Master Plan, evaluate recent demand trends and update future demand projections, and re-prioritize their capital improvements plan and marry it with the latest asset management plan.

The City's distribution and treatment system entails the following. The water facilities include three well fields and groundwater treatment plants, which are located in the northwest, central and southern sections of the distribution system. The North Main Street Well Field (central; 10.7 mgd available capacity) is the oldest and largest well field that serves all of the downtown area and is the back-up supply to the South and Northwest Well Fields. The Northwest Well Field (4.6 mgd) is the newest well field. The South Well Field (3.0 mgd) is the smallest and is primarily used to serve the higher elevations on the south side of Elkhart. The water facilities also include eight storage tanks (three ground, five elevated) and one booster station. The City has 411 miles of water mains.

The following describes the scope of work to perform this Water Master Plan Update.

TASK 1 – PROJECT MANAGEMENT / MEETINGS

1.1 Project Management

The project management task includes project staffing, budget and schedule management over the duration of this project. Arcadis will keep the City informed of the current status of the project and coordinate all invoicing related to the project.

Deliverables:

- Project Schedule
- Project Invoicing

1.2 Kick-Off Meeting

Arcadis will facilitate a kickoff meeting to review the project intent, scope of services, project schedule, project contacts and communications. The kickoff meeting will also include a discussion of the key elements and concepts for the project. Prior to the kickoff meeting, a data

request will be submitted (see task below). During the kickoff meeting, this data will be reviewed to build consensus regarding the meaning of pertinent data as well as its completeness and accuracy. In addition, as part of this meeting, a detailed review of the recommendations for facilities and distribution system improvements outlined in the most recent water master plan update will be completed. This will include basis for each of the recommended improvements, the status as to whether or not the improvements have been implemented, and a discussion on the need to re-evaluate if the improvement is still needed. Any changes that have occurred with regard to large user demands or new demand additions to the system will also be discussed.

Deliverables:

- Kickoff Meeting Minutes

1.3 Monthly Progress Meetings

Monthly project progress meetings will be conducted with a presentation developed to communicate and coordinate with the City on ongoing task efforts. We anticipate a Teams virtual meeting format for the monthly progress meetings. In addition to updates on the current work, schedule updates will be shared along with the status of any action items from previous meetings such as remaining items on any requests for information presented to the City. Select meetings and workshops will be bundled with progress meetings when possible to minimize disruption to the City staff.

1.4 Request for Information

Arcadis will formally request certain documents and data necessary to perform the work in this scope. This data will be reviewed and incorporated as appropriate into the hydraulic model and water master plan. This typically includes, but is not limited to, hourly operational data (SCADA), water quality data, flow test data, daily water production records, available water audit reports, detailed facility drawings, filter inspection reports, and details on closed valves, control valves, and other system infrastructure significant to system hydraulics. We understand that the most accurate representation of a system is through a compilation of multiple sources, including the GIS database, valve books, SCADA data, and operator knowledge, so we will work directly with the City to process and review all relevant information. Arcadis shall be entitled to reasonably rely on data provided by the City.

Deliverables:

- Request for Information

TASK 2 – FOXFIELD DEVELOPMENT NEEDS

2.1 Field Data Collection

Arcadis owns and maintains a fleet of hydrant pressure recorders which can be utilized to gain detailed distribution system pressure data. These can be utilized to gain high resolution details on

system capacity in the Foxfield development area. With assistance from City operators, Arcadis will perform the following field work:

- Perform 2 hydraulic grade tests (multiple pressure recorders with one or two simultaneous hydrant flows)

A four-phase workflow — identify, prepare, execute, and record — will be implemented to ensure the correct field data is collected, the correct procedure is executed, and the appropriate documentation is recorded and communicated. The identify phase will impart a science to selecting the correct locations for data collection and measurement, and the prepare phase will empower staff to perform the testing by using a proven setup process within ESRI Collector. The execute phase will consist of Arcadis staff performing the testing (with City staff operating valves and hydrants) with the record phase collecting specific information in Collector regarding the test details, equipment IDs, and locations. All field data will be summarized in field reports which include all data and test results, while the data itself will also be utilized during the next task and during model calibration.

Deliverables:

- Field testing reports

2.2 Desktop Evaluation

The field testing will be utilized to perform a desktop evaluation of the Foxfield development. Hydraulic grade line tests will be used to understand local hydraulics and system capacity at the development location along with pressure impact along transmission and distribution lines feeding the area. A desktop water storage evaluation (equating existing and required storage volumes) will also be performed under existing and future conditions for the distribution system. Based on these evaluations, necessary improvements will be identified and proposed to the City for their short-term implementation. Once the hydraulic model is complete, any improvements will be confirmed with the model and added to the final master plan.

Deliverables:

- TM on Foxfield Development Needs

TASK 3 – WATER DEMANDS

3.1 Existing Demand Analysis

Arcadis will review billing data provided by the City, post-process the data based on discussions with the team and calculate an average annual consumption for each meter. Arcadis will review any specific codes associated with the type of water customer (e.g. residential, commercial, industrial) and confirm the City's desired approach for representation of various user types within the model. Any available information on non-revenue water (NRW) will be reviewed, including latest water audits and any non-revenue water studies, to understand and best apply all

differences between WTP production records, pump station flow meters, and billing records as NRW demands. Final demand information will be spatially allocated to each meter address using model tools during model development. This will result in the actual billed data represented at each customer location within the model.

Deliverables:

- Existing Water Demand (report section)

3.2 Future Demand Projections

Under this subtask, Arcadis will update and prepare demand projections through 2030, taking into consideration the projected and actual demand from the previous Water Master Plan Update. Consistently with the last Water Master Plan update, a regression analysis using long-term historic data of the water system's pumpage will be used to determine the range of average and maximum day demand projections through 2030. This analysis will rely on average and maximum pumpage data, and the evolution of the peaking factor (ratio) between these values, in years since 2011, and also in the most recent 2-3 years. Arcadis will discuss the identified trends with the City for comments and concurrence before finalizing the present task, as other anecdotal information must be taken into consideration for completeness (e.g., unusual discrete water loss events, loss of large industrial customer, etc).

Deliverables:

- Projected Water Demand (report section)

TASK 4 – HYDRAULIC MODEL UPDATE AND CALIBRATION

4.1 Hydraulic Model Update

The hydraulic model will be updated based on the City's latest GIS. In addition to GIS, additional physical infrastructure such as pumping stations and storage tanks will be added or adjusted as needed based on changes since the original model development. Other model elements that may not be directly measured but will need confirmed may include tank mixing characteristics, pump curves, pipe condition, and valve specifications. Demand data that was developed as part of the above tasks will also be spatially allocated in the model. Various tools will be utilized to track and visually summarize model elements and data gaps as the model is developed. Arcadis will apply their expertise and experience to create an accurate model with information available.

Deliverables:

- Hydraulic model development report

4.2 Hydraulic Model Calibration

Model calibration is believed by the water industry to be the most technically challenging aspect of modeling (per AWWA Engineering Modeling Applications Committee). The measure of model calibration is the primary tool to communicate the level of confidence and representativeness of the model computer simulations to the actual system. Common measures define a threshold allowable variation for each measurement or as percentage variance. However, every model is unique, and every system has facilities that are more critical than other for the model. Therefore, calibration must use smart digital applications to ensure results are presented and interpreted based on the needs of the modeled system. Arcadis will employ a number of custom calibration tools, including:

1. Computer scripts to directly read the model database and bring results into Microsoft Excel for automated comparison of calibration data. This, along with calibration SCADA templates developed by our team, will make it easy to visualize the calibration results at multiple locations and for multiple scenarios.
2. Similarly, we have developed computer scripts that directly read the model database for comparison of multiple scenarios within the model. This visualization of comparison provides an efficient means to understand the impact of any changes made during calibration from one adjustment to the next.

It is anticipated that the City's available data (hydrant flow test results and SCADA meter data) will be utilized for steady-state and a 24-hour calibration scenario. We will work closely with City staff during the calibration process to understand any anomalies and develop solutions. During coordination workshops, we will collaboratively develop a set of criteria for macro and micro calibration. For example, one criterium may specify that the pressure at a node is within five pounds per square inch (psi) of the measured data. During macro calibration, parameters such as diurnal curves and demand at a node may be adjusted to match model pressures to field observed data. Alternatively, during micro calibration, parameters such as pipe roughness factors may need adjusted to match model results to observed data.

<u>Deliverables:</u>

- Calibrated hydraulic model

TASK 5 – DISTRIBUTION SYSTEM ANALYSIS

The new model will be utilized to perform system and localized evaluations to identify deficient areas under current and future conditions and identify improvements. These model results will be fed into the subsequent risk profiles and planning scenarios, while additional analysis will be performed and made available directly to the City through ArcGIS Online portals and dashboards.

5.1 Hydraulic Assessments

After the model is calibrated, hydraulic performance will be evaluated throughout the system for current conditions. Based on discussions with the City, these key model parameters and outputs may include pipe roughness, system pressures, pipeline velocity/headloss, and storage tank turnover for hydraulics. These results will be fed into interactive dashboards and maps to help with identification of hydraulic deficiencies. Many of these assessments and results will also feed into individual recommendations and master planning.

5.2 Distribution Master Plan Analysis

Based on the existing system deficiencies identified through completion of the above tasks, possible solutions will be evaluated based on feedback and prioritization from the City. These improvements will be analyzed for both existing and future conditions (based on model scenarios from demand forecasting) to ensure system deficiencies are addressed under any expected conditions. These evaluations may focus on pipeline replacements or operational changes to help improve hydraulic conditions. Based on these findings and discussions with the City, a set of recommendations will be developed to improve current conditions and expected future conditions. The model output will include likelihood of failure (LoF) and consequence of failure (CoF) information that could be used in future repair and replacement planning when the City decides to update this next.

Deliverables:

- Distribution System Analysis (report section)

TASK 6 – WATER SUPPLY AND TREATMENT EVALUATION

An important step in developing a capital improvements plan is evaluating the ability of the existing sources of water supply to meet projected demands. From previous discussions with the City, Arcadis understands that the City has good knowledge of the production capabilities of the existing wells and well fields in the water system based on the operation and performance of those wells and that no additional capacity is anticipated.

6.1 Evaluate Supply/Demand Gap

Arcadis will obtain the current estimated well and well field capacities from the City for the North Main, South, and Northwest Well Fields. At this time, it is anticipated that further evaluation and/or refinement of these capacities will not be necessary. The future projected demands will be compared to the available water supplies from the well fields to determine if a gap exists between the supply and demand. If it is determined that a gap exists between the available water supply and the projected future demand, Arcadis will identify a probable time frame in which the development of additional groundwater supplies will be necessary.

6.2 Chemical System Replacement & Upgrades

Arcadis will review the condition and capacities of the existing chemical feed systems at the North Main, Northwest and South facilities; they will be compared to projected capacity needs, themselves largely based on projected water demands determined in Task 3, and corresponding contributions of each well field to meeting these projections. If a gap is identified between current and future needs, Arcadis will define the associated capital project scope and timing. Although it is anticipated at this time that additional chemical feed capacity will not be needed, the City noted during the previous condition assessment that several chemical feed systems (chlorine, fluoride, phosphate) require improvements with containment, ventilation/exhaust, safety and other features. Arcadis will take these observations into consideration to determine whether discrete repairs or wholesale replacement are a more cost-effective long-term solution. Recommended capital projects will be described in terms of anticipated scope and construction cost estimate.

6.3 Filter Rehabilitation & Upgrades

The City noted during the previous condition assessment that due to their age, the Northwest and South pressure filters may need to be replaced within a few years. When considered as a separate asset (i.e., transferrable from existing to new filter), the filter media may also soon reach the end of its useful life. Arcadis will review available information, and work with the City and equipment suppliers to determine whether 1) the media alone can be replaced, with the filter replacement being deferred several years if condition allows, or 2) conditions warrant the prompt replacement of both filter and media. As part of this evaluation, Arcadis will also include the comparison of existing and future filtration capacity needs, to determine whether additional capacity may be required. Recommended capital projects will be described in terms of anticipated scope and construction cost estimate.

Deliverables:

- Water Supply and Treatment Evaluation (report section)

TASK 7 – SAFE DRINKING WATER ACT (SDWA) COMPLIANCE

Arcadis will perform the following services to prepare the City for any upcoming SDWA compliance needs.

- Determine applicable future federal and state regulations.
- Summarize potential compliance requirements.
- Assess compliance status based on available data, including any available unregulated contaminants monitoring rule data.
- Identify and evaluate potential strategies for compliance, potentially including:
    - Updated sample collection and analysis program

- Updated recording and reporting procedures
- Treatment and/or operational modifications

TASK 8 – RECOMMENDED CIP AND WATER MASTER PLAN

8.1 Development of Capital Improvements Plan

Based on the results of the above tasks, Arcadis will assist in prioritizing the City's Capital Improvements Plan (CIP) and will marry this with the City's latest Asset Management Plan. The Asset Management Plan was recently submitted in 2020; it is assumed that the facilities and distribution system repair and replacement needs are still up-to-date and can be used for this purpose. The draft plan will include:

- A list of recommended ten-year (first priority 2021-2025, second priority 2026-2030) capital improvements and asset management projects and their planning level cost estimates prioritized based on expected need.
- Recommendations for suggested "trigger" events that would indicate when a project is needed based on increases or decreases in system-wide or specific customer demands.

Before submitting the draft CIP, Arcadis will discuss with the City the improvement priorities and ensure that the resulting capital improvement plans coincide with the City's five-year CIP planning cycle.

Deliverables:

- Recommended Capital Improvements (report section)

8.2 Water Master Plan Update

Based on the results of the above tasks, Arcadis will compile the Waster Master Plan Update. This will be a compilation of the draft report sections provided as part of each task. A draft plan will be submitted for the City's review and comment, followed by a final plan incorporating the City's feedback.

Deliverables:

- Water Master Plan Update (draft and final)

ASSUMPTIONS

This scope is based on the following assumptions. Any change in these assumptions may result in a change to the project scope and engineering fee.

1. All operational/SCADA data, GIS data, and billing data will be provided in electronic, spreadsheet or database format.
2. The City will provide a field crew to assist Arcadis staff in field data collection. The City field crew will operate hydrants and valve necessary for field testing.

3. The City field crew will provide and perform any traffic control required as part of the field testing.
4. The City will provide a complete GIS of the water pipe network as a geometric network with minimal changes required for simulation of a hydraulic model.
5. The original WaterCAD model will be utilized for the model update and an entirely new model will not be developed. The same distribution pipe size limits will be included as the existing model (pipes >8")

SCHEDULE

It is proposed that Arcadis complete Task 2 (Foxfield Development Needs) within six weeks for the City to timely respond to the Foxfield development request, Task 3 (Water Demands) also within six weeks, and the remaining services within five months from notice to proceed. This assumes requested information is provided timely and City staff have meeting availability.

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

Owner's Responsibilities

- The City will provide all operational/SCADA data, GIS data, and billing data in electronic, spreadsheet or database format.
- The City will provide a field crew to assist Arcadis staff in field data collection. The City field crew will operate hydrants and valve necessary for field testing.
- The City field crew will provide and perform any traffic control required as part of the field testing.
- The City will provide a complete GIS of the water pipe network as a geometric network with minimal changes required for simulation of a hydraulic model.

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

Payments to Engineer for Services and Reimbursable Expenses

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

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

Arcadis proposes to perform this scope of work on a time and materials basis for a not-to-exceed budget as shown in the following table.

Task	Labor	ODCs / Subs	Not-To-Exceed Amount
Task 1. Project Management / Meetings	$12,600	-	$12,600
Task 2. Foxfield Development Needs	$10,100	$1,100	$11,200
Task 3. Water Demands	$5,900	-	$5,900
Task 4. Hydraulic Model Update and Calibration	$17,700	-	$17,700
Task 5. Distribution System Analysis	$16,200	-	$16,200
Task 6. Water Supply and Treatment Evaluation	$13,100	-	$13,100
Task 7. SDWA Compliance	$2,700	-	$2,700
Task 8. Recommended CIP and Water Master Plan	$5,100	-	$5,100
Total	**$83,400**	**$1,100**	**$84,500**

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

Insurance

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

Insurance

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

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

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

AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION

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

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

2. I am now and at all times relevant herein have been employed by **Arcadis U.S., Inc.** ("Engineer")in the position of **Vice President**.

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

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

5. Engineer does not knowingly employ any unauthorized aliens.

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

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

EXECUTED on the 27th day of April, 2021.

Amy E. Smitley

Printed: Amy E. Smitley

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

CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN

I, **Amy E. Smitley**, certify to the following:

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

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

EXECUTED THIS 27th DAY OF APRIL, 2021.

Amy E. Smitley

Printed: Amy E. Smitley

MEMORANDUM

DATE: April 28, 2021

TO: Board of Public Works

FROM: Edgar Moreno, Utility Engineer EM

RE: **Amendment #2: PSA with DLZ Indiana, LLC**
Main Street Water Main Replacement – WA 7687

Attached is Amendment #2 for the Main Street Water Main Replacement project. This amendment is for additional work to be provided by DLZ Indiana, LLC.

The additional work from this amendment includes:

- **Reduction of services** under Task 3 (Subsurface Utility Engineering), Task 12 (Construction Administration), Task 13 (Property Owner Coordination and Easement Acquisition), and Reimbursables.

- **Task 4 Field Survey** – Additional field survey, utility research and as-built conditions review were completed to determine the current field conditions near the backup generator concrete pad.

- **Task 7 Final Design** – Additional coordination meetings and design modifications were completed to modify the project manual and specifications to allow for the removal of an existing backup generator concrete pad and conduit and facilitate the installation of a new backup generator concrete pad, conduit and associated equipment.

- **Task 9 Railroad Crossing Permit** – Additional reimbursable costs associated with submitting the railroad occupancy permit.

- **Task 11 Bidding/Quoting Phase Services** – Additional bid phase required to complete the project.

This amendment will result in an increase of $15,505.00 to the not-to-exceed fee of $231,825.00. Approval of Amendment #2 would increase the not-to-exceed fee to $247,330.00.

This amendment has been sent to Legal for their review.

It is requested the Board of Public Works:

Approve Amendment #2 with DLZ Indiana, LLC for the Main Street Water Main Replacement project, WA 7687, for an increase of $15,505.00, bringing the current not-to-exceed fee to $247,330.00.

CITY OF ELKHART INDIANA,

AMENDMENT NO. 2
BETWEEN CITY OF ELKHART AND DLZ INDIANA, LLC
FOR PROFESSIONAL SERVICES

THIS AMENDMENT NO. 2 is effective as of _____

1. Background Data:

   a. Effective Date of Original Agreement: July 7, 2020

   b. Owner: City of Elkhart, Indiana, acting by and through its Board of Public Works

   c. Engineer: DLZ Indiana, LLC

   d. Project: Main Street Water Main Replacement

2. Nature of Amendment:

   No. 2 Additional Services to be performed by Engineer

3. Description of Modifications

   a. Reduction of services under Task 3 – Subsurface Utility Engineering (Allowance);

   b. Reduction of services under Task 12 – Construction Administration;

   c. Reduction of services under Task 13 – Property Owner Coordination and Easement Acquisition (Allowance);

   d. Reduction of Reimbursables;

   e. Provide additional services under Task 4 – Field Survey;

   f. Provide additional services under Task 7 – Final Design;

   g. Provide additional services under Task 9 – Railroad Crossing Permit (Allowance);

   h. Provide additional services under Task 11 – Bidding/Quoting Phase Services.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment No. 2. All provisions of the Agreement and Amendment No 1 not modified by this or previous Amendments remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2.

OWNER: City of Elkhart, Indiana, acting by and through its Board of Public Works			ENGINEER:
By:	Michael Machlan	By:	Andrew C. Lemberis, P.E.
Title:	President, Board of Works	Title:	Vice President
Date Signed:		Date Signed:	04-10-2021
Attest:		Engineer License or Certificate No.:	PE 10100882
Clerk		State of:	Indiana
Address for giving notices:			**Address for giving notices:**
Elkhart City Board of Public Works			DLZ Indiana, LLC
229 S. Second Street			2211 E. Jefferson Blvd.
Elkhart, Indiana 46516			South Bend, IN 46615

	Designated Representative:		**Designated Representative:**
	Tory S. Irwin, PE		Stephanie Cerling, P.E.
Title:	Public Works Director	Title:	Project Manager
Phone Number:	574-293-2572	Phone Number:	574-236-4400
Facsimile Number:	574-293-7658	Facsimile Number:	574-236-4471
E-Mail Address:	tory.irwin@coei.org	E-Mail Address:	scerling@dlz.com

This is **Attachment 1**, consisting of 2 pages, to Amendment No. 2.

Modifications

1. Engineer shall decrease the services under Tasks 3 for Subsurface Utility Engineering, Task 12 Construction Administration (Allowance), Task 13 Property Owner Coordination and Easement Acquisition (Allowance) and Reimbursables.

    a. Task 3 Subsurface Utility Engineering (Allowance) – The fee decreased from $21,445.00 to $19,373.90.
    b. Task 12 Construction Administration (Allowance) –The fee decreased from $13,100.00 to $10,000.00.
    c. Task 13 Property Owner Coordination and Easement Acquisition (Allowance) – Work performed for this task was less than originally anticipated. The fee decreased from $9,000.00 to $140.00.
    d. Reimbursables – The reimbursables were less than original anticipated. The fee decreased from $4,000.00 to $140.54.

2. Engineer shall perform the following Additional Services: Additional Services under: Task 7 Final Design, Task 9 Railroad Crossing Permit (Allowance) and Task 11 Bidding/Quoting Phase Services.

    a. Task 4 Field Survey – Additional field survey, utility research and as-built conditions review were completed to determine the current field conditions near the backup generator concrete pad. The fee increased from $5,700.00 to $7,200.00.
    b. Task 7 Final Design – Additional coordination meetings and design modifications were completed to modify the project manual and specifications to allow for the removal of an existing backup generator concrete pad and conduit and facilitate the installation of a new backup generator concrete pad, conduit and associated equipment. The fee increased from $63,000.00 to $88,275.56.
    c. Task 9 Railroad Crossing Permit (Allowance) – Additional reimbursable costs associated with submitting the railroad occupancy permit. The fee increased from $5,000.00 to $5,120.00.
    d. Task 11 Bidding/Quoting Phase Services – Additional bid phase required to complete the project. The fee increased from $13,000.00 to $19,500.00.

3. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as indicated on the attached revised Exhibit A.

4. The responsibilities of Owner are modified as follows: No change.

5. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer additional or modified compensation as indicated in the attached revised Exhibit C.

6. The schedule for rendering services is modified as follows: The Main Street Water Main and Library Alley Drainage Improvements have been combined into one set of bidding documents. The project bidding phase was January 2021 through February 2021.

7. Other portions of the Agreement (including previous amendments, if any) are modified as follows: No other changes.

(The remainder of this page intentionally left blank)

This is **EXHIBIT A**, consisting of **eleven (11)** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

Engineer's Services

PART I - PROJECT DESCRIPTION

The Project includes investigative services, design phase services, permitting, bidding phase services, and construction administration.

A. North Main Street Water Main Replacement

1. Approximately 1,000 lineal feet of new 24-inch water main from East Simonton Street to the existing High Service Pump Discharge Building just north of Grove Street. The existing 12-inch/18-inch water main will be abandoned in-place or removed. The Engineer will prepare plans to replace the existing water main. Refer to **Exhibit G,** for the North Main Street Water Main Project Area Map.

2. The new water main will require the crossing of Christiana Creek and the Elkhart and Western Railway. Jack and bore and direction drilling methods will be evaluated for this section.

3. Remove two (2) abandoned pipes currently resting on the Christiana Creek streambed. The Owner has obtained all necessary permitting. Removal shall be limited to the exposed pipe to the toe of the slope of the stream banks. The Owner has indicated that these abandoned pipes have been filled with grout.

4. Full depth pavement replacement of intersection of Main Street and Simonton Street including to the radius return points. Sidewalk and ADA ramps along the full depth replacement will also be replaced. Detailed drawings will be provided for the ramp grades. Full depth pavement replacement of approximately 200 lineal feet of Main Street where the water main will be located in the roadway.

5. Utility modifications within the intersection of Main Street and Simonton Street. Replacement of the existing brick sanitary sewer manhole (MH #1) with a precast concrete structure. Existing inlets (CB #101 and CB #102) will be replaced and rerouted to storm sewer manhole MH #2 located in the northeast corner of the intersection. Consolidation and rerouting of water main such that only one water main in each direction to the limits of the pavement replacement.

6. The traffic signal poles and signal heads at the intersection of Main Street and Simonton Street will be maintained in place. Push button pedestals will be provided to meet ADA requirements. With the full depth pavement replacement, traffic loops, signal handholes and signal wiring will be replaced. The current traffic handholes fall within the ADA ramps and will need to be relocated outside the ramp limits, if possible.

7. Maintenance of traffic will be developed based on closing the intersection of Main Street and Simonton Street with a detour. Access to the Botanic Gardens driveway will be maintained.

8. Concrete sidewalk shall be replaced in-kind within the full depth pavement replacement limits.

9. Tree lawn and turfgrass shall be replaced in-kind and appropriate street tree species specified at a 2:1 replacement ratio.

10. Easement agreements with parcel owners associated with the improvements at the intersection of Main Street and Simonton. A railroad crossing agreement is anticipated with the Elkhart and Western Railway. All other work will be completed within the public right-of-way or on Owner owned property.

11. This project also includes utility coordination; environmental red flag screening; and filing for applicable permits.

B. Elkhart Public Library - Alley Drainage Improvements

1. The parking area drive southeast of the Elkhart Public Library Downtown Branch regularly has standing water near the catch basin. A new dry well, catch basin, and stormwater conveyance will be added to the area to help remove stormwater. The existing dry well(s) will be cleaned, or abandoned-in-place. Asphalt pavement mill and overlay will be completed within the project limits. Refer to **Exhibit H**, for the Elkhart Public Library Project Area Map.

2. The intent of these improvements is to improve the drainage of the alley.

3. The stormwater improvements will not be sized to any particular storm event. The Engineer will assist the Owner in soliciting quotes for this work.

PART II - BASIC SERVICES

ENGINEER'S SCOPE OF SERVICES

Engineer will provide the consulting engineering services necessary for the completion of the North Main Street Water Main portion of the Project as follows:

Task 1 – Project Management

1. The Engineer will establish project management controls and procedures including; scheduling, budgeting, subcontractor management, and quality controls. Engineer will perform monthly invoicing and status reporting including progress updates.

2. Monthly meeting with the Owner will be conducted. Agendas will be submitted prior to the meeting and meeting minutes will be submitted to all attendees within seven (7) days of the

meeting. Three (3) meetings are anticipated.

Task 2 - Utility Coordination

The Engineer shall perform utility coordination for this project. This work shall include:

1. Notifying affected utilities in the project area,
2. Coordination meetings with affected utilities,
3. Reviewing relocation plans, and
4. Preparation of utility status reports.

Task 3 – Subsurface Utility Engineering (Allowance)

1. The Engineer will coordinate with the Owner to complete subsurface investigations as required to determine the alignment for the proposed water main. A total of ten (10) utilities were potholed.
2. The Engineer will perform a subsurface utility engineering (SUE) investigation to determine the locations and elevations of existing critical utilities along the west side of Main Street and within the intersection of Main Street and Simonton Street. The SUE work will be within the roadway pavement and the grasslawn areas. The results of the investigation will determine the zones available for the proposed water main and potential need for utility relocation.
3. The Engineer will survey the SUE reference points so that the SUE results are incorporated into the Final Design Plans.
4. Where determination of the depth of an existing utility is critical for the purposes of the design of the new facilities, potholing methods may be employed unless provided for by the Owner.

Task 4 – Field Survey

1. Engineer will rely upon the Owner provided survey. The Owner will provide the survey in Civil 3D Version 2018. The Engineer will supplement the Owner provided information and complete the following:
   a. Establish State Plane Coordinates on the survey control in the drawing provided based on the Indiana Coordinate System of 1983, East zone (NAD83). Establish benchmarks based on the elevations in the data provided.
   b. Transform the survey drawing onto the State Plane coordinate system to allow for integration of aerial mapping and GIS data.
   c. Create control point witness diagrams and benchmark descriptions drawing.
   d. Reformat survey drawing to conform with DLZ drafting standards and parts catalog.
   e. Create a single topographic base map from the combined survey data.
   f. Determine Right of way/property lines based on available field investigation and recorded subdivision plats, apparent right of way will be shown for any areas lying outside of a

subdivision. Lot lines will be depicted per the recorded subdivision plats or GIS information.

g. **After the backup generator concrete pad was installed, the Engineer completed an updated topo survey to locate concrete pad. Additional research was completed to determine the location of below grade pipes/conduits associated with the concrete pad.**

Task 5 - Geotechnical Investigation

1. The Engineer shall make or cause to be made, a geotechnical investigation.
2. Prior to making the borings, the Engineer shall submit boring specifications and boring locations and sketches for approval by the Owner. Borings shall extend sufficiently in depth to obtain characteristic data for the proper design of the pavement and sewers. The Engineer shall backfill bore hole or cause to be backfilled in accordance with *Aquifer Protection Guidelines*, dated October 30, 1996.
3. Two (2) soil boring (at a depth 20 feet) will be completed along the proposed water main alignment. One soil boring will be completed along Main Street, and one soil boring will be completed at the Library site. Maintenance of Traffic is included for the soil boring activities.
4. Eight (8) pavement cores will be completed in Main Street.
5. The finalized boring logs and report will be provided for Owner review.

Task 6 - Preliminary Design

1. Conduct a meeting with the Owner regarding the preliminary phase of the project.
2. Evaluate creek and railway crossing method options (jack and bore and directional drill). Evaluation will include coordination with the Elkhart and Western Railway on acceptable pipe material and boring method. Engineer will present results of the evaluation in a Technical Memorandum to the Owner that includes advantages and disadvantages of each option and associated costs.
3. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project. The Engineer shall prepare (1) one set of 50% documents for Owner review and comment, including the following:
   a. Plan Set
      1) General Sheets (Title Sheet, general notes, abbreviations)
      2) Water Main plan and profile sheets
      3) Roadway plan and profile sheets

4) Traffic Signal plan sheet

5) Stormwater Pollution Prevention Plan (SWPPP)

6) Planting Plan, Schedule and Details

7) Construction Details

b. Preliminary material quantity list

4. Advise Owner if additional reports, data, information, or services of the types described in **Exhibit B** are necessary and assist Owner in obtaining such reports, data, information, or services.

5. Based on the information contained in the Preliminary Design Phase documents, prepare a budgetary construction cost, and assist Owner in collating the various cost categories which comprise the total project cost.

6. Furnish two (2) review copies and one (1) digital PDF copy of the Preliminary Design Phase documents and review them with Owner. Within fourteen (14) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents. Engineer will incorporate the Owner's comments into the Final Design.

Task 7 - Final Design

1. Prepare construction plans and specifications to outline the design. This includes preparation of specifications, plans and details as necessary for bidding the project. General notes, plans and profiles, erosion control plans and construction details will be provided.

2. Design to comply with local codes and the Recommended Standards for Water Works, 2018 Edition (10 States Standards).

3. Develop maintenance of traffic plans.

4. Prepare a revised budgetary construction cost for the project.

5. Develop front-end bid specifications assuming that the project is only funded through local funds. Development of bidding documents for other funding sources are considered additional services. Front-end bid specifications will be Elkhart Public Works standard specifications.

6. **The Engineer shall complete the following tasks to revise the design, within the water treatment plant site.**
   a. **The Engineer shall incorporate the surveyed information into the design plans.**
   b. **The Engineer shall attend onsite and virtual meeting with the Owner and the generator pad contractor to coordinate the work activities associated with the Project.**
   c. **The Engineer shall revise the plans and specifications to incorporate the removal of the generator pad and associated conduits, revisions to the storm sewer and revisions to the water main design.**

7. Deliverables

   a. Engineer shall furnish two (2) copies of the final design documents to the Owner for final review prior to printing sets for bidding.

   b. Upon completion and final approval of the work by Owner, the Engineer shall deliver to the Owner the following, which shall become the property of the Owner:
      1) Two (2) copies of all plan drawings and specifications. Plans will be copied on 24" x 36" paper.
      2) Electronic copies (.PDF and AutoCAD files) of the plan drawings will be provided for the Owner's use.
      3) An electronic copy (in .PDF format) of the specifications will be provided for the Owner's use.
      4) One (1) - Copy of the budgetary construction cost along with a Microsoft Excel electronic file.

Task 8 – IDEM and Rule 5 Permits

1. Engineer shall prepare and submit the application and back-up documentation for the following permits:

   a. Indiana Department of Environmental Management (IDEM) Construction Permit for water main will be issued by the Owner.

   b. Rule 5 Erosion Control Permit in accordance with 327 IAC 15-5 and 327 IAC 15-13.

2. Permit fees shall be paid by Engineer at the time of submission as a reimbursable expense.

3. The Engineer shall monitor the approval process and provide any additional information that may be required to secure permit(s) and approval(s).

Task 9 – Railroad Crossing Permit Application (Allowance)

1. Engineer shall prepare and submit the application and back-up documentation for one crossing at the Elkhart and Western Railway. The Engineer shall coordinate with Elkhart and Western Railway through the Right of Entry Permit.

2. The Engineer will request a deviation from the railroad's technical standards for the use of direction drilling of the water main at the crossing.

3. Permit fees shall be paid by Engineer at the time of submission as a reimbursable expense.

4. The Engineer shall monitor the approval process and provide any additional information that may be required to secure permit(s) and approval(s).

Task 10 - Elkhart Public Library - Alley Drainage Improvements

1. The intent is to provide reasonable improvements to the drainage of the alley, within the existing physical constraints. The stormwater improvements will not be sized to any particular storm event.

2. Engineer will rely upon the Owner provided survey. The Owner will provide the survey in Civil 3D Version 2018. The Engineer will supplement the Owner provided information and complete the following:
   a. Establish State Plane Coordinates on the survey control in the drawing provided based on the Indiana Coordinate System of 1983, East zone (NAD83). Establish benchmarks based on the elevations in the data provided.
   b. Transform the survey drawing onto the State Plane coordinate system to allow for integration of aerial mapping and GIS data.
   c. Create control point witness diagrams and benchmark descriptions drawing.
   d. Reformat survey drawing to conform with DLZ drafting standards and parts catalog.
   e. Create a single topographic base map from the combined survey data.

3. Preliminary Design: Prepare Preliminary Design Phase documents consisting of preliminary drawings (11" x 17" Civil plan sheet), budgetary construction cost, and written description of the Project.

4. Final Design

   a. Prepare construction plans and specifications to outline the design. This includes preparation of specifications, plans and details as necessary for quoting the project. Plans and construction details will be provided.

   b. Prepare a revised budgetary construction cost for the project.

   c. Develop front-end specifications assuming that the project is only funded through local funds. Development of quoting documents for other funding sources are considered additional services. Front-end quote specifications will be Elkhart Public Works standard specifications.

   d. Deliverables
      1) Engineer shall furnish two (2) copies of the final design documents to the Owner for final review prior to printing sets for quoting.
      2) Upon completion and final approval of the work by Owner, the Engineer shall deliver to the Owner the following, which shall become the property of the Owner:

a. Two (2) copies of all plan drawings and specifications. Plans will be copied on 11" x 17" paper.
ii. Electronic copies (.PDF and AutoCAD files) of the plan drawings will be provided for the Owner's use.
iii. An electronic copy (in .PDF format) of the specifications will be provided for the Owner's use.
iv. One (1) - Copy of the budgetary construction cost along with a Microsoft Excel electronic file.

Task 11 – Bidding Phase Services

The Engineer will assist the Owner in obtaining bids for the Main Street Water Main and the Library Drainage Improvements. A total of two (2) bid phases will be completed.

a. Advertising for and obtaining bids for the contract for construction, materials, equipment and services described above by the contractor.
b. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.
c. Attend the bid opening, prepare the bid tabulation sheets and assist the Owner in evaluating bids and in assembling and awarding contracts.

Task 12 – Limited Construction Administration

Engineer will assist Owner in the following for both the Library Alley Drainage Improvements and the Main Street Water Main:

1. **Attend pre-construction meeting and a maximum of four (4) construction meetings.**
2. Review shop drawings for compliance to design intent, assist in clarifications and complete site observations on an as needed basis during critical construction tasks.

Task 13 – Property Owner Coordination and Easement Acquisition (Allowance)

1. Management and Coordination
   a. The Engineer will evaluate the design to determine if any properties are anticipated to be adversely impacted by the Project.

PART III – SCHEDULE OF SERVICES

Engineer shall complete the Engineer's Scope of Services with the following schedule that assumes a Notice To Proceed to Engineer on or before July 7, 2020.

Task	Completion Date
Notice to Proceed	July 7, 2020
Preliminary Design Submittal	August 20, 2020
Owner's Comments Received on Preliminary Design	September 3, 2020
Final Design Submittal	October 15, 2020
Owner's Comments Received on Final Design	October 29, 2020
Bidding	January – February 2021
Construction	Spring/Summer 2021

PART IV - ADDITIONAL SERVICES

Additional services that are not included in the above Project scope are available through the resources of Engineer. It is not anticipated that these services will be required at this time. Additional services include, but are not limited to:

A. Preparation of applications and supporting documents for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project except as specifically set out in **Exhibit A** and **Exhibit C**.

B. Providing renderings or physical models for Owner's use except as specifically set out in **Exhibit A**.

C. Preparing documents for alternate bids requested by Owner for Contractor's work which is not executed or documents for out-of-sequence work.

D. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value Engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the project; evaluating processes available for licensing and assist Owner in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by Owner.

E. Furnishing services of independent professional associates and consultants.

F. Services during out-of-town travel required of Engineer other than visit to the site or Owner's office.

G. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services except as specifically set out in Article 6 of the Professional Services Agreement. Preparation of revised bid documents for rebidding in the event that bids as received are rejected except as specifically set out in Article 6 of the Professional Services Agreement.

H. Right-of-Way engineering and land acquisition work for which compensation is expected for easement(s) and appraisal(s) is required, except for services specifically set out in Part II, Task 12.

I. Preparation of operating, maintenance and staffing manuals except as specifically set out in **Exhibit A**.

J. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other legal or administrative proceeding involving the project.

K. Additional Services in connection with the project, including services which are to be furnished by Owner in accordance with **Exhibit B** and services not otherwise provided for in this Agreement.

L. Services to make measured drawings of or to investigate the accuracy of drawings or other information furnished by the Owner except as specifically set out in **Exhibit A** and **Exhibit C**.

M. Preparing design plans of temporary sheeting, as required.

N. Preparation of an Environmental Assessment, Environmental Impact Statement, Section 4(f) Evaluation, Section 106 Evaluation, Section 6(f) Evaluation or other environmental compliance documentation, as required except as specifically set out in **Exhibit A**.

O. Preparation of applications and supporting documents for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project except as specifically set out in **Exhibit A** and **Exhibit C**.

P. Construction observation services.

Q. Design of street or wellfield lighting.

R. Development of conceptual alternatives exceeding those indicated in the Scope of Services.

S. Attendance at meetings other than those indicated in the Engineer's Scope of Services.

T. All other services not specifically listed in the Engineer's Scope of Services.

(Remainder of this page intentionally left blank.)

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

Payments to Engineer for Services and Reimbursable Expenses

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

In consideration of the Basic Services presented in **EXHIBIT A**, Engineer will be compensated on an hourly rate with the total fee not to exceed ~~$231,825.00~~ **$247,330.00.**

Task	Description	Estimated Amount	
1	Project Management		$4,400.00
2	Utility Coordination		$2,500.00
3	Subsurface Utility Engineering (Allowance)	**$19,373.90**	~~$21,445.00~~
4	Field Survey	**$7,200.00**	~~$5,700.00~~
5	Geotechnical Investigation		$11,680.00
6	Preliminary Design		$68,500.00
7	Final Design	**$88,275.56**	~~$63,000.00~~
8	IDEM and Rule 5 Permits		$4,400.00
9	Railroad Crossing Permit (Allowance)	**$5,120.00**	~~$5,000.00~~
10	Elkhart Public Library Alley Drainage Improvements		$6,100.00
11	Bidding Phase Services	**$19,500.00**	~~$13,000.00~~
12	Construction Administration (Allowance)	**$10,000.00**	~~$13,100.00~~
13	Property Owner Coordination and Easement Acquisition (Allowance)	**$140.00**	~~$9,000.00~~
	Reimbursables	**$140.54**	~~$4,000.00~~
	Total Amount	**$247,330.00**	~~$231,825.00~~

Invoices will be submitted on a monthly basis based upon percent of completion.

Additional services, as required or desired, will be negotiated and agreed upon before commencing work on those services.

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

MEMORANDUM

DATE: April 27, 2021

TO: Board of Public Works

FROM: Edgar Moreno, Utility Engineer EM

RE: **Amendment #1: PSA with DLZ Indiana, LLC**
Edgewater Lift Station Replacement – SA 7782

Attached is amendment #1 for the Edgewater Lift Station Replacement project. This amendment is for additional work to be provided by DLZ Indiana, LLC.

The additional work from this amendment includes:

- **Reduction of services under Task 7** – Hydraulic Analysis/Modeling (Hourly Rate). The fee for Task 7 decreased in the amount of $30,030.00 from $35,000.00 to $4,970.00.

- **Provide additional services under Task 11** – Permits. Additional permit application was prepared for Department of Planning Special Exception, exhibit preparation, and attendance and presentation at virtual Plan Commission and Board of Zoning Appeals meetings. The amount for Task 11 Permits increased by $6,890.00 from $7,500.00 to $14,390.00.

- **Provide additional services under Task 13** – Construction Administration (Hourly Rate). Additional construction phase assistance may include periodic on-site construction observation, as requested by the Owner, during prescribed on-site construction activities including building demolition, concrete formwork and rebar installation for the top slab and building foundation, delivery and installation of pre-manufactured building, set up and start-up of bypass pumping operations, and equipment startup. This phase shall include attendance at pre-installation conferences. The amount for Task 13 Construction Administration increased by $23,140.00 from $30,000.00 to $53,140.00

This amendment will result in a net change of $0 to the not-to-exceed fee. Approval of amendment #1 would leave the not-to-exceed fee of $369,500.00 unchanged.

This amendment has been sent to Legal for their review.

It is requested the Board of Public Works:

Approve Amendment #1 with DLZ Indiana, LLC for the Edgewater Lift Station Replacement project, SA 7782, with a net change to the contract amount of $0. The current not-to-exceed fee will remain at $369,500.00.

CITY OF ELKHART INDIANA,

AMENDMENT NO. 1
BETWEEN CITY OF ELKHART AND DLZ INDIANA, LLC
FOR PROFESSIONAL SERVICES

THIS AMENDMENT NO. 1 is effective as of _____

1. Background Data:

   a. Effective Date of Original Agreement: September 15, 2020

   b. Owner: City of Elkhart, Indiana, acting by and through its Board of Public Works

   c. Engineer: DLZ Indiana, LLC

   d. Project: Edgewater Lift Station Replacement

2. Nature of Amendment:

   No. 1 Additional Services to be performed by Engineer

3. Description of Modifications

   a. Reduction of services under Task 7 – Hydraulic Analysis/Modeling (Hourly Rate);

   b. Provide additional services under Task 11 – Permits;

   c. Provide additional services under Task 13 – Construction Administration (Hourly Rate)

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment No. 1. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1.

