

****PERSONAL AUDIO ENHANCERS ARE AVAILABLE FROM THE COUNCIL
SECRETARY****

AGENDA FOR REGULAR ELKHART CITY COUNCIL MEETING

LOCATION: CITY HALL, 2ND FLOOR, COUNCIL CHAMBERS

March 7, 2022

7:00 P.M.

- 1. Call to Order, Pledge, Moment of Silent Meditation, Roll Call**
- 2. Minutes for Approval**
Minutes of February 7, 2022 Council Meeting
Minutes of February 14, 2022 Council Meeting
- 3. Presentations and Introductions**
- 4. Unfinished Business**
 - a) Reports of Council Committees**
 - b) Ordinances on Second-Third Reading**
 - c) Ordinances and Resolutions Referred to Committees**

PROPOSED ORDINANCE 21-O-46, an ordinance appropriating Five Hundred Thousand and 00\100 Dollars (\$500,000) from the ARP Coronavirus Local Fiscal Recovery Fund to the Negative Economic Impact Account the Homeowner-Occupied Property Rehabilitation Program

PROPOSED ORDINANCE 21-O-49, an ordinance appropriating Three Hundred Twenty-Two Thousand Three Hundred and Fifty Dollars (\$322,350.00) from the ARP Coronavirus Local Fiscal Recovery Fund to the Negative Economic Impact Account for the Elkhart Thrive Neighborhood Opportunity Hub Initiative

PROPOSED ORDINANCE 21-O-67, an ordinance appropriating Four Million Two Hundred Thousand Dollars (\$4,200,000.00) for the design other professional services for the new public safety facilities of the Elkhart Police Department and Elkhart Fire Department

PROPOSED ORDINANCE 21-O-68-R, an ordinance appropriating One Million Dollars (\$1,000,000.00) for land acquisition in connection with the new public safety facilities for the Elkhart Police Department and Elkhart Fire Department

d) Tabled Ordinances and Resolutions

PROPOSED ORDINANCE 21-O-57-R, an ordinance appropriating One Million Dollars (\$1,000,000) from the ARP Coronavirus Local Fiscal Recovery Fund to the Provision of Government Services Account for upgrades to the Lerner Theatre heating, ventilation and air conditioning system

PROPOSED ORDINANCE 22-O-01, an ordinance annexing certain real estate commonly known as 25610 County Road 4, Elkhart County, Indiana and 52396 County Road 9, Elkhart County, Indiana and declaring the same to be a part of the City of Elkhart, Indiana (*LD Elkhart IN Landlord, LLC, petitioner*)

5. New Business

a) Ordinances on First Reading

PROPOSED ORDINANCE 22-O-06, an ordinance vacating Wagner Avenue, between the East right-of-way line of Benham Avenue and the West right-of-way line of Chester Street, a public way within Elkhart, Indiana

b) Resolutions

PROPOSED RESOLUTION 22-R-06, a resolution of the City of Elkhart, Indiana, confirming Resolution No. R-04-22, which declared a certain area in the City of Elkhart to be an economic revitalization area for the purpose of granting tax phase-in benefits to Marson International LLC

PROPOSED RESOLUTION 22-R-07, a resolution of the Common Council of the City of Elkhart, Indiana, to approve two memoranda of agreements between the City of Elkhart and Marson International LLC

PROPOSED RESOLUTION 22-R-08, a resolution of the City of Elkhart, Indiana, confirming Resolution No. R-05-22, which declared a certain area in the City of Elkhart to be an economic revitalization area for the purpose of granting tax phase-in benefits to PontoonStuff, Inc.\MMM Realty LLC\Legacy Plastics LLC

PROPOSED RESOLUTION 22-R-09, a resolution of the Common Council of the City of Elkhart, Indiana, to approve two memoranda of agreements between the City of Elkhart and PontoonStuff, Inc.\MMM Realty LLC\Legacy Plastics LLC

PROPOSED RESOLUTION 22-R-10, a resolution of the Common Council of the City of Elkhart, Indiana, approving the collective bargaining agreement between the City of Elkhart and the Indiana Fraternal Order of Police Labor Council, Inc.

- c) **Vacation Hearings** None
- d) **Other New Business**
- e) **Reports of Mayor, Board of Works, Board of Safety or City Departments**
- f) **Neighborhood Association Reports**
- g) **Privilege of the Floor**
- h) **Scheduling of Committee Meetings**

6. Acceptance of Communications

Minutes of January 26, 2022 – Board of Aviation Commissioners
Minutes of January 25, 2022 – Board of Public Safety
Minutes of February 8, 2022 – Board of Public Safety
Minutes of February 1, 2022 – Board of Public Works
Minutes of February 14, 2022 – Board of Public Works
Minutes of January 13, 2022 – Board of Zoning Appeals
Minutes of January 12, 2022 – Lerner Theatre Board
Minutes of January 16, 2022 – Park and Recreation Board Meeting
Report of January 2022 Month End – Elkhart Communications Center
Report of February 15, 2022 – Parks Department

7. Adjournment

MINUTES OF THE REGULAR COMMON COUNCIL MEETING
OF FEBRUARY 7, 2022

Present: Council President Arvis Dawson
Council Members Kevin Bullard, Brent Curry, Brian Thomas, Aaron Mishler, Tonda Hines, Megan Baughman, Dwight Fish, David Henke

Absent: None

This meeting was made available to the public electronically through WebEx and live-streamed on Facebook. All Council Members were present in Council Chambers.

President Dawson called the meeting to order at 7:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, in Elkhart.

Alex Holtz led the assembly in the Pledge of Allegiance and President Dawson asked for a moment of silent reflection.

The clerk called the roll.

President Dawson presented the Council with proposed Ordinance 22-O-03 which replaces proposed Ordinance 21-O-29 that establishes electronic participated for the Council. President Dawson asked for a motion to remove proposed Ordinance 21-O-29 from the agenda. Motion by Councilman Henke and seconded by Councilman Mishler.

By a unanimous voice vote of 7-0, the motion passed.

APPROVAL OF MINUTES

Minutes of October 25, 2021 Special Meeting of the Common Council

Minutes of November 1, 2021 Council Meeting

Minutes of November 8, 2021 Finance Committee Meeting

Minutes of December 6, 2021 Council Meeting

Minutes of January 3, 2022 Finance Committee Meeting Of-The-Whole

Minutes of January 3, 2022 Council Meeting

Minutes of January 6, 2022 AD-HOC Committee Meeting

Councilman Henke, seconded by Councilman Mishler, **moved to approve the minutes of the October 25, 2021 Special Meeting of the Common Council**, which **motion carried** by voice vote and **the minutes were approved.**

Councilman Henke, seconded by Councilman Fish, **moved to approve the minutes of the November 1, 2021 Council Meeting**, which **motion carried** by voice vote and **the minutes were approved.**

Councilman Thomas, seconded by Councilman Mishler, **moved to approve the minutes of the November 8, 2021 Finance Committee Meeting**, which **motion carried** by voice vote and **the minutes were approved.**

Councilman Fish, seconded by Councilman Mishler, **moved to approve the minutes of the December 6, 2021 Council Meeting**, which **motion carried** by voice vote and **the minutes were approved**.

Councilman Fish, seconded by Councilman Mishler, **moved to approve the minutes of the January 3, 2022 Finance Committee Meeting Of-The-Whole**, which **motion carried** by voice vote and **the minutes were approved**.

President Dawson asked to let the record show that Councilman Curry had just joined the meeting in person.

Councilman Fish, seconded by Councilman Mishler, **moved to approve the minutes of the January 3, 2022 Council Meeting**, which **motion carried** by voice vote and **the minutes were approved**.

Councilman Henke, seconded by Councilman Thomas, **moved to approve the minutes of the January 6, 2022 AD-HOC Committee Meeting**, which **motion carried** by voice vote and **the minutes were approved**.

PRESENTATIONS AND INTRODUCTIONS

President Dawson introduced Angie McKee as the new Council Clerk.

President Dawson recognized that the former Council Clerk Traci Adams will be staying around to help and that she also got engaged.

Chief of Staff Bradley Tracy introduced the new Human Resource Director Patrick Tibbs.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There were no Council committee reports.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 22-O-02

AN ORDINANCE AMENDING § 157.019 OF THE CODE OF ORDINANCES OF THE CITY OF ELKHART, INDIANA RELATING TO THE TESTING OF APPLICANTS FOR AN ELECTRICAL CONTRACTOR LICENSE BY THE CITY OF ELKHART

The clerk read the proposed ordinance, 22-O-02 by title only. President Dawson asked for a motion to approve ordinance. Motion to approve on second reading was made by Councilman Henke and seconded by Councilman Curry. President Dawson opened the floor for council discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 22-O-02

Councilman Henke asked for a presentation on significant change. Electrical Inspector, Dan Riddle speaks on the proposed ordinance starting at 40 minutes and 40 seconds of the audio recording. **Councilman Mishler** asked a question of Dan Riddle at 43 minutes and 40 seconds of the audio recording. **Councilman Fish** comments start at 44 minutes and 17 seconds of the audio recording. **John Espar** from the Legal department speaks on the proposed ordinance starting at 44 minutes 52 seconds of the audio recording. **Councilman Fish** ask for clarification from John Espar starting at 46 minutes and 28 seconds of the audio recording. Dan Riddle answers Councilman Fish starting at 46 minutes and 59 second of the audio recording. **President Dawson** addresses clarification of the ordinance starting at 48 minutes and 07 seconds of the audio recording.

PUBLIC COMMENT ON PROPOSED ORDINANCE 22-O-02

President Dawson opened public comments. There were no public comments. President Dawson returned the comments to the Council and seeing that there were no additional comments from the Council, he asked the clerk to call the roll. Roll call was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Baughman, Fish, Henke, Dawson

NAYS:

ABSENT: Councilwoman Hines

President Dawson asked for a motion to move ordinance to third and final reading. Motion by Councilman Henke and seconded by Councilman Curry. There were no further discussions on this proposed ordinance.

The clerk read the proposed ordinance, 22-O-02 by title only. President Dawson asked the clerk to call the roll. Roll call was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Baughman, Fish, Henke, Dawson

NAYS:

ABSENT: Councilwoman Hines

By a vote of 8-0 the ordinance was adopted

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES:

Proposed Ordinance 21-O-46

AN ORDINANCE APPROPRIATING FIVE HUNDRED THOUSAND AND 00\100 DOLLARS (\$500,000) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE NEGATIVE ECONOMIC IMPACT ACCOUNT FOR THE HOMEOWNER-OCCUPIED PROPERTY REHABILITATION PROGRAM

President Dawson stated **proposed ordinance 21-O-46 remains in committee.**

Proposed Ordinance 21-O-49

AN ORDINANCE APPROPRIATING THREE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$322,350.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE NEGATIVE ECONOMIC IMPACT ACCOUNT FOR THE ELKHART THRIVE NEIGHBORHOOD OPPORTUNITY HUB INITIATIVE

President Dawson stated **proposed ordinance 21-O-49 remains in committee.**

Proposed Ordinance 21-O-67

AN ORDINANCE APPROPRIATING FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00) FOR THE DESIGN OTHER PROFESSIONAL SERVICES FOR THE NEW PUBLIC SAFETY FACILITIES OF THE ELKHART POLICE DEPARTMENT AND ELKHART FIRE DEPARTMENT

President Dawson stated **proposed ordinance 21-O-67 remains in committee.**

Proposed Ordinance 21-O-68-R

AN ORDINANCE APPROPRIATING ONE MILLION DOLLARS (\$1,000,000.00) FOR LAND ACQUISITION IN CONNECTION WITH THE NEW PUBLIC SAFETY FACILITIES FOR THE ELKHART POLICE DEPARTMENT AND ELKHART FIRE DEPARTMENT

President Dawson stated **proposed ordinance, 21-O-68-R remains in committee.**

TABLED ORDINANCES AND RESOLUTIONS

Proposed Ordinance 21-O-57-R

AN ORDINANCE APPROPRIATING ONE MILLION DOLLARS (\$1,000,000.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE PROVISION OF GOVERNMENT SERVICES ACCOUNT FOR UPGRADES TO THE LERNER THEATRE HEATING, VENTILATION AND AIR CONDITIONING SYSTEM

President Dawson stated the **proposed ordinance 21-O-57-R remains tabled.**

NEW BUSINESS

ORDINANCES ON FIRST READING

Proposed Ordinance 22-O-01

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE COMMONLY KNOWN AS 25610 COUNTY ROAD 4, ELKHART COUNTY, INDIANA AND 52396 COUNTY ROAD 9, ELKHART COUNTY, INDIANA AND DECLARING THE SAME TO BE A PART OF THE CITY OF ELKHART

The clerk read the proposed ordinance, 22-O-01, by title only. President Dawson asked for a motion to remove this from the table. Motion by Councilman Henke and seconded by Councilman Fish.

By a unanimous voice vote of 8-0, the motion carried.

PUBLIC HEARING ON PROPOSED ORDINANCE 22-O-01

President Dawson opened the public hearing. Debra Hughes, Civil Engineer from Surveying and Mapping LLC, formerly known as Marbach Brady and Weaver and Marbach-Palm, representing Lazy Days RV. Her comments start at 51 minutes and 59 seconds of the audio recording.

Seeing that there were no additional comments from the public, President Dawson asked for a motion to table this proposed ordinance until the March 7th meeting. Motion made by Councilman Henke and seconded by Councilman Fish.

By a unanimous voice vote of 8-0, this proposed ordinance was tabled.

Proposed Ordinance 22-O-03

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AMENDING ORDINANCE NO. 4099, “AN ORDINANCE AMENDING ORDINANCE NO. 3116, ESTABLISHING THE RULES AND REGULATIONS FOR THE GOVERNMENT OF THE COMMON COUNCIL OF CITY OF ELKHART, INDIANA, AND ITS MEMBERS” AND ESTABLISHING RULES FOR THE COUNCIL MEMBERS TO PARTICIPATE IN COUNCIL MEETINGS BY MEANS OF ELECTRONIC COMMUNICATION.

The clerk read the proposed ordinance, 22-O-03 by title only. President Dawson moved this proposed ordinance on to second reading.

Proposed Ordinance 22-O-04

AN ORDINANCE TO ESTABLISH RESPONSIBLE BIDDING PRACTICES AND SUBMISSION REQUIREMENTS ON PUBLIC WORKS PROJECTS.

The clerk read the proposed ordinance, 22-O-04 by title only. President Dawson moved this proposed ordinance on to second reading.

Proposed Ordinance 22-O-05

AN ORDINANCE AMENDING THE ZONING MAP CREATED PURSUANT TO ORDINANCE NO. 4370, THE “ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA,” AS AMENDED, TO REZONE 1637, 1643, AND 1649 W. INDIANA AVENUE IN THE CITY OF ELKHART, INDIANA FROM R-3, TWO-FAMILY DWELLING DISTRICT TO R-2, ONE-FAMILY DWELLING DISTRICT.

The clerk read the proposed ordinance, 22-O-05 by title only. President Dawson moved this proposed ordinance on to second reading.

RESOLUTIONS

Resolution #R-02-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, OPPOSING LEGISLATION REGARDING THE BUSINESS PERSONAL PROPERTY TAX.

The clerk read proposed resolution 22-R-02 by title only. President Dawson asked for a motion to adopt this resolution. Motion by Councilman Curry and seconded by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 22-R-02

President Dawson opened Council discussion. **Councilman Henke** comments start at 56 minutes and 41 seconds of the audio recording. ****Councilman Bullard** comments start at 58 minutes and 09 seconds of the audio recording (**there were audio issues when Councilman Bullard was speaking and some of his comments are not audible). **Councilman Curry** comments start at 1 hour, 0 minutes and 04 seconds of the audio recording. **Councilman Fish** comments start at 1 hour, 0 minutes and 35 second of audio recording. **Councilwoman Baughman** comments start at 1 hour, 2 minutes and 41 seconds of the audio recording.

PUBLIC COMMENTS ON PROPOSED RESOLUTION 22-R-02

President Dawson opened public comments. **Mayor Roberson** comments start at 1 hour, 4 minutes and 00 seconds of the audio recording. President Dawson asked to let the records show that Councilwoman Hines is here. **City Controller, Jamie Arce** comments start at 1 hour, 6 minutes and 19 seconds of the audio recording. **Councilwoman Baughman** asked a question to Jamie starting at 1 hour 8 minutes and 58 seconds of the audio recording. Jamie responds to the question/comment starting at 1 hour, 9 minutes and 57 seconds of the audio recording. **Mayor Roberson** comments start at 1 hour, 11 minutes and 08 seconds of the audio recording. Seeing that there were no other comments from the public, President Dawson returned the discussion to the council.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 22-R-02

President Dawson opened Council discussion. **Councilman Mishler** comments start at 1 hour, 12 minutes and 24 seconds of the audio recording. **Councilman Henke** comments start at 1 hour, 13 minutes and 36 seconds of the audio recording. **Councilman Fish** comments start at 1 hour, 17 minutes and 38 seconds of the audio recording. Councilman Henke asked a question to President Dawson starting at 1 hour, 19 minutes and 44 seconds of the audio recording. **Councilman Bullard** comments start at 1 hour, 20 minutes and 00 seconds of the audio recording. **Councilman Curry** comments at 1 hour, 20 minutes and 58 seconds of the audio recording. **President Dawson** comments start at 1 hour, 22 minutes and 15 seconds of the audio recording.

President Dawson asked the clerk to call the roll. Roll call was as follows:

AYES: Curry, Mishler, Hines, Fish, Dawson

NAYS: Bullard, Thomas, Baughman, Henke

Motion passed by a 5-4 vote, the resolution passed.

President Dawson stated that the administration has presented the Council with a revised proposed Resolution 22-R-03-R to replace proposed Resolution 22-R-03 due to a scrivener's error. Motion to replace made by Councilman Fish and seconded by Councilwoman Hines.

By a unanimous voice vote of 9-0, the motion passed.

Resolution #R-03-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, OPPOSING HOUSE BILL 1134 AS AN UNNECESSARY BURDEN UPON TEACHERS AND A STRUGGLING STATEWIDE AND LOCAL EDUCATIONAL SYSTEM.

The clerk read proposed resolution 22-R-03 by title only. President Dawson asked for a motion to adopt this resolution. Motion made by Councilwoman Hines and seconded by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION R-03-22-R

President Dawson opened Council discussion. **Councilman Mishler** comments start at 1 hour, 26 minutes and 40 seconds of the audio recording. **Councilman Henke** comments start at 1 hour, 28 minutes and 47 seconds of the audio recording. **Councilman Fish** comments start at 1 hour, 31 minutes and 37 seconds of the audio recording. **Councilwoman Hines** comments start at 1 hour, 33 minutes and 51 seconds of the audio recording. During Councilwoman Hines' comments, she makes a motion to change the wording of the resolution from "assault upon teachers to unnecessary burden upon teachers". It was seconded by Councilman Henke. **By a unanimous voice vote of 9-0 the amendment passed.**

President Dawson asked for a motion to adopt the amended resolution. Motion by Councilwoman Hines and seconded by Councilman Mishler. Council discussion resumes with **Councilman Thomas** comments starting at 1 hour, 35 minutes and 39 seconds of the audio recording. No further comments were made by the Council.

PUBLIC COMMENTS ON PROPOSED RESOLUTION R-03-22-R

President Dawson opened public comments. **Krista Riblet** spoke in favor of the resolution. She had a letter for the Council. Her comments start at 1 hour, 38 minutes and 55 seconds of the audio recording. **Kris Thomas-Bartley** spoke in favor of the resolution. Her comments start at 1 hour, 44 minutes and 30 seconds of the audio recording. **Janine Doot** spoke in favor of the resolution. Her comments start at 1 hour, 51 minutes and 26 seconds of the audio recording.

President Dawson asked the Director of Communications, Corrine Straight if there were any comments online, she stated that there a few comments but nothing to share. **Amber Kosar** spoke in favor of the resolution. Her comments start at 1 hour, 56 minutes and 13 seconds of the audio recording. **Alex Holtz** spoke in favor of the resolution. His comments start at 2 hours, 00 minutes and 44 seconds of the audio recording. **Bryan Golden** spoke in favor of the resolution. His comments start at 2 hours, 03 minutes and 26 seconds of the audio recording. **Jenn Harrold** spoke in favor if the resolution. Her comments start at 2 hours, 9 minutes and 18 seconds of the audio recording. Seeing that there were no additional comments from the public, President Dawson closed the public comments.

President Dawson returned the comments to the Council and called for a 5-minute break at 2 hours, 13 minutes and 40 seconds of the audio recording.

COUNCIL COMMENTS ON PROPOSED RESOLUTION R-03-22-R

President Dawson called the meeting back to order at 2 hours, 18 minutes and 15 seconds of the audio recording. **Councilman Henke** comments start at 2 hours, 18 minutes and 24 seconds of the audio recording. **Councilman Fish** comments start at 2 hours, 24 minutes and 12 seconds of the audio recording. **Councilwoman Baughman** comments start at 2 hours, 26 minutes and 07 seconds of the audio recording. **Councilman Mishler** comments start at 2 hours, 28 minutes and 43 seconds of the audio recording. **Councilman Curry** comments start at 2 hours, 30 minutes and 00 seconds of the audio recording. **Councilman Bullard** comments start at 2 hours, 32 minutes and 54 seconds of the audio recording. **President Dawson** comments start at 2 hours, 34 minutes and 02 seconds of the audio recording. President Dawson asked the clerk to call the roll. Roll Call was as follows:

AYES: Bullard, Curry, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS: Thomas

By a vote of 8-1 the resolution passed.

VACATION HEARINGS

There were no vacation hearings.

OTHER NEW BUSINESS

COUNCIL COMMENTS/ISSUES

Councilman Fish talks about his free COVID test kit. His comments start at 2 hours, 39 minutes and 00 seconds of the audio recording.

Councilman Henke talks about comments about items in his packet and the Lerner report. His comments start at 2 hours, 39 minutes and 32 seconds of the audio recording.

Councilwoman Baughman talks about dump trucks at the airport. Her comments start at 2 hours, 43 minutes and 10 seconds of the audio recording,

Councilman Mishler thanked several departments for their work during the recent snow storm. His comments start at 2 hours, 43 minutes and 54 seconds of the audio recording.

President Dawson asked the clerk to send proposed Resolution R-03-22-R to the local state representatives and talks about the upcoming Lerner tour and the Council getting an attorney. His comments start at 2 hours, 44 minutes and 33 seconds of the audio recording.

REPORTS OF THE MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY DEPARTMENT HEADS

Corrine Straight, Director of Communications, thanked several departments as well regarding their work during the recent snow storm. Her comments start at 2 hours, 46 minutes and 40 seconds of the audio recording. **Councilman Curry** asked Corrine about trash pick-up schedule since it was not collected for 2 days during the snow storm. His comments start at 2 hours, 47 minutes and 22 seconds of the audio recording.

Mayor Roberson talks about the aquatic center and the upcoming event Great Lakes Valley Conference championships. His comments start at 2 hours, 48 minutes and 15 seconds of the audio recording.

President Dawson asked Corrine or Bradley to contact Michelle Frank at the Lerner to let her know that the 2pm time does not work for the Council and that it needs to be rescheduled.

NEIGHBORHOOD ASSOCIATION REPORTS

Councilman Curry reported on the Pierre Moran Neighborhood Association meeting that was held on February 6, 2022. His comments start at 2 hours, 52 minutes and 00 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

There were no comments during privilege of the floor.

SCHEDULING OF COMMITTEE MEETINGS

No committee meeting scheduled at this time.

ACCEPTANCE OF COMMUNICATIONS

Minutes of December 29, 2021 Board of Aviation Commissioners Meeting
Minutes of December 14, 2021 Board of Public Safety Meeting
Minutes of January 4, 2022 Board of Public Works Meeting
Minutes of December 9, 2021 Board of Zoning Meeting
Minutes of November 18, 2021 Historic Commission Meeting
Minutes of December 8, 2021 Lerner Theatre Board Meeting
Minutes of December 21, 2021 Park Board Meeting
Minutes of October 27, 2021 Stormwater Board Meeting
Report of Parks Department for January 2022

Councilman Henke, seconded by Councilman Mishler, **moved to accept communications**, which **motion carried**, by voice vote, and **the communications were accepted**.