OWNER: City of Elkhart, Indiana, acting by and through its Board of Public Works			ENGINEER:
By:	Michael Machlan	By:	Andrew C. Lemberis, P.E.
Title:	President, Board of Works	Title:	Vice President
Date Signed:		Date Signed:	04-23-2021
Attest:		Engineer License or Certificate No.:	PE 10100882
Clerk		State of:	Indiana
Address for giving notices:			**Address for giving notices:**
Elkhart City Board of Public Works			DLZ Indiana, LLC
229 S. Second Street			2211 E. Jefferson Blvd.
Elkhart, Indiana 46516			South Bend, IN 46615

	Designated Representative:		**Designated Representative**:
	Tory S. Irwin, PE		Stephanie Cerling, P.E.
Title:	Public Works Director	Title:	Project Manager
Phone Number:	574-293-2572	Phone Number:	574-236-4400
Facsimile Number:	574-293-7658	Facsimile Number:	574-236-4471
E-Mail Address:	tory.irwin@coei.org	E-Mail Address:	scerling@dlz.com

This is **Attachment 1**, consisting of 1 page, to Amendment No. 1.

Modifications

1. Engineer shall decrease the services under Tasks 7 for Hydraulic Analysis/Modeling (Hourly).

    a. Task 7 Hydraulic Analysis/Modeling (Hourly) – The fee decreased from $35,000.00 to $4,970.00.

2. Engineer shall perform the following Additional Services: Additional Services under: Task 11 Permits, Task 13 Construction Administration (Hourly).

    a. Task 11 Permits – Additional permit application was prepared for Department of Planning Special Exception, exhibit preparation, and attendance and presentation at virtual Plan Commission and Board of Zoning Appeals meetings. The fee for Task 11 Permits increased by $6,890.00 from $7,500.00 to $14,390.00.
    b. Task 13 Construction Administration – Additional construction phase assistance may include periodic on-site construction observation, as requested by the Owner, during prescribed on-site construction activities including building demolition, concrete formwork and rebar installation for the top slab and building foundation, delivery and installation of pre-manufactured building, set up and start up of bypass pumping operations, and equipment startup. This phase shall include attendance at pre-installation conferences. The fee for Task 13 Construction Administration increased by $23,140.00 from $30,000.00 to $53,140.00.

3. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as indicated on the attached revised Exhibit A.

4. The responsibilities of Owner are modified as follows: No change.

5. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer additional or modified compensation as indicated in the attached revised Exhibit C.

6. The schedule for rendering services is modified as follows: No change.

7. Other portions of the Agreement (including previous amendments, if any) are modified as follows: No other changes.

This is **EXHIBIT A**, consisting of twelve (12) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

Engineer's Services

PART I - PROJECT DESCRIPTION

The project includes investigative services, design phase services, permitting, bidding phase services, construction administration, and startup services.

The Edgewater Lift Station is located along the St. Joseph River near the intersection of Navajo Street and Edgewater Drive. The lift station was originally designed and constructed in the 1950's. Since then, the equipment in the dry well side has been replaced and several modifications have occurred including the addition of an intermediate platform, and roof access. In addition, the original bar screen equipment has been removed and replaced with a Flo-Minutor in-channel comminutor to reduce the size of large solids.

The pump station is designed for five (5) - 45 horsepower (HP) pumps. One of the pumps was removed from service, and one pump has recently failed. Three pumps remain in service. Two pumps are needed to convey dry-weather flow, leaving little flexibility and limited ability to pump wet weather flow.

Based on discussions with the Owner, a new submersible lift station is desired. The concrete below grade structure appears to be in good condition, and there is adequate area within the structure. Therefore, this Agreement is based on incorporating the existing concrete below grade structure in the design of the new submersible type lift station.

The Project includes:

A. The Edgewater Lift Station Replacement ("Project") includes the preparation of construction documents for the replacement of the existing lift station. The Engineer will prepare construction plans to renovate the existing wet well into a new flow channel and the existing dry well into a wet well for a submersible lift station.

B. The existing Edgewater Lift Station has an estimated pumping capacity of 14 million gallons per day (estimated based on the station receiving approximately 2/3 of the WWTP average daily flow of 20 million gallons per day). It pumps into a 54-inch gravity sewer that is located at the corner of Navajo Street and Pennsylvania Avenue.

C. The existing lift station equipment will be replaced with a new in-channel comminutor and up to 5 submersible pumps having the same flow rate, total dynamic head and horsepower design parameters as the existing pumps.

D. The Owner acknowledges that the lift station upgrades will not require upsizing as no future growth is anticipated in the surrounding area. An evaluation of the influent flow

requirements is not included in this agreement.

E. The design will include a new concrete valve vault structure to be located within or adjacent to the existing dry well.

F. The design will include a new above-grade building to house new electrical equipment for the lift station, pump station controls, monitoring equipment, power distribution panel, automatic transfer switch, and a new permanent generator.

G. Development of suggested construction sequencing parameters that will include bypass pumping requirements, allowing for the contractor to have full access to the existing lift station, allowing for complete demolition of the above grade structure and removal of all equipment in the wet well and dry well. The contractor will be required to develop the actual construction sequence.

H. Preparation of demolition plans and specifications for the removal of the existing lift station, force main, and associated components that are to be replaced. It is anticipated that the existing above grade structure of the lift station will be demolished.

I. Perform an asbestos investigation on the existing Edgewater Lift Station above grade structure.

J. Preparation of site plans will include a new driveway, sidewalk replacement, manhole repair and pavement patching at Navajo Street and Pennsylvania Avenue, sidewalk replacement, alley pavement replacement, and plantings for visual screening.

K. Refer to **Exhibit G**, for the Project Area Map.

PART II - BASIC SERVICES

ENGINEER'S SCOPE OF SERVICES

Engineer will provide the consulting Engineering services necessary for the completion of the Project as follows:

Task 1 – Project Management

1. The Engineer will establish project management controls and procedures including; scheduling, budgeting, subcontractor management, and quality controls. Engineer will perform monthly invoicing and status reporting including progress updates.

Task 2 - Utility Coordination

The Engineer shall perform utility coordination for this project. This work shall include:

1. Notifying affected utilities in the project area,
2. Coordination with affected utilities,
3. Reviewing relocation plans, and
4. Preparation of utility status reports.

Task 3 - Field Survey

1. Establish horizontal and vertical control throughout the project limits. Horizontal control will be based on the Indiana Coordinate System of 1983, East zone (NAD83). Vertical control will be based on the North American Vertical Datum of 1988 (NAVD88).
2. Provide topographic mapping within the Project Area indicated in **Exhibit G.** The width of the survey corridor will be the apparent right-of-way. The mapping will include features such as curbs, sidewalks, traffic poles, outline of landscape areas, trees over 6" in diameter, etc.
3. Locate and provide rim elevations for castings (manholes, catch basins and curb inlets) within the project limits, including those just beyond the curb line.
4. Detail sanitary and storm structures to determine invert elevations, flow direction, type and size of pipes.
5. Locate and detail the exterior features of the existing Edgewater Lift station, including building location, concrete slabs, hatches, and support beams.
6. Subsurface utilities will be depicted based on the field survey of surface markings provided by Indiana Underground Plant Protection Service.
7. Create topographic base map from the survey data.
8. Right of way/property lines based on available field investigation and recorded subdivision plats, apparent right of way will be shown for any areas lying outside of a subdivision. Lot lines will be depicted per the recorded subdivision plats or GIS information.

Task 4 – Interior Survey – High Definition Laser Scan

1. The Engineer shall perform a high definition laser scan of the wet well utilizing an inverted tripod mounted scanner, accessing the wet well through the existing hatches. Engineer will only capture data on exposed elements visible from the hatches. Engineer's field crews will not physically enter the wet well area. Data on the interior dry well will be collected from inside the dry well with access made available via the existing staircase. The scan will concentrate on the existing structure as well and mechanical and plumbing features.

2. Engineer will generate a 3-D point cloud file of the scan data in an RCS file format compatible with Revit or other CAD related software for use in obtaining field measurements of the interior of the wet well and dry well.

Task 5 - Geotechnical Investigation

1. The Engineer shall make or cause to be made, a geotechnical investigation.
2. Prior to making the borings, the Engineer shall submit boring specifications and boring locations and sketches for approval by the Owner. Borings shall extend sufficiently in depth to obtain characteristic data for the proper design of the pavement and sewers. The Engineer shall backfill bore hole or cause to be backfilled in accordance with *Aquifer Protection Guidelines*, dated October 30, 1996.
3. One (1) soil boring (at a depth 25 feet) will be completed at the proposed lift station valve vault location.
4. One (1) soil boring (at a depth of 15 feet) will be completed at the proposed lift station building location.
5. One (1) soil boring (at a depth of 10 feet) will be completed at the location of the proposed forcemain.
6. One (1) pavement core will be completed in Navajo Street.
7. The finalized boring logs and report will be provided for Owner review.

Task 6 – Asbestos Investigation

1. Engineer shall utilize an Indiana Department of Environmental Management (IDEM) accredited Asbestos Building Inspector to perform an asbestos inspection of the Edgewater Lift Station above grade structure. The asbestos inspection will be performed in accordance with the requirements set forth by the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) asbestos regulations contained in the Code of Federal Regulations, Title 40, Part 61, Subpart M, (40 CFR 61, Subpart M). The purpose of the asbestos inspection will be to document the location, quantity, and the presence of asbestos containing materials required to be removed prior to the demolition of the structure.

Task 7 – Hydraulic Analysis/Modeling (Hourly Rate)

1. Engineer will make or cause to be made a hydraulic analysis to support the proposed modifications to the lift station. The scope of work outlined in Task 7 is based on the initial concept for completing the work.
2. The Engineer will evaluate the capacity of the lift station layout particularly the capacity of the influent flow channel and the embedded pipes to deliver the required flow to the proposed wet well (currently the dry well) of the lift station.

a. The Owner shall provide the required peak flow distributions (e.g. dry and wet weather operating conditions of the system).

b. The calculations shall be the basis for final pumping rate. As part of this task, the Engineer shall layout the wet well to determine modifications required during construction.

3. Influent Flow Channel

a. A Storm Water Management Model (SWMM) type model will be used for the hydraulic analysis of the influent flow channel portion of the lift station (the existing wet well) because of the open channel flow conditions. The Engineer will select the computational engine (EPA SWMM5, PCSWMM or TAP) based on the complexity of the boundary conditions and the expected flow response.

b. The results of the model will indicate the total flow delivered and the distribution of flows between the pipe openings that lead to the wet well (the existing dry well). If the flow delivered is not sufficient in flow quantity or distribution, the Engineer will evaluate alternative opening sizes and shapes that deliver the required flow.

4. Wet Well Flow Uniformity

a. Once a suitable solution is determined for the openings between the influent flow channel and the wet well, a Computation Fluid Dynamics (CFD) program will be utilized to analyze the hydraulics on the wet well side of the openings. The CFD model will provide the 3D flow distribution at various critical locations within the wet well for the peak flow.

b. The Engineer will coordinate with pump manufacturer(s) to establish the required conditions at the pump inlet. The intent is to help the design in arriving at appropriate conditions in the wet well to support the smooth operation of the pumps.

c. The results of the model will indicate the flow distribution within the wet well. If the flow distribution is not sufficient, the Engineer will evaluate adding alternate structural elements [for example, baffle(s)] to aid with flow uniformity and distribution.

Task 8 - Preliminary Design

1. Conduct two (2) meetings with the Owner regarding the preliminary phase of the project.

2. Review Owner supplied information related to the existing lift station. Meetings will be conducted with the Owner to review this information.

3. Evaluate the current layout/configuration of the piping, pumps, and electrical equipment.

4. Develop preliminary pumping, piping, and valve layouts in conjunction with input from the Owner.

5. Develop preliminary sequence of construction.
6. Advise Owner if additional reports, data, information, or services of the types described in **Exhibit B** are necessary and assist Owner in obtaining such reports, data, information, or services.
7. Based on the information contained in the preliminary design plans, prepare a budgetary construction cost, and assist Owner in collating the various cost categories which comprise the total project cost. Costs will be based on construction in 2021.
8. Deliverables:
    a. Preliminary Design Plans: Engineer will furnish two (2) review copies and one (1) digital PDF copy, and
    b. Budgetary Construction Cost.

Review Meeting - The Engineer will conduct a design review meeting with the Owner at the completion of the preliminary design.

Task 9 – 60% Design

1. After receipt of the Owner's preliminary design submittal comments and approval, the Engineer shall proceed with the 60% Design.
2. Pumping, piping, instrumentation, and controls will be further developed during this stage to a 60% design level. Layout of the wet well and valve vault will be advanced in accordance with the Task 7, Hydraulic Analysis/Modeling, of this Agreement. The design will conform to Indiana Department of Environmental Management (IDEM) requirements and the Recommended Standards for Wastewater Facilities, 2014 Edition (10 States Standards).
3. Make equipment selections based on compatibility and similar operations within the wastewater collection system.
4. The anticipate sequence of construction will be refined at this stage.
5. Engineer shall meet with the Owner's SCADA provider to develop requirements and parameters for the project.
6. Electrical and mechanical loads will be refined during this stage to a 60% design level. Preliminary emergency generator sizing will be developed. The design will be in accordance with the National Electric Code (NEC) and National Fire Protection Association (NFPA) codes and standards, latest edition applicable to Indiana.

7. Preliminary architectural, electrical, and structural layouts will be prepared and will include floor plans and section views at critical locations. Preliminary structural calculations will be started with respect to critical design elements.

8. Demolitions plans will be developed and will identify the structure removal limits, utility abandonment requirements, waste disposal requirements, asbestos abatement requirements (if required), and the backfill and compaction requirements (if required).

9. Site geometric, grading, and landscaping elements will be advanced.

10. Preliminary technical specifications will be prepared in six-digit Construction Specification Institute (CSI) format for all divisions applicable to the project.

11. Budgetary construction cost will be updated during this phase.

12. Deliverables

    Engineer will furnish two (2) review copies and one (1) digital PDF copy for Owner review and comment, including the following:

    a. 60% Design Plans,

    b. Draft Technical Specifications, and

    c. Updated Budgetary Construction Cost.

13. Review Meeting - The Engineer will conduct a design review meeting with the Owner at the completion of the 60% design.

Task 10 - Final Design

1. Final construction plans and specifications will be completed to detail the design requirements for the lift station.

2. Final construction plans will include: a cover sheet with general project information; general notes; demolition plan, facility layout information; site plan; grading plan; landscape plan; pumping, piping and valve layout; structural and architectural plans, sections, and details; electrical site and facility layout, schedules, and details; and mechanical, plumbing, and HVAC plans, schedules, and details.

3. Project specifications will be completed including the divisions of work necessary to construct the lift station. Front end documentation shall either be provided by the Owner, or Engineer shall use Engineers Joint Contract Documents Committee (EJCDC), 2013 edition format, assuming that the project is only funded through local funds.

4. Review guidelines and restrictions with the Owner and finalize the suggested sequence of construction.

5. Develop maintenance of traffic plans.

6. Prepare a revised budgetary construction cost for the project.
7. Deliverables

   Engineer will furnish two (2) review copies and one (1) digital PDF copy for Owner review and comment, including the following:

   a. Final Design Plans.
   b. Project Manual
      i. Front End Specifications
      ii. Technical Specifications
   c. Updated Budgetary Construction Cost
8. Upon review and comment by the Owner, the Engineer will shall deliver to the Owner the following bid documents, which shall become the property of the Owner:
   a. Two (2) copies of all plan drawings and specifications. Plans will be copied on 22" x 34" paper.
   b. Electronic copies (.PDF and AutoCAD files) of the plan drawings will be provided for the Owner's use.
   c. An electronic copy (in .PDF format) of the specifications will be provided for the Owner's use.
   d. One (1) - Copy of the budgetary construction cost along with a Microsoft Excel electronic file.

Task 11 – Permits

1. Engineer shall prepare and submit the application and back-up documentation for the following permits:
   a. Indiana Department of Environmental Management (IDEM) Sanitary Sewer Construction Permit. Permit will be issued by the Owner.
   b. Department of Homeland Security State Design Release.
   c. Rule 5 Erosion Control Permit in accordance with 327 IAC 15-5 and 327 IAC 15-13.
   d. City of Elkhart Department of Planning Special Exception request.
      i. Preparation of Special Exception Application, including building and site renderings.
      ii. Attendance and presentation at City of Elkhart Plan Commission meeting.

iii. **Attendance and presentation at City of Elkhart Board of Zoning Appeals meeting.**

2. Permit fees shall be paid by Engineer at the time of submission as a reimbursable expense.
3. The Engineer shall monitor the approval process and provide any additional information that may be required to secure permit(s).

Task 12 - Bidding Phase Services

Engineer will assist Owner in the following during the bidding phase:

1. Coordinate distribution of the plans and specifications through the City of Elkhart and the Elkhart Plan Room. Bid sets will be paid for directly by the bidders to the local printing company/ plan room.
2. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.
3. Attend the bid opening, prepare bid tabulation sheets, and assist the Owner in evaluating bids and assembling and awarding contracts.

Task 13 - Construction Administration

1. Attend the pre-construction meeting and ~~a maximum of six (6)~~ construction meetings.
2. Wet well condition assessment. The condition of the existing concrete wet well will be visually assessed to determine the extent of needed concrete repair. A field order shall be issued based on observations. The contractor will be required to clean surfaces as required to allow for the visual inspection. The contractor will be required to assist with entry requirements into the space.
3. Architectural, structural, mechanical, process and electrical will review shop drawings for compliance to design intent, assist in clarifications, and complete site observations on an as needed basis during critical construction tasks.
4. Facilitate pre-installation conferences.
5. Facilitate progress meetings and prepare meeting agendas and minutes, as needed.
6. Prepare and issue Engineer's supplemental instructions and proposal requests.
7. **Conduct periodic on-site construction observation, as requested by the Owner, for specific construction activities including: building demolition, concrete formwork and rebar installation for the top slab and building foundation, delivery and installation of pre-manufactured building, set up and start up of bypass pumping operations, and equipment startup.**
8. **When requested, Construction Observer shall:**

a. Attend pre-installation conferences.

b. Conduct on-site reviews for the Owner of the work in progress as a bases for determining that the project is proceeding in accordance with the Contract Documents.

c. Verify required testing has been accomplished, specifically concrete testing and backfill and compaction testing.

d. Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the Owner.

e. Keep a diary or log book recording hours on the job site, weather conditions, list of visiting officials, decision, general observations, and specific observations with regard to test procedures.

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

Payments to Engineer for Services and Reimbursable Expenses

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

In consideration of the Basic Services presented in **Exhibit A**, Engineer will be compensated on a lump sum basis, unless noted otherwise in accordance with the following schedule:

Task	Description	Amount
1	Project Management	$6,700.00
2	Utility Coordination	$2,800.00
3	Field Survey	$5,300.00
4	Interior Survey – High Definition Laser Scan	$7,000.00
5	Geotechnical Investigation	$8,500.00
6	Asbestos Investigation	$2,300.00
7	Hydraulic Analysis/Modeling (Hourly Rate)	**$4,970.00** ~~**$35,000.00**~~
8	Preliminary Design	$51,800.00
9	60% Design	$98,300.00
10	Final Design	$98,300.00
11	Permits	**$14,390.00** ~~**$7,500.00**~~
12	Bidding Phase Services	$14,000.00
13	Construction Administration (Hourly Rate)	**$53,140.00** ~~**$30,000.00**~~
	Reimbursables	$2,000.00
	Total Amount	**$369,500.00**

Invoices will be submitted on a monthly basis based on estimated percentage of completion. For tasks designated to be hourly rate, invoices will be based upon actual hours worked at the hourly rate identified in **Exhibit H**.

Additional services, as required or desired, will be negotiated and agreed upon before commencing work on those services.

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

City of Elkhart
Public Works and Utilities

Date: April 23, 2021

Memo To: Michael Machlan, Board President

Memo From: Laura Kolo, Utility Services Manager

RE: Wastewater Treatment Plant Monthly Report – March 2021

The monthly Wastewater Treatment Plant NetDMR, CSO MRO, and Marketing and Distribution reports were all submitted electronically for the month of March. The wastewater treatment plant treated and released 337 million gallons to the St Joseph River.

CSO Events: Three wet weather CSO events occurred in March.

Violations: None

City of Elkhart
Public Works & Utilities

Memorandum

Date: May 4, 2021

To: Board of Public Works

From: Joe Foy, Stormwater Manager

RE: Great Lakes Combined Sewer Overflow Public Notice Annual Notification

As a Great Lakes community the City of Elkhart is now required by Federal legislation and EPA rule, to follow new rules regarding the public notification of combined sewer overflows in its sewer system. One of those requirements is to post an annual notification consisting of the following items for the previous calendar year on our City website by May 1st:

(1) A description of the location and receiving water for each CSO discharge point, and, if applicable, any treatment provided;
(2) The date, location, approximate duration, measured or estimated volume, and cause (e.g., rainfall, snowmelt) of each wet weather CSO discharge that occurred during the past calendar year.
(3) The date, location, duration, volume, and cause of each dry weather CSO discharge that occurred during the past calendar year;
(4) A summary of available monitoring data for CSO discharges from the past calendar year;
(5) A description of any public access areas potentially impacted by each CSO discharge;
(6) Representative precipitation data in total inches to the nearest 0.1 inch that resulted in a CSO discharge, if precipitation was the cause of the discharge;
(7) Permittee contact information, if not listed elsewhere on the website where this annual notice is provided; and
(8) A concise summary of implementation of the nine minimum controls and the status of implementation of the long-term CSO control plan (or other plans to reduce or prevent CSO discharges).

This memo is to inform you that the above information is posted on the City website at http://www.elkhartindiana.org/government/public-works under the CSO Public Notices subsection. If you have any questions, feel free to contact me at (574) 293-2572 or joe.foy@coei.org.

City of Elkhart
Public Works and Utilities

MEMO

Date:	April 26th, 2021
To:	Board of Public Works
From:	Nicolette Kershner, Utility Accountant -NK
RE:	1032 E. Beardsley Ave. Remediation Project – Approval of Payment Request #21 to Keramida, Inc

Attached is invoice #81510 from Keramida, Inc. for environmental assessment work conducted at 1032 E. Beardsley Ave. This environmental assessment project is being paid for with funds from the State Revolving Loan Fund Series 2009 B Bond, loan number WW09302002.