ADJOURNMENT

Councilwoman Hines, seconded by Councilman Fish, **moved for adjournment**, which **motion carried unanimously**, by voice vote, and **the meeting was adjourned**.

Debra D. Barrett, City Clerk

Arvis Dawson
President of the Elkhart City Council

**MINUTES OF THE REGULAR COMMON COUNCIL MEETING
OF FEBRUARY 14, 2022**

Present: Council President Arvis Dawson
Council Members Kevin Bullard, Brent Curry, Brian Thomas, Aaron Mishler, Tonda Hines, Megan Baughman, Dwight Fish, David Henke

Absent: None

This meeting was made available to the public electronically through WebEx and live-streamed on Facebook. All Council Members were present in Council Chambers.

President Dawson called the meeting to order at 7:00 p.m. in the Council Chambers at City Hall, 229 S. Second Street, in Elkhart.

James Gardner led the assembly in the Pledge of Allegiance and President Dawson asked for a moment of silent reflection.

The clerk called the roll.

APPROVAL OF MINUTES

Minutes of January 10, 2022 Council Meeting

President Dawson asked for a motion to approve the minutes. Motion made by **Councilman Fish** and seconded by **Councilwoman Hines**.

By a unanimous voice vote of 9-0, the minutes were approved.

PRESENTATIONS AND INTRODUCTIONS

There were no presentations or introductions.

UNFINISHED BUSINESS

REPORTS OF COUNCIL COMMITTEES

There were no Council committee reports.

ORDINANCES ON SECOND-THIRD READING

Proposed Ordinance 22-O-03

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AMENDING ORDINANCE NO. 4099, “AN ORDINANCE AMENDING ORDINANCE NO. 3116, ESTABLISHING THE RULES AND REGULATIONS FOR THE GOVERNMENT OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, AND ITS MEMBERS” AND ESTABLISHING RULES FOR THE COUNCIL MEMBERS TO PARTICIPATE IN COUNCIL MEETINGS BY MEANS OF ELECTRONIC COMMUNICATIONS.

The clerk read the proposed Ordinance, 22-O-03 by title only. President Dawson asked for a motion to approve ordinance. Motion to approve on second reading was made by Councilman Henke and seconded by Councilwoman Hines. President Dawson opened the floor for council discussion.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 22-O-03

Councilman Henke comments start at 14 minutes and 01 seconds of the audio recording.

Councilman Bullard comments start at 14 minutes and 40 seconds of the audio recording.

Councilman Fish comments start at 15 minutes and 47 seconds of the audio recording. During his comments he made a motion to amend the ordinance. His amendment is to change the language in Section 5 Paragraph 3, from 2/3 majority to simple majority. Motion was seconded by Councilwoman Hines.

Councilman Henke comments on the amendment starting at 16 minutes and 23 seconds of the audio recording. **President Dawson** asked Councilman Fish to restate his motion starting at 18 minutes and 03 seconds of the audio recording.

President Dawson asked the clerk to do a roll call. Roll Call was as follows:

AYES: Curry, Mishler, Hines, Fish, Dawson

NAYS: Bullard, Thomas, Baughman, Henke

By a vote of 5-4, the amendment passed.

Councilman Henke comments starting at 19 minutes and 09 seconds of the audio recording.

PUBLIC COMMENT ON PROPOSED ORDINANCE 22-O-03

President Dawson opened public comments. There were no public comments. President Dawson returned the comments to the Council and seeing that there were no additional comments from the Council, he asked the clerk to call the roll. Roll call was as follows:

AYES: Curry, Thomas, Mishler, Hines, Fish, Dawson

NAYS: Bullard, Baughman, Henke

By a vote of 6-3, the proposed ordinance as amended passed on second reading.

President Dawson asked for a motion to move ordinance as amended to third and final reading. Motion by Councilman Thomas and seconded by Councilman Mishler. There were no further discussions on this proposed ordinance.

The clerk read the proposed Ordinance, 22-O-02 by title only. President Dawson asked the clerk to call the roll. Roll call was as follows:

AYES: Curry, Thomas, Mishler, Hines, Fish, Dawson

NAYS: Bullard, Baughman, Henke

By a vote of 6-3 the ordinance was adopted as amended.

Proposed Ordinance 22-O-04

AN ORDINANCE TO ESTABLISH RESPONSIBLE BIDDING PRACTICES AND SUBMISSIONS REQUIREMENTS ON PUBLIC WORKS PROJECTS

The clerk read proposed Ordinance 22-O-04 by title only. President Dawson asked for a motion to approve on second reading. Motion to approve was made by Councilman Mishler and seconded by Councilman Fish.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 22-O-04

Councilman Henke comments start at 21 minutes and 59 seconds of the audio recording. His comments were meant for proposed Resolution 22-R-04.

There were no further council comments.

PUBLIC COMMENTS ON PROPOSED ORDINANCE 22-O-04

President Dawson opened public comments. **Marcella Kunstek, Senior Construction Analyst for Indiana, Illinois and Iowa Foundation for Fair Contracting (IIFFC)**, speaks in favor of ordinance. Her comments start at 22 minutes and 53 seconds of the audio recording. **James Gardner** speaks in favor of the ordinance. His comments start at 24 minutes and 36 seconds of the audio recording.

Seeing that there were no further public comments, President Dawson returned the comments to the council.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 22-O-04

Councilman Fish comments start at 27 minutes and 15 seconds of the audio recording.

Councilman Henke comments start at 28 minutes and 10 seconds of the audio recording.

Tory Irwin, Public Works Director, responds to Councilman Henke at 29 minutes and 12 seconds of the audio recording. **Councilman Mishler** comments start at 30 minutes and 44 seconds of the audio recording. **Councilman Bullard** comments start at 31 minutes and 46 seconds of the audio recording.

Seeing that there were no further comments from the council, President Dawson asked the clerk to call the roll. Roll Call was as follows:

AYES: Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS: Bullard

By a vote of 8-1, the proposed ordinance passed on second reading.

The clerk read proposed Ordinance 22-O-04 by title only. President Dawson asked for a motion to approve on third and final reading. Motion made by Councilwoman Hines and seconded by Councilman Fish. Roll Call was as follows:

AYES: Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS: Bullard

By a vote of 8-1, the proposed ordinance was adopted.

Proposed Ordinance 22-O-05

AN ORDINANCE AMENDING THE ZONING MAP CREATED PURSUANT TO ORDINANCE NO. 4370, THE “ZONING ORDINANCE OF THE CITY OF ELKHART, INDIANA,” AS AMENDED, TO REZONE 1637, 1643, AND 1649 W. INDIANA AVENUE IN THE CITY OF ELKHART, INDIANA FROM R-3, TWO-FAMILY DWELLING DISTRICT TO R-2, ONE-FAMILY DWELLING DISTRICT

The clerk read proposed Ordinance 22-O-05 by title only. President Dawson asked for a motion to approve on second reading. Motion by Councilman Curry and seconded by Councilman Henke.

COUNCIL DISCUSSION ON PROPOSED ORDINANCE 22-O-05

President Dawson opened council comments. **Councilman Henke** comments start at 35 minutes and 03 seconds of the audio recording. Seeing that there were no further council comments, President Dawson moved to public discussion.

PUBLIC DISCUSSION ON PROPOSED ORDINANCE 22-O-05

President Dawson opened public comments. **Eric Trotter, Assistant Director of Planning,** comments starting at 35 minutes and 32 seconds of the audio recording. **Chris Marbach, Surveying and Mapping** formerly Marbach comments starting at 36 minutes and 47 seconds of the audio recording. **Councilman Fish** asked a question of Chris Marbach. His comments start at 37 minutes and 30 seconds of the audio recording. Chris Marbach answers the question at 37 minutes and 37 seconds of the audio recording. Seeing that there were no further public comments, President Dawson asked the clerk to do a roll call vote. Roll Call was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS:

By a unanimous vote of 9-0, the proposed ordinance passed on second reading.

President Dawson asked for a motion to approve on third and final reading. Motion made by Councilman Mishler and seconded by Councilman Fish.

The clerk read the proposed Ordinance 22-O-05 by title only. The clerk did a roll call vote. The Roll Call vote was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS:

By a unanimous vote of 9-0, the proposed ordinance was adopted.

ORDINANCES AND RESOLUTIONS REFERRED TO COMMITTEES:

Proposed Ordinance 21-O-46

AN ORDINANCE APPROPRIATING FIVE HUNDRED THOUSAND AND 00\100 DOLLARS (\$500,000) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE NEGATIVE ECONOMIC IMPACT ACCOUNT FOR THE HOMEOWNER-OCCUPIED PROPERTY REHABILITATION PROGRAM

President Dawson stated **proposed Ordinance 21-O-46 remains in committee.** **Councilman Bullard** comments starting at 39 minutes and 20 seconds of the audio recording. **President Dawson** responds to Councilman Bullard starting at 39 minutes and 46 seconds of the audio recording,

Proposed Ordinance 21-O-49

AN ORDINANCE APPROPRIATING THREE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$322,350.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE NEGATIVE ECONOMIC IMPACT ACCOUNT FOR THE ELKHART THRIVE NEIGHBORHOOD OPPORTUNITY HUB INITIATIVE

President Dawson stated **proposed Ordinance 21-O-49 remains in committee.**

Proposed Ordinance 21-O-67

AN ORDINANCE APPROPRIATING FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00) FOR THE DESIGN OTHER PROFESSIONAL SERVICES FOR THE NEW PUBLIC SAFETY FACILITIES OF THE ELKHART POLICE DEPARTMENT AND ELKHART FIRE DEPARTMENT

President Dawson stated **proposed Ordinance 21-O-67 remains in committee.**

Proposed Ordinance 21-O-68-R

AN ORDINANCE APPROPRIATING ONE MILLION DOLLARS (\$1,000,000.00) FOR LAND ACQUISITION IN CONNECTION WITH THE NEW PUBLIC SAFETY FACILITIES FOR THE ELKHART POLICE DEPARTMENT AND ELKHART FIRE DEPARTMENT

President Dawson stated **proposed Ordinance, 21-O-68-R remains in committee.**

TABLED ORDINANCES AND RESOLUTIONS

Proposed Ordinance 21-O-57-R

AN ORDINANCE APPROPRIATING ONE MILLION DOLLARS (\$1,000,000.00) FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND TO THE PROVISION OF GOVERNMENT SERVICES ACCOUNT FOR UPGRADES TO THE LERNER THEATRE HEATING, VENTILATION AND AIR CONDITIONING SYSTEM

President Dawson stated the **proposed Ordinance 21-O-57-R remains tabled.**

Proposed Ordinance 22-O-01

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE COMMONLY KNOWN AS 25610 COUNTY ROAD 4, ELKHART COUNTY, INDIANA AND 52396 COUNTY ROAD 9, ELKHART COUNTY, INDIANA AND DECLARING THE SAME TO BE A PART OF THE CITY OF ELKHART, INDIANA. (LD Elkhart IN Landlord, LLC, petitioner)

President Dawson stated the **proposed Ordinance 22-O-01 remains tabled.**

NEW BUSINESS

ORDINANCES ON FIRST READING

There are no ordinances for first reading.

RESOLUTIONS

Resolution #R-04-22

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, DECLARING A CERTAIN AREA TO BE AN ECONOMIC REVIVALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN BENEFITS TO MARSON INTERNATIONAL LLC

The clerk read proposed Resolution 22-R-04 by title only. President Dawson asked for a motion to adopt this resolution. Motion by Councilman Fish and seconded by Councilman Mishler.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 22-R-04

President Dawson opened Council discussion. **Councilman Henke** comments start at 43 minutes and 08 seconds of the audio recording. **Kristen Smole, Economic Development**, comments starting at 43 minutes and 31 seconds of the audio recording.

PUBLIC COMMENTS ON PROPOSED RESOLUTION 22-R-04

President Dawson opened public comments. **Leighton Johnson, Senior Director of Workforce Solutions from the South Bend/Elkhart Regional Partnerships** comments start at 45 minutes and 36 seconds of the audio recording. Seeing that there were no further comments from the public, President Dawson moved the comments back to the council.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 22-R-04

President Dawson opened Council discussion. **Councilman Thomas** comments start at 48 minutes and 27 seconds of the audio recording. **Councilman Henke** comments start at 49 minutes and 33 seconds of the audio recording.

President Dawson asked the clerk to call the roll. Roll Call was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS:

By a unanimous vote of 9-0, the resolution was adopted.

Resolution #R-05-22

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA,
DECLARING A CERTAIN AREA TO BE AN ECONOMIC REVIALIZATION AREA FOR
THE PURPOSE OF GRANTING TAX PHASE-IN BENEFITS FOR PONTOONSTUFF,
INC.\MMM REALTY LLC\LEGACY PLASTICS LLC**

The clerk read proposed Resolution 22-R-05 by title only. President Dawson asked for a motion to adopt this resolution. Motion made by Councilman Mishler and seconded by Councilwoman Hines.

COUNCIL DISCUSSION ON PROPOSED RESOLUTION 22-R-05

President Dawson opened Council discussion. No comments were made by the council.

PUBLIC COMMENTS ON PROPOSED RESOLUTION 22-R-05

President Dawson opened public comments. **Kristen Smole, Economic Development**, comments starting at 51 minutes and 43 seconds of the audio recording. **Councilwoman Baughman** asked a question to the representative from Pontoonstuff. Her comments start at 53 minutes and 07 seconds of the audio recording. Answer is given by **James Morgan, CEO**, starting at 52 minutes and 27 seconds of the audio recording. **Councilman Henke** comments start at 54 minutes and 38 seconds of the audio recording. **Stephanie Kabel, Director of Business Retention and Expansion from the EDC of Elkhart County**, comments start at 55 minutes and 37 seconds of the audio recording. **Councilman Bullard** comments start at 57 minutes and 00 seconds of the audio recording. **Kristen Smole** comments starting at 57 minutes and 48 seconds of the audio recording. **Councilman Mishler** comment start at 58 minutes and 21 seconds of the audio recording.

President Dawson asked the clerk to call the roll. Roll Call was as follows:

AYES: Bullard, Curry, Thomas, Mishler, Hines, Baughman, Fish, Henke, Dawson

NAYS:

By a unanimous vote of 9-0 the resolution was adopted.

VACATION HEARINGS

There were no vacation hearings.

OTHER NEW BUSINESS

COUNCIL COMMENTS/ISSUES

Councilman Henke talks his concerns in returning calls, meeting with investors. His comments start at 59 minutes and 37 seconds of the audio recording.

Councilman Bullard talks about the e-scooters. His comments start at 1 hour, 01 minutes and 33 seconds of the audio recording.

REPORTS OF THE MAYOR, BOARD OF WORKS, BOARD OF SAFETY OR CITY DEPARTMENT HEADS

Bradley Tracy, Chief of Staff, gave an update on the Great Lakes Valley event that was held at the aquatic center and House Bill 1002. His comments start at 1 hour, 03 minutes and 19 seconds of the audio recording.

Tory Irwin, Public Works Director, talked about a notice that they received from the EPA. His comments start at 1 hour, 04 minutes and 33 seconds of the audio recording.

Dana Bennett, Director of Development Services, talks about Suzanne's Kitchen. Her comments start at 1 hour, 06 minutes and 11 seconds of the audio recording.

Kristen Smole, Economic Development, talks about the small business grants. Her comments start at 1 hour, 06 minutes and 52 seconds of the audio recording. Councilman Mishler asked a question of Kristen. His comments start at 1 hour, 09 minutes and 50 seconds of the audio recording. She responds to the question starting at 1 hour, 10 minutes and 00 seconds of the audio recording.

Councilman Henke asked a question of Kristen. His comments start at 1 hour, 10 minutes and 27 seconds of the audio recording. She responds to the question starting at 1 hour, 10 minutes and 44 seconds of the audio recording.

Councilman Bullard asked some of the council members about their trip to Indianapolis and suggested that the tax payers should have a little report about the AIM dinner that they attended. His comments start at 1 hour, 12 minutes and 44 seconds of the audio recording. **Councilman Mishler** responds to the request starting at 1 hour, 13 minutes and 19 seconds of the audio recording. **Councilman Fish** also responds starting at 1 hour, 14 minutes and 08 seconds of the audio recording. **President Dawson** responds starting at 1 hour, 15 minutes and 21 seconds of the audio recording.

NEIGHBORHOOD ASSOCIATION REPORTS

Councilman Curry gives an update on Pierre Moran Neighborhood Association starting at 1 hour, 16 minutes and 09 seconds of the audio recording.

Councilman Fish gives an update on restarting the Hudson/Sterling Neighborhood Association starting at 1 hour, 17 minutes and 00 seconds of the audio recording.

PRIVILEGE OF THE FLOOR

There were no comments during privilege of the floor.

SCHEDULING OF COMMITTEE MEETINGS

Finance Committee Meeting Of-The-Whole for Monday February 28, 2022 at 6pm.

ACCEPTANCE OF COMMUNICATIONS

Minutes of January 18, 2022 Board of Public Works
Minutes of January 3, 2022 Plan Commission
American Rescue Plan Compliance Report
Budget Encumbrances from 2021 to 2022

Councilman Fish, seconded by Councilman Mishler, **moved to accept communications**, which **motion carried**, by voice vote, and **the communications were accepted**.

ADJOURNMENT

Motion by Councilman Fish, seconded by Councilman Mishler, **moved for adjournment**, which **motion carried unanimously**, by voice vote, and **the meeting was adjourned**.

Debra D. Barrett, City Clerk

Arvis Dawson
President of the Elkhart City Council



MEMORANDUM

DATE: March 2, 2022

TO: Common Council

FROM: Corporation Counsel John Espar

RE: Proposed Ordinance No. 22-O-06
Vacation Petition No. 21-V-06
Tolson Center Inc., Petitioner

AN ORDINANCE VACATING WAGNER AVENUE, BETWEEN THE EAST RIGHT-OF-WAY LINE OF BENHAM AVENUE AND THE WEST RIGHT-OF-WAY LINE OF CHESTER STREET, A PUBLIC WAY WITHIN ELKHART, INDIANA

Petitioner, Tolson Center Inc., filed a petition to vacate Wagner Avenue, between the east right-of-way line of Benham Avenue and the west right-of-way line of Chester Street, a public way.

This Council conducted a public hearing on December 6, 2021.

The attached materials were previously provided to the Council with the original petition and are included here for ease of reference. Any interested property owner comments or objections are likewise included, together with any departmental responses in connection with the petition.

Proposed Ordinance No. 22-O-06 presents to the Council for its consideration, an ordinance to grant the petition, vacate the public way, while preserving any easements for any public utilities situated within the vacated property.

ORDINANCE NO. _____

AN ORDINANCE VACATING WAGNER AVENUE, BETWEEN THE EAST RIGHT-OF-WAY LINE OF BENHAM AVENUE AND THE WEST RIGHT OF WAY LINE OF CHESTER STREET, A PUBLIC WAY WITHIN ELKHART, INDIANA

WHEREAS, a municipality has the exclusive right to vacate any street, alley or other public way within its corporate boundaries; and

WHEREAS, Indiana Code 36-7-3-12, permits a person who owns or has an interest in any lot or partial lot, and who wants to vacate all or part of a public way or public place contiguous to the lot, to file a petition for vacation with the legislative body of a municipality within whose corporate boundaries all or any part of the public place or way is located; and

WHEREAS, Tolson Center Inc., (the “Petitioner”) is the owner of 1320 Benham Avenue, Elkhart, Indiana, further identified by Parcel Identification No. 20-06-08-280-034.000-012, and an unassigned lot on Wagner Ave., Elkhart, IN at the S/E corner of Wagner & Chester Street, Elkhart, IN, property contiguous to all or part of the public way generally described as Wagner Avenue, between the east right-of-way line of Benham Avenue and the west right of way line of Chester Street, a public way within the City of Elkhart, Indiana; and

WHEREAS, Petitioner filed Vacation Petition No. 21-V-06 with the Common Council of the City of Elkhart (the “Common Council”) requesting that the Council vacate a portion the public

way generally described as Wagner Avenue, between the east right-of-way line of Benham Avenue and the west right of way line of Chester Street, in the City of Elkhart, Indiana, and

WHEREAS, Indiana Code 36-1-11-4.3 provides that a sale or transfer of a land containing a public easement or right of way does not deprive a public utility of the use of all or part of the public easement or right of way that is sold or transferred if, at the time of the sale or transfer, the public utility is occupying and using all or part of that public easement or right of way for the location and operation of its facilities; and

WHEREAS, pursuant to Indiana Code 36-7-3-12, the Common Council held a public hearing on December 6, 2021, at which time information was presented by the Petitioner supporting the petition to vacate said public way and by any interested parties, including any aggrieved persons objecting to it.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

Section 1. After considering the information presented at the public hearing, together with the information submitted to the Council in connection with the petition and any other information presented at the public hearing and any subsequent public meeting of the Council, the Common Council hereby finds and determines:

- A. That the vacation will not hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous; and
- B. That the vacation will not make access to the lands of any aggrieved person by means of public way difficult or inconvenient; and
- C. That the vacation will not hinder the public's access to a church, school, or other public building or place; and

D. That the vacation will not hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous; and

E. That one or more public utilities are currently occupying and using all or part of area; and

F. That this proposed vacation shall neither diminish nor deprive such public utilities' right to use all or part of the vacated area and an easement for the same shall continue, the vacation notwithstanding.

Section 2. Subject to any public utility easements, the public property specifically described below and depicted in "Exhibit A," attached hereto, is hereby vacated:

A PART OF THE NORTHEAST QUARTER OF SECTION 8 IN TOWNSHIP 37 NORTH, RANGE 5 EAST, CITY OF ELKHART, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA.

BEGINNING AT THE NORTHEAST CORNER OF LOT 399 IN CHAPMAN'S ROSEDALE ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 114, PAGE 586; THENCE NORTH 88 DEGREES 52'54" WEST ALONG THE NORTH LINE OF LOTS 399 THROUGH 412, INCLUSIVE IN CHAPMAN'S ROSEDALE ADDITION AND LOT 415 IN BENHAM AVENUE REPLAT OF CHAPMAN'S ROSEDALE ADDITION (PLAT BOOK 1, PAGE 101), A DISTANCE OF 753.12 FEET; THENCE SOUTH 45 DEGREES 17'26" WEST, 13.98 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF BENHAM AVENUE; THENCE NORTH 00 DEGREES 33'09" WEST ALONG SAID EAST LINE, 66.06 FEET; THENCE SOUTH 58 DEGREES 08'13" EAST, 11.78 FEET TO THE SOUTH LINE OF LOT 382 IN SAID BENHAM AVENUE REPLAT OF CHAPMAN'S ROSEDALE ADDITION; THENCE SOUTH 88 DEGREES 52'54" EAST ALONG THE SOUTH LINE OF SAID LOT 382 AND THE SOUTH LINE OF LOTS 385 THROUGH 398, INCLUSIVE IN SAID CHAPMAN'S ROSEDALE ADDITION, 753.26 FEET TO THE SOUTHEAST CORNER OF SAID LOT 398; THENCE SOUTH 00 DEGREES 29'00" EAST, 50.00 FEET TO THE POINT OF BEGINNING. CONTAINING 38,225 SQUARE FEET OR 0.88 ACRES, MORE OR LESS. BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR RIGHTS OF WAY OF RECORD.

Section 3. Pursuant to Indiana Code 36-7-3-14 (a), the vacated area being part of platted land, the descriptions of the lots and parcels of that land shall be preserved as set forth in the plat, with the proportionate parts of the area added as provided by law, unless all the owners of land in the vacated area consent in writing to the description of the area by:

- (1) the method used before the plat was made;
- (2) metes and bounds; or
- (3) other appropriate description.

Section 4. The Clerk shall furnish a copy of this Ordinance to the Elkhart County Recorder for recording and to the Elkhart County Auditor.

Section 5. This Ordinance shall be in effect from and after its passage by the Common Council and approval by the Mayor according to law.

[Signature pages follow]

ORDAINED this _____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

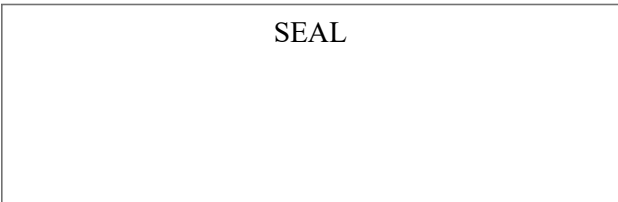
By: _____
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, on this _____ day of _____, _____, personally appeared Arvis Dawson in his capacity as President of the Elkhart Common Council and Debra D. Barrett in her capacity as Elkhart City Clerk and acknowledged the execution of the foregoing Ordinance No. _____ as the duly authorized act of the Common Council of the City of Elkhart, Indiana for the purposes stated therein.

Witness my hand and Notarial Seal this _____ day of _____,
_____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030



PRESENTED to the Mayor by me this _____ day of _____, _____, at _____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

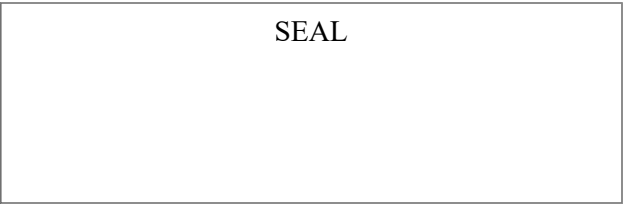
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, on this _____ day of _____, _____, personally appeared Rod Roberson in his capacity as Elkhart City Mayor and Debra D. Barrett in her capacity as Elkhart City Clerk and acknowledged the execution of the foregoing Ordinance No. _____ as the duly authorized act of the Mayor of the City of Elkhart, Indiana for the purposes stated therein.

Witness my hand and Notarial Seal this _____ day of _____, _____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030



EXECUTED AND DELIVERED in my presence:

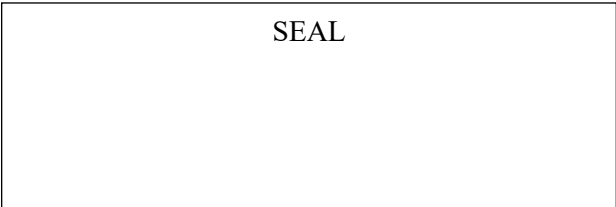
Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

Before me, Angela McKee, Notary Public in and for said County and State, personally appeared Debra D. Barrett in her capacity as Elkhart City Clerk, who being personally known to me as the Elkhart City Clerk, and whose name is subscribed as a witness to the foregoing instrument, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by Arvis Dawson, as President of the Elkhart Common Council and Rod Roberson, as Mayor of the City of Elkhart, in the above-named subscribing witness's presence, and that the above-named subscribing witness is a disinterested person as defined by law.

Witness my hand and Notarial Seal this _____ day of _____,
_____.

Angela McKee, Notary Public
Resident of Elkhart County
My Commission Number: NP0738730
My Commission Expires: January 25, 2030



This document was prepared by John M. Espar, Attorney No. 20758-46, as Corporation Counsel for the City of Elkhart, 229 S. Second Street, Elkhart, Indiana 46516. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John M. Espar

EXHIBIT "A"

R/W VACATION DESCRIPTION

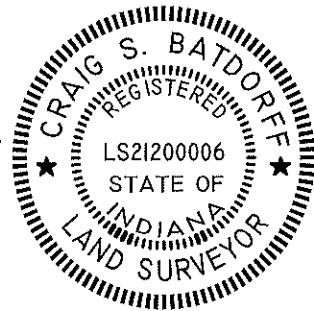
A PART OF THE NORTHEAST QUARTER OF SECTION 8 IN TOWNSHIP 37 NORTH, RANGE 5 EAST, CITY OF ELKHART, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA.

BEGINNING AT THE NORTHEAST CORNER OF LOT 399 IN CHAPMAN'S ROSEDALE ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 114, PAGE 586; THENCE NORTH 88 DEGREES 52'54" WEST ALONG THE NORTH LINE OF LOTS 399 THROUGH 412, INCLUSIVE IN CHAPMAN'S ROSEDALE ADDITION AND LOT 415 IN BENHAM AVENUE REPLAT OF CHAPMAN'S ROSEDALE ADDITION (PLAT BOOK 1, PAGE 101), A DISTANCE OF 753.12 FEET; THENCE SOUTH 45 DEGREES 17'26" WEST, 13.98 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF BENHAM AVENUE; THENCE NORTH 00 DEGREES 33'09" WEST ALONG SAID EAST LINE, 66.06 FEET; THENCE SOUTH 58 DEGREES 08'13" EAST, 11.78 FEET TO THE SOUTH LINE OF LOT 382 IN SAID BENHAM AVENUE REPLAT OF CHAPMAN'S ROSEDALE ADDITION; THENCE SOUTH 88 DEGREES 52'54" EAST ALONG THE SOUTH LINE OF SAID LOT 382 AND THE SOUTH LINE OF LOTS 385 THROUGH 398, INCLUSIVE IN SAID CHAPMAN'S ROSEDALE ADDITION, 753.26 FEET TO THE SOUTHEAST CORNER OF SAID LOT 398; THENCE SOUTH 00 DEGREES 29'00" EAST, 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 38,225 SQUARE FEET OR 0.88 ACRES, MORE OR LESS.

BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR RIGHTS OF WAY OF RECORD.

Craig S. Batdorff
CRAIG S. BATDORFF P.S. 21200006



ABONMARCHE

JOB #: 21-1120
DATE: 10/20/21

PAGE 1 OF 2

303 River Race Drive, Unit 206
Goshen, IN. 46526
T 574.533.9913
F 574.533.9911
abonmarche.com

Battle Creek
Benton Harbor
Manistee
South Haven
Goshen
Hobart
Lafayette
South Bend
Valparaiso

Engineering · Architecture · Land Surveying

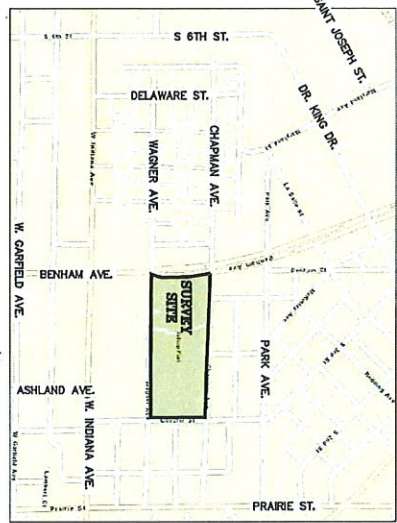
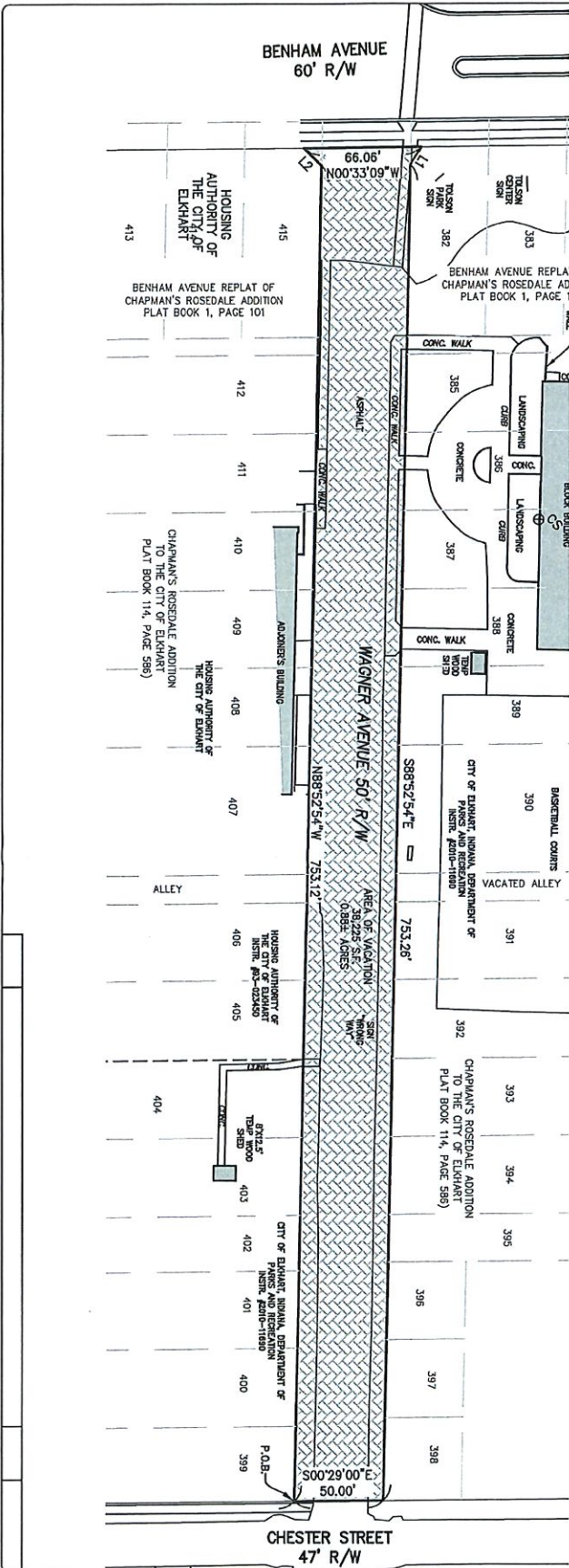


EXHIBIT "B"
RIGHT OF WAY VACATION
 A PART OF THE NE 1/4 OF SECTION 8 IN TOWNSHIP 37 NORTH,
 RANGE 5 EAST, CITY OF ELKHART, ELKHART TOWNSHIP,
 ELKHART COUNTY, INDIANA.

Line Table		
Line #	Bearing	Length
L1	S89°08'13"E	11.78'
L2	S45°17'28"W	13.98'



SHEET NO. **2 of 2**
 AC/120 B
21-1120

SCALE: HORZ. 1" = 40'
 DATE: 10/20/21
 CONGR. ENGINEER: MJR
 CIVIL ENGINEER: BMA
 PROJECT NO.: 21-1120

SHEET TITLE:
WAGNER R/W VACATION

PROJECT:
TOLSON CENTER

ABONMARCHE
 333 River Race, Unit 206
 Goshen, Indiana 46526
 T.574.533.9913
 F.574.533.9911
 abonmarche.com

Benlon Harbor
 Ft. Wayne
 Goshen
 Grand Haven
 Hobart

Lafayette
 Paragon
 South Bend
 Valparaiso

Engineering - Architecture - Land Surveying

ALLEY/STREET VACATION PETITION

Vacation # 21 -V- 06

Elkhart, Indiana

Date: 11/01/21

TO: THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA

(Please indicate below what is to be vacated and how your property relates to or abuts upon said alley or street.)

The undersigned, owners of real estate commonly known as: 1320 Benham Ave
BENHAM REPLAT LOTS 329-331, 382-384 & VAC ALLEY ADJ E & CHAPMAN'S ROSEDALE LOTS 315-328, 385-
398 & VAC ALLEY BETW and CHAPMANS ROSEDALE LOT 399-404 & 1/2 VAC ALLEY ADJ S

(Lot Numbers or Other Identification)

and abutting upon alley or street proposed for vacation, respectfully petition(s) for the passage or an ordinance providing for the vacation of: Wagner Ave (E/W) from Benham Ave to Chester St [legal description attached]

(E/W or N/S) street or alley or public right-of-way/or a more lengthy legal description may be attached)

Reasons for request: This public right of way is requested to be vacated for the renovation of the Tolson Center for Community Excellence.

Please provide names and addresses of each property owner who owns property abutting upon the alley or street to be vacate. Please Print-and attach separate sheet if necessary.

Property Owner's Name

Addresses

Lot Numbers

Housing Authority of the City of Elkhart IN 1396 Benham Ave Chapmans Rosedale Lots 405 thru 415

Please provide names and addresses of any party who would be directly affected by this vacation even though their property might not abut upon the property being vacated-attach separate sheet if necessary.

SEND NOTICE TO:

None

(Name) (Address) (Phone No.)

(Name) (Address) (Phone No.)

(Name) (Address) (Phone No.)

Danielle S

Petitioner's Signature

300 Nibco Pkwy #301, Elkhart IN, 46516

Mailing Address

Phone:



Legend

- Parcels
- Road ROW

Disclaimer: The graphic data provided by the City of Elkhart, Indiana ("City") herein may be inaccurate or out of date. Any person or entity who relies on said information for any purposes does so at their own risk. Neither the City, its boards, commission, officials, or employees warrant accuracy, reliability, or timeliness of any of the data provided herein. This data is provided "as is" without warranty of any kind, and all warranties of merchantability and fitness for its particular purpose are hereby disclaimed. Portions of this material include intellectual property of Elkhart County, Indiana and are used herein by permission. Information shown on any map or other data provided is not warranted for accuracy or merchantability by Elkhart County.

2010-11690

ELKHART CNTY RECORDER
CHRISTOPHER J ANDERSON
FILED FOR RECORD
AS PRESENTED

2010 JUN 16 A 11:30

QUIT-CLAIM DEED

City of Elkhart, Indiana, Department of Redevelopment, a municipal corporation, the *Grantor*, **Releases and Quit-Claims to** City of Elkhart, Indiana, Department of Parks and Recreation, a municipal corporation, the *Grantee*, whose mailing address is 229 S. Second St., Elkhart, Indiana 46516,

for and in consideration of One Dollar (\$1) and other good and valuable consideration, the receipt of which is hereby acknowledged, Real Estate in Elkhart County, in the State of Indiana, described as follows:

See Attached Exhibit A.

Subject to real estate taxes, easements, agreements, restrictions of record, and all public rights of way.

Signed and dated on June 8, 2010.

City of Elkhart, Indiana,
Elkhart Redevelopment Commission

By: Steven C. Eldridge
Steven C. Eldridge, President

State of Indiana, Elkhart County, SS:

5
24
ck

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Elkhart Redevelopment Commission, by Steven C. Eldridge, President, being authorized so to do, and acknowledged the execution of the foregoing deed on behalf of the Grantor on June 8, 2010.

Gary D. Boyn
GARY D. BOYN, Notary Public
Residing in Elkhart County,
State of Indiana

My commission expires: August 29, 2016

Prepared by the law firm of Warrick & Boyn, 121 W. Franklin Street, Suite 400, Elkhart, Indiana 46516, by Gary D. Boyn. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Gary D. Boyn.

MAIL DEED TO:
Gary D. Boyn
121 W. Franklin St., Ste. 400
Elkhart, IN 46516

MAIL TAX BILLS TO (Grantee):
City of Elkhart Controller
229 S. Second Street
Elkhart, IN 46516

NO SALES DISCLOSURE REQUIRED

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER
6/16 2010
D. Boyn AUDITOR
TRANSFER FEE 30
PARCEL NO. 1

100

three (3) feet west from the northeast corner of said lot; thence southwardly, parallel with the East line of said lot, to a point which is midway between the north and south lines of said lot; thence eastwardly parallel with the north line of said lot, three (3) feet to the east line thereof; thence northwardly along the east line of said lot to the northeast corner thereof; thence westwardly along the north line of said lot, three (3) feet to the place of beginning.

ALSO, the North One-half (N 1/2) of the vacated alley adjoining said Lot Three Hundred Fifteen (315) on the south side of said lot.

ALSO: Lot Numbered Three Hundred Sixteen (316), except the East Three (3) feet of the North One-half (N 1/2) of said Lot; and Lots Numbered Three Hundred Seventeen (317) to Three Hundred Twenty-two (322) inclusive as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO: Lots Numbered Three Hundred Ninety-one (391) and Three Hundred Ninety-two (392) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the Office of the Recorder of Elkhart County, Indiana.

ALSO, the South one-half (S 1/2) of the vacated alley lying north of and adjacent to said Lots, and ALSO the East one-half (E 1/2) of the vacated alley lying west of and adjacent to said Lot Three Hundred Ninety-one (391).

ALSO: Lots Numbered Three Hundred Ninety-three (393), Three Hundred Ninety-four (394) and Three Hundred Ninety-five (395) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S ROSEDALE ADDITION to the City of Elkhart; said Plat being recorded in Deed Record 114, page 586 in the office of the Recorder of Elkhart County, Indiana.

ALSO, the south one-half (S 1/2) of the vacated alley lying north of and adjacent to said Lots.

ALSO: Lots Numbered Three hundred Ninety-six (396), Three Hundred Ninety-seven (397) and Three Hundred Ninety-eight (398) as the said Lots are known and designated on the recorded Plat of CHAPMAN'S

Containing the following parcel numbers:

Tax Parcel ID: 20-06-08-280-033.000-012
Tax Parcel ID: 20-06-08-280-034.000-012
Tax Parcel ID: 20-06-08-280-008.000-012
Tax Parcel ID: 20-06-08-280-009.000-012
Tax Parcel ID: 20-06-08-280-010.000-012
Tax Parcel ID: 20-06-08-280-011.000-012
Tax Parcel ID: 20-06-08-280-012.000-012
Tax Parcel ID: 20-06-08-280-019.000-012
Tax Parcel ID: 20-06-08-280-020.000-012
Tax Parcel ID: 20-06-08-280-021.000-012
Tax Parcel ID: 20-06-08-280-022.000-012
Tax Parcel ID: 20-06-08-280-023.000-012
Tax Parcel ID: 20-06-08-280-024.000-012
Tax Parcel ID: 20-06-08-280-025.000-012
Tax Parcel ID: 20-06-08-280-026.000-012
Tax Parcel ID: 20-06-08-281-011.000-012
Tax Parcel ID: 20-06-08-281-012.000-012
Tax Parcel ID: 20-06-08-281-013.000-012
Tax Parcel ID: 20-06-08-281-014.000-012
Tax Parcel ID: 20-06-08-281-015.000-012
Tax Parcel ID: 20-06-08-281-016.000-012



MEMORANDUM

DATE: 3/2/2022
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 22-R-06
Resolution Confirming the Designation of an Economic Revitalization Area for Purposes of Granting Tax Phase-In Benefits to Marson International LLC

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by Marson International LLC for which this Council previously declared an Economic Revitalization Area under Resolution No. R-04-22 at the public meeting held on February 14, 2022.

This Proposed Resolution 22-R-06 confirms the declaration of an Economic Revitalization Area within which Marson International LLC proposes to make certain real property and personal property investments to increase economic development in the area and in exchange for which Marson International LLC seeks to receive tax phase-in benefits.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, CONFIRMING RESOLUTION NO. R-04-22, WHICH DECLARED A
CERTAIN AREA IN THE CITY OF ELKHART TO BE AN ECONOMIC
REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN
BENEFITS TO MARSON INTERNATIONAL LLC**

WHEREAS, on February 14, 2022, the Common Council of the City of Elkhart (the "Common Council"), approved and adopted Resolution No. R-04-22, a resolution entitled "A Resolution of the Common Council of the City of Elkhart, Indiana, Declaring a Certain Area to be an Economic Revitalization Area For the Purpose of Granting Tax Phase-in Benefits to Marson International LLC " (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution found and determined that a certain area in the City of Elkhart (the "Area") was an economic revitalization area within the meaning of Indiana Code 6-1.1-12.1, (the "Act") for the purpose of allowing deductions from the assessed value of the real estate improvements (the "Project") and from the assessed value of the manufacturing equipment (the "New Equipment") in the Area; and

WHEREAS, pursuant to Section 2.5(b) of the Act, the Common Council filed the Declaratory Resolution with the Elkhart County Assessor; and

WHEREAS, pursuant to Section 2.5(c)(1) of the Act, the Common Council published notice of the adoption and substance of the Declaratory Resolution in accordance with Indiana Code 5-3-1 (the "Notice"); and

WHEREAS, pursuant to Section 2.5(c)(2) of the Act, the Common Council filed a copy of the Notice and a copy of the Statement of Benefits form filed by Marson International LLC, with the officers of the taxing units who are authorized to fix budgets, tax rates and tax levies in the Area; and

WHEREAS, at a public hearing held by the Common Council on this date, March 7, 2022, at the City Hall, 229 S. Second Street, Elkhart, Indiana, the Common Council heard all persons interested in the proceedings and received any written remonstrances and objections, and considered those remonstrances and objections, if any, and such other evidence presented; and

WHEREAS, the Common Council now desires to take final action and confirm the necessary findings in accordance with Section 2.5, Section 3 and Section 4.5 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Elkhart, Indiana, as follows:

1. After considering the evidence presented at the public hearing on this date, March 7, 2022, the Common Council hereby finds that the Declaratory Resolution should be, and hereby is, confirmed in its entirety and without modification.

2. This Resolution constitutes final action, pursuant to Section 2.5(c) of the Act, by the Common Council determining the public utility and benefit of the Project and the New Equipment in the Area, confirming the Declaratory Resolution, and declaring the Area an economic revitalization area pursuant to the Act.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this ____ day of _____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 3/2/2022
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 22-R-07
A Resolution Approving the Memoranda of Agreements with Marson International LLC for Tax Phase-In Benefits

This resolution relates to the Application for Property Tax Phase-In submitted by Marson International LLC which was first considered by this Council at its public meeting held on March 7, 2022.

Proposed Resolution 22-R-07 approves the corresponding agreements by which Marson International LLC will enjoy tax phase-in benefits for the real property and personal property investments made in the economic revitalization area. Each Memorandum of Agreement likewise establishes the legal responsibilities and legal obligations imposed upon Marson International LLC in exchange for the tax phase-in benefits granted by the City.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, TO APPROVE TWO MEMORANDA OF AGREEMENTS BETWEEN THE
CITY OF ELKHART AND MARSON INTERNATIONAL LLC**

WHEREAS, Marson International LLC, (hereinafter, the “Applicant”) has filed an application with the City of Elkhart (the “City”) requesting that the property commonly known as 3630 Manchester Drive, Elkhart, IN 46514, be designated as an economic revitalization area by the Common Council of the City of Elkhart (the “Common Council”), in accordance with Indiana Code 6.1-1.1-12.1, for the purpose of allowing deductions from the assessed value of the proposed real estate improvements (the “Project”) and the proposed installation of manufacturing equipment (the “New Equipment”) in the proposed economic revitalization area; and

WHEREAS, the City’s Tax Abatement Policy requires that the Applicant\Property Owner (jointly and severally, if not the same entity), enter into a written agreement agreeing: (i) to comply with the project description, (ii) to create and retain a certain number of jobs along with the associated wages rates and salaries (as shown in its Application), and (iii) to comply with its Statement of Benefits forms and any other documents submitted in support of its Application; and

WHEREAS, a Memorandum of Agreement (Real Property) and a Memorandum of Agreement (Personal Property) have been prepared and presented to the Common Council for the Project and the New Equipment, respectively, which Agreements govern the relationship between the City and the Applicant\Property Owner during the term of the tax abatement; and

WHEREAS, the Common Council believes that it is in the best interest of the City to enter into these agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the attached Memorandum of Agreement (Real Property) and the attached Memorandum of Agreement (Personal Property) to be entered into between the City and the Applicant\Property Owner are hereby approved by the Common Council.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

MEMORANDUM OF AGREEMENT

Real Estate

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by Marson International LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Real Property Improvement (Form SB-1 Real Property), herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant's Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed development of the real estate for three (3) years (consecutive) on the Applicant’s real property commonly known as 3630 Manchester Drive, Elkhart, IN 46514 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed development. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2023, and the Project (as hereafter defined) must be completed by then in order for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2022, it will make a total capital expenditure of One Million (\$1,000,000.00) to improve the Subject Property with acquisition of existing structure and building improvements and related improvements at the Subject Property (the “Project”), which will create at least 10 new full-time permanent positions with an average annual salary of no less than \$49,920.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of real property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the obligations contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$49,920.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are created, then the percentage of benefit repayment is the following: 85 actual jobs created ÷ 95 jobs representing substantial compliance = 89.47% compliance rate. 100% - 89.47% compliance rate = 10.53% noncompliance rate
10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor (“Assessor”) is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City’s designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys’ fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of

such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

Marson International LLC
Jason Newburn
Vice President
3230 Magnum Dr.
Elkhart, IN 46516

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or

unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

Marson International LLC
3230 Magnum Dr.
Elkhart, IN 46516

By:

Jason Newburn
Vice President

CITY OF ELKHART:

By:

Arvis Dawson
President of the Elkhart Common Council

Attest:

Debra Barrett
Elkhart City Clerk

By:

Rod Roberson
Mayor of the City of Elkhart

Attest:

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

TRACT 1:

A PART OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ELKHART COUNTY, INDIANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST ALONG THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION, ONE THOUSAND TWO HUNDRED EIGHTY-ONE AND TWENTY-THREE HUNDREDTHS (1281.23) FEET TO THE SOUTH LINE OF PENN CENTRAL RAILROAD, THE PLACE OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH EIGHT-NINE (89) DEGREES FIFTY-NINE (.59) MINUTES EAST, ALONG SOUTH LINE OF SAID RAILROAD, SIX HUNDRED EIGHT AND TWENTY-ONE HUNDREDTHS (608.21) FEET; THENCE DUE SOUTH FOUR HUNDRED THIRTY-EIGHT (438) FEET TO THE NORTH LINE OF LEXINGTON PARK DRIVE; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY -NINE (59) MINUTES WEST, ALONG THE NORTH LINE OF SAID DRIVE, TWENTY-EIGHT AND ONE HUNDREDTHS (28.01) FEET TO THE P.O.C. OF A CURVE TO THE LEFT WITH A RADIUS OF ONE HUNDRED EIGHTY (180) FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, ONE HUNDRED TWENTY-TWO AND NINETY-NINE HUNDREDTHS (122.99) FEET TO A POINT ON CURVE; THENCE NORTH FORTY-FOUR (44) DEGREES SEVENTEEN (17) MINUTES THIRTY (30) SECONDS WEST, SIX HUNDRED SIXTY-EIGHT AND SIXTEEN HUNDREDTHS (668.16) FEET TO THE PLACE OF BEGINNING.