The Brownfields Program is respectfully requesting the Board approve payment request #21 in the amount of $7,950.00 to Keramida, Inc. for the 1032 E. Beardsley Ave. Remediation Project.

KERAMIDA, Inc
401 N College Avenue
Indianapolis, IN 46202
800/508-8034

City of Elkhart
Sarah Mitchell
1201 South Nappanee Street
Elkhart, IN 46516

Invoice number 81510
Date 04/07/2021

Project **18835 CITY OF ELKHART - BERGERSON - REMEDIATION**

For Professional Services rendered through 03/31/2021

Description	Current Billed
CHEMICAL INJECTIONS 3 DAYS $2,650/DAY	7,950.00
Total	7,950.00

GROUNDWATER SAMPLING (8 QTRS)

Professional Fees

	Date	Hours	Rate	Billed Amount
Project Coordination				
Mike Devir, P.E.				
	03/18/2021	0.50	135.00	67.50
Data on site from Roberts Environmental; review for data input				
Subtotal		0.50		67.50
Professional Fees subtotal		0.50		67.50
Phase subtotal				67.50

SUPPLEMENTAL GROUNDWATER TREATMENT

Professional Fees

	Date	Hours	Rate	Billed Amount
Project Management				
Mike Devir, P.E.				
	03/01/2021	0.25	135.00	33.75
Review of vendor invoice				
	03/04/2021	0.50	135.00	67.50
Staffing coordination and equipment for injection Status of 811 locate				
	03/05/2021	0.50	135.00	67.50
Search for new box truck rental after Enterprise cancelled reservation				
	03/08/2021	1.50	135.00	202.50
Coordination of Supplement Injection - Mix and Mobilize support				
	03/09/2021	0.50	135.00	67.50
Field communication on inject progress				
	03/11/2021	0.25	135.00	33.75
Field work tracking				
	03/15/2021	0.50	135.00	67.50
Communicaiton on injection work				
	03/16/2021	0.50	135.00	67.50
Invoice fee review				

SUPPLEMENTAL GROUNDWATER TREATMENT

Professional Fees

	Date	Hours	Rate	Billed Amount
	Subtotal	4.50		607.50
Project Coordination				
Xuqing Xiong, P.E.				
	03/10/2021	0.25	80.00	20.00
equipment shipping back				
	03/16/2021	0.50	80.00	40.00
injection data management				
	Subtotal	0.75		60.00
Report Writing				
Xuqing Xiong, P.E.				
	03/30/2021	1.00	80.00	80.00
report				
	03/31/2021	2.50	80.00	200.00
report				
	Subtotal	3.50		280.00
Field Work				
Clinton Poynter				
	03/16/2021	1.25	65.00	81.25
Clean tanks/ Return Nitrogen tank to Indy air gas.				
Kevin Burkett				
	03/08/2021	8.00	80.00	640.00
	03/09/2021	8.00	80.00	640.00
	03/10/2021	8.00	80.00	640.00
	Subtotal	25.25		2,001.25
	Professional Fees subtotal	34.00		2,948.75

Reimbursable Expenses

	Date	Units	Rate	Billed Amount
Equipment Rental				
0614 Devir - BMO				
	03/19/2021			835.21
Ground Transportation				
1370 Burkett - BMO				
	03/10/2021			147.76
Meals/Per Diem				
Kevin Burkett				
	03/29/2021	1.00	35.00	35.00
	03/30/2021	1.00	35.00	35.00
	03/31/2021	1.00	15.00	15.00
Field Supplies				
1370 Burkett - BMO				
	03/10/2021			5.92
Hotel				
1370 Burkett - BMO				
	03/10/2021			182.47
	Reimbursable Expenses subtotal			1,256.36

SUPPLEMENTAL GROUNDWATER TREATMENT

Consultant

	Date	Units	Rate	Billed Amount
Laboratory				
Terra Systems, Inc.				
	03/01/2021			6,431.22
	Consultant subtotal			6,431.22
	Phase subtotal			10,636.33
			Invoice total	**18,653.83**

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
81510	04/07/2021	18,653.83	18,653.83				
	Total	18,653.83	18,653.83	0.00	0.00	0.00	0.00

Rental Agreement Cover Sheet

PENSKE

24/7 Roadside Assistance:
1-800-526-0798

Rental Agreement #:78955792 COMMERCIAL LOCAL

Created by:	E.OWEN	**Pick Up Date:**	**03/08/21 08:17 AM**
Completed by:	E.OWEN	**Expected Drop-Off:**	**03/11/21 08:17 AM**
Entered At:	0500-10	Changed On:	03/08/21 01:12 PM
Status:	**OPEN**		
Customer Name:	KERAMIDA ENVIRONMENTAL		
Created On:	03/08/21 01:02 PM		

BILLING INFORMATION

Invoice #: PO #: Billing Cycle: Weekly

Bill Start Date:03/08/21 08:17 AM

Remit To: PENSKE TRUCK LEASING CO.,L.P. - P.O. BOX 802577 CHICAGO, IL 60680-2577 USA

CHARGES

Type	Quantity	Unit of Meas	Rate	Charge
Unit #:481946				
	3	Day	$145.00	**$435.00**
Mileage Out: 67	400	Miles	$0.3000	**$120.00**
Ldw $1000 Responsibility	3	Day	$30.00	**$90.00**
Liability Accident Insurance	3	Day	$25.00	**$75.00**
Vehicle Licensing Recovery Fee	2 Days @ $3.50			**$7.00**
environmental fee	2 Days @ $3.00			**$6.00**
			SUBTOTAL:	**$733.00**

TAXES

IN SALES TAX	**$39.76**
TOTAL DUE:	**$772.76**

PAYMENTS AND REFUNDS

Pay Type	Trans	Date	Card #	Approval Code	
MC	AUTH	03/08/2021	xxxxxxxxxxxx0614	08378Z on 03/08/2021 for $772.76	**-$0.00**
				PAYMENT:	**($0.00)**
				NET DUE:	**$772.76**

Penske respects your privacy. Penske collects contact, driver's license, and payment information from Customers at time of rental, and shares this information with service providers as needed to facilitate the rental process, perform watch list checks, and process payments. You may have the right to request copies or deletion of the personal information we collect about you under certain local privacy laws. For details on how Penske and its trusted partners manage your personal information, provide you with choices regarding your personal information, and a statement of your privacy rights, see our full Privacy Policy at www.gopenske.com/privacy. You may also contact us at privacy@penske.com or (844) 967-0109.

Customer acknowledges that Customer has read, or been given an opportunity to read, the Rental Agreement, including this Cover Sheet, the General Terms and Conditions, as well as any attachments hereto and agrees to be fully bound by its terms. Before deciding whether to purchase the optional limited damage waiver, you may wish to determine whether your own automobile insurance already affords you coverage for damage to the rental vehicle. To the extent the Customer had purchased Limited Damage Waiver coverage, Customer acknowledges reading, understanding, and agreeing with the disclosures, exclusions, and terms and conditions applicable to Limited Damage Waiver as set forth in Attachment D to the Rental Agreement.

By: _____

Customer/Authorized Signatory

STORE 83700
3758 W. Morris Street
Indianapolis,IN 4624101
317-241-0013
03/10/2021

1835

SALE
Transaction #: 99045918

Qty	Name	Price	Total
1	Truck Diesel	134.33	134.33
	Pump: 19		
	Gallons: 40.718		
	Price / Gal: 3.299		
	Subtotal		134.33
	Sales Tax		0.00
	Total		134.33
	Received		134.33
	MASTERCARD		
	XXXXXXXXXXXX1370	SWIPED	
	Approved		
	Auth #: 07729Z		

VehicleID

837099045918

Pos:99 Clerk:99
#ORIGINAL RECEIPT
Fuel sold by Pilot Travel Centers LLC

WELCOME TO
PAK-A-SAK #40
1129 Johnson St.
Elkhart, IN
574-264-0472
00000107748
PAK A SAK 40
1129 JOHNSON ST
ELKHART IN 46514

18835

< DUPLICATE RECEIPT >

	Description	Qty	Amount
	AQUAFINA 1LTR/1LTR	1	1.25
	1.69 Dsc -0.44		
	AQUAFINA 1LTR/1LTR	1	1.25
	1.69 Dsc -0.44		
T	GAT ZERC LEMON LIME	1	2.69

Subtotal	5.19
Tax	0.19
TOTAL	**5.38**
CREDIT $	5.38

CARD TYPE: MASTERCARD
AUTH TIME: 091443
ACCT NUMBER: 1370
TRANS TYPE: SALE
AUTH: 00019Z 00
Ref #: 99000780314
APPNAME: Mastercard
AID: A0000000041010
APP CRYPTOGRAM : ARQC B4A53A59916C9837
ENTRY: Insert
EMV STAN#: 01662617799

DEALER#: 00000107748 Term ID: 05
TEXT JOIN TO 40244
JOIN MAKEITCOUNT
REWARDS TODAY

THANK YOU
Please Come Again
ST# 40 TILL XXXX DR# 1 TRAN# 1012630
CSH: 10 3/10/21 9:14:47 AM

Holiday Inn Express & Suites

AN IHG HOTEL

18835

18 03-10-21

Kevin Burkett **4522 Annelo Circle** **Greenwood Us 46142** **United States**	Folio No. : A/R Number : Group Code : Company : Membership No. : **PC 210037299** Invoice No. :	Room No. : **419** Arrival : **03-08-21** Departure : **03-10-21** Conf. No. : **41030554** Rate Code : **IDMEF** Page No. : **1 of 1**	

Date	Description		Charges	Credits
03-08-21	*Accommodation		71.82	
03-08-21	State Tax 7%		5.03	
03-08-21	Occupancy Tax 5%		3.59	
03-09-21	Market	Post It No.132521	1.00	
03-09-21	Market	Post It No.132521	1.00	
03-09-21	Market	Post It No.132521	1.00	
03-09-21	Market	Post It No.132521	1.00	
03-09-21	Market	Post It No.132521	1.00	
03-09-21	*Accommodation		71.82	
03-09-21	State Tax 7%		5.03	
03-09-21	Occupancy Tax 5%		3.59	
03-10-21	MasterCard			165.88
		Total	**165.88**	**165.88**
		Balance	**0.00**	

Thank you for staying with us! Qualifying points for this stay will automatically be credited to your account. Please tell us about your stay by writing a review here - www.ihgrewardsclub.com/review. We look forward to welcoming you back soon.

Guest Signature: _____

I have received the goods and / or services in the amount shown herein. I agree that my liability for this bill is not waived and agree to be held personally liable in the event that the indicated person, company, or associate fails to pay for any part or the full amount of these charges. If a credit card charge, I further agree to perform the obligations set forth in the cardholder's agreement with the issuer.

Holiday Inn Express & Suites Elkhart North
3300 Sunny Drive
Elkhart, IN 46514
Telephone: (574) 327-6494 Fax: (574) 327-6493

Owned by Shaan, LLC. and operated by Jai Shree Mounikrupa, LLC.

8835

TERRA SYSTEMS, INC. INVOICE

Offering Bioremediation Solutions to Environmental Problems

United States Patent# RE40,448 Emulsified Vegetable Oil Substrate

Prepared By: Michael Free 130 Hickman Road, Suite 1 Claymont, Delaware 19703 Phone 302-798-9553 Cell: 484-889-2214 Email: mfree@terrasystems.net	Sunday, February 28, 2021
Mike Devir, P.E. Senior Engineer KERAMIDA Inc. 401 North College Avenue Indianapolis, IN 46202 t: (317) 685-6628 m: (317) 363-5972 Email: mdevir@keramida.com	Site: Former Bergerson Screw Machine Products 1031 East Beardsley Avenue, Elkhart, Indiana 46514 Keramida Project#18415 Terra Systems INVOICE#21373

DESCRIPTION	Price
MW-3, MW-4, and MW-5	
275 gallons (2224 lbs) of Terra Systems patented 60% SRS®-SD small droplet (0.6 µm) emulsified vegetable oil substrate, which contains 60% US grown soy bean oil, 5.5% sodium lactate, nutrients and Vitamin B12 at $11.33 per gallon. The price includes packaging in one 275-gallon IBC tote. The price does not include freight or any applicable sales or use tax.	$3,135.75
Two (2) fifty pound bags (75 lbs) of sodium bicarbonate at $35 per bag to buffer the water. The price does not include freight or any applicable sales or use tax.	$70.00
Freight to Elkhart, IN - Licensed and insured commercial carrier. A fork-lift or loading dock are required for unloading. The price does not include any applicable sales or use tax.	$750.00
4 L of Terra Systems TSI-DC® *Dehalococcoides mccartyi* Biomagnetation Culture at $175 per L. The TSI-DC® culture contains >1E11 *Dehalococcoides*/L. The price does not include overnight delivery to the site or any required sales or use tax.	$700.00
TSI DC Overnight Shipping: The Biomagnetation Culture® will be delivered to the site via an overnight carrier like FedEx or UPS in one specially designed stainless steel keg inside of a cooler measuring ~36" x ~18" x ~18" and weighing ~100 pounds at $240. A graduated 1 L sight tube is shipped inside the cooler for accurately measuring the amount of culture injected. The day of the delivery will be made based on the PM's requirements. The price does not include any required sales or use tax.	$240.00
7 pounds of sodium ascorbate at $15 per pound to drive the water anaerobic for the Biomagnetation injections. The price does not include freight or any applicable sales or use tax	$105.00
Total for MW-3, MW-4 and MW-5 without sales or use tax	**$4,910.75**
MW-2	
57 gallons (462 lbs) of Terra Systems patented 60% SRS®-SD small droplet (0.6 µm) emulsified vegetable oil substrate, which contains 60% US grown soy bean oil, 5.5% sodium lactate, nutrients and Vitamin B12 at $11.33 per gallon. The price includes packaging in one 275-gallon IBC tote. The price does not include freight or any applicable sales or use tax.	$645.81
Twenty-five pounds of sodium bicarbonate at $35 per bag to buffer the water. The price does not include freight or any applicable sales or use tax.	Included in MW-2, 5 and 8 Price
Freight to Elkhart, IN - Licensed and insured commercial carrier. A fork-lift or loading dock are required for unloading. The price does not include any applicable sales or use tax.	Included in Freight Cost for MW-3, 5 and 8
1 L of Terra Systems TSI-DC® *Dehalococcoides mccartyi* Biomagnetation Culture at $175 per L. The TSI-DC® culture contains >1E11 *Dehalococcoides*/L. The price does not include overnight delivery to the site or any required sales or use tax.	$175.00
TSI DC Overnight Shipping: The Biomagnetation Culture® will be delivered to the site via an overnight carrier like FedEx or UPS in one specially designed stainless steel keg inside of a cooler measuring ~36" x ~18" x ~18" and weighing ~100 pounds at $240. A graduated 1 L sight tube is shipped inside the cooler for accurately measuring the amount of culture injected. The day of the delivery will be made based on the PM's requirements. The price does not include any required sales or use tax.	Included in Keg for MW-2, 5 and 8 Price
3 pounds of sodium ascorbate at $15 per pound to drive the water anaerobic for the Biomagnetation injections. The price does not include freight or any applicable sales or use tax.	$45.00
Total for MW-2 without sales or use tax	**$865.81**
Total for MW-3, MW-4 and MW-5 and MW-2 without sales or use tax	**$5,816.56**
Prices do not include sales or use tax of 7% Tax for Elkhart, IN, which is in Elkhart County and includes the following zip codes: 46514, 46515, 46516, 46517. Shipping is taxable. Payment Terms: Net 45 Days Make all checks payable to Terra Systems, Inc. Remit to: Terra Systems, Inc., 130 Hickman Road, Suite 1, Claymont, Delaware 19703	

THANK YOU FOR YOUR BUSINESS
http://www.terrasystems.net/

71309

Please print or type. Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number
CESQG	1	877-917-3239	021364305 JJK

GENERATOR

5. Generator's Name and Mailing Address
City of Elkhart
229 South Second St. Elkhart, IN 46516
Generator's Phone: 574-294-5471

Generator's Site Address (if different than mailing address)
City of Elkhart
216 S. Main St. Elkhart, IN 46516

6. Transporter 1 Company Name: INSERV, Inc.
U.S. EPA ID Number: IND 984 872 846

7. Transporter 2 Company Name: Earth Smart Environmental Solutions, LLC
U.S. EPA ID Number: MIR 000 037 697

8. Designated Facility Name and Site Address
Drug and Laboratory Disposal, Inc.
331 Broad Street, Plainwell, MI 49080
Facility's Phone: 269-685-9824
U.S. EPA ID Number: MID 092 947 928

9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No.	10. Containers Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes
X	1. UN1993 Waste Flammable Liquids, n.o.s. 3, PGII (Water, Petroleum Distillates) ERG#128 RQ=D001	1	DM	200	P	D001
	2.					
	3.					
	4.					

14. Special Handling Instructions and Additional Information
1) 55DM BL

15. **GENERATOR'S/OFFEROR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name: Benjamin VanDyk on behalf of the City of Elkhart
Signature: [signature]
Month 01 Day 27 Year 21

INT'L

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:
Transporter signature (for exports only): Date leaving U.S.:

TRANSPORTER

17. Transporter Acknowledgment of Receipt of Materials

Transporter 1 Printed/Typed Name: [signature]
Signature: [signature]
Month 01 Day 27 Year 21

Transporter 2 Printed/Typed Name: Timothy J Gibson
Signature: [signature]
Month 2 Day 3 Year 21

DESIGNATED FACILITY

18. Discrepancy

18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number:

18b. Alternate Facility (or Generator) U.S. EPA ID Number

Facility's Phone:

18c. Signature of Alternate Facility (or Generator) Month Day Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1.	2.	3.	4.
H141			

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a

Printed/Typed Name: Patrick McKellar
Signature: [signature]
Month 02 Day 03 Year 21

EPA Form 8700-22 (Rev. 12-17) Previous editions are obsolete. DESIGNATED FACILITY TO GENERATOR

LAND DISPOSAL RESTRICTION NOTIFICATION AND CERTIFICATION FORM

Generator Name: City of Elkhart

Manifest Number: 021364305JJK

Applicable Certification/Notification Statement (found on reverse side) : A

F001 – F005 SPENT SOLVENTS

CONSTITUENT	WW	NWW	CONSTITUENT	WW	NWW
Acetone – F003			Methylene chloride – F002		
Benzene – F005 (D018)			Methyl ethyl ketone – F005 (D035)		
n-Butyl alcohol – F003			Methyl isobutyl ketone – F003		
Carbon disulfide – F005			Nitrobenzene – F004 (D036)		
Carbon tetrachloride – F001 (D019)			2-Nitropropane – F005		
Chlorobenzene – F002 (D021)			Pyridine – F005 (D038)		
m- & p-Cresol – F004 (D024 & D025)			Tetrachloroethylene – F001 (D039)		
o-Cresol – F004 (D023)			Tetrachloroethylene – F002 (D039)		
Cyclohexanone – F003			Toluene – F005		
1,2-Dichlorobenzene – F002			1,1,1-Trichloroethane – F001		
2-Ethoxyethanol – F005			1,1,1-Trichloroethane – F002		
Ethyl acetate – F003			1,1,2-Trichloroethane – F002		
Ethyl benzene – F003			1,1,2-Trichloro-1,2,2-trifluoroethane – F002		
Ethyl ether – F003			Trichloroethylene – F001 (D040)		
Isobutanol – F005			Trichloroethylene – F002 (D040)		
Methanol – F003			Trichlorofluoromethane - F002		
Methylene chloride - F001			Xylene - F003		

Shaded areas indicate waste that can carry D waste numbers also. D waste numbers shown in parenthesis are for reference only.

OTHER RESTRICTED WASTES

EPA Hazardous Waste No.	WW	NWW	Subcategory of Waste	EPA Hazardous Waste No.	WW	NWW	Subcategory of Waste
D001		1	High TOC-Ignitable Liquid (≥10%)	U002			None
D001			Ignitable Waste in non-CWA/SDWA	U003			None
D002			Corrosive Waste in non-CWA/SDWA	U162			None
D003			Reactive Cyanides	D006			None
D003			Reactive Sulfides	U019			
D003			Water-Reactive	U123			None
D003			Other Reactive	D011			
D009			High Mercury – Inorganic (≥260 mg/kg)				
D009			High Mercury – Organic (≥260 mg/kg)				
D009			Low Mercury (<260 mg/kg)				
U010			None				
U035			None				
U058			None				
U150			None				
U206			None				
P001			None				
P075			None				
D011			None				
D022			None				
U044			None				
U080			None				
U144			None				
D007			None				
U404			None				
D008			None				
U144			None				

Generator Name: City of Elkhart

Manifest Number: 021364305JJK

HAZARDOUS DEBRIS

[ ]	This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45. The contaminants subject to treatment are indicated on the attached Underlying Hazardous Constituent form.

UNDERLYING HAZARDOUS CONSTITUENTS (UHCs)

For D001 [except High (>10%) TOC Subcategory], D002 - D043, and F039 wastes; UHCs, which can reasonably be expected to be present at the point of generation at a concentration above the constituent-specific Universal Treatment Standard, must be indicated on the Underlying Hazardous Constituents Form. UHCs need not be determined for lab packs managed under the alternative treatment standards for lab packs.

[X] No UHC's [ ] UHCs identified on attached Underlying Hazardous Constituents Form

CERTIFICATION STATEMENTS

A. RESTRICTED WASTE REQUIRING TREATMENT

I am the initial generator of the restricted waste(s) listed on the reverse side which must be treated to the applicable treatment standard prior to land disposal.

B. RESTRICTED WASTE MEETING TREATMENT STANDARDS AT THE POINT OF GENERATION

I am the initial generator of the EPA hazardous waste number(s) listed on the reverse side. I have determined that the waste meets all applicable treatment standards set forth in 40 CFR Part 268 and therefore, can be land disposed without further treatment.

"I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR part 268 subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment."

C. LAB PACKS MANAGED UNDER ALTERNATIVE TREATMENT STANDARDS

The lab packs identified on the reverse side do not contain any of the wastes specified in Appendix IV and are managed under the alternative treatment standards in 40 CFR 268.42(c).

"I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to 40 CFR part 268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at 40 CFR 269.42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment."

D. RESTRICTED WASTE CONSISTING OF CONTAMINATED SOIL NOT MEETING TREATMENT STANDARDS

The contaminated soil identified on the reverse side does not meet the soil treatment standard in 40 CFR 268.49(c).

"I certify under penalty of law that I personally have examined this contaminated soil and it [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and requires treatment to meet the soil treatment standards as provided by 268.49(c)."

E. DECHARACTERIZED WASTE CONTAINING UNDERLYING HAZARDOUS CONSTITUENTS REQUIRING FURTHER TREATMENT

The decharacterized hazardous waste listed on the reverse side contain underlying hazardous constituents requiring further treatment.

"I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

F. RESTRICTED WASTE SUBJECT TO A VARIANCE OR EXEMPTION

The waste identified on the reverse side is exempt from LDR standards and subject to a nationwide variance which expires on _____.

I hereby certify that all information submitted in this and all associated documents is complete and accurate, to the best of my knowledge and information.

Generator Signature: Benjamin Van Ryk on behalf of the City of Elkhart Date: 01.27.21

City of Elkhart
Public Works and Utilities

MEMO

Date:	April 26th, 2021
To:	Board of Public Works
From:	Nicolette Kershner, Utility Accountant - NK
RE:	700 W. Beardsley Ave. Remediation Project – Approval of Payment Request #23 to Weaver Consultants Group

Attached is invoice #77573 from Weaver Consultants Group for environmental assessment work conducted at 700 W. Beardsley Ave. This environmental assessment project is being paid for with funds from the State Revolving Loan Fund Series 2009 B Bond, loan number WW09302002.

The Brownfields Program is respectfully requesting the Board approve payment request #23 in the amount of $2,415.25 to Weaver Consultants Group for the 700 W. Beardsley Ave. Remediation Project.

Weaver Consultants Group

Office Location:
7121 Grape Road
Granger, IN 46530
Phone - 574-271-3447
Fax - 574-271-3343

PLEASE REMIT PAYMENT TO:
8203 SOLUTIONS CENTER
CHICAGO, IL 60677-8002

Ms. Sarah Mitchell
City of Elkhart
Public Works and Utilities Dept.
1201 South Nappanee Street
Elkhart, IN 46516

April 7, 2021
Project No: 0609-356-03-04
Invoice No: 77573
PO Number:

Project **0609-356-03-04** **Beardsley Avenue Tasks 19-23 (Brownfields Site #4120904) - Groundwater Delineation & Quarterly Monitoring - Beardsley Avenue Elkhart, Indiana 46514**

Professional Services for the Period:January 30, 2021 to February 26, 2021

Phase **01** **Task 19 - FSI Work Plan/Remediation Options/Project Management**

Professional Services

	Hours	Rate	Amount
Engineering and Design Director	.75	$155.00	$116.25
Project Manager	9.75	$132.00	$1,287.00
Total Labor:			**$1,403.25**
		Phase Total	**$1,403.25**

Phase **05** **Task 23 - Further Site Investigation Report and Quarterly Reports**

Professional Services

	Hours	Rate	Amount
Project Engineer/Scientist/Env Spec	8.50	$113.00	$960.50
CAD Designer III	.50	$103.00	$51.50
Total Labor:			**$1,012.00**
		Phase Total	**$1,012.00**
		INVOICE TOTAL:	**$2,415.25**

Beardsley Ave Tasks 19-23 - Elkhart, IN	**Budget**	**Current**	**Prior**	**Total**	**Remaining**
Billing Summary	**$104,124.00**	**$2,415.25**	**$77,269.60**	**$79,684.85**	**$24,439.15**

Project 0609-356-03-04 Beardsley Avenue Tasks 19-23 (Brownfields Site #4120904) - Groundwater Delineation & Quarterly Monitoring - Beardsley Avenue Elkhart, Indiana 46514

Phase 01 Task 19 - FSI Work Plan/Remediation Options/Project Management

Professional Services

			Hours	Rate	Amount	
Engineering and Design Director						
Engineering and Design Director						
2929	415 - 400 - Yerton, John	2/18/2021	.75	155.00	$116.25	
	Review and discussion of project remediation strategy with project staff.					
Project Manager						
Project Manager						
2114	426 - 7 - Gruca, Paul	2/16/2021	.50	132.00	$66.00	
	Project Meeting Coordination Communications					
2114	426 - 7 - Gruca, Paul	2/18/2021	1.00	132.00	$132.00	
	Beardsley Ave Strategy Discussion w City					
2114	426 - 7 - Gruca, Paul	2/19/2021	1.50	132.00	$198.00	
	Preparation and Attend Remedial Action Work Plan Meeting with IDEM, Elkhart Supporting US EPA Grant Information					
2114	426 - 7 - Gruca, Paul	2/25/2021	.75	132.00	$99.00	
	Project Management, IFA US EPA RLF Subgrant Funding Application					
609	043 - 7 - Slough, Jodi	2/11/2021	1.00	132.00	$132.00	
	Project Meeting with RSG/vapor review					
609	043 - 7 - Slough, Jodi	2/12/2021	1.50	132.00	$198.00	
	Meeting with client to discuss project status, project management					
609	043 - 7 - Slough, Jodi	2/18/2021	1.50	132.00	$198.00	
	RSG Site Strategy Meeting					
609	043 - 7 - Slough, Jodi	2/19/2021	2.00	132.00	$264.00	
	Site Project meeting with IDEM and the City of Elkhart/followup with client after meeting/task update					
	Totals:		10.50		$1,403.25	
	Total Labor:					**$1,403.25**
				Phase Total		**$1,403.25**

Phase 05 Task 23 - Further Site Investigation Report and Quarterly Reports

Professional Services

			Hours	Rate	Amount
Project Engineer/Scientist/Env Spec					
Project Engineer/Scientist/Env Spec					
609	049 - 9 - Slough, Jodi	2/1/2021	1.50	113.00	$169.50
	4Q2020 Report				
609	049 - 9 - Slough, Jodi	2/10/2021	2.50	113.00	$282.50
	4Q2020/Project management				
609	049 - 9 - Slough, Jodi	2/12/2021	.50	113.00	$56.50
	4Q2020 Report				
609	049 - 9 - Slough, Jodi	2/15/2021	2.00	113.00	$226.00
	Project management				
609	049 - 9 - Slough, Jodi	2/17/2021	2.00	113.00	$226.00
	project status management				

CAD Designer III

	CAD Designer III					
614	054 - 14 - Dunton, Riah	2/19/2021	.50	103.00	$51.50	
	update fig, color coding, note					
	Totals:		9.00		$1,012.00	
	Total Labor:					**$1,012.00**
					Phase Total	**$1,012.00**
					Project Total	**$2,415.25**
					Total this Report	**$2,415.25**

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
9:10:31 AM

Weaver Consultants Group LLC

Week Number 7

Employee **2929** **Yerton, John**

Signed _____

Posted

Approved _____

Organization **WBCDNENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
0609-356-03-04	01		415	.75						.75	
1478-351-04-03	06		415	2.00			.75			1.25	
3320-300-04-01	01		415	1.75					1.75		
9932-351-04-02	01		416	21.00			8.00	3.00	2.00	8.00	
9932-351-04-02	02		416	7.00				7.00			
9932-351-04-02	04		415	1.50			1.50				
9932-351-04-02	05		416	8.00					8.00		
MKTG-046-01-00	02	02A	415	3.00			.50	2.50			
				Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
			DAILY TOTALS	45.00			10.75	12.50	11.75	10.00	

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
9:06:43 AM

Weaver Consultants Group LLC

Week Number 7

Employee **2114** **Gruca, Paul**

Signed _____

Posted

Approved _____

Organization **WBCDNENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
0036-354-01-02-01	08		426	2.00			.50	1.00	.50		
0609-356-03-04	01		426	3.00				.50		1.00	1.50
1611-301-04-04	01	01A	426	.75			.25		.25	.25	
1611-301-04-04	07	07A	426	1.25			.50				.75
1611-301-04-04	07	07B	426	2.00			.50	.50		.50	.50
1611-301-04-04	07	07C	426	1.75				1.25	.50		
1611-301-04-04	07	07C	426	2.00			.50	1.50			
1611-301-04-04	07	07D	426	1.00			1.00				
1611-301-04-04	08	08A	426	1.75			1.00		.75		
1611-306-04-02	01	01A	426	1.25						1.25	
1611-306-04-02	06B	06B4	426	1.00			1.00				
1611-308-04-04	08	08A	426	.25						.25	
1611-309-04-02	01	01A	426	.75			.75				
3320-302-04-02	01		426	.50				.50			
3320-303-04-01	01		426	1.00			.25	.50	.25		
3320-303-04-01	01		426	13.75					2.00	9.25	2.50
9929-352-04-02	09		426	1.00							1.00

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
9:06:43 AM

Weaver Consultants Group LLC

Week Number 7

Employee **2114** **Gruca, Paul**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
9929-352-04-02	10		426	2.00			1.25	.75			
ADMN-046-01-00			426	1.75			.75		.50	.50	
MKTG-046-01-00	01		426	6.50				3.00	1.50		2.00
WNCP-001-2021-13			426	2.50				.50	.25	.25	1.50
				Total Hr	**Sat 2/13**	**Sun 2/14**	**Mon 2/15**	**Tue 2/16**	**Wed 2/17**	**Thu 2/18**	**Fri 2/19**
DAILY TOTALS				47.75			8.25	10.00	6.50	13.25	9.75

Summarized Timesheet for the Period Ending 2/26/2021

Wednesday, April 7, 2021
9:09:15 AM

Weaver Consultants Group LLC

Week Number 8

Employee **2114** **Gruca, Paul**

Signed _____

Posted

Approved _____

Organization **WBCDNENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/20	Sun 2/21	Mon 2/22	Tue 2/23	Wed 2/24	Thu 2/25	Fri 2/26
0036-354-01-02-01	07		426	2.75					2.00	.25	.50
0609-356-03-04	01		426	.75						.75	
1611-301-04-04	07	07B	426	.50					.50		
1611-301-04-04	07	07D	426	2.00			.75	1.00		.25	
1611-301-04-04	08	08C	426	.50			.50				
1611-306-04-02	01	01A	426	2.75					1.25	1.50	
1611-306-04-02	04	04A	426	10.50				.50	1.50	2.50	6.00
1611-306-04-02	06B	06B1	426	.75						.25	.50
1611-306-04-02	06B	06B4	426	4.00				2.50	1.50		
1611-306-04-02	06B	06B7	426	1.00			.50		.50		
1611-306-04-02	06B	06D1	426	.75						.75	
1611-308-04-04	08	08A	426	1.25				.75	.50		
1611-309-04-02	01	01A	426	.25			.25				
3320-303-04-01	01		426	7.00			3.00	4.00			
3320-303-04-01	01		426	2.50			.75	1.00			.75
9929-352-04-02	08		426	.50							.50
ADMN-046-01-00			426	2.25			1.75	.50			

Summarized Timesheet for the Period Ending 2/26/2021

Wednesday, April 7, 2021
9:09:15 AM

Weaver Consultants Group LLC

Week Number 8

Employee **2114** **Gruca, Paul**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/20	Sun 2/21	Mon 2/22	Tue 2/23	Wed 2/24	Thu 2/25	Fri 2/26
ADMN-046-01-00			426	1.00						1.00	
MKTG-046-01-00	01		426	2.75			1.00		1.75		
MKTG-046-01-00	01		426	.50			.50				
MKTG-046-01-00	02	02A	426	.75						.75	
TRAN-046-01-00			426	1.25				1.25			
				Total Hr	**Sat 2/20**	**Sun 2/21**	**Mon 2/22**	**Tue 2/23**	**Wed 2/24**	**Thu 2/25**	**Fri 2/26**
DAILY TOTALS				46.25			9.00	11.50	9.50	8.00	8.25

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
9:05:00 AM

Weaver Consultants Group North Central LLC Week Number 7

Employee **614** **Dunton, Riah M.**

Signed _____

Posted

Approved _____

Organization **WNCCHENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
0036-354-01-02-01	07		054	.50							.50
0120-037-01-05			054	2.75			2.75				
0415-350-04-01	05		054	1.00			1.00				
0609-356-03-04	05		054	.50							.50
3747-316-02-01			054	1.75							1.75
3774-300-02-16			054	2.00							2.00
4262-300-01-08	02		054	2.50			2.25	.25			
4305-301-02-01			054	1.50						1.50	
4523-328-03-01	02		054	.75				.75			
5019-354-01-00	02		054	.75			.75				
5244-300-07-01			054	15.25				7.00	8.25		
ADMN-001-01-01	000		082	6.25			1.00	.50	.75	2.50	1.50
ADMN-001-01-01	000		094	1.00			.50		.50		
ADMN-001-01-01	000		095	1.75			.25	.50	.25	.25	.50
WNCP-001-2021-13			054	1.00						1.00	

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
9:05:00 AM

Weaver Consultants Group North Central LLC

Week Number 7

Employee **614** **Dunton, Riah M.**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
WNCP-003-2021-04			054	2.00						2.00	

	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
DAILY TOTALS	41.25			8.50	9.00	9.75	7.25	6.75

- What is the assumed project design duration and planned construction duration?

- Will we be using an existing survey or provide our own? This may heavily depend on the limits and location of the rerouted utilities.

- Will any easements or ROW research be required? Same comment as above.

- Will Geotech be completed by County engineer?

- Does Elkhart have standard specifications and details to be incorporated?

- Will we be responsible for relevant project specifications and will these be incorporated into INDOT project specs?

- Assume Wessler will NOT provide Div. 00 or Div. 01 sections? Who is responsible for pay item descriptions?

- Will any permits be required, including RR? If so, who is responsible?

- What design submittals will be required and who will we be submitting to, City, County, INDOT, all? 30, 60, 90 or just prelim and final? What are submittal requirements, including plot size, etc.?

- Will we have any bidding services? If so, what assistance is requested?

- Will we have construction admin services? If so, what assistance is requested?

Summarized Timesheet for the Period Ending 2/5/2021

Wednesday, April 7, 2021
11:10:28 AM

Weaver Consultants Group LLC

Week Number 5

Employee **609** **Slough, Jodi**

Signed _____

Posted

Approved _____

Organization **WBCSBENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 1/30	Sun 1/31	Mon 2/1	Tue 2/2	Wed 2/3	Thu 2/4	Fri 2/5
0036-354-01-02-01	05		056	4.50			2.50	2.00			
0609-356-03-04	05		049	1.50			1.50				
0660-538-01-00			014	4.00					4.00		
ADMN-026-01-00	00		081	1.00			1.00				
ADMN-026-01-00	00		094	2.00			1.00				1.00
LLCP-001-2021-03			091	4.00			2.00			2.00	
LLCP-001-2021-05			091	2.00						2.00	
LLCP-001-2020-19			091	1.50					.50	1.00	
LLCP-001-2020-20			091	1.50					.50	1.00	
LLCP-001-2020-21			091	1.50					.50	1.00	
LLCP-001-2020-22			091	1.50					.50	1.00	
LLCP-001-2020-23			091	1.50					.50	1.00	
LLCP-001-2020-24			041	1.50					1.50		
PTO-026-02-00	00		097	3.00				3.00			
SAFE-026-01-00	01		094	11.00				3.00			8.00
	DAILY TOTALS			42.00			8.00	8.00	8.00	9.00	9.00

Summarized Timesheet for the Period Ending 2/12/2021

Wednesday, April 7, 2021
11:11:01 AM

Weaver Consultants Group LLC

Week Number 6

Employee **609** **Slough, Jodi**

Signed _____

Posted

Approved _____

Organization **WBCSBENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/6	Sun 2/7	Mon 2/8	Tue 2/9	Wed 2/10	Thu 2/11	Fri 2/12
0036-354-01-02-01	05		043	3.50				.50		2.00	1.00
0609-356-03-04	01		043	2.50						1.00	1.50
0609-356-03-04	05		049	3.00					2.50		.50
0609-356-03-05	01		040	.50			.50				
0660-538-01-00			014	6.00				1.50	2.50	2.00	
2311-351-04-20			040	3.50			1.50			2.00	
5259-300-01-00			014	5.50				5.50			
ADMN-026-01-00	00		081	1.00			1.00				
ADMN-026-01-00	00		087	2.00					2.00		
ADMN-026-01-00	00		094	1.00			1.00				
WNCP-001-2021-10			091	2.00			2.00				
SOPD-ENV-01-00			043	6.50			1.00	.50			5.00
LLCP-001-2020-18			091	3.00			1.00		1.00	1.00	
	DAILY TOTALS			40.00			8.00	8.00	8.00	8.00	8.00

Summarized Timesheet for the Period Ending 2/19/2021

Wednesday, April 7, 2021
11:11:25 AM

Weaver Consultants Group LLC Week Number 7

Employee **609** **Slough, Jodi**

Signed _____

Posted

Approved _____

Organization **WBCSBENV**

Project	Phase	WBS3	Labor Code	Total Hr	Sat 2/13	Sun 2/14	Mon 2/15	Tue 2/16	Wed 2/17	Thu 2/18	Fri 2/19
0036-354-01-02-01	03		054	4.50					2.50	2.00	
0036-354-01-02-01	05		054	1.00			1.00				
0036-354-01-02-01	08		041	2.00			1.00	1.00			
0036-354-01-02-01	08		042	1.00				1.00			
0609-356-03-04	01		043	3.50						1.50	2.00
0609-356-03-04	05		049	4.00			2.00		2.00		
0609-356-03-05	01		040	5.50				2.00		1.50	2.00
0660-538-01-00			014	1.50					.50	1.00	
2387-354-04-16	02		049	1.00				1.00			
5255-351-02-00			049	1.00					1.00		
ADMN-026-01-00	00		081	1.00			1.00				
ADMN-026-01-00	00		094	1.00			1.00				
LLCP-003-2020-01			091	4.00					2.00	2.00	
MKTG-026-05-00	00		090	1.00				1.00			
PTO-026-02-00	00		097	3.00							3.00
SOPD-ENV-01-00			043	5.00			2.00	2.00			1.00
	DAILY TOTALS			40.00			8.00	8.00	8.00	8.00	8.00

City of Elkhart
Public Works & Utilities

To: Members of the Board of Public Works

From: Lynn Brabec, Environmental Compliance Manager LB

Date: April 22, 2021

Re: Notice of Violation: 25% Rule Violation – Five Star Dive Bar, 526 S. MAIN ST. (F2018-001)

During a renewal inspection on 02/17/2021 at Five Star Dive Bar, located at 526 S. MAIN ST., the grease trap was found to be in violation of the 25% Rule as defined in Ordinance No. 5434 as amended Section 5.11 and the Best Management Practices outlined in the Elkhart Public Works and Utilities Guide to Wastewater Utility Policies Section 15.6.1. This is the first 25% Rule Violation within a year. Five Star Dive Bar did respond to the Notice of Violation. **Pretreatment staff recommends assessing a total penalty of $100.**

Violation #1: Failure to operate or maintain FOG control device in proper working order (Ord. No. 5434 as amended)

Violation Date & FOG Amount	Staff Recommendation:*	Met all requirements outlined in Notice of Violation? Requirements included submission of written response, signed certification statement and FOG application	Additional Violation?
02/17/2021 100%	$100	Yes	No

For Five Star Dive Bar, located at 526 S. MAIN ST., first 25% Rule Violation offense within a year, staff recommends assessing a $100 penalty.

Action taken by Board of Public Works: **Penalty:** $_____

Approved this _____ of _____ 2020.

Michael Machlan	Date
Chad Crabtree	Date
Jamie Arce	Date
Ronnie Davis	Date
Rose Rivera	Date

Additional notes or requirements from the Board of Public Works:

-OVER-

*According to the "FSE FOG Penalty Guideline Table" contained in the Elkhart Public Works and Utilities "Guide to Wastewater Utility Policies", July 2019 revision, the following penalty is recommended for the second offense (within a year) of the 25% Rule:

Offense	First offense	Second offense	Third offense	Fourth & subsequent offense(s)
15.9.3 Failure to operate or maintain FOG control device in proper working order (Ord. No. 5285 as amended)	$100	$200	$250	$300

City of Elkhart
Public Works & Utilities

To: Members of the Board of Public Works

From: Lynn Brabec, Environmental Compliance Manager LB

Date: April 22, 2021

Re: Notice of Violation: 25% Rule Violation – Yummy Chinese, 30913 US 20 W (F2018-005)

During a renewal inspection on 03/09/2021 at Yummy Chinese, located at 30913 US 20 W, the grease interceptor was found to be in violation of the 25% Rule as defined in Ordinance No. 5434 as amended Section 5.11 and the Best Management Practices outlined in the Elkhart Public Works and Utilities Guide to Wastewater Utility Policies Section 15.6.1. This is the first 25% Rule Violation within a year. Yummy Chinese did respond to the Notice of Violation. **Pretreatment staff recommends assessing a total penalty of $100.**

Violation #1: Failure to operate or maintain FOG control device in proper working order (Ord. No. 5434 as amended)

Violation Date & FOG Amount	Staff Recommendation:*	Met all requirements outlined in Notice of Violation? Requirements included submission of written response, signed certification statement and FOG application	Additional Violation?
03/09/2021 28%	$100	Yes	No

For Yummy Chinese, located at 30913 US 20 W, first 25% Rule Violation offense within a year, staff recommends assessing a $100 penalty.

Action taken by Board of Public Works: **Penalty:** $_____

Approved this _____ of _____ 2020.