TRACT 2:

A PART OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) OF SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ELKHART COUNTY, INDIANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST ALONG THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION, ONE THOUSAND TWO HUNDRED EIGHTY-ONE AND TWENTY-THREE HUNDREDTHS (1281.23) FEET TO THE: SOUTH LINE OF PENN CENTRAL RAILROAD, THE PLACE OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH FORTY-FOUR (44) DEGREES SEVENTEEN (17) MINUTES THIRTY (30) SECONDS EAST, SIX HUNDRED SIXTY-EIGHT AND SIXTEEN HUNDREDTHS (668.16) FEET TO THE NORTH LINE OF LEXINGTON PARK DRIVE AND P.O.C. OF A CURVE SOUTHWESTERLY WITH A RADIUS OF ONE HUNDRED EIGHTY (180) FEET; THENCE

SOUTHWESTERLY ALONG SAID CURVE ONE HUNDRED TWENTY-TWO AND NINETY-NINE HUNDREDTHS (122.99) FEET TO POINT AN CURVE: THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES WEST FOUR HUNDRED THREE AND FOUR HUNDRED SEVENTY-FIVE THOUSANDTHS (405.475) FEET TO THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ZERO (0) DEGREES THREE (3) MINUTES WEST, ALONG, THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION, FIVE HUNDRED EIGHTY-ONE AND FIVE TENTHS (581.5) FEET TO THE PLACE OF BEGINNING.

TRACT 3:

PART OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, SITUATE IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SAID SECTION TWO (2); THENCE NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SAID SECTION TWO (2) A DISTANCE OF FOUR HUNDRED EIGHTY-TWO AND NINETY-FOUR HUNDREDTHS (482.94) FEET TO ON IRON STAKE MARKING THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES WEST A DISTANCE OF NINE HUNDRED FIFTY-FOUR AND NINETY-FOUR HUNDREDTHS (954.94) FEET TO ON IRON STAKE; THENCE NORTH ZERO (0) DEGREES ONE (01) MINUTE WEST DISTANCE OF TWO HUNDRED FORTY-SIX AND FIVE TENTHS (246.5) FEET TO A POINT; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES EAST A DISTANCE OF FOUR HUNDRED SEVENTY-SEVEN AND FORTY-FIVE HUNDREDTHS (477.45) FEET TO POINT; THENCE NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST DISTANCE OF FIVE HUNDRED FIFTY-ONE AND FIVE TENTHS (551.5) FEET TO AN IRON STAKE ON THE SOUTH LINE OF THE CONSOLIDATED RAIL CORPORATION (CONRAIL) RIGHT-OF-WAY LINE BEING THIRTY-THREE (33) FEET SOUTH OF THE CENTERLINE OF THE CONRAIL TRACK; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-EIGHT (58) MINUTES EAST ALONG THE SOUTH RIGHT OF-WAY LINE OF SAID CONRAIL RIGHT-OF-WAY A DISTANCE OF FOUR HUNDRED SEVENTY-SEVEN AND THIRTY-FIVE HUNDREDTHS (477.35) FEET TO ON IRON STAKE ON THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SAID SECTION TWO THENCE SOUTH ZERO (0) DEGREES 11-IREE (03) MINUTES EAST ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SAID SECTION TWO (2) A DISTANCE OF SEVEN HUNDRED NINETY-EIGHT (798) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

EXCEPTING FROM TRACTS 2 AND 3 ABOVE SO MUCH THEREOF AS WAS CONVEYED TO ELKHART COUNTY, INDIANA FOR USE AS A PUBLIC HIGHWAY AND BOUNDED AND DESCRIBED AS FOLLOWS:

PART OF THE FRACTIONAL NORTH HALF (FR N L/2) OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 4 EAST, SITUATE IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST FRACTIONAL QUARTER (FR NE 1/4) OF SAID SECTION 2, SAID POINT BEING NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST A DISTANCE OF SIX HUNDRED NINETY-NINE AND SEVENTY-THREE HUNDREDTHS (699.73) FEET FROM THE SOUTHWEST CORNER OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) OF SAID SECTION TWO (2); THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY NINE (59) MINUTES EAST ALONG THE SOUTH LINE OF LAND DESCRIBED IN A DEED TO MANCHESTER TANK AND EQUIPMENT COMPANY, INC. (DEED RECORD 405, PAGE 475) A DISTANCE OF FOUR HUNDRED THREE AND FORTY-EIGHT HUNDREDTHS (403.48) FEET TO A POINT ON THE WEST LINE OF LEXINGTON PARK DRIVE: THENCE NORTHEASTWARDLY ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS DISTANCE OF ONE HUNDRED EIGHTY (180) FEET AND ALONG THE WEST LINE OF SAID LEXINGTON PARK DRIVE A DISTANCE OF SIXTY-FIVE AND NINE HUNDREDTHS (65.09) FEET (CHORD: NORTH TWENTY-TWO (22) DEGREES THREE (03) MINUTES EAST SIXTY-FOUR AND SEVENTY-FOUR HUNDREDTH (64.74) FEET) TO POINT: THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES WEST A DISTANCE OF ONE THOUSAND ONE HUNDRED FORTY-THREE AND SIX HUNDREDTHS (1143.06) FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT; THENCE NORTHWESTWARDLY ALONG SAID CURVE TO THE RIGHT (RADIUS - FORTY-FIVE (45) FEET), A DISTANCE OF TWENTY-SIX AND THIRTY-SIX HUNDREDTHS (26.36) FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE LEFT; THENCE WESTWARDLY, SOUTHWARDLY AND EASTWARDLY ALONG SAID CURVE TO THE LEFT (RADIUS - FORTY-FIVE (45) FEET) A DISTANCE OF ONE HUNDRED NINETY-FOUR AND EIGHT HUNDREDTHS (194.08) FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT; THENCE NORTHEASTWARDLY ALONG SAID CURVE TO THE RIGHT (RADIUS - FORTY FIVE (45) FEET) A DISTANCE OF TWENTY-SIX AND THIRTY-SIX HUNDREDTHS (26.36) FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES EAST A DISTANCE OF SEVEN HUNDRED FIFTEEN AND TWENTY-SEVEN HUNDREDTHS (715.27) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING, A PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 4 EAST, CLEVELAND TOWNSHIP, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST FRACTIONAL QUARTER OF SECTION 2; THENCE NORTH 00 DEGREES 03 MINUTES WEST, ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 482.94 FEET TO AN IRON STAKE MARKING THE SOUTHEAST CORNER OF LAND CONVEYED TO MANCHESTER TANK AND EQUIPMENT COMPANY OF INDIANA, INC.) IN DEED RECORD 411, PAGE 421, SAID STAKE BEING THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 89 DEGREES 58 MINUTES WEST, ALONG THE SOUTH LINE OF SAID MANCHESTER TANK LAND A DISTANCE

OF 200 FEET TO AN IRON STAKE; THENCE NORTH 00 DEGREES 03 MINUTES WEST, A DISTANCE OF 216.56 FEET TO AN IRON STAKE ON THE SOUTH LINE OF MANCHESTER DRIVE (DOCUMENT NO. 89003517); THENCE NORTH 89 DEGREES 59 MINUTES EAST ALONG THE SOUTH LINE OF SAID MANCHESTER DRIVE A DISTANCE OF 200 FEET TO AN IRON STAKE ON THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2; THENCE SOUTH 00 DEGREES 03 MINUTES EAST ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2 A DISTANCE OF 216.50 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

Address:

3630 Manchester Drive, Elkhart, IN 46514

Parcel Identification Number(s):

20-05-02-176-032.000-006

Exhibit B

Tax Deduction Schedule

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029
2023	100%	66%	33%	-	-	-
2024	-	100%	66%	33%	-	-
2025	-	-	100%	66%	33%	-

MEMORANDUM OF AGREEMENT

Personal Property

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by Marson International LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Personal Property Improvement (Form SB-1 Personal Property, as the same may have been amended, herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant's Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed installation of manufacturing equipment for three (3) years (consecutive) on the Applicant’s real property to be located at 3630 Manchester Drive, Elkhart, IN 46514 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed manufacturing equipment. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2023, and the Project (as hereafter defined) must be completed by then for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2022, it will make a total capital expenditure of Two Million (\$2,000,000.00) associated with the investment of manufacturing equipment for new equipment consisting a tube laser and two (2) robotic CNC tuber benders at the Subject Property (the “New Equipment”), which will create at least 10 new full-time permanent positions with an average annual salary of no less than \$49,920.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of personal property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with

such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with all of the Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$49,920.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each particular category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are actually created, then the percentage of benefit repayment is the following: $85 \text{ actual jobs created} \div 95 \text{ jobs representing substantial compliance} = 89.47\% \text{ compliance rate}$. $100\% - 89.47\% \text{ compliance rate} = 10.53\% \text{ noncompliance rate}$

10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

Marson International LLC
Jason Newburn
Vice President
3230 Magnum Dr.
Elkhart, IN 46516

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this

Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

Marson International LLC
3230 Magnum Dr.
Elkhart, IN 46516

By:

Jason Newburn
Vice President

CITY OF ELKHART:

By:

Arvis Dawson
President of the Elkhart Common Council

Attest:

Debra Barrett
Elkhart City Clerk

By:

Rod Roberson
Mayor of the City of Elkhart

Attest:

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

TRACT 1:

A PART OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ELKHART COUNTY, INDIANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST ALONG THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION, ONE THOUSAND TWO HUNDRED EIGHTY-ONE AND TWENTY-THREE HUNDREDTHS (1281.23) FEET TO THE SOUTH LINE OF PENN CENTRAL RAILROAD, THE PLACE OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH EIGHT-NINE (89) DEGREES FIFTY-NINE (.59) MINUTES EAST, ALONG SOUTH LINE OF SAID RAILROAD, SIX HUNDRED EIGHT AND TWENTY-ONE HUNDREDTHS (608.21) FEET; THENCE DUE SOUTH FOUR HUNDRED THIRTY-EIGHT (438) FEET TO THE NORTH LINE OF LEXINGTON PARK DRIVE; THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY -NINE (59) MINUTES WEST, ALONG THE NORTH LINE OF SAID DRIVE, TWENTYEIGHT AND ONE HUNDREDTHS (28.01) FEET TO THE P.O.C. OF A CURVE TO THE LEFT WITH A RADIUS OF ONE HUNDRED EIGHTY (180) FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, ONE HUNDRED TWENTY-TWO AND NINETY-NINE HUNDREDTHS (122.99) FEET TO A POINT ON CURVE; THENCE NORTH FORTY-FOUR (44) DEGREES SEVENTEEN (17) MINUTES THIRTY (30) SECONDS WEST, SIX HUNDRED SIXTY-EIGHT AND SIXTEEN HUNDREDTHS (668.16) FEET TO THE PLACE OF BEGINNING.

TRACT 2:

A PORT OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) OF SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ELKHART COUNTY, INDIANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE SOUTH FORTY-FOUR (44) DEGREES SEVENTEEN (17) MINUTES THIRTY (30) SECONDS EAST, SIX HUNDRED SIXTY-EIGHT AND SIXTEEN HUNDREDTHS (668.16) FEET TO THE NORTH LINE OF LEXINGTON PARK DRIVE AND P.O.C. OF A CURVE SOUTHWESTERLY WITH A RADIUS OF ONE HUNDRED EIGHTY (180) FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE ONE HUNDRED TWENTY-TWO AND NINETY-NINE HUNDREDTHS (122.99) FEET TO POINT AN CURVE: THENCE SOUTH

EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES WEST FOUR HUNDRED THREE AND FOUR HUNDRED SEVENTY-FIVE THOUSANDTHS (405.475) FEET TO THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION; THENCE NORTH ZERO (0) DEGREES THREE (3) MINUTES WEST, ALONG, THE WEST LINE OF SAID FRACTIONAL QUARTER SECTION, FIVE HUNDRED EIGHTY-ONE AND FIVE TENTHS (581.5) FEET TO THE PLACE OF BEGINNING.

TRACT 3:

PART OF THE FRACTIONAL NORTHWEST QUARTER (FR. NW 1/4) OF SECTION TWO (2), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, SITUATE IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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EXCEPTING FROM TRACTS 2 AND 3 ABOVE SO MUCH THEREOF AS WAS CONVEYED TO ELKHART COUNTY, INDIANA FOR USE AS A PUBLIC HIGHWAY AND BOUNDED AND DESCRIBED AS FOLLOWS:

PART OF THE FRACTIONAL NORTH HALF (FR N L/2) OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 4 EAST, SITUATE IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NORTHEAST FRACTIONAL QUARTER (FR NE 1/4) OF SAID SECTION 2, SAID POINT BEING NORTH ZERO (0) DEGREES THREE (03) MINUTES WEST A DISTANCE OF SIX HUNDRED NINETY-NINE

AND SEVENTY-THREE HUNDREDTHS (699.73) FEET FROM THE SOUTHWEST CORNER OF THE NORTHEAST FRACTIONAL QUARTER (FR. NE 1/4) OF SAID SECTION TWO (2): THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY NINE (59) MINUTES EAST ALONG THE SOUTH LINE OF LAND DESCRIBED IN A DEED TO MANCHESTER TANK AND EQUIPMENT COMPANY, INC. (DEED RECORD 405, PAGE 475) A DISTANCE OF FOUR HUNDRED THREE AND FORTY-EIGHT HUNDREDTHS (403.48) FEET TO A POINT ON THE WEST LINE OF LEXINGTON PARK DRIVE: THENCE NORTHEASTWARDLY ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS DISTANCE OF ONE HUNDRED EIGHTY (180) FEET AND ALONG THE WEST LINE OF SAID LEXINGTON PARK DRIVE A DISTANCE OF SIXTY-FIVE AND NINE HUNDREDTHS (65.09) FEET (CHORD: NORTH TWENTY-TWO (22) DEGREES THREE (03) MINUTES EAST SIXTY-FOUR AND SEVENTY-FOUR HUNDREDTH (64.74) FEET) TO POINT: THENCE SOUTH EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES WEST A DISTANCE OF ONE THOUSAND ONE HUNDRED FORTY-THREE AND SIX HUNDREDTHS (1143.06) FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT; THENCE NORTHWESTWARDLY ALONG SAID CURVE TO THE RIGHT (RADIUS - FORTY-FIVE (45) FEET), A DISTANCE OF TWENTY-SIX AND THIRTY-SIX HUNDREDTHS (26.36) FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE LEFT; THENCE WESTWARDLY, SOUTHWARDLY AND EASTWARDLY ALONG SAID CURVE TO THE LEFT (RADIUS - FORTY-FIVE (45) FEET) A DISTANCE OF ONE HUNDRED NINETY-FOUR AND EIGHT HUNDREDTHS (194.08) FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT; THENCE NORTHEASTWARDLY ALONG SAID CURVE TO THE RIGHT (RADIUS - FORTY FIVE (45) FEET) A DISTANCE OF TWENTY-SIX AND THIRTY-SIX HUNDREDTHS (26.36) FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH EIGHTY-NINE (89) DEGREES FIFTY-NINE (59) MINUTES EAST A DISTANCE OF SEVEN HUNDRED FIFTEEN AND TWENTY-SEVEN HUNDREDTHS (715.27) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING, A PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 4 EAST, CLEVELAND TOWNSHIP, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST FRACTIONAL QUARTER OF SECTION 2; THENCE NORTH 00 DEGREES 03 MINUTES WEST, ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 482.94 FEET TO AN IRON STAKE MARKING THE SOUTHEAST CORNER OF LAND CONVEYED TO MANCHESTER TANK AND EQUIPMENT COMPANY OF INDIANA, INC.) IN DEED RECORD 411, PAGE 421, SAID STAKE BEING THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 89 DEGREES 58 MINUTES WEST, ALONG THE SOUTH LINE OF SAID MANCHESTER TANK LAND A DISTANCE OF 200 FEET TO AN IRON STAKE; THENCE NORTH 00 DEGREES 03 MINUTES WEST, A DISTANCE OF 216.56 FEET TO AN IRON STAKE ON THE SOUTH LINE OF MANCHESTER DRIVE (DOCUMENT NO. 89003517); THENCE NORTH 89 DEGREES 59 MINUTES EAST ALONG THE SOUTH LINE OF SAID MANCHESTER DRIVE A DISTANCE OF 200 FEET TO AN IRON STAKE ON THE EAST LINE OF THE

FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2; THENCE SOUTH 00 DEGREES 03 MINUTES EAST ALONG THE EAST LINE OF THE FRACTIONAL NORTHWEST QUARTER OF SAID SECTION 2 A DISTANCE OF 216.50 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

Address:

3630 Manchester Drive, Elkhart, IN 46514

Parcel Identification Number(s):

20-05-02-176-032.000-006

Exhibit B

Tax Deduction Schedule

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029
2023	100%	66%	33%	-	-	-
2024	-	100%	66%	33%	-	-
2025	-	-	100%	66%	33%	-



MEMORANDUM

DATE: 3/2/2022
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 22-R-08
Resolution Confirming the Designation of an Economic Revitalization Area for Purposes of Granting Tax Phase-In Benefits to PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC

This Proposed Resolution relates to the Application for Property Tax Phase-In submitted by PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC for which this Council previously declared an Economic Revitalization Area under Resolution No. R-05-22 at the public meeting held on February 14, 2022.

This Proposed Resolution 22-R-08 confirms the declaration of an Economic Revitalization Area within which PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC proposes to make certain real property and personal property investments to increase economic development in the area and in exchange for which PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC seeks to receive tax phase-in benefits.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, CONFIRMING RESOLUTION NO. R-05-22, WHICH DECLARED A
CERTAIN AREA IN THE CITY OF ELKHART TO BE AN ECONOMIC
REVITALIZATION AREA FOR THE PURPOSE OF GRANTING TAX PHASE-IN
BENEFITS TO PONTOONSTUFF, INC. \ MMM REALTY LLC \ LEGACY PLASTICS
LLC**

WHEREAS, on February 14, 2022, the Common Council of the City of Elkhart (the "Common Council"), approved and adopted Resolution No. R-05-22, a resolution entitled "A Resolution of the Common Council of the City of Elkhart, Indiana, Declaring a Certain Area to be an Economic Revitalization Area For the Purpose of Granting Tax Phase-in Benefits to PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution found and determined that a certain area in the City of Elkhart (the "Area") was an economic revitalization area within the meaning of Indiana Code 6-1.1-12.1, (the "Act") for the purpose of allowing deductions from the assessed value of the real estate improvements (the "Project") and from the assessed value of the manufacturing equipment (the "New Equipment") in the Area; and

WHEREAS, pursuant to Section 2.5(b) of the Act, the Common Council filed the Declaratory Resolution with the Elkhart County Assessor; and

WHEREAS, pursuant to Section 2.5(c)(1) of the Act, the Common Council published notice of the adoption and substance of the Declaratory Resolution in accordance with Indiana Code 5-3-1 (the "Notice"); and

WHEREAS, pursuant to Section 2.5(c)(2) of the Act, the Common Council filed a copy of the Notice and a copy of the Statement of Benefits form filed by PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC, with the officers of the taxing units who are authorized to fix budgets, tax rates and tax levies in the Area; and

WHEREAS, at a public hearing held by the Common Council on this date, March 7, 2022, at the City Hall, 229 S. Second Street, Elkhart, Indiana, the Common Council heard all persons interested in the proceedings and received any written remonstrances and objections, and considered those remonstrances and objections, if any, and such other evidence presented; and

WHEREAS, the Common Council now desires to take final action and confirm the

necessary findings in accordance with Section 2.5, Section 3 and Section 4.5 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Elkhart, Indiana, as follows:

1. After considering the evidence presented at the public hearing on this date, March 7, 2022, the Common Council hereby finds that the Declaratory Resolution should be, and hereby is, confirmed in its entirety and without modification.

2. This Resolution constitutes final action, pursuant to Section 2.5(c) of the Act, by the Common Council determining the public utility and benefit of the Project and the New Equipment in the Area, confirming the Declaratory Resolution, and declaring the Area an economic revitalization area pursuant to the Act.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

STATE OF INDIANA)
) §
COUNTY OF ELKHART)

I, Debra D. Barrett, Clerk of the City of Elkhart, Indiana, do hereby certify the above is a full, true and complete copy of Resolution No. R-____, adopted by the Common Council on the _____ day of _____, _____, by a vote of _____ AYES and _____ NAYS, and was approved and signed by the Mayor on the _____ day of _____, _____, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Elkhart, Indiana, this ____ day of _____, _____.

Debra D. Barrett, City Clerk



MEMORANDUM

DATE: 3/2/2022
TO: Common Council
FROM: Corporation Counsel John Espar
RE: Proposed Resolution No. 22-R-09
A Resolution Approving the Memoranda of Agreements with PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC for Tax Phase-In Benefits

This resolution relates to the Application for Property Tax Phase-In submitted by PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC which was first considered by this Council at its public meeting held on March 7, 2022.

Proposed Resolution 22-R-09 approves the corresponding agreements by which PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC will enjoy tax phase-in benefits for the real property and personal property investments made in the economic revitalization area. Each Memorandum of Agreement likewise establishes the legal responsibilities and legal obligations imposed upon PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC in exchange for the tax phase-in benefits granted by the City.

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, TO APPROVE TWO MEMORANDA OF AGREEMENTS BETWEEN THE
CITY OF ELKHART AND PONTOONSTUFF, INC. \ MMM REALTY LLC \ LEGACY
PLASTICS LLC**

WHEREAS, PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC, (hereinafter, the “Applicant”) has filed an application with the City of Elkhart (the “City”) requesting that the property commonly known as 1165 Fremont Court, Elkhart, IN 46516, be designated as an economic revitalization area by the Common Council of the City of Elkhart (the “Common Council”), in accordance with Indiana Code 6.1-1.1-12.1, for the purpose of allowing deductions from the assessed value of the proposed real estate improvements (the “Project”) and the proposed installation of manufacturing equipment (the “New Equipment”) in the proposed economic revitalization area; and

WHEREAS, the City’s Tax Abatement Policy requires that the Applicant\Property Owner (jointly and severally, if not the same entity), enter into a written agreement agreeing: (i) to comply with the project description, (ii) to create and retain a certain number of jobs along with the associated wages rates and salaries (as shown in its Application), and (iii) to comply with its Statement of Benefits forms and any other documents submitted in support of its Application; and

WHEREAS, a Memorandum of Agreement (Real Property) and a Memorandum of Agreement (Personal Property) have been prepared and presented to the Common Council for the Project and the New Equipment, respectively, which Agreements govern the relationship between the City and the Applicant\Property Owner during the term of the tax abatement; and

WHEREAS, the Common Council believes that it is in the best interest of the City to enter

into these agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the attached Memorandum of Agreement (Real Property) and the attached Memorandum of Agreement (Personal Property) to be entered into between the City and the Applicant\Property Owner are hereby approved by the Common Council.

RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at _____
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

MEMORANDUM OF AGREEMENT

Real Estate

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Real Property Improvement (Form SB-1 Real Property), herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant’s Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed development of the real estate for three (3) years (consecutive) on the Applicant’s real property commonly known as 1165 Fremont Court, Elkhart, IN 46516 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed development. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2023, and the Project (as hereafter defined) must be completed by then in order for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2022, it will make a total capital expenditure of one million five hundred thousand dollars (\$1,500,000.00) to improve the Subject Property with existing building acquisition and post-acquisition building improvements and related improvements at the Subject Property (the “Project”), which will create at least 10 new full-time permanent positions with an average annual salary of no less than \$62,400.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of real property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the obligations contained in Applicant's Commitment at all times after the date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with

such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$62,400.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are created, then the percentage of benefit repayment is the following: $85 \text{ actual jobs created} \div 95 \text{ jobs representing substantial compliance} = 89.47\% \text{ compliance rate}$. $100\% - 89.47\% \text{ compliance rate} = 10.53\% \text{ noncompliance rate}$

10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

PontoonStuff, Inc.
James P. Myers
President
1165 Fremont Court
Elkhart, IN 46516

MMM Realty LLC and/or Legacy Plastics LLC
James Morgan
Chief Operating Officer
1165 Fremont Court
Elkhart, IN 46516

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

PontoonStuff, Inc.
1165 Fremont Court
Elkhart, IN 46516

MMM Realty LLC Legacy Plastics LLC
1165 Fremont Court
Elkhart, IN 46516

By:

By:

James P. Myers
President

James Morgan
Chief Operating Officer

MMM Realty LLC
1165 Fremont Court
Elkhart, IN 46516

By:

James Morgan
Chief Operating Officer

CITY OF ELKHART:

By:

Attest:

Arvis Dawson
President of the Elkhart Common Council

Debra Barrett
Elkhart City Clerk

By:

Attest:

Rod Roberson
Mayor of the City of Elkhart

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

LOT NUMBERED SIX-B (6-B) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF REPLAT NO. 1 OF LOT SIX (6) OF THE DEVELOPMENT PLAN FOR EASTLAND INDUSTRIAL PARK, PHASE VI, PART "B"; RECORDED IN THE RECORDS OF THE ELKHART COUNTY RECORDER IN PLAT BOOK 29, PAGE 16, AND LOCATED WITHIN THE EAST HALF OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA.

ALSO, LOT NUMBERED SEVEN (7), AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF "DEVELOPMENT PLAN FOR EASTLAND INDUSTRIAL PARK - PHASE VI - PART B", RECORDED IN THE RECORDS OF THE ELKHART COUNTY RECORDER IN PLAT BOOK 27, PAGE 100, AND LOCATED WITHIN THE EAST HALF OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA.

Address:

1165 Fremont Court, Elkhart, IN 46516

Parcel Identification Number(s):

20-06-12-427-003.000-011

Exhibit B

Tax Deduction Schedule

YEAR OF REDEVELOPMENT AND REVITALIZATION OF THE REAL ESTATE	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029
2023	100%	66%	33%	-	-	-
2024	-	100%	66%	33%	-	-
2025	-	-	100%	66%	33%	-

MEMORANDUM OF AGREEMENT

Personal Property

This Memorandum of Agreement (“Agreement”) serves as a confirmation of the good-faith commitment by PontoonStuff, Inc. \ MMM Realty LLC \ Legacy Plastics LLC, (hereinafter, the “Applicant”) to use its reasonable best efforts to implement the Project as described, to create and retain the jobs and pay the wages specified in the Applicant’s Property Tax Phase-In Application for designation of certain real property as an Economic Revitalization Area, (“Application”), and the Statement of Benefits Personal Property Improvement (Form SB-1 Personal Property, as the same may have been amended, herein after “Statement of Benefits”), and to fulfill its obligations set forth within this Agreement (“Applicant's Commitment”).

1. Commitments of City and Applicant:

(a) Subject to the requirements under Indiana Code 6-1.1-12.1-3, the City of Elkhart, Indiana ("City"), acting by and through its Common Council, agrees to approve a deduction from the assessed value of the proposed installation of manufacturing equipment for three (3) years (consecutive) on the Applicant’s real property to be located at 1165 Fremont Court, Elkhart, IN 46516 (hereinafter, the “Subject Property”), which is more specifically described in Exhibit A of this Agreement. The amount of the deduction from the assessed value of the Subject Property shall be according to the deduction schedule shown in Exhibit B of this Agreement (hereinafter, the “Tax Phase-In”). The Tax Phase-In shall start with the first year in which the assessed value of the Subject Property increases because of the proposed manufacturing equipment. The Applicant acknowledges and agrees that the designation of the Subject Property as an economic revitalization area expires on December 31, 2023, and the Project (as hereafter defined) must be completed by then for the Applicant to be or remain eligible to receive the Tax Phase-In benefits.

(b) Subject to Section 4 herein, the Applicant agrees that by December 31, 2022, it will make a total capital expenditure of one million five hundred thousand dollars (\$1,500,000.00) associated with the investment of manufacturing equipment for rotomold injection and robotic CNC equipment at the Subject Property (the “New Equipment”), which will create at least 10 new full-time permanent positions with an average annual salary of no less than \$62,400.00, while retaining 0 jobs with an average annual salary of no less than , based on two thousand forty hours (2,040) annually. The Applicant further agrees to contribute fifteen percent (15%) of the amount of personal property taxes abated under the Tax Phase-In, which payment will be collected by the Elkhart County Treasurer as set forth in the tax invoice statement and remitted to the City. Payment of the contribution shall (1) coincide with the due date of property tax payments in Elkhart County as set forth in Indiana Code 6-1.1-22-9(a), and (2) shall be due and payable the first time in the year following the first year in which the assess value of the subject property increases by reason of the Project and shall continue and each year thereafter during the term of the Tax Phase-In deduction period set forth in Exhibit B, unless modified by agreement of the City of Elkhart and the Applicant.

2. Applicant’s Compliance with City and State Laws: During the term of the Tax Phase-In, the Applicant shall use its good-faith efforts to comply with all applicable provisions of Indiana Code 6-1.1-12.1. Also, during the term of the Tax Phase-In, the City may annually request information from the Applicant concerning the nature of the Project, the costs of the Project and the amount of and average wages for the jobs, and the Applicant shall provide the City with adequate written evidence thereof within fifteen (15) days of such request ("Annual Survey"). The City shall utilize this information and the information provided by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in Applicant's Commitment at all times after the

date thereof until the expiration of the Tax Phase-In. The Applicant further agrees to provide the City with such additional information reasonably requested by the City related to the information provided in the Annual Survey and the CF-1 form within fifteen (15) days following any such additional request.

3. Substantial Compliance and Rights of Termination: The City reserves the right to terminate the Economic Revitalization Area designation and the associated Tax Phase-In if it determines that the Applicant has not substantially complied with all of the Applicant's Commitment, and the Applicant's failure to substantially comply with Applicant's Commitment was not due to factors beyond its control. As used in this Agreement, substantial compliance shall mean: by December 31, 2022, (1) making capital expenditures of not less than Ninety-Five Percent (95%) of the capital expenditures referenced in Section 1 above for the Project, (2) creating not less than Ninety-five Percent (95%) of the jobs referenced in Section 1 above, and (3) those new jobs will have an average annual salary of at least \$62,400.00, excluding benefits, while retaining the jobs referenced in Section 1 of this Agreement and at the specified average annual rate of pay.

4. Factors Beyond Applicant's Control: As used in this Agreement, factors beyond the control of the Applicant shall only include factors that: (i) are not reasonably foreseeable at the time of designation, application, and submission of the Statement of Benefits; (ii) are not caused by any grossly negligent act or omission of the Applicant; and (iii) do not materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

5. Repayment of Tax Phase-In Savings:

(a) During the term of this Agreement, if the Applicant: (i) is delinquent or in default for a period of sixty (60) days with respect to any tax payment due in Elkhart County, Indiana; or (ii) ceases operations at the facility for which the Tax Phase-In was granted for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event); or (iii) announces the cessation of operations at such facility for a period longer than thirty (30) consecutive days (other than a temporary cessation of operations in the Applicant's normal course of business or as a result of a force majeure event), then the City may terminate the Economic Revitalization Area designation and associated Tax Phase-In benefits, and upon such termination, require the Applicant to repay all of the Tax Phase-In benefits received through the date of such termination, so long as it follows the procedures set forth in Section 7. Such repayment of received benefits shall be calculated as provided in Section 5(b). The amount of benefit repayment shall be measured against the level of noncompliance.

(b) In the event the City terminates this Agreement in accordance with this Section 5, the Applicant will be required to repay only that percentage of the Tax Phase-In benefits received through the date of termination that is equal to the percentage of the Applicant's noncompliance with Section 1 above, less the fifteen percent (15%) tax savings to the City. For purposes of this Agreement, the percentage of the Applicant's noncompliance with Section 1 above shall be calculated as follows: the amount of actual investment in each particular category (average annual salary, number of jobs, and personal property investment) shall be divided by the corresponding established amount for substantial compliance in that category to determine the compliance rate. The compliance rate then shall be subtracted from 100% to determine the percentage of noncompliance. The percentage of noncompliance shall equal the percentage of benefit repayment.

Example: If an applicant promises 100 jobs, 95 jobs represent substantial compliance, and 85 jobs are actually created, then the percentage of benefit repayment is the following: 85

actual jobs created ÷ 95 jobs representing substantial compliance = 89.47% compliance rate. 100% - 89.47% compliance rate = 10.53% noncompliance rate
10.53% of received benefit will be repaid, less a credit for the 15% remitted to the City's Tax Phase-In Development Fund.

If the Applicant fails to achieve substantial compliance in more than one category, the category with the lowest compliance rate will be used to determine the repayment percentage.

6. Assessment Appeals. Neither the Applicant, nor its successors and assigns, shall file any property tax assessment appeal, review, or other challenge of the property tax assessment made for the Project involved during the term of the Tax Phase-In unless one of the following conditions occurs during the deduction period:

(a) the original assessment for the Project as determined by the Elkhart County Assessor ("Assessor") is in excess of the total capital expenditure for the Project as set forth in Section 1 of this Agreement; or

(b) a trending assessment or a reassessment by the Assessor increases the assessment for the Project by more than fifteen percent (15%) from one year to the next year, or by more than an average of ten percent (10%) per year over two (2) or more years.

7. Notice/Hearing of Termination: In the event that the City determines in accordance with Section 5 above that (i) the Economic Revitalization Area designation and associated Tax Phase-In benefits should be terminated or (ii) that all or a portion of the Tax Savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the Tax Phase-In benefits should not be terminated and/or repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the Tax Phase-In benefits termination and/or repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the Tax Phase-In termination and/or repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Common Council. Before any final action shall be taken terminating the Tax Phase-In and/or requiring repayment of Tax Phase-In benefits, any such action shall be subject to judicial review under Indiana Code 6-1.1-12.1-5.9(e).

8. Repayment: In the event the City requires repayment of the Tax Phase-In benefits as provided following the procedures set forth in Section 7 hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall repay its actual amount of Tax Phase-In benefits to the City within thirty (30) days of the date of the Statement. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' fees incurred in the enforcement and collection of the Tax Phase-In benefits required to be repaid hereunder.

9. Modification/Entire Agreement: This Agreement and any schedules attached hereto contain the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the Tax Phase-In are solely the responsibility of the Applicant.

10. Waivers: Neither the failure, nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11. Governing Laws of Indiana: This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

12. Applicant's Consent to Jurisdiction: The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Elkhart County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

13. Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand, by facsimile (with confirmation by registered or certified mail), on the next business day following the mailing by a nationally recognized overnight commercial courier, or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

PontoonStuff, Inc.
James P. Myers
President
1165 Fremont Court
Elkhart, IN 46516

MMM Realty LLC and/or Legacy Plastics LLC
James Morgan
Chief Operating Officer
1165 Fremont Court
Elkhart, IN 46516

If to the City of Elkhart:

Office of the Mayor
229 S. Second Street
Elkhart, Indiana 46516

Copy to:

Elkhart Common Council
c/o Administrative Assistant to the Council
229 S. Second Street
Elkhart, Indiana 46516

14. Assignment and Transfer Prohibited: This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Valid and Binding Agreement: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each party confirms that each person so executing it has been duly authorized to execute this

Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

16. Severability: The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

17. No Personal Liability: No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT:

PontoonStuff, Inc.
1165 Fremont Court
Elkhart, IN 46516

MMM Realty LLC Legacy Plastics LLC
1165 Fremont Court
Elkhart, IN 46516

By:

By:

James P. Myers
President

James Morgan
Chief Operating Officer

MMM Realty LLC
1165 Fremont Court
Elkhart, IN 46516

By:

James Morgan
Chief Operating Officer

CITY OF ELKHART:

By:

Attest:

Arvis Dawson
President of the Elkhart Common Council

Debra Barrett
Elkhart City Clerk

By:

Attest:

Rod Roberson
Mayor of the City of Elkhart

Debra Barrett
Elkhart City Clerk

Approved as to form:

John M. Espar
Corporation Counsel for the City of Elkhart

Exhibit A
Description of Real Property

(Economic Revitalization Area and Project Area)

Legal Description:

LOT NUMBERED SIX-B (6-B) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF REPLAT NO. 1 OF LOT SIX (6) OF THE DEVELOPMENT PLAN FOR EASTLAND INDUSTRIAL PARK, PHASE VI, PART "B"; RECORDED IN THE RECORDS OF THE ELKHART COUNTY RECORDER IN PLAT BOOK 29, PAGE 16, AND LOCATED WITHIN THE EAST HALF OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA.

ALSO, LOT NUMBERED SEVEN (7), AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF "DEVELOPMENT PLAN FOR EASTLAND INDUSTRIAL PARK - PHASE VI - PART B", RECORDED IN THE RECORDS OF THE ELKHART COUNTY RECORDER IN PLAT BOOK 27, PAGE 100, AND LOCATED WITHIN THE EAST HALF OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA.

Address:

1165 Fremont Court, Elkhart, IN 46516

Parcel Identification Number(s):

20-06-12-427-003.000-011

Exhibit B

Tax Deduction Schedule

YEAR EQUIPMENT INSTALLED IN THE IN THE ERA	2023 Payable 2024	2024 Payable 2025	2025 Payable 2026	2026 Payable 2027	2027 Payable 2028	2028 Payable 2029
2023	100%	66%	33%	-	-	-
2024	-	100%	66%	33%	-	-
2025	-	-	100%	66%	33%	-



MEMORANDUM

DATE: March 2, 2022
TO: Common Council
FROM: Bradley Tracy
RE: Proposed Resolution No. 22-R-10

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, APPROVING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF ELKHART AND THE INDIANA F.O.P. LABOR COUNCIL, INC.

Dear Councilmembers,

The negotiating team for the City of Elkhart took the time to meet with the negotiating team for the Indiana Fraternal Order of Police Labor Council, Inc. which is the union that represents our Communications Center employees and our public safety officers. The negotiating teams were able to arrive at an agreement. The Indiana Fraternal Order of Police Labor Council voted and approved the proposed collective bargaining agreement. We now request that the Council approve the collective bargaining agreement.

Thank you,

Bradley Tracy

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ELKHART,
INDIANA, APPROVING THE COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE CITY OF ELKHART AND THE INDIANA FRATERNAL ORDER OF
POLICE LABOR COUNCIL, INC.**

WHEREAS, the negotiating teams for the City of Elkhart, Indiana, (“City”) and the Indiana Fraternal Order of Police Labor Council, Inc. have reached an agreement as to a new collective bargaining agreement covering the period starting from January 1, 2021 through December 31, 2024 (the “Collective Bargaining Agreement”), which is attached hereto as Exhibit A; and

WHEREAS, the Administration, bargaining team and Indiana Fraternal Order of Police Labor Council, Inc. recommend and request that the Elkhart Common Council approve the collective bargaining agreement; and

WHEREAS, the Common Council finds that the interests of the City of Elkhart are served by the collective bargaining agreement:

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, that the Collective Bargaining Agreement between the City of Elkhart and the Indiana Fraternal Order of Police Labor Council, Inc. attached hereto as Exhibit A is hereby approved.

[Signature page to follow.]

SO RESOLVED this ____ day of _____, _____.

Arvis Dawson
President of the Common Council

ATTEST:

Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this _____ day of _____, _____, at
_____ a.m./p.m.

Debra D. Barrett, City Clerk

APPROVED by me this _____ day of _____, _____.

Rod Roberson, Mayor

ATTEST:

Debra D. Barrett, City Clerk

Exhibit A

**Collective Bargaining Agreement Between the City of Elkhart, Indiana and
the Indiana F.O.P. Labor Council, Inc.**

Collective Bargaining Agreement

Between

The City of Elkhart

Indiana F.O.P, Labor Council, Inc,

Through

December 31, 2024

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Preamble

Whereas, the obligation and responsibility for furnishing efficient service to the public is a mutual responsibility of the City and the employees of the City of Elkhart.

Whereas, the responsibility for the operation for the various departments of the

Whereas, the City recognizes its responsibility to provide service to the public and the City recognizes the right of its employees to a clarification of administrative policy;

Whereas, the powers and duties of the Mayor, and the various boards listed above cannot be delegated; however, the present administration does recognize that the employees of the City may associate together to select representatives and petition for redress of grievances;

Whereas, the Board of Public Safety of the City of Elkhart, Indiana, with respect to full-time hourly employees of the following departments: Communications Department Employees and Civil City Safety Officers in the Elkhart Police Department have negotiated and discussed wages, hours, and working conditions with representatives of the Indiana F.O.P. Labor Council (IFOPLC), acting on behalf of employees of the listed departments and have reached accord in regard to wages, hours, and working conditions, and other matters from January 1, 2021 through December 31, 2024. Now, therefore, the City of Elkhart and Indiana F.O.P. Labor Council, Inc. Employees hereby agree as follows:

ARTICLE 1

Recognition

Section 1. For the duration of this Agreement, the City recognizes Indiana F.O.P. Labor Council as the collective bargaining representative for hourly employees regularly scheduled to work forty (40) hours per week in the following departments:

b. Communications Center Employees

Section 2. Nothing in this Article or any other provision of this Agreement shall be construed to constitute an acknowledgment by the City that any work assignment, job classification, job position or any particular work is the exclusive right or ownership interest of any employee or group of employees represented by IFOPLC.

ARTICLE 2

Non-discrimination

Section 1. The City and Union agree that no applicant or employee shall be discriminated against because of their race, age, religion, color, sex, national origin, or disability as defined by law, except where specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient operation or as provided by law. Further, the City and Union agree that no applicant or employee shall be discriminated against because of Union membership or activities or a desire to refrain from same.

Section 2. The City shall abide by current State & Federal law regarding Title VII and the ADA as amended.

ARTICLE 3

Management Rights

Section 1. The City, on its own behalf and on behalf of its citizens, hereby retains and reserves all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Indiana, and the United States of America, City ordinances and Code and any modifications made thereto, and any resolutions or policies passed by City elected and/or appointed officials. Further, all rights that ordinarily vest in and are exercised by employers except to the extent such are specifically relinquished in this Agreement are reserved to and remain vested in the City, including but without limiting the following rights:

- a. to manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of material, tools, and equipment to be used and the discontinuance of any services, material, or methods of operation;
- b. to introduce new equipment, methods, machinery or processes, change or eliminate existing equipment, and institute technological changes, decide on materials, supplies, equipment, and tools to be purchased;
- c. to purchase or subcontract any or all work, processes or services, or the construction of new facilities or the improvement of existing facilities;
- e.
- f. to hire, assign, evaluate, and lay off employees, to reduce the workweek or the workday, or effect reductions in hours worked by combining layoffs and reductions in workweek or workday;

Section 2. The exercise by the City of, or its waiver of or its failure to exercise its full right of management or decision on any matter or occasion, shall not prohibit the City from exercising such rights in the future.

ARTICLE 4

Union Business and Dues Check-Off

Section 1. The administration of grievances shall occur during the employee's and /or the steward's non-working time. On occasion, and with the prior consent of the department head, the administration of a grievance may occur during the scheduled shift. If a grievance arises for which the department head determines there is a need to meet on non-work time, then the department head will meet with the steward at a mutually convenient time.

Section 2. Union representatives shall give their department heads at least twenty-four (24) hours prior written notice if they expect to be absent from normal duties to participate in Union business that lasts three work days or less. The absence contemplated in this Section is without pay.

Section 3. An employee may request the assistance of a steward during working time if the employee is to meet with a supervisor and the purpose of the meeting is discipline of the employee, or the employee is to be questioned which may ultimately result in disciplinary action against that employee.

Section 4. No more than two (2) union representatives, with no more than one (1) union representative from any one department, may be granted leave without pay to attend union sponsored conventions, meetings and/or seminars. The City will provide paid time for two (2) members for a

maximum of 5 days annually for such purposes. The time will be paid only for days the employee would have otherwise worked. To qualify for leave with or without pay under this Article 4, the Executive Board of IFOPLC must make written application to the department head at least thirty (30) days prior to the scheduled event. The total number of days of unpaid leave granted pursuant to this Section shall not exceed five (5) for any one employee, or thirty-five (35) days in total for all employees in any calendar year. .

Section 5. All union dues shall be deducted from the first paycheck of each month and remitted by the City to the union. No deduction shall be made, however, unless the employee has submitted an authorization for the deduction. Written authorization by an employee shall be renewed each calendar year. Employees shall indicate annually that their participation in the Union is at will by acknowledging such on the annual status form (or equivalent). This shall serve as the employees' authorization for dues deduction as well. Employees may change dues deduction at any time during the calendar year by written notice to Human Resources.

Section 6. If an error is discovered with respect to any deductions made pursuant to this Article, the City shall correct the error by appropriate adjustments in the next paycheck of the employee, or the next submission of funds to the union. Additionally, if excessive monies have been collected by the City and submitted to the union, the union (and not the City) shall refund such monies to the appropriate person(s). Further, the union agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, suits or other forms of liability that may arise by reason of the provisions of this Article 4.

Section 7. The City Agrees to distribute a packet of information provided by the Union to new employees. The City shall remit a list of employees that have authorized such deductions to the secretary of the Union at the end of each calendar year. The City also agrees that it shall submit a list of new employees quarterly to the Union secretary.

ARTICLE 5

Hours of Work

Section 1. Work Schedule. The nature of work performed by a municipality and its employees requires that work schedules vary considerably within the City of Elkhart. Management retains the right to designate the time the workday begins and the time the workday ends, but shall include 8 hours of time worked without regard to a lunch break. The normal workweek shall consist of forty (40) hours worked without regard to lunch break. All hours worked in excess of eight (8) hours a day shall be compensated as overtime, with the exception of trade time. Under this section, vacation, paid holidays and paid sick hours shall constitute hours worked if the same are part of the scheduled work week of an individual employee.

Section 2. Lunch Time. It has been agreed by all parties that due to the nature of business conducted by the Communications Center and the Police Department Civil Safety Officers that lunch breaks are not possible, as public safety is of the utmost importance, a working lunch shall be taken and it is reflected in the hours worked during an eight (8) hour shift.

Section 3. An up-to-date telephone number that rings into the principal place of residence, or a cellular phone which is exclusively the employee's, is essential and required in order for the City to call its employees in times of emergencies. Answering machines are not an acceptable method of answering the telephone due to the delay in calling the next senior person when waiting for a call back from the previous person. An answer by the answering machine will be considered a no answer and the next employee will be called. The supervisor doing the calling will leave a message on the answering machine stating that the department has called. Text messaging shall not be an acceptable form of notification.

Section 4. An employee, who is called to work on their scheduled day off or is recalled to work within 8 hours of their work day, shall be entitled to compensation for no less than two (2) hours. If the job for which the employee has been recalled is completed in less than two (2) hours, the employee will not be required to remain at their place of work for the entire two (2) hours unless emergency conditions exist (snowfall, windstorms, flood, earthquake, etc.) as determined by management. If an additional recall is necessary and the employee has been released during the first two (2) hour period, any balance of time from the first two (2) hour period less than two (2) hours shall be used in the second recall before an additional two (2) hours compensation shall be owed. An employee called back pursuant to this Section 5 shall receive time and one half (1 1/2) for all hours worked with a minimum of two (2) hours pay. An employee, who is required to wear a pager or City cell phone on their scheduled day off but who is not called to work, shall receive two (2) hours of pay at the employee's regular rate of pay or two (2) hours of straight compensatory time for each day the employee was required to wear the pager or City cell phone.