Michael Machlan	Date
Chad Crabtree	Date
Jamie Arce	Date
Ronnie Davis	Date
Rose Rivera	Date

Additional notes or requirements from the Board of Public Works:

-OVER-

*According to the "FSE FOG Penalty Guideline Table" contained in the Elkhart Public Works and Utilities "Guide to Wastewater Utility Policies", July 2019 revision, the following penalty is recommended for the second offense (within a year) of the 25% Rule:

Offense	First offense	Second offense	Third offense	Fourth & subsequent offense(s)
15.9.3 Failure to operate or maintain FOG control device in proper working order (Ord. No. 5285 as amended)	$100	$200	$250	$300

City of Elkhart
Public Works & Utilities

To: Members of the Board of Public Works

From: Lynn Brabec, Environmental Compliance Manager

Date: April 27, 2021

Re: **FOG Variance Request Extension for That Guy's Gourmet Ribs, 2041 Cassopolis St. Suite A**

That Guy's Gourmet Ribs received a six-month variance from Category A grease interceptor from the Board of Public Works on November 17, 2021 and is asking the Board of Public Works to extend the variance to expire when their FOG Certificate expires on November 30, 2023.

That Guy's Ribs, located at 2041 Cassopolis St. Suite A, received 29 points for the type of operation, equipment and hours of operation. Any facility that receives 24 or more points is considered a Category A facility and is required to install an outdoor grease interceptor. This site has two food service establishments residing in a single building. There are two separate kitchens in this building, one for each food service establishment. The two food service establishments SHARE two grease interceptors installed in series. The first grease interceptor is 1,800 gallons which then discharges into a 1,500 gallon grease interceptor. Based on the number of seats, expected number of meals served, equipment and hours of operation, That Guy's Gourmet Ribs is required to install at minimum an 1,800 gallon grease interceptor. **That Guy's Gourmet Ribs is requesting a variance extension from Category A grease interceptor installation requirements and is requesting to utilize the existing SHARED grease interceptors.**

On November 17, 2021, the Board of Public Works granted the six-month variance to allow the City's legal department, Pretreatment staff and That Guy's Gourmet Ribs to work with the property owner to either install the proper interceptor or to get a restrictive covenant in place with the property owner.

The City's Legal Department attempted to work with the property owner to get a restrictive covenant in place, however, the property owner refused to sign a restrictive covenant. After discovering that the property owner would not agree to the request for a restrictive covenant, Pretreatment staff contacted That Guy's Gourmet Ribs and informed them that a properly sized grease interceptor solely for That Guys Ribs would be required to be installed before the variance expired.

If approved, That Guy's Gourmet Ribs would be required to verify compliance with the variance. There is not an existing control manhole on site for Pretreatment Staff to conduct routine sampling, therefore **Pretreatment staff recommends requiring annual visual monitoring**. In summary, **Pretreatment Staff is neutral regarding the approval of the variance request, however, if approved, Pretreatment staff recommends annual visual monitoring.**

Board of Works Actions:

Variance Request from Category Sizing A Requirements ☐ Approved ☐ Denied

If approved, required to: ☐ Annual sampling for FOG (☐ Alternative time frame defined below)

OR

☐ Annual visual Monitoring (☐ Alternative time frame defined below)

OR

☐ Not applicable

Approved this _____ of _____ 2021.

_____ _____

Michael Machlan Date

_____ _____

Chad Crabtree Date

-OVER-

Jamie Arce	Date
Ronnie Davis	Date
Rose Rivera	Date

Additional notes or requirements from the Board of Public Works:

_____

_____

_____

_____

City of Elkhart
Public Works and Utilities

FATS, OILS AND GREASE
APPLICATION FOR VARIANCE

PLEASE FILL OUT COMPLETELY & PRINT CLEARLY!
(Incomplete forms will be denied.)

Name of FSE: That Guy's Gourmet Ribs
Name of Owner of FSE: Cedric Rollins
Physical Address: 2041 Cassopolis st
City: Elkhart State: IN Zip Code: 46514
Mailing Address: 518 W. Lusher ave
City: Elkhart State: IN Zip Code: 46517
Telephone Number: (574) 322-4354
Email Address: thatguysribs@gmail.com
Is there a control manhole on site? Yes ☒* No ☐
*If yes, please attach a map indicating the location.
Current FSE Category: ☐ A ☐ B ☐ C
Is this variance renewal request? Yes ☒ No ☐

RECEIVED
APR 20 21
ELKHART PUBLIC WORKS

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

I was given a variance earlier in the year which is about to expire. I don't believe my business produces very much oil, fats, or grease as 100% of the meat is cooked outside and any oils are disposed of properly.

RECEIVED
APR 20 2021
ELKHART PUBLIC WORKS & U

I certify that the information submitted is true, accurate and complete to the best of my knowledge.
Signature: [signature] **Date:** 04/13/21
Printed Name: Cedric Rollins
Title: owner

VARIANCE REQUEST: ☐ Approved ☐ Not Approved
Required: ☐ Annual Sampling
☐ Annual Visual Monitoring (to be completed between Jan. 15 and Feb. 15)
☐ Other: _____

Please Return This Form & Associated Documents To:
Elkhart Public Works & Utilities
Pretreatment Division
1201 S. Nappanee St.
Elkhart, IN 46516

Revised: 6/20/19

City of Elkhart
Department of Law

Memo

To: Members of the Board of Public Works

From: Randy Arndt, Deputy City Attorney

Date: April 28, 2021

Re: Municipal Band Contract

The Elkhart Municipal Band has been providing free public concerts and performances in the community for numerous years. For this public benefit and service, the City has provided the Band with an annual subsidy which is $55,000 for 2021. Each year, the City and the Band entered into a standard agreement that sets forth the terms and conditions of our arrangement. Attached is the agreement covering the 2021 year.

I am requesting that the Board approve the **2021 MUNICIPAL BAND AGREEMENT.**

2020 MUNICIPAL BAND AGREEMENT

This Agreement made and entered into this _____ day of _____, 2021, by and between the CITY OF ELKHART, INDIANA, an Indiana Municipal Corporation, acting through its Board of Public Works (the "City"), and the ELKHART MUNICIPAL BAND (the "Band");

WITNESSETH AS FOLLOWS:

WHEREAS, Band has partnered with the City for the past several years to give public concerts, performances, and appearances without charge to the public, and

WHEREAS, the partnership between City and Band has been successful and both parties desire to continue this partnership;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The term of this Agreement is from January 1, 2021 to December 31, 2021.

2. During the term of this Agreement, Band will give public concerts, performances, and appearances, all to the satisfaction of City and without charge to the public.

3. City will provide reasonably adequate equipment and facilities to Band for performances.

4. Band shall provide all instruments, music, and uniforms and Band shall be responsible for the payment of any licensing or royalty fees attributable to the musical compositions performed by Band.

5. City will pay to Band an annual sum of Fifty-Five Thousand and no/100 Dollars ($55,000.00) for the calendar year of this Agreement. The City will make eleven (11) equal

installments of Four Thousand Five Hundred Eighty-four and no/100 Dollars ($4,584.00) and a final twelfth (12th) payment of Four Thousand Five Hundred Seventy-six and no/100 Dollars ($4,576.00).

6. During the calendar year, Band will make a minimum of thirteen (13) public appearances, including concerts and parades. Prior to the scheduling of each public appearance, Band shall submit to City, within a reasonable time, which shall not be later than thirty (30) days prior to a proposed scheduled public appearance, the date, time, and place of the proposed public appearance.

7. Band shall, at each of said public appearances, present a full band of not less than fifty (50) pieces.

8. Band shall be obligated to ensure that each individual performer who participates in a performance shall execute a release of liability in favor of the City of Elkhart, on a form prescribed by City, prior to being permitted to participate in any performance. A copy of this release is attached hereto as Exhibit "A". At the end of each year, a roster of participants, along with the executed releases, shall be submitted to the Clerk of the Board of Public Works, 229 S. Second Street, Elkhart, Indiana 46516.

9. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are, at any time, not forthcoming or are insufficient, then the City shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funds, in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which funds are available. The City agrees that it will make its best effort to obtain sufficient funds to meet its obligations hereunder in full. The City may terminate this Agreement for any

reason as long as Band is given 30 days written notice of the City's intent to terminate the Agreement.

10. Neither the Band, nor any person acting on Band's behalf, shall, in any manner with respect to any matter related to this Agreement, discriminate against nor intimidate any person on account of race, age, religion, color, sex, national origin, ancestry or disability.

11. All terms identified in I.C. § 22-5-1.7 et seq. are adopted and incorporated into this section. Pursuant to I.C. §22-5-1.7 et seq., Band shall enroll in and verify the work eligibility status of all its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement. Band is further required to execute an affidavit, attached as Exhibit "B" affirming that: (i) it is enrolled and is participating in the E-Verify program, and (ii) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Band shall provide the City with documentation that it has enrolled and is participating in the E- Verify program. This Agreement shall not take effect until said affidavit is signed by Band and delivered to the Clerk of the Board of Public Works, 229 S. Second Street, Elkhart, Indiana 46516.

12. Should Band subcontract for the performance of any work under this Agreement, Band shall require any subcontractors to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) has enrolled in and is participating in the E-Verify program. Band shall maintain a copy of such certification for the duration of the term of any subcontract. Band shall also deliver to the Clerk of the Board of Public Works, 229 S. Second Street, Elkhart, Indiana 46516 a copy of the certification within seven (7) days of the effective date of the subcontract.

13. If Band, or any subcontractor of Band, knowingly employs or contracts with any unauthorized aliens, or retains an employee or a contract with a person that Band or subcontractor

subsequently learns is an unauthorized alien, Band shall terminate the employment of or the contract with the unauthorized alien within thirty (30) days (the "Cure Period").

14. Should Band, or any subcontractor of Band, fail to cure within the Cure Period, the City has the right to terminate this Agreement without consequence to the City.

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

16. By signing this agreement, the President of the Band acknowledges and represents that he is the duly authorized representative of the Band and that he has the authority to enter into this Agreement and to bind the Band thereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the City, by its Board of Public Works, and Band, by its authorized representative(s) execute this Agreement on this _____ day of _____, 2021.

ELKHART MUNICIPAL BAND

By: _____

Printed: _____

Title: _____

CITY OF ELKHART
BOARD OF PUBLIC WORKS

_____
Michael Machlan

_____
Jamie Arce

_____
Rose Rivera

_____
Chad Crabtree

_____
Ronnie Davis

ATTEST:

_____
Nancy Wilson, Clerk

EXHIBIT A

RELEASE AND WAIVER OF ALL CLAIMS FOR YEAR 2019 MUNICIPAL BAND PERFORMANCES

I, _____, (participant) having a desire to participate in one or more performances as a member of the Elkhart Municipal Band during the year 2021, and in consideration of the opportunity to participate therein, do hereby agree to release and forever discharge the City of Elkhart, its officials, employees, agents and representatives, from any and all claims, demands, liabilities, and/or rights of action resulting from, respecting, relating to or arising out of any accident or other incident which may result from my participation in or attendance at any performance as a member of the Elkhart Municipal Band during the year 2019. I further agree that I will not file, maintain or litigate any action against the City of Elkhart, or its officials, employees, agents or representatives, resulting from the same; nor will my heirs, executors, administrators and successors file, maintain or litigate any action against the City, its officials, employees, agents or representatives.

It is understood that this document is intended to release the City of Elkhart to the fullest extent permitted by Indiana Law.

The participant and his/her parent or legal guardian, if applicable, hereby represent that they have read, understand and accept the terms and conditions of this Release and Waiver of Claims.

Dated: _____, 2021.

_____
Signature of Participant

_____
Signature of Participant's Parent/Guardian
(If applicable)

EXHIBIT B

AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION

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

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

2. I am now and at all times relevant herein have been employed by _____ ("Employer") in the position of _____.

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

4. Employer is enrolled and participates in the federal E-Verify program. Documentation of this enrollment and participation is attached hereto and incorporated herein.

5. Employer does not knowingly employ any unauthorized aliens.

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

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

EXECUTED on the _____day of _____, 20___.

_____

Printed:_____

Rod Roberson
Mayor

City of Elkhart
the city with a heart

Mayor's Office
229 S. Second St.
Elkhart, IN 46516

574.294.5471 ext. 1041

April 15, 2021

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

Dear Board of Works Members,

As part of the City of Elkhart's process to provide support to various not-for-profit organizations that provide a substantial benefit to our city, I am requesting your approval of the Northern Indiana Business Center, dba Center for Business excellence (CBE) application for an Economic Development Partnership Grant in the amount of $15,000.00. CBE is a not-for-profit organization affiliated with the Greater Elkhart Chamber of Commerce. These funds will be used to provide training services to local businesses who wish to improve their business knowledge, skills and abilities. The CBE offers six training programs, which benefit non-profit and for-profit organizations.

The Center for Business Excellence has demonstrated significant change in the operation and overall efficiency of our local businesses. One company reduced employee turnover by 50% and increased efficiency by 13% in one year. A non-profit participated in team building exercises that substantially reduced wasted time and frustration. A third outcome was the drawing together like-minded companies in roundtable discussions as to the tools and methods used by each company as to what worked and what did not. Much of CBE's success can be attributed to partnerships developed between SCORE and the Indiana Business Development Center.

Subject grant fund was done previously at the discretion of the Mayor; however, I want to have additional review and input by the Board of Public Works. Thank you for your consideration of this Elkhart Economic Development Partnership Grant.

Sincerely,

Rod Roberson
Mayor

City of Elkhart

Mayor Rod Roberson

ECONOMIC DEVELOPMENT PARTNERSHIP
2021 REGISTRATION

1. **NAME OF AGENCY: Center for Business Excellence**
2. **INDIANA NFP TAX REGISTRATION#: 0005000955-000**
3. **FEDERAL EIN #: 35-1850192**
4. **DUNS #: NA**
5. **CONTACT PERSON: Merritt Dilts**
6. **CONTACT PERSON TITLE: Vice President Business Resources**
7. **MAILING ADDRESS OF CONTACT PERSON:**

   418 South Main Street Suite 2-C

   Elkhart, Indiana 46515

8. **TELEPHONE #:** 574/293-3209 x121 **FAX #:** (574) 294-1859
9. **E-MAIL ADDRESS:** mdilts@elkhart.org
10. **AMOUNT REQUESTED:** $15,000
11. **DESCRIPTION OF PROJECT OR PROGAM:**

    The Center For Business Excellence is a Not for Profit organization affiliated with the Greater Elkhart Chamber of Commerce. It serves local For Profit and Not For Profit organizations through training and business consulting in the areas of Lean Tools and Principles, Leadership Development, Team Building, Vision and Mission Development, Strategic Planning and Executive Coaching. CBE partners with SCORE and the ISBDC to help small and medium sized businesses and assists workforce development and employee retention.

MISSION STATEMENT:

To help local For Profit and Not For Profit organizations transform their current strengths to provide even greater value to their clients and customers. This is accomplished through training and implementing Lean Principles and enhancing capabilities in continuous improvement, team building and leadership effectiveness.

March 29, 2021

Authorized Signature **Date**

This information will be kept on file in the office of the Grant Administrator and will only be presented for annual updates and changes as needed.

Questions

Contact Gail Smith, Deputy Treasurer, Office of Finance, 229 S. 2nd St., Elkhart, IN 46516
Phone: 574-294-5471, ex 1033; email: gail.smith@coei.org

City of Elkhart
Mayor Rod Roberson

ECONOMIC DEVELOPMENT PARTNERSHIP
2021 APPLICATION

PLEASE ATTACH THE FOLLOWING:

PROGRAM

No more than two pages containing a detailed scope of services or description of the special project. Include the goals or objectives the organization hopes to accomplish, the method of delivery, and a timetable. (Attachment entitled "Scope of Services")

Provide a program budget if the funds will be used for a specific program or project. (Attachment entitled "Program Budget")

OUT COMES/OUT PUTS

Provide a list of benefits that the community will realize as a result of the organization's activities, programs, or projects. (Attachment entitled "Benefits")

Describe the methods the organization will use to evaluate the success of the organization's activities, programs, or projects, including measurable indicators and timelines. (Attachment entitled "Benchmarks")

ORGANIZATIONAL CAPACITY

- **Annual Budget (Attachment entitled "Annual Budget")**
- **List of Board Members (Attachment entitled "Board Members")**
- **Major Investors (Attachment entitled "Major Investors")**
- **A description of organization's capacity and ability to accomplish the stated goals. Include information regarding staff qualifications and the organization's experience with this type (or similar types) of service/project. (Attachment entitled "Organizational Capacity")**

SIGNATURES

Executive Director Printed Name	Steven Eller **Board Chair Printed Name**
Leron D. Johnson **Executive Director Signature**	**Board Chair Signature**

Questions

Contact Gail Smith, Deputy Treasurer, Office of Finance, 229 S. 2nd St., Elkhart, IN 46516
Phone: 574-294-5471, ex 1033; email: gail.smith@coci.org

GRANT AGREEMENT

This Agreement is made and entered into this 29 day of March, 2021, by and between the **City of Elkhart,** Indiana, 229 South Second Street, Elkhart, Indiana 46516, hereinafter referred to as the "CITY," and **Center for Business Excellence, Inc.,** 418 South Main Street, Elkhart, Indiana, 46515, hereinafter referred to as "RECIPIENT."

WITNESSETH

WHEREAS, the CITY, through its Economic Development Partnership Grant, desires to improve the quality of life of its residents by making connections that foster collaboration which serves and promotes efforts to strengthen the Greater Elkhart business community; and

WHEREAS, the CITY'S Economic Development Grant Program provides funding for projects and activities that have a positive economic impact within the community (herein "Economic Development Funds") in accordance with program criteria recommended by the Department of Planning and Development and approved by the Mayor; and

WHEREAS, the CITY has determined that RECIPIENT's development initiatives for the redevelopment of identified areas, new marketing of public and private resources to be utilize in redevelopment, additional promotional and marketing materials to recruit more increased investments District in Elkhart meet the established criteria for Economic Development Grant Funds and desires to fund the Program; and

WHEREAS, RECIPIENT is in need of funding to support the Program and desires to receive Economic Development Funds;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **PROGRAM DESCRIPTION.**
   Center for Business Excellence, Inc. – This organization goal is to facilitate the training and support of City organizations by establishing and employing benchmarks to make certain that their programs have a positive impact on the community services. These benchmarks include various training and consulting services. The organization will further have community organizations actively participate to inprove and continue to develop their Lean/Continuous Improvement cultures, teamwork, leadership and drive process and efficiency improvements through CI/Lean/Six Sigma Leadership and Team building. The RECIPIENT shall provide all services necessary to implement the economic and business development initiatives described in the Economic Development Partnership Grant Application 2021, which is attached to this Agreement as Exhibit A.

2. **GRANT AND REIMBURSEMENT.**
   The CITY shall grant RECIPIENT Economic Development Partnership Grant Funds in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), exclusively for use by

RECIPIENT in conducting the Program as described in Paragraph 1. RECIPIENT agrees that Economic Development Funds shall be used exclusively for Program purposes. RECIPIENT agrees that any Economic Development Funds not expended for Program purposes shall be promptly returned to CITY.

3. **RECORDS.**
RECIPIENT shall maintain complete and accurate records of all transactions in the course of conducting Programs in accordance with generally accepted accounting principles and sound corporate practice. RECIPIENT shall make such records available for inspection by the CITY or its designated representative at any time upon request. RECIPIENT agrees to submit both Quarterly Reports and a Final Report at the end of the year along with a budget sheet detailing what was actually spent by category.

4. **INSURANCE INDEMNIFICATION.**
RECIPIENT shall obtain and maintain insurance in appropriate amounts and coverage for the activities contemplated by the Program. RECIPIENT shall indemnify and hold CITY harmless for any claims and causes of action, including but not limited to negligence of any employee or agent of the CITY, as well as attorney fees, which may arise out of the Program.

5. **MATERIAL ACTIONS.**
RECIPIENT shall provide the CITY prompt written notice of any material action, suit or proceeding before any court, governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, which affects RECIPIENT. RECIPIENT shall provide the CITY prompt written notice of any material change in condition, financial or otherwise, or material transaction that may affect its operations or performance of obligations under this Agreement.

6. **E-VERIFY COMPLIANCE**
Pursuant to Indiana Code § 22-5-1.7-11, RECIPIENT shall enroll in and verify the work eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement. RECIPIENT is further required to execute an affidavit affirming that: (i) it is enrolled and is participating in the E-verify program, and (ii) does not knowingly employ any unauthorized aliens. In support of the affidavit, RECIPIENT shall provide the City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by RECIPIENT and delivered to the City's authorized representative.

7. **NONDISCRIMINATION.**
RECIPIENT, its agents, and its employees, shall not discriminate against any person on the basis of race, color, national origin, religion, sex, age, or handicap in discharging the duties and responsibilities of RECIPIENT under this Agreement. RECIPIENT shall at all times comply with all applicable federal and state laws and regulations, including but not limited to; the Equal Credit Opportunity Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1866; the Pregnancy Discrimination Act; the Equal Pay Act; the Fair Labor Standards Act; the Family and Medical Leave Act; the Indiana

Civil Rights Act; Vietnam Veterans Reemployment Act; the Occupational Safety and Health Act; the Employee Polygraph and Protection Act.

8. **FAILURE TO PERFORM OBLIGATIONS.**
In the event that RECIPIENT is unable to perform its obligations under this Agreement for any reason, RECIPIENT shall give prompt notice to the CITY of its inability to perform and the reasons therefore. In the event that RECIPIENT is unable to perform its obligations due to war, strike, fire, explosion, sabotage, accident, casualty, governmental law or regulation or any other cause beyond the reasonable control of RECIPIENT, such failure to perform may be deemed an excusable default by the CITY. In the event RECIPIENT is unable to perform its obligations, RECIPIENT shall promptly refund all Economic Development Funds provided under the terms of this Agreement, unless the CITY otherwise agrees in writing.

9. **TERM.**
This Agreement shall be effective from January 1, 2021 and shall continue in effect until **December 31, 2021,** unless extended by written agreement of the parties or terminated as provided herein.