Section 5. An employee, who is called to work on their scheduled day off or is recalled to work within 8 hours of their work day, shall be entitled to compensation for no less than two (2) hours. If the job for which he has been recalled is completed in less than two (2) hours, the employee will not be required to remain at his place of work for the entire two (2) hours, unless emergency conditions exist (snowfall, windstorms, flood, earthquake, etc.) as determined by management. If an additional recall is necessary and the employee has been released during the first two (2) hour period, any balance of time from the first two (2) hour period less than two (2) hours shall be used in the second recall before an additional two (2) hours compensation shall be owed. An employee called back pursuant to this Section 5 shall receive time and one half (1 1/2) for all hours worked with a minimum of two (2) hours pay or, with Department Head approval, two (2) hours of compensatory time.

Section 6. Employees called in after eight (8) hours have elapsed since they last punched out will not be considered on recall but will be entitled to two (2) hours minimum compensation unless notified at least two (2) hours in advance before they are to report for work. In such case, time and a half (1 1/2) will be paid for the hours worked before and after the normal eight (8) hour schedule.

Section 7. Attendance at training, safety, or departmental information meetings, at times other than during an employee's regularly scheduled shift, shall not be considered recall or call-in time. Employees who attend training, safety or departmental information meetings shall be entitled to at least two (2) hours minimum compensation at time and a half (1 1/2) if it occurs outside of the work schedule and is not contiguous to the work day.

Section 8. An employee who is called back to work on any holiday will receive, in addition to their holiday pay for the day off, the pay described in the minimum call-back provisions described here but at a rate of two (2) times the normal hourly rate (rather than one and a half (1 1/2) times the regular hourly rate.)

Section 9. During times of storm, breakdown, public disaster, or other emergency, it shall be the employee's responsibility to return the supervisor's/designee's call to report to work within 15 minutes. Failure to do so shall cause an employee not to be entitled to claim that they she should have received an emergency work assignment. It will be the employee's responsibility to provide the department with updated phone contact information.

Section 10. There is to be an employee (on-call) designated from each shift at all times. The on-call person is responsible for covering short notice vacancies when needed.

1. **On Call Compensation** - Two (2) hours of pay will be earned when being on-call per regular day off, provided that employee is not called into work. This may be compensated as straight pay or straight compensatory time, if compensatory time is approved by Department Head. If an employee is paged

in during their regularly scheduled day off, they will receive their normal overtime pay rather than the two (2) hours of on call compensation.

2. **Communication Center On Call Time Periods** - On call periods for the Communication Center will be in one week increments pursuant to departmental rules and regulations.

When an employee calls in sick, the person on-call is to be notified directly. That individual will be responsible to work or cover the 4-hour slot. If the on-call person does not wish to work it, it will be their responsibility to contact employees off duty by seniority to cover the hours for them. Because the employee is paid for on-call, they will have to cover or find the coverage for their hours.

3. **Responsibility and Rotations**

- b. On call employees are required to contact the Center within 15 minutes of an initial call for notification, and must be capable of reporting to work within one (1) hour.
- c. Team Leaders are responsible for implementing and maintaining each shift's on-call rotation list. The lists are to be posted in the radio room. Additionally, each week the pager board must be updated to reflect who is responsible for each shift's on-call during that week. Any changes made to the rotation list must be shared with the shift, and the list and/or board must be updated as well.
- d. Employees that are scheduled as being off on voluntary leave (VAC) are not eligible to also be on-call. It will be the responsibility of that employee to find coverage for any . and each day they will be off on leave, as well as notifying their Team Leader of those changes.

- e. When possible, and unless otherwise instructed or approved by management, during the time period in which a person is responsible for on-call this would exempt them from any hold-over overtime slots and/or rotations, as well as prevent them from participating in voluntary overtime sign-up's that would conflict with call-in times.

Section 11. Trading of Days An employee shall be permitted to voluntarily trade six (6) shifts per quarter pursuant to internal rules and regulations and subject to approval of the Department Head or Assistant Department Head. The period when time is traded and paid back shall not exceed a quarter year. A trading of time shall occur between two (2) employees (in other words once an agreement to trade time has occurred, the employee scheduled to work that time shall not be permitted to trade that time with a third employee). The employee requesting the trade shall complete a record on forms provided by the Department sufficient to inform the Department fully of the trade, and the City shall keep a record of all time traded by its employees. Such traded regular work shifts shall be exempted from the computation of overtime hours and shall not cause an adjustment in the employee's normal salary. Where one employee substitutes for another, each employee will be credited as if they had worked their normal schedule for that shift. An employee who is working a trade may elect to use their earned vacation, personal or compensatory time on the day of the trade, pending approval of the shift supervisor and with the exception that it does not create overtime. An employee who elects to use time off on the day of the trade will not receive any additional compensation; however, the hours will be deducted from the employee's available time off. Under no circumstances shall an employee be permitted to trade a work day for cash or its equivalent or for anything other than an equivalent workday. Probationary employees will not be permitted to trade days during first six (6) months of employment.

ARTICLE 6

Overtime Pay and Scheduling

Section 1. Due to the nature of some of the work to be performed (emergency, snow, storms, floods, earthquake, etc.) to assure the common welfare of the general public, management may require any employee of the department to work overtime. All time worked by employees covered by this Agreement, with supervisory permission, in excess of the eight (8) hour workday as defined in Article 5, Section 1, Hours of Work, will be compensated as overtime. This provision shall not prohibit, however, an employee and his supervisor, from time to time, from arriving at a mutually acceptable variation from the normal workday or normal work schedule which shall not result in payment of any overtime. The rate of pay for overtime is one and one half (1 1/2) hours times the employee's regular straight time hourly rate of pay for each hour of overtime worked. It is understood there shall be no duplicating or pyramiding of overtime.

Section 2. Overtime compensation shall be calculated by one and one-half (1 1/2) times the employee's regular straight time hourly rate multiplied by the actual amount of time worked in excess of the eight (8) hour workday. Monetary overtime compensation shall be paid no later than the next regularly scheduled payday after the overtime is earned. Based upon financial considerations of the City, management may direct, with the employee's consent, overtime be paid by crediting compensatory time off with pay at the rate of one and one half (1 1/2) time the actual time worked. The calculation for compensatory time in lieu of monetary overtime shall be one and one half times the actual amount of time worked in excess of the eight (8) hour workday.

Section 3. Compensatory time - An employee may request to have overtime paid by crediting compensatory time off with pay at the rate of one and one half (1 1/2) times the actual time worked in excess of the eight (8) hour workday. Compensatory time off with pay must be submitted for approval by the Department Head. Compensatory time off may be submitted at any time during the calendar year so long as the employee has sufficient accrued time to cover the hours requested. Departmental policies may provide more details to how this Article is implemented.

An employee shall be allowed to accumulate up to one hundred sixty (160) hours of non-expiring compensatory time. Any time accumulated in excess of one hundred sixty (160) hours must be used within the pay period earned or taken as monetary compensation.

When an employee notifies management of his intent to retire or voluntarily terminate employment with the City, the employee's available accumulated compensatory time shall be reduced to no more than one-hundred sixty (160) hours. This portion of unused compensatory time shall be paid at the time of termination.

A maximum of one hundred sixty hours of compensatory time (160) shall be eligible to be rolled over into the new year. All compensatory time above and beyond one hundred sixty (160) hours will be paid out on January 1 of the new year.

Section 4. When advance scheduling permits, as determined by management, wherein management knows no later than one (1) hour before quitting time on any workday that an overtime assignment is necessary the next working day or next scheduled shift, employees shall be scheduled for such overtime in a rotation schedule in order of classification seniority. For unique situations such as notification late on the last day of the workweek or when an employee is not off duty sixteen (16) hours before returning to work (such as the swing shift and short notice comes up that overtime is necessary), the decision to use the rotation schedule will be determined by management. If a department or work group and their supervisor work out an alternative mutually agreeable overtime assignment which is

approved by the union president or designee and president of the Board of Public Works, or Board of Public Safety, such alternative overtime assignment shall not be grievable.

Section 5. In the event the City inadvertently makes an error to assign overtime in accordance with Section 1 of this Article, the employee who was entitled to the work shall be given, within thirty (30) days of the missed assignment, additional work equal to that which the employee would have worked but for the missed assignment. The employee must request the makeup work no later than the first business day following the end of the next payroll period in which the missed assignment occurred. Should the City make an additional missed assignment, within the same calendar year, causing the same employee to be left out of an overtime assignment he should have been awarded, the City agrees to compensate the employee in pay in the same amount as the employee would have earned had he received the assignment.

ARTICLE 7

Holidays and Holiday Pay

New Year's Day

Martin Luther King, Jr.'s Birthday (Observed the third Monday in January)

President's Day

Good Friday

May Election Day (During Election Years)

Juneteenth
Independence Day
Labor Day (Observed the first Monday in September)
November Election Day (During Election Years)
Veteran's Day

Friday after Thanksgiving Day
Christmas Day

For the duration of this Agreement, the above noted holidays shall be observed. The dates that each holiday will be observed will be provided annually by the Mayor's office prior to the beginning of each calendar year. Each employee shall be paid holiday pay as provided in the ordinance adopted by the Elkhart Common Council.

In the event that a designated holiday is not observed on the actual holiday, employees working in 24/7 operations will receive holiday pay as provided in this section for working the actual holiday rather than the observed holiday. If an employee is required to work on a holiday, the employee shall receive one and a half (1 1/2) times the employee's regular hourly rate in addition to the eight (8) hours of holiday pay granted to all employees. With the approval of the Department Head, an employee may choose to be paid by crediting compensatory time off with pay at the rate of one and one half (1 ½) times the actual time worked in lieu of monetary compensation.

Any employee who is scheduled off on a designated holiday and subsequently works one of the designated holidays, will be paid two (2) times his regular rate of pay in addition to the eight (8) hours holiday pay granted to all employees. If an employee completes a scheduled shift of work on a holiday and returns home only to be called back to work, the employee will be paid two (2) times his regular rate of pay for the call-back on the holiday.

Any employee who is scheduled off on a designated holiday shall receive eight (8) hours of straight pay that will be paid at the employee's regular hourly rate. An employee may choose to instead be paid by crediting eight (8) hours of straight compensatory time off with pay, with the approval of Department Head. Details regarding the implementation of this Article may be found in the Department's Rules and Regulations.

Section 2. To be eligible to receive holiday pay as set forth in Section 1, the employee must work all of the normal workday hours of the employee's scheduled work day immediately before the designated holiday, and all of the normal workday hours of the employee's scheduled workday immediately after the designated holiday. Contractually granted leave approved in advance by the department head (vacation, bereavement, personal day, or other excused absences approved by the department head) shall be considered time worked for purposes of this Section 2. An employee scheduled to work the holiday who does not report to work as scheduled shall not receive holiday pay. In the event that inability to report to work on a scheduled holiday due to just cause, holiday pay shall be granted. The employee shall be required to provide tangible proof of the incident in question.

Section 3. An employee will be paid for the holiday if the employee misses the day before or day after the holiday provided the employee provides an acceptable doctor's medical certification and the employee has not received a reprimand for absenteeism in the last twelve (12) months. The City reserves the right to verify, through investigation and reasonable inquiry, the employee's injury or illness and/or to obtain a second medical opinion at the City's expense. An employee's refusal to cooperate with City requests pursuant to this Section 3 will result in the employee's disqualification for holiday pay.

Section 5. When Spring Daylight Savings Time takes effect, which results in a 7 hour work day for third shift personnel, the affected personnel will have the opportunity to make up the lost time of one (1) hour by reporting to work one (1) hour prior to their scheduled shift or by staying one (1) hour past their scheduled shift. Arrangements for the amended work schedule will be approved by the administration of each department to ensure maximum manpower coverage.

ARTICLE 8

Section 1. All employees, upon completing one (1) year of continuous service shall receive twenty-eight (28) personal hours off with pay, which personal hours must be requested and taken from anniversary date to anniversary date. Personal hours must be taken in not less than one (1) hour increments. The request for personal time is subject to the approval of the department head. In an emergency (personal, family, household) the department head may accept as little as one (1) hour notice. For non-emergencies a twenty-four (24) hour notice is required. The personal hours must be applied for as required above and will be granted in accordance with the rules of seniority. Scheduling of all personal hours off will be at the discretion of the department head or his designated representative. Personal hours may not be accumulated from year to year.

ARTICLE 9

Vacation

Section 1. Vacation shall not accumulate from year to year and must be taken before the next anniversary date of hire or it shall be forfeited. Vacation shall be taken in increments of one (1) hours.

Section 3. All vacation is subject to approval by the employee's supervisor, who shall approve or disapprove the selected dates within two workdays of the employee's request. The dates each employee shall take vacation shall be determined by the City in order of seniority. Once an employee's vacation dates have been selected and approved by the employee's supervisor, another employee with more seniority cannot force a change.

Section 4. For critical schedule operations, an employee shall be required to request vacation in advance by the same number of days as the duration of the vacation (e.g., if the employee wants a three (3) week continuous vacation, the employee must request it at least three (3) weeks in advance). In the event of an unforeseeable situation were the employee has no other paid time off benefit to cover needed time (e.g. sick time), vacation pay for that time may be approved by management. Management may require proof of such situations before granting approval to use vacation pay.

Section 5. If employment terminates for any reason, vacation that has been earned by reason of employment in the prior year, but not yet taken, shall be paid to the employee or the employee's heirs as determined by the Indiana laws of descent and distribution and as described in the City's Employee Handbook. Vacation is a benefit and not part of wages. Therefore, vacation is not earned by virtue of work during a partial year in which termination occurs. Rather, vacation is allotted upon the employee's anniversary date of hire.

ARTICLE 10

Sick Hours

Section 2. Sick hours are made available to compensate an employee who is unable to work due to an illness, a non-work related injury or by engaging in treatment prescribed by a medical doctor approved by the City. Sick hours may also be used by employees to attend to the illness, injury or bona fide medical treatment of an employee's spouse, child, or parent. Time off requests to use sick hours for personal medical treatment or to attend to medical treatment of qualified family members as previously stated requires proof of the appointment for approval. The Employee, who is unable to work due to personal or family member illness or injury, shall notify their supervisor prior to the scheduled time to reporting to work. An employee, who needs time off for non-emergency medical treatment, shall notify their supervisor of such need at least twenty-four (24) hours in advance. Misrepresentation by an employee of any facts to support a claim for the use of sick hours shall be grounds for disciplinary action and may result in the employee's termination from employment.

Section 3. If an employee is absent from work for five (5) consecutive work days, upon the department head's request, the employee upon return to work must provide the department head with a physician's certification specifying the nature of the illness or injury with a statement from the physician that the employee was unable to perform his duties on said days and confirming that employee is able to return to work with normal job duties. Nevertheless, the City reserves the right to request a physician's certification when an employee is absent his last scheduled workday prior to or

his first scheduled workday following a paid holiday. Failure to cooperate in providing such proof may result in the denial of compensation pursuant to this Article. The City may at any time require a second medical opinion from a physician selected by the City at its expense.

Section 4. By December 31 of each year during the term of this agreement, each employee shall be paid for unused sick hours up to a maximum of forty-eight (48) hours for that particular calendar year, calculated at the employee's current rate of pay for each unused sick hour.

Section 5. Employees hired after the effective date of this Agreement shall be allotted sick hours, prorated as follows:

- a. Hire date on or between January 1 and March 8—forty-eight (48) sick hours;
- b. Hire date on or between March 9 and May 14—forty (40) sick hours;
- c. Hire date on or between May 15 and July 20—thirty-two (32) sick hours;
- d. Hire date on or between July 21 and September 25—twenty-four (24) sick hours;
- e. Hire date on or between September 26 and November 30—sixteen (16) sick hours;
- f. Hire date after November 30—no sick hours.

Section 6. An employee with more than two years of continuous employment with the City who resigns or retires, but who is not terminated for cause, shall be paid for unused sick hours up to a maximum of forty-eight (48) hours calculated at the employee's current rate of pay.

ARTICLE 11

Medical Leave and Salary Continuation

Section 1. The City recognizes all employees who qualify for benefits given to them by the Family Medical Leave Act of 1993 and as amended (FMLA). FMLA is concurrent with salary continuation benefits.

Section 2. A medical leave will be approved when supported by a written statement from the employee's physician. A medical leave will not be extended for more than twenty-six (26) weeks for any one sickness, injury or disability or concurrent sickness, injury or disability. A medical leave is defined as a leave because of illness or injury which lasts more than seven (7) calendar days. Provided the employee qualifies for FMLA, the employee has the option of taking the five working days unpaid, if they do not have accrued compensatory time.

Section 3. Employees shall be paid Five Hundred Twenty-five Dollars (\$525) per week until the employee is able to return to work up to a maximum of twenty-six (26) weeks commencing seven (7) calendar days from the date of such illness or injury. This salary continuation is intended to be wages, therefore, insurance, social security, and PERF, as well as any applicable taxes will be withheld. The salary continuance payroll checks will be issued bi-weekly by the City

Section 4. An employee is eligible one time for a maximum of up to twenty-six (26) weeks of salary continuation in any rolling twelve (12) month period. During an employee's medical leave, the City will pay the City's share of the employee's (and employee's family) City group insurance for a maximum period of six (6) months provided the employee continues payment of his share of the premium. It is not possible to take short term disability on an intermittent basis.

Section 5. If an employee is injured or becomes ill while off duty on vacation causing medical leave to be necessary at the time the employee is scheduled to return from vacation such medical leave will be effective on the first day they are scheduled to return to duty from vacation.

Section 6. If an employee's medical leave lasts more than one (1) month, said employee will not be eligible to take any vacation for a minimum of one (1) month after returning to work to allow work backlog to be caught up. However, such employees will not lose vacation time that they otherwise could have taken during such thirty (30) calendar day period if delayed by management beyond their anniversary date. An employee on medical leave shall not lose any vacation earned prior to the illness or injury but shall not earn additional future vacation time during the period of time the employee is off work on medical leave. In such case, the employee will earn vacation during the year the leave occurs as follows: the number of days not on leave divided by 365 days and the resulting fraction shall be multiplied by the days of vacation the employee would have had for the year had the employee not been on leave.

ARTICLE 12

Compensable on the Job Injuries

Section 1. Employees who may become injured on the job in an accident arising out of or in the course of their employment under circumstances which would qualify the employee for benefits under the Workers' Compensation Act or the Occupational Disease Act, shall report the matter to their supervisor by the end of the shift for instructions on the procedure for medical care under the provisions of the Workers' Compensation Act of the State of Indiana.

Section 2. The reporting of all accidents to the supervisor is necessary and must be prompt and accurate in order to ensure proper handling of all compensable claims.

Section 3. An employee injured, or who incurs a work related illness, on the job will not need to use any sick hours to visit a doctor or otherwise seek emergency medical care (including follow up medical care or treatment). On the other hand, if the injury or illness is such that the physician releases the employee to return to work after the examination and simple treatment, the employee is expected to return to work. The employee will receive full pay for the day of the injury under these circumstances so long as the employee returns to work on that day if instructed by the physician.

Section 4. For the first on the job injury of the year covered by this Agreement, an injured employee will receive full pay during the first week. For injuries received due to an intentional tortuous act, an injured employee will receive full pay during the first week. If Workers' Compensation later pays benefits to the employee for that week, those benefits will be reimbursed to the City.

will continue to pay the Employer's share of the health insurance premium provided that the Employee continues payment of his/her share of the premium. The Employee will be required to pay the premiums for any additional group benefits the employee has elected to continue coverage during the leave.

ARTICLE 13

Bereavement Leave

Regular full-time employees will be allowed up to three (3) work days off without loss of pay in the event of death of the employee's spouses/significant others, father/mother son/daughter brother/sister or grandparents.

Bereavement pay is calculated based on the pay rate at the time of absence. Bereavement leave must be taken in consecutive work days at the time of the event unless documentation for postponed services is provided.

Employees may, with their supervisor's approval, use vacation or personal paid days off for additional time off as necessary.

ARTICLE 14

Jury Duty

Section 1. It shall be the policy of the City of Elkhart to encourage its employees to avail themselves of the opportunity of serving upon juries when so called. When so called, upon proper proof submitted and upon prior notice having been given to the appropriate department head, regular compensation shall be given during the time such employee is actually involved in injury duty. Any

jury fees received by an employee shall be kept by the employee. If an employee is released from jury service during working hours, the employee shall report for work, to the extent reasonable and practical.

ARTICLE 15

Section 1. Seniority shall be defined for purpose of this Statement of Policy as an employee's length of continuous service with the City of Elkhart since their last date of hire.

Management will notify the employee and the Union, in writing, of an extension of an employee's probationary period by the end of the first probationary period. There shall be no seniority among probationary employees, and each may be laid off, discharged or otherwise terminated at the sole discretion of the City.

Section 2. Continuous service or employment shall be defined for the purpose of this statement of policy as the length of non-cumulative active employment as a municipal employee of the City of Elkhart

Section 3. Previous periods of continuous service, when there has been a break in service of no more than 12 months, shall be recognized in the computation and vacation. For this benefit, the sum of eligible cumulative employment with the City of Elkhart will be applicable.

Section 5. In situations of layoff or forced shift change, the laid off employee or employee who is forced to change shifts must displace another employee within the same department as long as the employee being displaced has less seniority than the displacing employee. A laid off employee who cannot stay within the same department may displace another employee in a different classification or

department as long as the employee has the seniority, skills, qualifications, and abilities that is equal to or more than the employee being displaced.

Section 6. If an employee is promoted to a supervisory position, except the position of department head or elected official, the employee's bargaining unit seniority will be frozen for one year as of the date of promotion, and the employee will not be permitted to bid on a bargaining unit position while in a supervisory position. If that employee subsequently is removed from that position for any reason other than discharge for cause, the employee may return to the bargaining unit within one year and retain their bargaining unit seniority. After one year if the employee returns to the bargaining unit, the employee will be considered a new IFOPLCI union member with no seniority. The employee shall return to their former classification as long as it does not cause a layoff of another employee in that classification or in the event a return to the former classification would cause a layoff, the employee shall return to the next available opening in the bargaining unit for which the employee has bargaining unit seniority and the present skills, qualifications and abilities to perform.

Section 7. Changes in work schedules, vacations, days off preference, and/or shifts for non-sworn, non-exempt police personnel shall be posted and awarded to the employee who bid on such posting who possesses the most department seniority. For purposes of this Agreement, the term "departmental seniority" shall mean the continuous time a bargaining unit employee has worked within the non-sworn, non-exempt police personnel position.

Section 8. An employee who bids into a new department from another department shall have their prior departmental seniority included in the time worked in the new department after a period of

12 months for purposes utilizing departmental seniority except in the Police Department as covered in Section 7 of this Article.

ARTICLE 16

Posting of Job Vacancies, Bidding and Transfers

Section 1. Posting. A job vacancy in any classification covered by this agreement shall be posted City wide as soon as management reviews the position, job description and any other factors necessary, in the City's sole discretion, if the position is in fact needed at all. Each opening is an opportunity for the City to review organization human resources requirements. City will note on posting when trial period and therefore pay for the new position will begin.

Section 2. Bidding.

(a) All employees except those with a disciplinary action pending or upheld at a level more severe than verbal or written warnings in the prior six (6) months covered by this Agreement may bid on a posted job. The job will be posted City wide for seven (7) days to find a qualified candidate to fill the position. IFOPLC employees in the department with the open position will have three (3) days to submit a bid for priority consideration under subsection (b)(1) of this section. If any qualified IFOPLC employees within the department submits a bid, Human Resources will discontinue the posting. No employee covered by this agreement with less than three (3) years seniority shall be allowed to bid on a job at a lower pay classification outside of his department (b) The City shall select a candidate for the open position per the following order of consideration:

1. The bidder from within the bargaining unit with the most skills, qualifications, and abilities shall be selected as long as the member of the bargaining unit meets the minimum

requirements. They will be scored in four categories; skill level, customer service, tenure, and previous evaluation scores. In the event of a tie, then bargaining unit seniority shall be the controlling factor.

2. A bidder from outside the bargaining unit.

Departments for purposes of this Article shall mean hourly employees, non-sworn, non-exempt employees of the Police Department.

(c) In the event the City determines there is no bidder qualified to fill the vacancy, it may hire a new employee for the vacant position.