10. **TERMINATION.**
The CITY may, at any time, with or without cause, terminate this Agreement. Termination of this Agreement shall be effective immediately upon delivery of written notice to the undersigned or any person acting in the capacity of the undersigned. In the event of termination, RECIPIENT shall immediately return to the CITY any Funds received by RECIPIENT, but not expended by RECIPIENT for Program purposes.

11. **NO THIRD PARTY BENEFICIARY.**
This Agreement shall not be construed to create in any person or entity not a party hereto or specifically named herein, any right, claim, benefit or defense with respect to the parties, or in any party claiming by through or under either of them, with respect to any loss, cost, damage, claim or cause of action arising under or pursuant to the terms of this Agreement.

12. **BINDING NATURE AND ASSIGNMENT.**
This Agreement shall be binding upon the parties hereto, their respective assigns, representatives and successors in interest. However, this Agreement shall not be assigned by either party without the written consent of the other party.

13. **ENFORCEABILITY.**
This Agreement shall be construed and applied in such a manner as to maximize the enforceability of any provision. In the event that any provision of this Agreement, in whole or in part (or the application of any provision to a specific situation) is held to be invalid or unenforceable, if possible such provision shall be deemed rewritten and revised in a manner which eliminates the offending language but maintains the overall intent, in context of the Agreement. Provided, however, if that is not possible, the offending language will be deemed removed and the Agreement will otherwise remain effective and enforceable.

14. **ENTIRE AGREEMENT.**

This Agreement represents the entire understanding of the parties, and no modification hereof or addition hereto shall be binding upon the parties hereafter unless executed in writing by both CITY and RECIPIENT.

15. **ADDRESSES.**

Whenever written notice is required by this Agreement, such notice shall be deemed given when sent by certified mail to the parties at the addresses provided below:

"CITY"

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

"RECIPIENT"

Center for Business Excellence, Inc.
418 S. Main Street
Elkhart, Indiana 46515

With a copy to:

Corporation Counsel
City of Elkhart
229 South Second Street
Elkhart, Indiana 46516

16. **AUTHORITY.**

Each individual executing this Agreement on behalf of a party warrants that he or she is authorized to do so and that this Agreement will constitute the binding obligation of the party which he or she represents.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

"RECIPIENT"

Levon D. Johnson
Executive Director, Greater Elkhart
Chamber of Commerce

"CITY" acting by and through its
Board of Public Works

Michael Machlan, President

Chad Crabtree, Vice President

Jamie Arce

Ronnie Davis

ATTEST:

Nancy Wilson

Center for Business Excellence

Economic Development Partnership Application

Scope of Services

Vision:

To make the City of Elkhart, Elkhart County and the surrounding area a more vibrant economic region and global competitor by helping organizations excel through continuous improvement and strong leadership.

Mission:

To help local organizations, both For Profit and Not-For-Profit, transform their current strengths into even greater value to their clients and customers.

This is accomplished through training and implementing Lean Principles and enhancing capabilities in continuous improvement, team building and leadership effectiveness.

Services to be Provided

1) Lean/Six Sigma Continuous Improvement Principles and Tool Training
2) Leadership Training and Team Building
3) Strategic Planning and Cultural Transformation Consulting
4) Business Process Improvement Consulting
5) Employee hiring, training and retention consulting
6) Executive Coaching
7) Everything DiSC Training

Center for Business Excellence

Economic Development Partnership Application

Benchmarks

The Center for Business Excellence utilizes the following benchmarks to measure the positive impact of services to the community:

1) Number of organizations served through training and consulting services, both For-Profit and Not-For-Profit.
2) Number of organizations actively participating in the Michiana Lean Network and a direct value/satisfaction survey of those organizations.
3) Number of individuals trained or impacted by training and assistance services.
4) Key Process Indicator performance results in the organizations that CBE is provide direct assistance to.
5) Timeline for most performance metrics is annual except where services are building a base for future performance.

Center for Business Excellence

Economic Development Partnership Application

Board Members

Board Members of the Center for Business Excellence:

- Steve Eller, Beacon Health Systems
- Dina Harris, IUSB
- Kym Baker-Butler, Ruoff Home Mortgage
- Mark Bagwell, The Horton Group
- Greg Brown, Lake City Bank
- Levon Johnson, Elkhart Chamber

Center for Business Excellence

Economic Development Partnership Application

Organizational Capability

The organizational capability of CBE is a combination of the skills and experience of its primary consultant, Merritt Dilts (please see the Bio below) and the skills of local and regional partners, including the Greater Elkhart Chamber of Commerce, used to help facilitate the training and support of city organizations.

Merritt Dilts Bio

Merritt is the Vice President of Business Resources with the Center of Business Excellence, a Not for Profit organization affiliated with the Greater Elkhart Area Chamber of Commerce. He specializes in Leadership Development, Strategic planning and Lean/Continuous Improvement implementation. Prior to his current role with CBE, he worked in the Consumer Packaged Foods Industry with General Mills, Quaker Oats, Frito-Lay/PepsiCo, and Bimbo Bakeries USA (George Weston Bakeries) in the disciplines of Plant Management, Operations Leadership, Process Engineering and Quality Control.

Merritt received his Executive MBA from Emory University in Atlanta, Georgia and has a Bachelor's Degree in Food Science from Purdue University, West Lafayette, Indiana.

He enjoys being active in the community, serving previously on the Boards of the Greater Elkhart Area Chamber of Commerce and Church Community Services, on the Quality of Life Committee of the Community Foundation of Elkhart County and on the Supervisory Committee of INOVA Federal Credit Union and the Board of the Elkhart Rotary Club. He currently serves on the Elkhart, Region 2 and Goshen Homeless Coalitions.

Center for Business Excellence

Annual Budget

2021 Annual Budget - Executive Overview

Ordinary Income/Expense		2021 Bgt
Income		
4310	Program Revenue	$38,000
4700	Grants	$52,000
4750	Other Funds Received	$25,925
Total Income		$115,925
Gross Profit		$115,925
Expenses		
5000 - 5160	Payroll, Retirement, Insurance, Office Equipment	$93,690
5200 - 5300	Professional Fees, Contract and Program Exp	$7,300
5630 - 5990	Rent, Dues, Mileage, GECC Support	$14,611
Total Expense		$115,601
Net Income		$324

Note: Income and Expenses for the Gateway Mile Loan Fund are managed and tracked separately.

Center for Business Excellence

Economic Development Partnership Application

Major Investors

Major Investors in the Center for Business Excellence:

- **Elkhart County**
- **City of Elkhart**
- **City of Goshen**

Rod Roberson
Mayor

Richard Warfield
Department Head

City of Elkhart

Information Technology
131 Tyler Ave.
Elkhart, IN 46516
574.389.1939

April 29, 2021

Dear Board of Works Members,

I'd like to submit for approval the contract for Commercial Broadband Solutions for installation of a backup for Dedicated Internet Access for the use of providing backup Internet Access to City of Elkhart's fiber. The cost of this contract is $500 per month and it is already budgeted through the I.T. Department. This Internet Access will be used as a backup to Cogent Communications for all buildings that we are connecting via the new fiber Project.

Thank you

Richard Warfield

IT Department Head

City of Elkhart, Indiana

MASTER SERVICE AGREEMENT

This Master Service Agreement ("Agreement") is entered into as of April 28th, 2021 ("Effective Date") by and between Commercial Broadband Solutions ("Provider"), an Indiana Corporation organized under the laws of the State of Indiana with its principal place of business located at 3325 Middlebury St, Elkhart, In 46516 and City of Elkhart ("Customer"), a Indiana municipality organized under the laws of the State of Indiana with its principal place of business located at 229 S. 2nd St, Elkhart, IN 46514. This Agreement sets forth the terms and conditions under which Provider will deploy and provide to Customer certain telecommunications and related services described herein ("Services"). Provider and Customer may be individually referred to herein as "party" or collectively as "parties."

1. SERVICES

(a) Services and Service Orders. Subject to and in accordance with the terms and conditions of this Agreement, Customer purchases and will pay Provider to provide, and Provider shall provide to Customer, the Services set forth in each Service Order executed by the parties. Each executed Service Order is incorporated herein as part of the Agreement and shall be subject to all terms of the Agreement. Each Service Order shall include the type of Service the Customer is ordering, all Fees in connection with such Service, the term of the Service ("Service Term"), the locations and demarcation points for the Service, and any applicable service level agreements ("SLAs"). The parties may execute amendments to any Service Order and may execute or additional Service Orders at any time that this Agreement is in effect.

(b) Service Start Date. Provider will communicate to Customer its completion of deployment of the Services. Customer will accept or reject the Services within ten days thereafter. If Customer fails to accept or reject the Service within this period, the Service will be deemed accepted. As part of any rejection, Customer will communicate to Provider its reasonable belief regarding the manner in which Provider did not complete the Services in substantial conformance with this Agreement. Provider will resolve any deficiencies identified by Customer and communicate to Customer its resolution, following which Customer shall again accept or reject the Service within ten days. This process will continue until Customer affirmatively accepts Service or fails to timely communicate acceptance or rejection, which shall qualify as acceptance. The date on which Provider communicates that the Service has successfully been deployed, which Service Customer subsequently accepts or fails to reject, shall be the "Service Start Date." Provider shall provide notice to Customer of the Start of Service Date for each Service.

(c) Equipment. All equipment and facilities deployed by Provider to provide Services to Customer ("Equipment") will be owned by Provider irrespective of the location that the Equipment is deployed. Any equipment or facilities that Customer owned and maintained prior to the installation of Services by Provider will continue to be owned by Customer. During the Term, Provider shall, at its sole cost and expense, keep in good working order, condition, and repair its Equipment used to provide the Services. Provider will at its own expense inspect its Equipment bi-annually during the Term.

(d) Modifications. Provider has sole discretion to determine the network design and architecture that it will use to provide the Services to Customer. If Customer desires Provider to modify that design or architecture and Provider is amenable to such modification, the details of the Customer's request shall be set forth in the applicable Service Order, as initially executed or as thereafter amended, and Customer shall be responsible for all costs and related charges associated with any such modification. Provider shall provide Customer a non-binding estimate of such costs and charges, as well as estimated timing for deployment, in advance of undertaking the modification. At Customer's request and with Provider's consent, Provider's network may be expanded and capacity increased at any time during the term of this Agreement to meet Customer's increased bandwidth requirements. Customer shall request in writing the desired Service upgrades. Provider will provide a quote in response to the request. If the parties agree to undertake the Customer's requested upgrades, the parties will amend Attachment A to memorialize their agreement.

2. PROVIDER RESPONSIBILITIES

(a) Governmental Approvals. Unless Customer expressly is assigned in a Service Order the obligation to obtain certain governmental licenses, permits, consents or approvals (including rights-of-way access approvals) necessary for the deployment and provision of the Equipment or the delivery of Service (collectively "Government Approvals"), Provider shall be responsible for, and shall use all commercially reasonable efforts to procure, process, receive, and maintain any Government Approvals. If Provider is unable to obtain or maintain any required Government Approval despite commercially reasonable efforts and the Service cannot

commercially reasonably be restructured to avoid the need for such Government Approval, Provider may terminate without liability any portion of the Service requiring such Government Approval.

(b) Installation. Provider shall provide Customer with prior communication of the dates and times that Provider intends to enter the Customer's property to deploy Services. Provider shall comply with Customer's reasonable policies and procedures regarding access to Customer's premises or systems, *provided* that Customer provides Provider with notice of such policies and procedures. Provider shall use commercially reasonable efforts to ensure that the installation of the Services do not disrupt Customer's or its end users' activities. Provider shall take all appropriate safety measures, including fencing all construction areas, in connection with its installation. Certain construction requirements may alter or damage certain elements of Customers' property, including by causing ruts, concrete cracks, spoils, etc. Provider shall use commercially reasonable efforts to repair and restore Customer's property to its previous condition. If Provider does not restore the property to such a condition with 60 days after Customer sends notice to Provider requesting repair, Customer may restore the property, and Provider shall reimburse Customer for the reasonable costs of the repair within 15 days after Customer sends a written invoice to Provider.

3. CUSTOMER RESPONSIBILITIES

(a) Cooperation. Customer shall at its own expense provide commercially reasonable cooperation and collaboration with Provider to enable Provider to deploy, maintain, and provision the Services.

(b) Network Monitoring and Remote Access. During the Term, Customer shall, at its sole cost and expense, monitor the network twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") and provide notifications to Provider of outages, Simple Network Management Protocol traps and error conditions, as well as provide remote VPN Access 24x7x365 to Provider for the sole purpose of diagnosing and monitoring the network.

(c) Electrical Power. During the Term, Customer shall, at its sole cost and expense, provide 110 volt AC electrical service 24x7x365 to Provider's Equipment for the sole purpose of providing network services to Customer.

(d) Access to Service Locations. Except to the extent expressly set forth in a Service Order, Customer shall procure on behalf of Provider all rights required for Provider to access the Service Locations 24x7x365 for purposes of Provider deploying and maintaining Provider's Equipment for purposes of providing Customer the Services ("Access Rights") and Customer agrees to pay all fees and charges, if applicable, and maintain all required approvals in connection with such Access Rights. Customer shall maintain the security of all Equipment located on Customer's property against fire, theft, vandalism or other casualty using the same measures that Customer uses to maintain its own equipment, but no less than commercially reasonable measures. Provider's Equipment deployed in locations subject to the Access Rights may be used by Provider to provide services to third-party customers, provided that such use does not interfere with Provider's provision of Services to Customer using such Equipment.

(e) Customer Equipment. Customer is responsible for the installation, configuration, technical and physical security, and integrity of all Customer's equipment. Customer shall, at its sole cost and expense, keep in good working order, condition, and repair the Customer equipment and related infrastructure required for connectivity to the Service. Provider shall not be responsible for the making of any improvements, maintenance, and/or repairs to Customer equipment of any type, kind, or nature whatsoever. Any work undertaken by Provider shall be charged to Customer at Provider's standard hourly rates, and replacement components and parts will be provided by Provider to Customer at or below retail pricing. Customer shall be responsible for providing and provisioning suitable network connection points at each end of the link to accommodate the traffic capacity being provided via the Service.

(f) IP Addresses and Network Management Ports. Customer shall provide to Provider sufficient IP addresses and network interface ports for interconnecting devices and network management purposes.

(g) Dashboard. If Provider provides Customer with access to an online dashboard or other Customer interface tool in connection with a Service (collectively "Dashboard"), Customer may use the Dashboard solely as described in any documentation provided by Provider in connection with the Dashboard or as otherwise communicated to Customer by Provider. Customer shall not use the Dashboard for any other purpose, function, or feature. Provider may update the Dashboard from time to time at tis sole discretion, including by adding or removing functionality. If Customer receives passwords or other credentials ("Credentials") from Provider in connection with the Dashboard, or for any other purpose in connection with the Service, Customer will (A) keep the Credentials confidential, (B) not allow any entity or person to use the Credentials other than those entities or persons authorized by Customer, (C) be liable and responsible for any/all actions taken by

any user of the Credentials, and (D) promptly notify Provider if Customer has reason to believe that the Credentials were compromised or unauthorized access to the Dashboard or Services has occurred.

(h) Acceptable Use Policy ("AUP"). Customer shall comply with, and cause its end users to comply with Provider's AUP, which can be found at https://tinyurl.com/3dhwczuz and Customer shall be responsible for any non-compliance with the AUP by Customer's end users.

4. BILLING AND PAYMENT

(a) Billing and Payment. Provider shall invoice Customer (i) promptly upon execution of a Service Order for each non-recurring fee in connection with the Services Order ("Non-Recurring Fee"); (ii) monthly in advance for all recurring fixed monthly Service fees ("Monthly Fixed Fees") with billing for partial months prorated based on the number of days in the month; and (iii) each month in arrears for any usage-based Service fees ("Usage-Based Fees"), in each case as set forth in the applicable Service Order (collectively "Fees"). Customer shall pay such monthly invoices in full in U.S. dollars, without setoff or reduction, within thirty days of the date of the invoice. Provider may charge interest on invoice amounts not paid on or before the due date at the rate of one and one-half percent per month or the highest lawful rate, whichever is lower. Notwithstanding the foregoing, Provider shall have the right to invoice, including corrected and amended invoices, Fees and/or Taxes within one year of the date on which Customer incurs such Fees or Taxes, and waives the right to collect any Fees or Taxes that Provider does not invoice within this one-year period.

(b) Taxes. Except for Provider's payroll, income, and real and personal property taxes, Customer is responsible for sales, use, access, or other taxes, fees, duties, and charges or surcharges, however designated, imposed on or based upon the provision, sale or use of the Services ("Taxes"), including all Federal Communications Commission (including any bureau thereof acting on delegated authority, or any successor agency, "FCC") and state public service or public utilities commission, or similar state regulatory agency or body that regulates the telecommunications business of Provider ("State PUC") universal service fund contribution requirements and other regulatory surcharges that may be passed through by a telecommunications company to its customers under Law. Provider shall invoice Customer for all Taxes, Customer shall pay such Taxes to Provider, and Provider shall remit such Taxes to the appropriate jurisdiction.

(c) Tax Exemption. Notwithstanding the foregoing, if Customer is entitled to an exemption from any Taxes, Customer is responsible for presenting Provider with a valid exemption certificate in a form reasonably acceptable to each otherwise applicable taxing authority. Provider will give effect to any such valid exemption certificate to the extent it applies to any Service billed by Provider to Customer following Vendor's receipt of such exemption certificate.

(d) Billing Disputes. If Customer disputes any portion of an invoice, Customer shall provide notice to Provider that includes detailed documentation supporting its dispute within sixty days of the invoice date or Customer's right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay all undisputed amounts. Promptly following such billing dispute notice, an officer of Customer and an officer of Provider, each who have authority to resolve the dispute, shall meet, in person or telephonically if travel is impractical for either party, no later than thirty days after Customer provides notice of such dispute. During such meeting, the parties shall attempt in good faith to resolve such dispute. No action, suit, arbitration or other proceeding may be commenced by either party with respect to the dispute before the parties have met pursuant to this Section. If the dispute is resolved against Customer, Customer shall pay such amounts due plus interest as set forth above from the date the payment was originally due. A dispute regarding bandwidth usage may not be based upon a claim that all or a portion of the charges for the Services were incurred by unauthorized users.

5. TERM AND TERMINATION.

(a) Term. The initial term ("Initial Term") of this Agreement shall be five years unless terminated earlier pursuant to the terms hereof. The Initial Term shall commence on the Effective Date. This Agreement shall continue on a month-to-month basis following the expiration of the Initial Term until either party terminates this Agreement by providing the other party with 30 days prior notice of such termination. The Service Term for each Service, which be set forth in the applicable Service Order, shall commence on the Service Start Date for that Service. Unless otherwise set forth in a Service Order, each Service Order shall continue on a month-to-month basis following the expiration of the initial Service Term until either party terminates the Service Order by providing the other party with 30 days prior notice of such termination. If the Service Term of a Service Order extends beyond the Term of this Agreement, the terms of this Agreement nevertheless will apply to the Service Order until the Service Order terminates or expires.

(b) Termination of Service Order by Customer. If Provider materially breaches a material term of this Agreement in connection with the provision of a Service and fails to cure such breach within thirty days after receiving notice specifying the nature of the breach with reasonable specificity and including a statement as to Customer's intent to terminate, Customer may terminate the Service Order covering such Service by written notice to Provider and without early termination penalties. At Provider's request, Customer shall extend the cure period if Provider promptly commenced cure of the breach upon receiving notice of the breach, is endeavoring in good faith to cure the breach, and such cure is reasonably likely to be completed within sixty (60) days of the initial notice of the breach.

(c) Termination and/or Suspension by Provider. If Customer materially breaches a material term of this Agreement in connection with the provision of a Service, and fails to cure such breach within thirty days after receiving notice specifying the nature of the breach with reasonable specificity and including a statement as to Provider's intent to terminate, Provider may terminate the Service Order covering such Service and, at Provider's discretion, any other Service Order then in effect. Provider may cancel a Service Order without liability prior to the Service Start Date by providing Customer with 30 days advanced notice of such cancellation. Notwithstanding the foregoing, at Provider's discretion, Provider may suspend its provision of Service under this Agreement (including any or all Service Orders) (i) if Customer fails to cure any monetary breach within five days of receiving notice of the breach from Provider or (ii) immediately upon notice if Customer's breach is reasonably likely to disrupt Provider's ability to provide services to other customers, to cause harm to provider's network or any person, or to cause Provider to violate a Law.

(d) Termination of Agreement Without Cause. Either party may terminate the Agreement at any time that no Service Order is in effect by providing the other party with 90 days advanced notice.

(e) Termination for Bankruptcy. The Agreement and all Services Orders hereunder may be terminated immediately upon written notice by either party if the other party becomes insolvent or involved in a liquidation or termination of its business, files a bankruptcy petition, has involuntary bankruptcy filed against it (if not dismissed within thirty (30) days of filing), becomes adjudicated bankrupt, or becomes involved in an assignment for the benefit of its creditors.

(f) Early Termination Fee. Upon termination of a Service Order by Customer for any reason other than due to Provider's breach or bankruptcy, or upon termination by Provider due to Customer's breach or bankruptcy, Customer shall pay to Provider (i) all amounts due and payable for Services provided prior to termination; (ii) for all Service contracted at fixed monthly recurring rates (i.e., rates not based on usage), the amount that would be owed by Customer during the remainder of the then-current Service Term of each applicable Service Order and (iii) for all Services contracted at rates based on monthly usage, the applicable monthly minimum commitment (if any), for the remainder of the then-current Service Term of each applicable Service Order. Customer acknowledges and agrees that damages arising due to early termination of this Agreement would be difficult to determine and, therefore, this early termination fee constitutes liquidated damages and is not intended as a penalty or to be punitive in nature.

(g) Effect of Termination. Termination of this Agreement or any Service Order shall not affect a party's obligations with respect to any liability or matter arising prior to such termination, including fees due or accrued prior to such termination, and does not waive any other rights or remedies it may have under this Agreement.