Section 3. Transfers, notwithstanding the rules on bidding, transfers from one department to another or within a department for the convenience or benefit of the department, may be made by the department head when possible and advisable. Transfer requests should be submitted to the City's

Human Resources Office, which department shall make written recommendation and provide the request recommendations to the appropriate department head(s) for action. If the occasion arises that transfers must be made for the good of the City, each case will be discussed with the individual concerned before the transfer is made. This Article will not be used to displace the general bidding or layoff procedure. This Article modifies the bidding and layoff procedure order for the limited basis on transfers as described in this Section and is subject to prior notice to the Union.

ARTICLE 17

Training Opportunities

Section 1. Training is a benefit to both management and the Union. All in-house training opportunities in City departments shall be posted by the respective department head or training officer. Voluntary training through outside courses, which directly relate to an employee's job, shall be reimbursed by the City only if it is done with the departmental management and Human Resources prior approval and the employee successfully completes the class. An annual wants and needs list of desired trainings shall be prepared in August of every year. Any training with a cost of \$1,000 shall be subject to an escalated approval process above the Department Head. An annual training report shall be prepared identifying all classes taken, the subject of the classes, and the cost of the classes. An individual who is unable to receive training during a given year due to financial or other constraints on the City, will be given priority in subsequent years for training as more opportunities become available.

Section 2. Communications Center employees and Police Department Civil Safety Officers shall maintain current CPR and AED certification as is required by each respective department. It is the responsibility of each department's training officers or department heads to arrange for said employees to participate in re-certification courses prior to their current expiration date.

ARTICLE 18

Military Service

(a) An employee serving with the armed forces shall, upon discharge or separation, be restored to the job previously held, or to a job comparable with regard to work, rate of pay, and benefits except as limited by Article 15 (Seniority) regarding reductions in force. (b) An employee who desires reinstatement under USERRA must apply with the City for reinstatement within the time period, as specified by USERRA, following termination of his military service.

Section 3. Matters arising regarding military leave which are not covered by this Article shall be determined by the City and as provided by the Uniformed Services Employment and Reemployment Rights Act of 1994.

ARTICLE 19

Work Rules

Section 1. The City shall have the right to establish, maintain, enforce and revise policies, procedures, regulations and rules to govern the conduct of employees. Any action by the City to enforce work rules shall be subject to the grievance and arbitration procedure.

Section 2. When the City establishes or revises its policies, procedures, regulations and rules, any changes will be communicated to all employees and five (5) days shall be given for adjustments. A copy of all revised policies, procedures, regulations and rules shall be provided to each affected employee in writing and posted in the applicable department prior to implementation, except in the case of an emergency or issues of safety. A copy of all written rules and policies shall be made available to any employee within a reasonable time after a copy is requested.

(10) working days and discipline shall be imposed within thirty (30) calendar days after management becomes aware of the alleged violation.

Section 5. In regards to the Communication Center Policies, Rules and Regulations, notification of changes to existing polices or creation of new polices shall be discussed in good faith with members of the bargaining executive board before being enacted.

ARTICLE 20

Arbitration and Grievance Procedure

Section 1. A grievance is defined as a dispute regarding the interpretation or application of a specific provision of this Agreement, which is raised and processed in strict accordance with the steps, time limits and procedures set forth below.

Step 1. An informal effort to communicate and resolve a grievance claim after it is first raised in Section 1 above shall be made within three (3) working days of the occurrence that the grievance claim is based on. The effective date of the occurrence shall be the next payday after the actual occurrence if the grievance is pay related. Pursuant to this informal effort, the employee may present such a claim to his or her immediate supervisor. It is understood that this informal effort can be during normal working hours.

Step 2. In the event such a claim is not settled, it shall be reduced to writing and submitted within five (5) working days of its occurrence to the supervisor or department head who shall answer same in writing within five (5) working days. The grievance shall state the nature of the incident and provision of the Agreement upon which the grievance is based and shall be signed by the employee.

Step 3. In the event that the written answer of the supervisor or department head is not satisfactory or the supervisor or department head does not answer within said five (5) working days, then within five (5) working days of such answer by the supervisor or department head or within five (5) working days of the date on which such answer was due, the grievance, with all supporting evidence, shall be submitted in writing to the board having jurisdiction over the particular employee (Board of Public Works, Board of Public Safety, or Board of Aviation Commissioners) who shall schedule a meeting on such grievance within thirty (30) days of submission to the Board. If neither party or an authorized representative for such party appears at the hearing, the other party shall prevail

on the grievance. This procedure before the applicable board shall be the final administrative step for any grievance concerning disciplinary matters. However, if the employee grievant disagrees with the Findings of Fact issued by the applicable board, he can submit a rebuttal letter to the board which will be included in the record for the employee's personnel file.

Step 4. (a). Grievance mediation provided for in this Step is an optional and voluntary part of the grievance resolution process. It is a supplement to, not a substitute for, grievance arbitration. If grievance mediation is invoked pursuant to this Step, the contractual time limit for moving the grievance to arbitration shall be suspended for the period of time required for mediation to occur.

(b). If the grievance has not been satisfactorily resolved at Step 3, the Union or management may, within five (5) work days, request mediation by serving such request in writing on the other party. If both Union and management agree that the grievance is suitable for mediation, the parties shall submit a joint request for mediation to the American Arbitration Association (AAA) unless the parties mutually agree to submit such request to the Federal Mediation and Conciliation Service (FMCS) or the State Public Employment Relations Board. If both parties do not agree to submit the grievance to mediation within five (5) business days after the written notice for mediation is served, the grievance shall not be submitted to mediation and the time limits in Step 5 shall commence.

(c). The grievance mediation process shall be informal. Rules of evidence shall not apply, and no record shall be made of the proceeding. Both sides shall be provided ample opportunity to present evidence and argument to support their case. The mediator may meet with the parties in joint session or in separate caucuses.

(d). At the mutual request of both parties, the mediator shall issue a recommendation for settlement. Either party may request that the mediator assess how an arbitrator might rule in this case.

(e). The grievant shall be present at the grievance mediation proceeding. If the grievance is resolved by mutual agreement of the parties, the grievant shall sign a

(f). If the grievance is not resolved and is subsequently moved to a board proceeding and/or arbitration proceeding described at Step 5, all offers made at the mediation proceeding shall not be admissible as evidence at such proceedings described at Step 5. Nothing said or done by the parties or the mediator during grievance mediation with respect to their positions concerning resolution or orders of settlement may be used or referred to during such proceedings described at Step 5.

(g). In situations where there is a charge for mediation by the applicable agency and/or the mediator, all such charges incurred in grievance mediation shall be borne equally by the parties.

Step 5. (a) In the event that the answer or disposition of a grievance involving contract interpretation or discharge by the applicable board is not satisfactory, then within thirty

(b). In the event a party makes a written request within the time provided in Step 4, such party shall submit the grievance to the American Arbitration Association (AAA) for processing in accordance with its rules and regulations unless the parties mutually agree to submit the grievance to Federal Mediation and Conciliation Service (FMCS) in such cases the grievance will be processed with FMCS in accordance with its rules and regulations. The AAA or the FMCS shall submit a panel of seven (7) arbitrators, all of whom shall be members of the National Academy of Arbitrators.

(c). The Arbitrator is limited to interpretation of the specific provisions of this Agreement and shall have no authority to add to, subtract from, modify, change or alter any of its provisions or their

meaning, including the steps and time limits herein. The Arbitrator shall submit his award within thirty (30) calendar days of the later of the conclusion of the hearing or the filing of any briefs. The decision of the Arbitrator shall be final and binding on the parties and employees involved, and this procedure shall be the exclusive procedure for disputes concerning discharges or involving questions of contract interpretation.

(d). Expenses for the Arbitrator's services and the proceedings in cases of contract interpretation shall be borne equally by the City and the Union. In discharge cases, expenses of the arbitration service and the Arbitrator shall be paid for by the losing party who shall be determined by the Arbitrator as a part of his decision. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, provided that it pays for the record and makes copies available, without charge, to the other party and to the Arbitrator.

(e). Except with respect to the right to initiate and present grievances at Step 1, the Union shall be the exclusive representative of the interests of an employee covered by this Agreement in the processing and redress of grievances arising under this Agreement except that if the employee (i.e., grievant) desires to settle the grievance at any step or any time, the grievance shall be settled and concluded.

(f). Grievances involving contract interpretation or discharge may be submitted directly to Step 3 in the grievance process for a hearing before the applicable board. Issues involving discharge or contract interpretation are subject to arbitration pursuant to Step 5.

ARTICLE 21

Change of Name, Address and Telephone

Section 1. Change of name, address, telephone number, dependents or marital status shall be reported promptly within four (4) business days after the change is effective. This is necessary to insure proper deductions for tax purposes; proper beneficiary for life insurance and retirement plans; correct kind of hospitalizations, surgery and medical insurance coverage; and other changes in personnel records as well as to insure proper and efficient emergency service to the public. An up-to-date telephone number that rings into the principal place of residence or an employee's personally exclusive cellular telephone is essential and required in order that the City is able to contact its employees in times of emergency. Such changes shall be reported to the departmental secretary or department head so that the necessary form can be routed to the various City offices in notification of the change. In case of change of name, it is necessary to inform the department head with proof of name change and filing of new status form and for required signatures concerning insurance, retirement, etc. Failure to comply with the above shall result in progressive discipline per Article 19 (Work Rules).

ARTICLE 22

Section 1. The City does not prescribe a mandatory retirement age. An employee may continue to work, provided the employee is physically and mentally competent.

ARTICLE 23

Safety Committee

Section 1. In departments that have a safety committee an employee who is a member of the IFOPLC Union shall be appointed to be a part of that committee.

Section 2. The Union and City will continue to work together to improve safety and health programs. Both parties agree to support safety training.

ARTICLE 24

Uniforms, Boots, Gloves, and Equipment

Section 1. Communications Center employees shall be provided an equipment allowance of Two Hundred Dollars (\$200.00) per year. Police Department Civil Safety Officers shall be provided an equipment allowance of Seven Hundred Fifty Dollars (\$750.00) per year payable by the end of January. The annual allowance shall be used for job necessities not limited to replacement shoes, uniforms, and electronic equipment, including headphones. Police Department Civil Safety Officers shall also be supplied with five (5) uniforms and one (1) pair of shoes upon hire. Uniforms shall be chosen by the City, however, the City may provide alternative uniforms to an employee upon request prior to ordering if such alternatives are available from the City's vendor and are similarly priced.

Section 2. Any misuse of City property or material or repeated failure to properly use safety gear by an employee will constitute grounds for progressive discipline, up to and including dismissal, in accordance with work rules.

Section 4. For all employees covered by this Agreement, work attire should complement an environment that reflects an efficient, orderly, and professionally operated department. It is important to

maintain a neat, well-groomed, and professional appearance at all times. All attire should be conducive to the employee's position.

ARTICLE 25

Classification Assignments and Rates of Pay

Section 1. Annual pay rates are being set forth in Attachment "A" (Pay Grades) and Attachment "B" (Raises/Inflation Adjustment) for the term of this agreement.

Pay Grade Classification Assignments will be set forth in Schedule "A" to this Agreement

Section 3. The classification of an employee shall not change unless said employee is assigned to another classification by the department head. If an employee performs the duties of another classification, other than that which the employee is assigned, for more than six (6) months in any one (1) calendar year, that classification or a new classification will be posted for bid in accordance with the bidding procedure.

Section 4. An employee may be assigned, on a temporary basis, to a job at a higher pay classification. When properly assigned to a job with a higher pay classification, the employee will receive the higher pay classification. The employee will receive the higher rate of pay after the employee has completed more than eight (8) consecutive hours at such higher paying job.

Section 5. In the pay category of hourly employees, when an employee is regularly assigned to the second shift, the employee shall receive shift differential pay of Two Dollars and Zero Cents (\$2.00) per hour, in addition to the base scale. An employee who is regularly assigned to the third shift, shall receive shift differential pay of Two Dollars and Twenty-Five Cents (\$2.25) per hour, in addition to the base scale. An employee who works a modified shift outside reasonably normal day shift hours for a duration of time (e.g. modified seasonal scheduling) will be paid the shift differential for the shift addressed in this section that the work hours most closely reflects.

Section 6. The rate of pay for sick hours, holidays or vacation will not be paid at the higher rate until the employee has worked one (1) full pay period (eighty (80) hours) on the irregular shift.

Section 7. It is the intention of the City to foster and promote the continued training of unit members with due consideration being given to the seniority of such unit members. However, final selection of employees for schools and training classes shall be made by the department head and based on the need of that department.

Note that this does not relieve a department head of responsibilities in Article 17 (Training Opportunities).

ARTICLE 26

Longevity Pay

Section 1. In addition to the base scale, employees with four (4) or more years of continuous (note salary ordinance exception) service will receive Fifteen Dollars (\$15) per month for each four (4) years of service, beginning in the fifth (5th) year. Longevity payments will not exceed Seventy-five Dollars (\$75) per month according to the following schedule: (Note salary ordinance exception "any employees

hired prior to January 1, 1993 and who are receiving longevity pay based upon cumulative years of service shall continue to be paid under that arrangement. Any employees hired after January 1, 1993 shall receive longevity pay based upon continuous years of service.")

Continuous Years of Service Compensation

- Four (4) Years: \$15 per month, payable beginning in the fifth (5th) year
- Eight (8) Years: Additional \$15 per month, payable beginning in the ninth (9th) year. Total of \$30 per month.
- Twelve (12) Years: Additional \$15 per month, payable beginning in the thirteenth (13th) year. Total of \$45 per month.
- Sixteen (16) Years: Additional \$15 per month, payable beginning in the seventeenth (17th) year. Total of \$60 per month.
- Twenty (20) Years: Additional \$15 per month, payable beginning in the twenty-first (21st) year. Total of \$75 per month

Section 2. In addition to the compensation received above, employees will receive One Hundred (\$ 100) per month in recognition of twenty (20) years of service, payable in the twenty-first (21st) year.

Section 3. The maximum total compensation an employee may receive under this

ARTICLE 27

Health Insurance, Life Insurance and Benefits Advisory Committee

Section 1. The City shall make available to each eligible employee and eligible dependents a comprehensive major medical insurance program and life insurance program then in effect for that particular benefit year. All eligibility requirements of either health insurance or life insurance, or both,

and all other terms and conditions of said insurance shall be set forth in the plan documents, and shall be consistently and uniformly applied and made available to all full-time City employees.

Section 3. The City shall make reasonable efforts to maintain the City's level of contribution for individual and dependent coverage under the City's health and life insurance plans. Any change in contributions shall be consistent in all City departments.

Section 4. The City agrees that all retired employees and their eligible dependents shall be eligible for the City health insurance program for the term of this Agreement, as long as the retiree's participation in the coverage is continuous from their date of retirement

ARTICLE 28

Perf Pension

The City agrees to contribute the mandatory 3% employee PERF contribution for INFOPLC members. This was effective the first paycheck of March, 2020.

ARTICLE 29

Successor

ARTICLE 30

Communications Center Shift Bid

Section 1. The shift bid shall commence by the first Monday of the third week of November each calendar year. The bid will be announced and posted in a public forum a week prior to this giving union member's ample time to prepare. The bidding process will be overseen by a designated union representative. Each member shall have 24 hours to consider the bid.

Section 2. All dispatchers will be allowed the opportunity to exercise the right of seniority for selecting their desired shift and days off. The only slot changes accepted outside of regular bid will be due to the following circumstances and/or conditions:

a) If two employees work out a mutually exclusive acceptable agreement to trade, provided there is no objection by an employee with seniority that falls between the two requesting parties, and provided the Department Head and Assistant Department Head approve;

b) In the event of an opening created by the resignation, retirement or termination of an employee or if a locked shift is opened upon a trainee's release, or for any other reason, Management will offer the

empty slot to employees by seniority beginning with the next senior person from whom created the vacancy; or in the case of a locked shift becoming open, management may offer the opening by seniority or by a complete re-bid. This same procedure will then be followed by any subsequent vacancies created.

If for any reason an opening creates built-in overtime, Management reserves the right to fill the spot by moving the least senior dispatcher from another open shift. A dispatcher being mandated to change to this open shift/rotation will not be required to change their previously scheduled benefit time off, regardless of staffing levels.

Article 31

Officers and Elections

Section 1. The officers of the INFOPLC #52 shall be elected annually, and shall consist of the following: President, Vice President, and Secretary. The officers shall also serve as the union Executive Board.

Section 2. The election of all officers and trustees shall be made on the first Monday of each December of each year and shall be facilitated by the Police Department FOP President or other officer. The voting process may take place via email or in person ballot submission. This will be determined by the Executive Board with input from union members.

Section 3. The installation of the newly elected officers shall be effective on Saturday of the first full pay period of January and each shall serve until a successor is duly elected or appointed and qualified.

Section 4. Any officer may be removed from office for misconduct of that office and then by a special meeting for that purpose by a removal vote of two thirds of the members present. In case of such removal the vacancy shall be filled by a vote of the members of the union that is facilitated by the Police Department FOP President or other officer.

Section 5. In the event of the death, resignation, or a vacancy occurring for any other reason, the vacancy shall be filled by a vote of the members of the union that is facilitated by the Police Department FOP President or other officer.

ARTICLE 32

No Strike Clause

Section 1. It is recognized and agreed by the parties that because of the public policy of the City to protect the public health, safety, and welfare of the citizens of the City Communication Center employees and Public Safety Officers are not accorded, the right to strike or engage in any type of work stoppage, slowdown, picketing while on duty, or any other type of job action that interferes with the proper performance of their duties and responsibilities or those of any other Communication Center employees or Public Safety Officers as prescribed by the City.

In the event any of the actions prohibited in the first paragraph of this Article occur, the parties agree (i) it is appropriate for any court of competent jurisdiction immediately to restrain and enjoin such actions and award to the City any and all other appropriate relief after notice to an employee or representative of the Indiana FOP Labor Council; (ii) the City Administration no longer shall have the duty to recognize or bargain with any bargaining agent then representing the bargaining unit; and (iii) all employees who have engaged in the action shall be subject to immediate termination by the Board of Public Safety in conformance with relevant Indiana law and any applicable grievance procedures.

ARTICLE 33

Term of Agreement

Section 1. This agreement shall be retroactive to January 1, 2021, and in effect through the 31st day of December, 2024.

Signatures

Whereas, This Agreement has been negotiated by the City of Elkhart and Indiana FOP Labor Council, Inc and agreed to by said parties on this ___ day of January ___ 2022 by the undersigned.

Indiana FOP Labor Council, Inc.

City of Elkhart

Ayron Bringle, President

Bradley Tracy, Office of the Mayor
Negotiating Team Member

Greg Szabo, Vice President

Rose M. Rivera, City Attorney
Negotiating Team Member

Dan Schaefer

Jamie Arce, Controller
Negotiating Team Member

Jerame Simpson, Northern Indiana Representative

Rod Roberson, Mayor

Reviewed for content and legality

Rose Rivera, City Attorney

Date

City of Elkhart Board of Public Safety

The Elkhart City Board of Public Safety after motion being duly made and seconded, now approves the foregoing Collective Bargaining Agreement between the City of Elkhart, Indiana and the Indiana F.O.P. Labor Council, Inc. contingent upon the approval and signature of the Mayor and Common Council of the City of Elkhart.

Dr. Robert Woods, Chairman

Carol McDowell, Vice-Chairwoman

Corinne Straight-Reed, Member

Anthony Coleman, Member

Rev. Charlie Cross, Member

City of Elkhart Common Council

The Elkhart City Common Council after motion being duly made and seconded, now approves the foregoing Collective Bargaining Agreement between the City of Elkhart, Indiana and the Indiana F.O.P. Labor Council, Inc.

Arvis Dawson, Council President

Tonda Hines, Council Vice President

Aaron Mishler, Councilman

Brian A. Thomas, Councilman

David E. Henke, Councilman

Dwight Fish, Councilman

H. Brent Curry, Councilman

Megan Baughman, Councilwoman

Kevin Bullard, Councilman

Date _____

Attachment A

Pay Grade and Job Classification

PG	Title	2021
PG-1	Dispatch/Safety Officer (probationary under 6 months)	\$ 22.13
PG-2	1 st year Dispatcher / 1 st year Safety Officer	\$ 22.54
PG-3	Dispatcher/Safety Officer	\$ 22.98
PG-4	Trainers	\$ 23.39
PG-5	Training Coordinator/Team Leaders	\$ 24.17

SHIFT DIFFERENTIAL INCENTIVE 2021

2nd shift + 2.00/hour

3rd shift + 2.25/hour

INFLATION ADJUSTMENT ATTACHMENT B

INFOP 2021-24 New Paygrades	2021 Pay Rates	2021 Percent Increase	2021 Raise Amount	New 2021 INFOP Rate	Percent Increase	2022 Raise Amount	New 2022 INFOP Rate	2023 Percent Increase	2023 Raise Amount	New 2023 INFOP Rate	2024 Percent Increase	2024 Raise Amount	New 2024 INFOP rate	TOTAL RAISE 2021- 2024
PG-1 Dispatcher/Safety Officer (Probationary- under 6 months)	\$22.13	4%	\$0.89	\$23.02	3%	\$0.69	\$23.71	3%	\$0.71	\$24.42	0%	\$0.00	\$24.42	\$2.29
PG-2 Dispatcher/Safety Officer (6 mos-1 year)	\$22.54	4%	\$0.90	\$23.44	3%	\$0.70	\$24.14	3%	\$0.72	\$24.86	0%	\$0.00	\$24.86	\$2.32
PG-3 Dispatcher/Safety Officer (1 year anniversary and beyond)	\$22.98	4%	\$0.92	\$23.90	3%	\$0.72	\$24.62	3%	\$0.74	\$25.36	0%	\$0.00	\$25.36	\$2.38
PG-4 Trainers	\$23.39	4%	\$0.94	\$24.33	3%	\$0.73	\$25.06	3%	\$0.75	\$25.81	0%	\$0.00	\$25.81	\$2.42
PG-5 Team Leaders/Training Coordinator	\$24.17	4%	\$0.97	\$25.14	3%	\$0.75	\$25.89	3%	\$0.78	\$26.67	0%	\$0.00	\$26.67	\$2.50

City of Elkhart
Board of Aviation Commissioners Meeting
January 26, 2022

The Board of Aviation Commissioners meeting was called to order by Doug Thorne at 4:00pm on Wednesday, January 26, 2022 at the Elkhart Municipal Airport Administration Building, 1211 CR 6 W, Elkhart, Indiana 46514. Commissioners Bruce Shreiner and Shari Mellin were present. Commissioner Tom Shoff was present via Webex. Also present were Andy Jones, Karen Shaw, & Ryan Sherwood. Present via Webex were Paul Shaffer & Dwight Fish.

Approval of Minutes:

Bruce Shreiner made a MOTION to approve the minutes of the December 29, 2021 meeting. The motion was SECONDED by Shari Mellin. There being no further discussion, the motion PASSED unanimously.

Approval of Claims:

Shari Mellin made a MOTION to approve claims as submitted in the amount of \$20,796.92. The motion was SECONDED by Bruce Shreiner. Mr. Thorne asked Andy about the purchase of the event barriers. Andy advised we partnered with the EAA this past summer for 2 events for the Young Eagles and the Fly-In, Drive-In, Ride-In, and are planning to host more events in the future. Both of the EAA events required chair rentals. They also required safety partition barriers they we could not provide. The City of Elkhart does have a limited inventory of some of the items we needed but they were already being used by other city departments. Andy further stated that these items are part of the airport's equipment inventory but they are available for other city departments to use when we are not. Airport maintenance has converted an enclosed trailer from our inventory that will not only house the event fence, but make it easily transportable to anyplace in the city. There being no further discussion the motion to approve the claims PASSED unanimously.