6. WARRANTIES AND REPRESENTATIONS, LIMITATIONS OF LIABILITY AND INDEMNIFICATION.

(a) Provider's Warranties and Representations. EXCEPT AS OTHERWISE SET FORTH UNDER THIS AGREEMENT, THE SERVICE(S) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT STATUTORY OR OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE DESCRIPTION, QUALITY (INCLUDING WHETHER THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE), MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE SERVICE, AVAILABILITY OF LOCAL ACCESS, OR ANY OTHER MATTER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

(b) Customer's Warranties and Representations. Customer warrants and represents that (i) Customer shall use the Services only for the originally intended purpose(s) in accordance with this Agreement and all applicable Laws; (ii) Customer has the right, power and authority to enter into and perform its obligations under this Agreement; (iii) Customer has taken all the requisite legal action to approve the execution, delivery and performance of this Agreement; (iv) this Agreement constitutes a binding obligation enforceable against

Customer in accordance with its terms; and (v) the individual executing this Agreement is either the Customer individually or is a duly appointed officer or agent of Customer with the authority to execute this Agreement on behalf of Customer.

(c) Indemnification.

(i) *General.* Each party shall indemnify, defend and hold harmless ("Indemnifying Party") the other Party, its directors, officers, employees, agents, successors and assigns ("Indemnified Party"), from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements, sustained in any action commenced by any third party (including the FCC and any State PUC) in connection with the Indemnifying Party's negligence, wrongful misconduct, or breach of this Agreement; *provided* that Provider is not obligated to indemnify Customer, and Customer shall defend and indemnify Provider hereunder, for any claims by any third party, including any end-user customers of Customer, arising from services provided by Customer that incorporate any of the Services; *provided further* that no Indemnifying Party shall be required to indemnify an Indemnified Party for damages, costs, expenses or liabilities arising from the negligence or willful misconduct of the Indemnified Party or its directors, officers, employees, agents, successors and assigns.

(ii) *IP Infringement.* As its sole and exclusive obligation and Customer's exclusive remedy for intellectual property rights infringement, Provider will defend, indemnify and hold Customer harmless from any claim made against Customer by a third party alleging that the Services infringe such third party's intellectual property rights. Notwithstanding the foregoing, Provider has no obligation to indemnify Customer for claims for intellectual property infringement arising from (A) use of the Services by Customer in a manner other than as contemplated or prescribed by this Agreement; (B) Provider's compliance with Customer-specific (i.e., not generally used or applied by other third party customers) designs where such claims would not have arisen but for such compliance; or (C) infringement arising from a combination with, addition to, or modification of the Services by or for Customer. If any Service becomes, or is likely to become, the subject of a claim of infringement of intellectual property, Provider may at its option and expense (W) substitute other equally suitable Provider product; (X) modify the allegedly infringing Provider product to avoid the infringement (Y) procure for Customer the right to continue to use the Service free of the restrictions caused by the infringement; or (Z) if Provider cannot reasonably accomplish (W), (X), or (Y), terminate this Agreement without liability upon written notice to Customer.

(iii) *Indemnification Procedures.* The Indemnified Party shall (A) provide the Indemnifying Party with prompt written notice of any claim subject to indemnification, except that failure to provide such prompt notice only shall relieve the Indemnifying Party of its indemnification obligations to the extent that its ability to defend the Indemnified Party against such claim is materially prejudiced by such failure; (B) cooperate in good faith with the Indemnifying Party at the Indemnifying Party's expense in connection with the defense and settlement of the claim; (C) permit the Indemnifying Party to control the defense and settlement of the claim, *provided* that the Indemnified Party shall not be required to make any admission or agree to be bound by any non-monetary conditions as part of such settlement (other than an agreement to cease using a claimant's intellectual property) without its prior consent; (D) have the right, at its own expense, to participate in the defense and settlement of the claim; and (E) not make any admission that might be prejudicial to its defense without giving prior notice of its intention to do so to the Indemnifying Party.

(d) Limitation of Liability. PROVIDER'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT, IF ANY, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, INCLUDING BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR WARRANTY WILL BE LIMITED TO AND WILL NOT EXCEED THE FEES PAID TO PROVIDER BY CUSTOMER DURING THE 12-MONTH PERIOD PRECEDING SUCH DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER PARTY SHALL BE HELD RESPONSIBLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, RELIANCE OR OTHER FORMS OF INDIRECT DAMAGES, INCLUDING ANY LOST PROFITS, GOODWILL, LOST REVENUES, INCOME OR BUSINESS, DATA LOSS, INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST SAVINGS OR HARM TO BUSINESS AND WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES OR OTHER SUBJECT MATTER OF THIS AGREEMENT HOWEVER ARISING AND EVEN IF ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGES. Notwithstanding the foregoing, if a Service is subject to an SLA, the sole

and exclusive liability of Provider, and the sole recourse of Customer, in connection with mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the furnishing of such Service shall be as set forth in the SLA.

7. CONFIDENTIALITY

(a) General Obligation. A party receiving Confidential Information ("Receiving Party") from the other party ("Disclosing Party") will refrain from directly or indirectly disclosing the Disclosing Party's Confidential Information and not use the Disclosing Party's Confidential Information for any purpose whatsoever, except for the purpose it was provided and as contemplated and authorized by this Agreement. Notwithstanding the foregoing, the Receiving Party may use and disclose to its employees, contractors, advisers, and auditors ("Representatives") the Confidential Information of the Disclosing Party as reasonably necessary to enable the Receiving Party to fulfill its obligations and realize its benefits under this Agreement, *provided* that the Receiving Party uses all commercially reasonable endeavors to ensure that all such Representatives acknowledge and comply with this Section as if such Representative were a Party to the Section and that the Receiving Party remains responsible and liable for such Representative's compliance with this Section. The Receiving Party shall use the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized use or disclosure as it uses to protect its own information of a similar nature, but in no event less than reasonable care.

(b) "Confidential Information" shall mean all non-public information and material, whether disclosed or made available in writing, electronically, orally, visually or otherwise, regarding the business of the Disclosing Party and third parties who have furnished confidential, non-public information to the Disclosing Party and all other information or material disclosed to the Receiving Party by the Disclosing Party or its affiliates or representatives that should be understood by a reasonable business person to be confidential. Confidential Information does not include material or information that (i) is generally known by third parties other than as a result of breach of this Agreement or other wrongful act or omission by the Receiving Party; (ii) subsequent to its disclosure was lawfully received by the Receiving Party from a third party with the right to disseminate the information and with no restriction on disclosure; (iii) can be affirmatively demonstrated in documentary form by the Receiving Party to have been previously developed by the Receiving Party without use of Confidential Information of the Disclosing Party or in the possession of, or known by, the Receiving Party prior to the relationship between the parties without any limitation on use or disclosure. Notwithstanding the foregoing, this Agreement shall be the Confidential Information of Provider.

(c) Disclosure Required by Law. If the Receiving Party is required by Law to disclose the Confidential Information of the Disclosing Party, it shall (i) whenever permitted by Law, give prompt written notice to the Disclosing Party of the requirements of such disclosure to enable the Disclosing Party to intervene and object to such disclosure or seek a protective order or other appropriate protection; (ii) limit such disclosure to the extent of the legal requirement; and (iii) cooperate fully with the Disclosing Party, at the Disclosing Party's expense, to minimize such disclosure. A disclosure of Confidential Information pursuant to this Section shall not constitute a breach of this Agreement, *provided* that the Receiving Party complies with the terms of this Section.

8. MISCELLANEOUS

(a) Applicable Law

(i) Subject to Laws. This Agreement is subject to all applicable federal, state and local laws, including statutes; rules or regulations; decisions, orders or rulings of governmental authorities; Provider's applicable tariffs (if any); and court orders (collectively "Laws") and the obtaining and continuance of any required approval or authorization of any governmental authority.

(ii) Choice of Law and Venue. This Agreement shall be governed by the laws of the State of Indiana without regard to its conflict of laws principles. Any action or dispute arising out of, or in connection with this Agreement shall be brought for trial and determination in the appropriate federal or state court of competent jurisdiction in the State of Indiana. Each Party hereby irrevocably consents to the exclusive jurisdiction of such Indiana courts. If no federal or state court in Indiana will accept jurisdiction over the subject matter of such dispute, then the dispute may be brought and heard in any other court having subject matter jurisdiction over the dispute.

(iii) Change in Law. If any Law (A) prohibits either party's performance, (B) makes such performance illegal, impossible or impractical or (C) materially adversely impacts such performance, including by effecting such party's costs to perform its obligations, the parties will use commercially reasonable efforts to amend this

Agreement so that (Y) such performance is no longer prohibited, illegal, impossible, impractical or is no longer materially adversely impacted and (Z) this Agreement preserves, to the maximum extent possible, the original intent of the parties. If the Parties are unable to amend this Agreement, then the party whose performance or use of Service(s) is rendered prohibited, illegal, impossible, impractical or materially adversely impacted may, in its sole discretion and upon thirty (30) days prior written notification (or less if required by Law), cease performance of any such obligations without further obligation or liability, excluding payment for Service(s) received by Customer prior to notification of change in law.

(iv) Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLE WAIVES ITS RIGHT TO TRIAL BY JURY.

(v) Waiver of Class Action. ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR IN COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS ACTION OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER WILL NOT BE A CLASS REPRESENTATIVE, CLASS MEMBER OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING

(vi) Attorney Fees. In the event any action or proceeding is brought by either party against the other party under this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable costs and attorney's fees incurred in such action or proceeding, including any such fees and costs of appeal.

(b) Assignment. Neither party may assign this Agreement without receiving the written approval from the other party, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, either party may assign the Agreement, in whole or in part, without the other party's consent but after providing notice of such assignment, to (i) any entity which controls, or is controlled by, or is under common control with the assigning party, (ii) any entity resulting from any merger or consolidation with the assigning party, or (iii) any person or entity which acquires substantially all of the assets of the assigning party as a going concern, unless with respect to (i)-(iii) the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other party. Notwithstanding the foregoing, Provider may freely delegate its obligations hereunder to appropriately trained third-party contractors that operate under Provider's supervision and control.

(c) Counterparts. This Agreement, including each Service Order hereunder, may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. The exchange of executed copies of this Agreement or a Service Order by emailed PDF shall constitute effective execution and delivery.

(d) Customer Contact. Customer shall designate a "Customer Contact" who shall have the authority to represent and bind Customer in all of its dealings with Provider, and shall serve as a contact person in the event that Provider needs to contact Customer for any reason. The Customer Contact's contact information is as follows:

Name: _____

Title: _____

Address: _____

Telephone: _____

E-mail: _____

In the event that Customer replaces its Customer Contact, it shall appoint a new Customer Contact and provide Provider notice of such change and the new Customer Contact's contact information within five days.

(e) Dispute Resolution. If a dispute (other than a billing dispute) arises out of or relating to this Agreement ("Dispute"), it is the intention of Provider and Customer to settle, to the greatest extent possible, such Dispute in an amicable manner. If, despite a commercially reasonable good faith effort, a Dispute cannot be resolved by the Provider and Customer's employee(s) having primary managerial responsibility for the matter to which the Dispute pertains within fifteen days of either party providing the other party with notice of such dispute, the parties shall attempt to resolve such Dispute promptly by negotiation between executives who have authority to settle the Dispute and who are at a senior level to the employees who initially addressed the Dispute ("Executives"). The Executives shall meet at a mutually acceptable time and place (or telephonically if travel

is impractical for either party), and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information in connection with the dispute made by one party to another will be honored. A party may not avail itself of legal recourse unless the Dispute has not been resolved within 30 days after the commencement of, or invitations to commence, negotiations between the Executives.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof and may be amended or modified solely by written agreement signed by each of the parties hereto.

(g) Force Majeure. Except as otherwise expressly provided in this Agreement, neither Provider nor Customer shall be deemed to be in breach of this Agreement or otherwise liable to any third party for any delay in performance, failure of performance in whole or in part, or loss or damage if and to the extent caused by an event beyond such party's reasonable control, including, but not limited to, any riots, wars, acts of enemies, national emergency, acts of vandalism, strikes, floods, fires, high winds, lightning, hurricanes, tornados, acts of God ("Force Majeure Event"), *provided* that the party claiming a Force Majeure Event (i) could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, were commercially reasonably for the party to take; (ii) gives the other party prompt notice of such Force Majeure Event; and (iii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

(h) No Partnership or Agency. The relationship between Provider and Customer shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes. Provider and Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

(i) No Third-Party Beneficiaries. This Agreement is not intended to confer, and does not confer, any rights or remedies upon any person or entity other than the parties to this Agreement and the Indemnified Parties.

(j) Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given only if and when (i) personally delivered (including by means of a messenger service) or (ii) by United States first class mail postage prepaid (registered or certified) return receipt requested or (iii) when delivered (and receipted for) by an overnight delivery service, in each case addressed to the address set forth in the first paragraph of this Agreement, or in the case of a notice from Provider to Customer, addressed to the Customer Contact. Notwithstanding the foregoing, day-to-day operational communications may be by email between the Customer Contact and Provider.

(k) Order of Precedence. In the event of an express conflict between a term(s) of this Agreement (excluding the Service Orders) and the terms of the Service Order, precedence will be given in the following order: (i) the Agreement (excluding the Service Orders) and (b) a Service Order. Notwithstanding the foregoing, any provision in a Service Order that expressly states that it is intended to preempt an inconsistent term in the Agreement (excluding the Service Orders) by reference to the Section number of such term shall operate in lieu of the specifically referenced inconsistent term in this Agreement.

(l) Severability. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining portions shall remain in full force and effect.

(m) Survival. The terms and provisions of this Agreement that can only be given proper effect if they survive the termination of this Agreement, including, but not limited to, Section 5(f) (Early Termination Fee), Section 5(g) (Effect of Termination), Section 6 (Warranties and Representations, Limitations or Liability and Indemnification), Section 7 (Confidentiality), Section 8 (Miscellaneous), will survive and remain enforceable notwithstanding the termination, rescission, or expiration of this Agreement, for any reason whatsoever. In addition, all provisions of this Agreement will remain valid as to any obligation incurred prior to termination of this Agreement until such time as such obligations have been discharged.

(n) Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights and all waivers shall be in writing.

[Signatures on next page.]

[Signature page for Telecommunications Services Agreement]

IN WITNESS WHEREOF, the parties have executed this Master Service Agreement as of the date first written above.

PROVIDER,	**CUSTOMER,**
Commercial Broadband Solutions, LLC	_____
By:_____	By:_____
Name: Gene Crusie	Name:_____
Title: President	Title:_____

SERVICE ORDER 04282021-01

Schedule of Ethernet Transport Services and Fees

Service Description	A Location	Z Location	Install Fee	Monthly
4Gbps DIA with BGP and 15 Static IPv4	USTC	TBD NNI	$0	$500

Schedule Totals	
Monthly Service	$500
Installation and Setup	$0
Expected "Go-Live Date"	ASAP
DIA IPv4 addresses committed to	0

SERVICE TERM 36 Months

***Invoicing Terms:** Payment on each invoice is due 15 days from the date of the invoice. A late charge equal to 8% per year shall accrue, payable on the unpaid balance per month, on all amounts not paid when due.*

Commercial Broadband Solutions, Inc.	Client: City of Elkhart, IN
By:	By:
Print: Gene Crusia	Print:
Title: President	Title:
Date: 4-28-2021	Date:

ATTACHMENT TO SERVICE ORDER
SERVICE LEVEL AGREEMENTS

1. SERVICE LEVELS

(a) Availability Commitment. Provider shall use commercially reasonable efforts to maintain Services availability for Customer 99.99% of the time, except during Excused Outages ("Availability Commitment"). For purposes of the Availability Commitment, the term "availability" shall mean the ability to send and receive frames at the rate for which the segment is defined herein or in the applicable Service Order.

(b) Latency Commitment. Provider shall use commercially reasonable efforts to achieve round-trip transmissions between designated end-points that average three milliseconds or less, except during Outage Events ("Latency Commitment"). The Latency Commitment is measured by averaging sample measurements taken between core Backbone Equipment. The term "Backbone Equipment" means the Provider-owned service and related Equipment deployed and maintained by Provider and used in the provision of the Services to Customer.

(c) Frame Performance Metrics. Provider shall use commercially reasonable efforts to achieve the frame performance set forth in the table below, except during Outage Events ("Frame Performance Metric"). The Frame Performance Metric set forth in the table below apply to Ethernet Service only and performance is determined using a "met" or "missed" calculation.

One-way Performance Metrics	**PT0**	**PT1**	**PT2**	**PT3**	**PT4**
PT Max Distance (km/miles)	**75 km / 50 miles**	**250 km / 150 miles**	**1200 km / 750 miles**	**7000 km / 4350 miles**	**27500 km / 17000 miles**
One-way Frame Delay - FD (ms)	≤ 6	≤ 20	≤ 75	≤ 115	≤ 250
One-way Inter-Frame Delay Variaton - IFDV (ms)	≤ 2.5	≤ 8	≤ 40	≤ 40	≤ 40
One-way Frame Loss Ratio - FLR (percent)	≤ .001% i.e., 10-5	≤ .01% i.e., 10-4	≤ .01% i.e., 10-4	≤ .025% i.e., 2.5x10-4	≤ .05% i.e., 5x10-4

Definitions applicable to the Frame Performance Metric are set forth below:

(i) "One-way Frame Delay" or "FD" shall mean the time elapsed in milliseconds from when a Service Frame enters the ingress UNI until it fully transmits through the egress UNI. It will be approximated from a two-way measurement

(ii) "Frame Delay" includes link insertion delays, propagation delays, and queuing delays within the Provider's network only.

(iii) "One-way Inter-Frame Delay Variation" or "IFDV" shall mean the variance in frame delay in milliseconds between a pair of selected Service Frames.

(iv) "Frame Loss Ratio" or "FLR" shall mean the ratio of Service Frames successfully transmitted through the egress UNI versus Qualified Service Frames entering the ingress UNI.

2. DEFICIENCY CREDIT CALCULATION

(a) Deficient Minutes. The total number of minutes in a calendar month during which Provider fails to satisfy one or more of the SLA metrics that are in excess of the number of minutes of non-compliance with the SLAs permitted by their terms shall qualify as "Deficient Minutes." A minute shall qualify as a Deficient

Minute if Provider fails to satisfy one or more SLAs during such minute and no additional Deficiency Credit shall be awarded if Provider fails to satisfy multiple SLAs during such minute.

(b) Deficiency Credit. Except as set forth in Section 2(d) of this Attachment B, if Customer experiences Deficient Minutes during a calendar month, Provider shall provide Customer a "Deficiency Credit" against the Monthly Fixed Fee in the next invoice that the Provider sends the Customer. The amount of the Deficiency Credit shall be based on the number of Deficient Minutes experienced by the Customer as set forth in the table below.

Length of Service Outage (in hours : minutes : seconds)	Credit for Service as a Percentage of Monthly Fixed Fee
0:00:01 – 4:00:00	0%
4:00:01 – 8:00:00	10%
8:00:01 – 12:00:00	50%
12:00:01 or greater	100%

(c) Deficient Minutes Reporting. Except as set forth in Section 2(d) of this Attachment B, at Customer's written request, Provider shall calculate the number of Deficiency Minutes, if any, experienced by Customer during a calendar month and the amount of any Deficiency Credit owed to Customer due to such Deficient Minutes.

3. APPLICATION OF SLAS

(a) Network Standards of Performance. Provider shall utilize commercially reasonable and industry standard practices to provide Customer with uninterrupted Service during the Term of the Agreement consistent with the SLAs. The sole and exclusive liability of Provider, and the sole recourse of Customer, in connection with mistakes, omissions, interruptions, delays, errors or defects in transmission ("Failure of Performance") occurring in the furnishing of Service hereunder, or arising in any way out of this Agreement, shall be limited to Deficiency Credits as set forth in this Attachment B. In the event of a Failure of Performance, Provider shall use commercially reasonable efforts to correct such failure as soon as reasonably practicable after Provider is notified of such failure.

(b) For purposes of this SLA, the term "Excused Outage" shall mean any outage or other loss of the Services that is (i) less than one hour in duration; (ii) caused by the negligence or willful misconduct of the Customer; (iii) attributable to failure or outage of related telephone circuits (whether ordered by Provider or Customer); (iv) due to failure of power (excluding any industry standard back-up power sources that Provider may have in place); (v) resulting from Customer's applications, equipment, or facilities; (vi) resulting from any act or omission of Customer or any user of Customer's equipment or account, (vii) during any period in which Provider is not given access to the Customer or Customer's premises; (viii) during any period of Planned Maintenance or Repair, provided Customer is given advance disclosure consistent with this Agreement; (ix) not reported by Customer to Provider within five days of occurrence, or (ix) during any period of Force Majeure.

(c) Credit Limitations. Aggregate Deficiency Credits owed by Provider for any calendar month shall not exceed the Monthly Fixed Fee associated with the effected Service(s) that experienced the Deficient Minutes. Provider shall not owe any Deficiency Credits against Usage-Based Fees. To qualify to receive Deficiency Credits, Customer must inform Provider of the underlying Service-effecting issue that Customer experiences within five days of experiencing such issue, and Customer must submit a written request for Deficiency Credits no later than the last day of the subsequent month. Upon receipt of such communication, Provider shall confirm whether it owes Credits to Customer, and Provider's determination, which shall be reasonable, shall be final. SLAs shall not be applicable during Outage Events.

(d) Restoration. Provider shall provide Customer contact information for a Provider customer service representative ("CSR"). Provider shall respond to any Customer outreach to the CSR by any reasonable method and shall use commercially reasonable efforts to do so within fifteen minutes. Provider acknowledges that the Services are deemed by Customer to be of a mission critical nature and Provider

shall use all commercially reasonable efforts to restore Service as quickly as practical, *provided* that the final judgment regarding the safety of working conditions shall at all times rest with the Provider's field technicians.