Manager's Report:

Andy advised there will be a pre-construction meeting for the runway 9/27 LED Lighting Project. Some airport tenants have been invited to attend in order to get input on the scheduling of the expected temporary runway closures. Andy's goal is to limit the amount of inconvenience to our tenants by having them tell us how we can best accomplish that goal. The meeting will also include discussions regarding the contractor's ability to get materials so we decrease the chances of having to stop in the middle of a job because they lack something they need. Andy advised we have received the initial report from Kokosing regarding the solar panel study. The Mayor has asked Andy to set up another meeting soon to discuss next steps to see if there is a way to utilize solar energy to reduce our electric consumption. Andy advised there is a new process for Commercial Driver's License (CDL) testing that could be a large expense for some City departments, including Aviation. Even though a CDL is not a federal requirement for operating heavy equipment on city property, it is included in the airfield maintenance job description because airfield maintenance employees must be able to drive the equipment legally to drive to the Central Garage for maintenance. Mr. Thorne added that the requirement for airfield maintenance to have CDL's is likely a liability issue. Andy agreed. Andy advised we are adhering to the performance review goals as it relates to the up-to- 4% pay increases the City Council approved for salaried employees. Andy further states that this also included the ACFSCME employees, even though their raises were contractual. Andy advised that we have a maintenance employee currently on suspension due to a failed random drug screen. Because this employee has a CDL, this falls into the federal guidelines where one temporarily loses their CDL. This employee will complete a 2-week City of Elkhart mandatory suspension, then will complete the program set forth by the Department of Transportation for holders of a CDL license. This will entail counseling, another drug screen before returning to work, then several random drug screens over the next year. Andy advised this is not an employee that he wishes to terminate as long as he does a good job of meeting all

City of Elkhart
Board of Aviation Commissioners Meeting
January 26, 2022

necessary requirements. Andy further states that because all other maintenance staff have CDL licenses, it will not be a hardship to work around this one employee until the CDL is reinstated.

Andy stated we are currently attempting to hire another full-time air traffic controller. We advertised for the position and have received several applications. Mike Haller, chief air traffic controller, has started the phone screenings with these applicants, and has narrowed the field down. Mike, Andy, and the city HR department will conduct WebEx interviews with the final applicants and offer the position to one of the finalists. Andy advised that once we have hired this person, 1 of the current full-time controllers has expressed the desire to move back to part-time. Ideally we will then have succeeded in completing our stated goal of having 3 full-time and 1 part-time air traffic controllers. Mr. Shoff asked if an air traffic controller applicant must be certified? Andy advised that yes, this is a requirement and only certified applicants will be selected as a finalist.

Mr. Thorne advised the first order of New Business is the request from IFC to replace the existing, temporary FBO directional sign with a permanent sign. The location is at the corner of Airport Rd and the turn into IFC's hangar. Andy advised Ryan Sherwood with IFC is here and can answer any questions you may have. Andy also urged the BOAC to view the print copies he provided. Andy further advised that US Signcrafters designed the sign and will perform the installation. Andy further states that the existing sign was never intended to be permanent. So this new sign is something that has been discussed before. Andy encouraged the board to approve the IFC request. Mr. Sherwood advised that the new sign will replace the one located near the entrance to hangar 28. With the repurposing of the old terminal as the IFC terminal, there are now two IFC locations on the airport's south side. Both are accessed from Airport Road. The new sign will help alleviate confusion for passengers, the public, pilots, and tenants. Mr. Shoff asked why a local Elkhart company is not doing this work? Mr. Sherwood advised that because IFC has a long relationship with US Signcrafters they have a comfortable level with them. They know they can rely upon them for the provision of professional and reliable services as well as products at a fair price. Shari Mellin made a MOTION to approve the permanent sign. The motion was SECONDED by Tom Shoff. There being no further discussion, the motion PASSED unanimously.

Privilege of the Floor:

Doug Thorne opened comments. There were none.

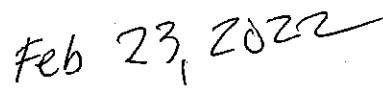
Adjournment:

Bruce Shreiner made a MOTION to adjourn. The motion was SECONDED by Tom Shoff. There being no further business, the motion PASSED and the meeting was adjourned.

Next regular BOAC meeting is scheduled for Wednesday, February 23, 2022 at 4pm. Location will be the Elkhart Municipal Airport Administration Building, 1211 County Road 6 W., Elkhart, IN 46514 & via WebEx.

Respectfully Submitted,


Tom Shoff – Aviation Board Secretary


Date

BOARD OF PUBLIC SAFETY
Tuesday, January 25, 2022

Chairman Robert Woods called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, January 25, 2022. Robert Woods attended in person. Corinne Straight and Charlie Cross attended on WebEx. Anthony Coleman and Carol Loshbough were absent. Elkhart Council liaison Megan Baughman attended on WebEx.

1. APPROVE AGENDA

On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0 the agenda was adopted as presented. On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board authorized Robert Woods to sign all actions on behalf of the Board.

2. ELECTION OF 2022 OFFICERS

On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0, the Board retained the 2021 Officers in 2022, Dr. Robert Woods as Chairman and Carol Loshbough as Vice-Chair.

3. MINUTES of Regular Meeting December 14, 2021

On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the minutes from December 14, 2021 were approved as presented.

4. POLICE

Chief Seymore presented Policy 332 Death Investigation updates for approval. On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board approved Policy #332 Death Investigation.

Chief Kris Seymore presented Policy #500 Traffic updates for approval. On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0, the Board approved Policy #500 Traffic.

Chief Seymore presented Policy #505 Operating While Intoxicated updates for approval. On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board approved Policy #505 Operating While Intoxicated.

Chief Seymore presented Policy #1000 Recruitment and Selection updates for approval. On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0, the Board approved Policy #1000 Recruitment and Selection.

Chief Seymore presented Policy #1023 Personal Appearance Standards updates for approval. On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0, the Board approved Policy #1023 Personal Appearance.

5. FIRE

Chief Shaun Edgerton attended and made himself available for questions.

6. COMMUNICATIONS

Adam Amsden present the November and December 2021 Month End Reports for the Communication Department. On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board accepted and placed on file the November and December 2021 Communication Center Month End Reports.

7. BUILDING & CODE ENFORCEMENT

Henry Terrazas presented the December Month End Report. On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board accepted the Building and Code December Month End Report and placed it on file. Henry noted the City is growing and commended his staff for their hard work.

BOARD OF PUBLIC SAFETY
Tuesday, January 25, 2022

8. OTHER PUBLIC SAFETY MATTERS

On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board accepted the Police Merit Commission minutes and placed them on file.

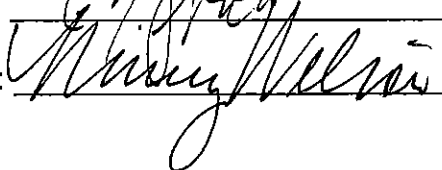
On motion by Corinne Straight, seconded by Charlie Cross and carried 3-0, the Board accepted the Fire Merit Commission minutes and placed them on file.

9. ADJOURNMENT

On motion by Charlie Cross, seconded by Corinne Straight and carried 3-0, the Board of Public Safety meeting was adjourned at 9:22 a.m.



Corinne Straight, Member
Robert Woods, Chairman

Attest: 

Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC SAFETY

Tuesday, February 8, 2022

Member Corinne Straight called a regular meeting of the Board of Public Safety to order at 9:00 a.m., Tuesday, February 8, 2022. Corinne Straight, Anthony Coleman and Charlie Cross attended in person. Carol Loshbough attended on WebEx. Robert Woods was absent. Elkhart Council liaison Megan Baughman was absent.

1. APPROVE AGENDA

On motion by Charlie Cross, seconded by Anthony Coleman and carried 4-0 the agenda was adopted as presented.

2. MINUTES of Regular Meeting January 25, 2022

On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0, the minutes from January 25, 2022 were approved as presented.

3. POLICE

Chief Seymore attended and there were no questions for him.

4. FIRE

Chief Shaun Edgerton presented the January 2022 Month End Report. On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0, the January 2022 Month End Report was accepted and placed on file.

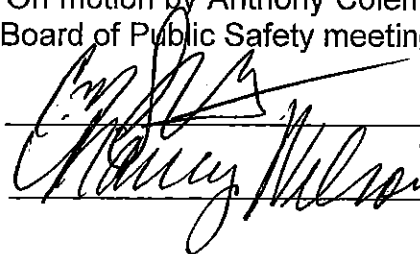
Chief Edgerton discussed the status of Firefighter Kevin Mann's Medical Leave. The Medical Provider declined to clear Firefighter Mann from his medical issue and there is no alternative but to part ways. He was an excellent young Firefighter and it is extremely troubling to let him go. We have no choice. He asked the Board to authorize the Pension Board to hold a meeting in order to place Firefighter Mann on disability. Charlie Cross asked if he will be terminated? Chief Edgerton responded no, he is not being terminated, he is being severed from the pension. Chief Edgerton said yes and no, he is leaving due to a medical issue. If the medical issue gets resolved somehow, he can petition the pension for reinstatement. At that point, we could bring him back, and because of the pension statutes, he would get the first available spot. On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0, the Board of Safety requested a Firefighter Pension Board Hearing for Firefighter Kevin Mann.

5. BUILDING & CODE ENFORCEMENT

Henry Terrazas presented the January 2022 Month End Report. On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0, the Board accepted the Building and Code January 2022 Month End Report and placed it on file.

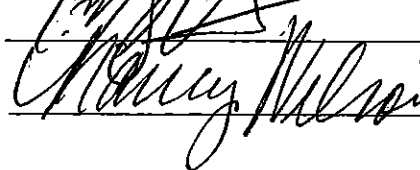
6. ADJOURNMENT

On motion by Anthony Coleman, seconded by Charlie Cross and carried 4-0, the Board of Public Safety meeting was adjourned at 9:11 a.m.



Corinne Straight, Member

Attest:



Nancy Wilson, Clerk of the Board

BOARD OF PUBLIC WORKS
Tuesday, February 1, 2022

Vice-President Chad Crabtree called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, February 1, 2022. Clerk of the Board Nancy Wilson called the roll. Chad Crabtree, Jamie Arce, Ronnie Davis, and Rose Rivera attended in person. Mike Machlan was absent. Chad stated the time was 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

A motion was made by Jamie Arce and seconded by Ron Davis to approve the agenda. On motion by Jamie Arce, seconded by Ron Davis and carried, the agenda was amended by adding Request Bid # 22-10 Police Vehicles under New Business. The amended agenda carried 4-0.

2. Open Bids

Bid #22-01 Utility Materials

Proof of publication was presented which appeared in The Elkhart Truth on January 8 and January 15, 2022. The following bids were received:

Utility Supply Company submitted a signed and certified bid summary form with all items checked except Item 9 catch basins.

EJ USA Inc. submitted a signed and certified bid summary form with items 1 & 3 checked.

Farmer Tank Inc. submitted a signed and certified bid summary form with item 9 checked. They submitted a bid bond check.

Ferguson Water Works submitted a signed and certified bid summary form with all items checked.

Neenah Foundry Company submitted a signed and certified bid summary form with all item 10 and 11 checked. They submitted a bid bond check.

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

Bid #22-02 Street Materials

Proof of publication was presented which appeared in The Elkhart Truth on January 8 and January 15, 2022. The following bids were received:

Ennis Flint Inc. submitted a signed and certified bid summary form with items 23-25 checked.

Elkhart County Gravel submitted a signed and certified bid summary form with items 1-8 checked.

Ozinga submitted a signed and certified bid summary form with all items 1-8 and 15-19 checked.

Rieth-Riley Construction submitted a signed and certified bid summary form with items 1-8, 9-13, and 19 checked.

Premium Concrete Services submitted a signed and certified bid summary form with items 15-19 & 20-22 checked.

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

Quote #22-01 Burr Oak Ave. Clearing

None received.

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3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the claims & allowance docket was approved in the amount of \$4,264,323.12 consisting of 125 pages as prepared on January 27, 2022 at 2:23 p.m.

4. Minutes Regular Meeting January 18, 2022

On motion by Ron Davis, seconded by Jamie Arce and carried 4-0, the minutes from January 18, 2022 were adopted.

5. Tabled Items

Notice of Violation: 25% Rule King Gyros 3520 S. Main St. (F2015-185)

On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the item was removed from the table for consideration. A motion was made by Jamie Arce and seconded by Ron Davis to approve the Notice of Violation 25% Rule for King Gyros at 3520 S. Main St. (F2015-185) and assess a penalty of \$700.00. Megan Kolaczyk explained the violation to the Board. The FSE did not attend in person or on line. This was their second violation in one year, and the penalty matrix recommends \$200, also, they did not respond at all to the notice of violation, and this is the third time they did not respond so the penalty matrix recommends \$500.00 for not responding. Staff recommends a total penalty of \$700.00. Megan reminded her when she dropped off paperwork for their other location that they needed a response for this location but they have not responded. On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the Board tripled the penalty to \$2,100.00. The amended motion carried 4-0.

6. Utilities

(A.) Regulatory Affairs

Consent for EPA to Store Equipment and Stage at Public Works

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board gave permission and granted access to the EPA to store equipment and set up a mobile lab at Public Works.

Service Agreement with Lancaster Safety Consulting, Inc.

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved an Agreement with Lancaster Safety Consulting, Inc. for Trenching and Excavation Competent Person Training for an amount not to exceed \$4,200.00.

Update Water Policy 6.2.6 Special Exception for Partial Billing Cycle

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved updates to Water Policy 6.2.6 Addition of a "Billing Cycle" definition and minor grammatical fixes to "Section 1.0 Definitions", and addition of a "6.2.6 Special Exception for Partial Billing Cycle" and minor grammatical fixes to "Section 6.0 Billing".

(B.) Environmental Compliance

Notice of Violation: Continued failure to Submit Renewal FOG Application King Gyros SB Express II 1532-A Cassopolis St. (F2015-186)

A motion was made by Jamie Arce and seconded by Rose Rivera to approve a Notice of Violation for King Gyros SB Express II and assess a penalty of \$5.00. Megan explained the violation and penalty that was assessed at the last meeting. They finished everything the next day. The motion carried 4-0.

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7. Engineering

(A.) Administration

Appropriation Request Central Park Lighting

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board appropriated \$35,000.00 from the donation fund for construction costs related to the Central Park Lighting Bid #22-09. Tory Irwin thanked Danielle Garlington on the record for working with Chief of Staff Bradley Tracy to apply for a grant to do this project. They received the full amount requested for the project.

Request Bid #22-09 Central Park Lighting

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #22-09 Central Park Lighting.

Request Bid #22-05 River Greenway Improvements

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #22-05 River Greenway Improvements.

(B.) Right-of-Way

Approval of Transit Agreement with MACOG

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the Transit Services Agreement with MACOG for the 2022 calendar year for \$102,000.00.

Award Quote #22-02 CR 17 Impact Attenuator Repairs

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board awarded Quote #22-02 CR 17 Impact Attenuator Repair Project to Specialties Company, LLC who was the lowest, responsive and responsible bidder with a contract price in the amount of \$78,250.00.

Request Bid #22-08 2022 Curb Ramp Project

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved plans and specifications and granted permission to advertise Bid #22-08 2022 Curb Ramp Project.

Meijer Right of way Dedication

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved and accepted the Meijer Right of Way Dedication as explained to the Board by Eric Trotter.

8. New Business

Uniform Conflict of Interest Disclosures- Gary Boyn, James Rieckhoff

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

EEC Cleaning Contract with Casandra's Perfect Cleaning

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved a contract with Casandra's Perfect Cleaning for \$236.00/month. Jamie noted they asked for three quotes and received one that fits the budget.

Energy Technology and Innovation Grant Agreement

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board awarded Quote #22-04 Energy Technology and Innovation at the Elkhart

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Environmental Center to Wellspring Components, LLC for \$50,000.00. Jeff Zavatsky explained the grant, one of ten recipients in the State of Indiana the EEC received from the Office of Energy development for the installation of renewable energy sources. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the motion was amended to allow Jeff Zavatsky to sign the contract electronically. The amended motion carried 4-0.

Contract with Traci Adams to Provide Job Training

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved a Contract with Traci Adams to provide the new Clerk of the Council training as needed. City Clerk Debra Barrett presented the contract for approval.

BOW Resolution 22-R-01 Renaming Town Green

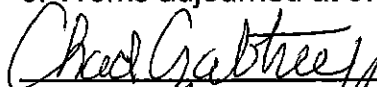
On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved BOW Resolution 22-R-01, a Resolution of the Board of Works authorizing the Mayor to collaborate with the City stakeholders and rename the public space known as the Town Green.

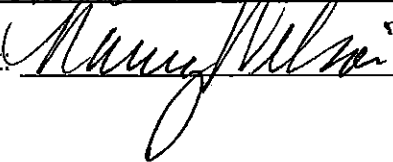
Request Bid #22-10 Police Vehicles

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board Approved Bid #22-10 Police vehicles and granted permission to Josh Holt, Fleet Manager to advertise.

9. Adjournment

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board of Works adjourned at 9:50 a.m.

 _____ Chad Crabtree, Vice-President

Attest:  _____ Nancy Wilson, Clerk of the Board.

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Vice-President Chad Crabtree called a regular meeting of the Board of Public Works to order at 9:00 a.m., Tuesday, February 15, 2022. Clerk of the Board Nancy Wilson called the roll. Chad Crabtree, Jamie Arce, Ronnie Davis, and Rose Rivera attended in person. Mike Machlan attended on WebEx and did not vote. Chad stated the time was 9:00 a.m. and no more bids would be accepted.

1. Approve Agenda

A motion was made by Jamie Arce and seconded by Ron Davis to approve the agenda. On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the agenda was amended by adding the Indiana Landmarks 2022 Contract, Request Quote # 22-05 High Dive Tennis Court Resurfacing and the Fallen Firefighter Wall Reveal Use and Event Permit. The amended agenda carried 4-0.

2. Open Bids

Bid #22-06 Arlington Road Improvements

Proof of publication was presented which appeared in The Elkhart Truth on January 29 and February 5, 2022. The following bids were received:

C&E Excavating submitted a signed and certified bid summary form with all items checked. Their base bid was \$1,345,045.00

Reith-Riley Construction submitted a signed and certified bid summary form with all items checked. Their base bid was \$1,473,520.63.

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

Bid #22-07 Hardee's Parcel Improvements

Proof of publication was presented which appeared in The Elkhart Truth on January 29 and February 5, 2022. The following bids were received:

John Boettcher Sewer and Excavating submitted a signed and certified bid summary form with all items checked. Their base bid was \$333,960.70.

C&E Excavating submitted a signed and certified bid summary form with all items checked. Their base bid was \$335,128.30.

Rieth Riley Construction Company submitted a signed and certified bid summary form with all items checked. Their base bid was \$360,594.26.

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

3. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the claims & allowance docket was approved in the amount of \$4,706,503.71 consisting of 119 pages as prepared on February 10, 2022 at 3:59 p.m.

4. Minutes Regular Meeting February 1, 2022

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the minutes from February 1, 2022 were adopted.

5. Utilities

(A.) Administration

2021 Nitrate Violation

A motion was made by Jamie Arce and seconded Ron Davis by to accept the

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communication regarding the 2021 Nitrate violation. Lynn Brabec explained the violation to the Board. The level of Nitrates was not the problem. It was a reporting issue. The laboratory that we send our samples to received them in late October. They were in the process of changing software. When they ordered the test they ordered the wrong test. They didn't report a problem so Lynn didn't review their results. We received a violation for not reporting Nitrates. We were both at fault. We have put things in place now. When data comes in, we immediately evaluate the data to make sure everything is fine. This lab is normally very efficient. They send notifications if there are any problems. We sent Nitrate samples in, but did not get data for them. Chad closed discussion and called for the vote. The motion carried 4-0.

Wastewater Utility MRO for December 2021

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board accepted the Wastewater MRO for December 2021 and placed it on file.

Request to Engage- Wastewater Microbiology Solutions

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board engaged in a contract with Microbiology Solutions in an amount not to exceed \$2,200.00.

Water Utility MRO for January 2022

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board accepted the Water MRO for January 2022 and placed it on file.

(B.) Regulatory Affairs

Request to Approve Quote for 2022 Safety Training

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board engaged in a contract with Industrial Safety and Environmental Services in an amount not to exceed \$12,900.00 for 2022 Safety Training at the Utility.

(C.) Finance

Notice of Violation: Direct Line Communications

A motion was made by Jamie Arce and seconded by Ron Davis to assess a penalty of \$900.00 to Direct Communications for Unauthorized Use of Utility Services and an additional charge of \$4.16 for the water usage. Utility Accountant Nicolette Kershner explained the violation to the Board. On December 30, 2021 the DPW discovered that our Water Salesman was being utilized by an outside source free of charge. Upon investigation we discovered that a contractor of Direct Line Communications knowingly took a key that was meant for staff and utilized it to obtain water for free. We used cameras to identify the user. Jamie asked if we knew how many times they used it? Nicolette said they used it three times. Jamie noticed in the Ordinance that each day was a separate violation. He recommended referring this to the appropriate authorities to investigate the theft. Nicolette said she took the penalty from the IURC, Illegal Use of Hydrant is \$900.00. Mike Machlan said three occurrences would be \$2,700.00. He expressed his concern with the violation and encouraged the Board to give a maximum penalty.

Shane Gann of Direct Line Communications came forward to speak. This is something they were unaware of. They do not tolerate this. They have been doing business with the City of Elkhart for thirty years and they do not tolerate this. They took this strong against the contractor. He had paperwork in his truck that showed the

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contractor responded to them. They asked them how they got the key, and he thinks there was a language barrier but that is not a reason why. He said they need to make sure their contractors, because they have several doing the work, know this is not tolerated and they do not want them to represent Direct Line this way. Jamie asked if they are doing business with them still, and Shane said yes, but with strong penalties. If this happens again, they will no longer do work with Direct Line. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board increased the fine to \$2,700.00 in addition to the \$4.16 fee for water usage. The amended motion carried 4-0.

(D.) Environmental Compliance

Notice of Violation Failure to Submit Renewal FOG Application WINGS Etc. 106 CR 6 W (F2015-348)

Megan asked the Board to table due to new information received after the Notice was written. On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the WINGS ETC. Violation for FOG was tabled.

Notice of Violation: Failure to Submit Renewal FOG Application 7-Eleven 429 N. Main St. (F2015-018)

A motion was made by Jamie Arce and seconded by Ron Davis to approve a Notice of Violation for 7-Eleven at 429 N. Main St. and assess a penalty of \$345.00. Megan Kolaczyk explained the Violation to the Board. They have not responded to their reminders and phone calls. The FSE was not present. As of today, we have not received the application or response. On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the motion was amended to increase the penalty to \$1,035.00. The amended motion carried 4-0.

6. Engineering

(A.) Utility

Change Order #1: 605 Mason Street Sewer Repair project- Quote #21-09

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 for the 605 Mason Street project, Quote #21-09, for an increase of \$7,270.80, bringing the Contract price to \$72,895.80.

Change Order #4, N. Main Street Water Replacement Project Bid #21-03

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #4 for the N. Main St. Water Replacement Project Bid #21-03, for an increase of \$227,500.00, bringing the Contract price to \$1,785,453.00.

Elkhart WWTP Capacity Upgrades Phase II Partial Payment #40 to Donohue & Associates Inc.

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved payment request #40 in the amount of \$89,730.00 to Donohue & Associates, Inc. from the allocated SRF Loan for professional services on the Elkhart WWTP Capacity Upgrades Phase II project.

(B.) Right-of-Way

Change Order #23 and Final: Jackson Blvd. River District Reconstruction & Elkhart Ave. Streetscape project Bid #18-03

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #23 and Final for the Jackson Blvd. River District & Elkhart Avenue Streetscape project, Bid #18-03, for an increase of \$13,462.57, bringing the

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current Contract price to \$5,456,579.35. Jamie Arce noted for the record the 31.5% increase from the original contract price contained 17.07% that resulted from changing site conditions that could not have been reasonably foreseen.

Change Order #1 Franklin St. Resurfacing CCMG Project Bid #21-25

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board approved Change Order #1 for the Franklin Street Resurfacing CCMG project Bid #21-25 for an increase of \$75,002.35 bringing the current contract price to \$701,550.88.

Change Order Request #1 and Final: Wolf Ave. Curb Ramp Project Quote #21-10

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved Change Order #1 & Final and released all retainage for the Wolf Avenue Curb Ramp Project, Quote #21-10 for an increase of \$3,178.67, bringing the final Contract price to \$22,558.59.

Request Quote #22-05 High Dive Tennis Court Resurfacing

On motion by Jamie Arce, seconded by Ron Davis and carried 4-0, the Board granted permission to quote the High Dive Tennis Court Resurfacing Project Quote #22-05.

(C.) Summary

On motion by Rose Rivera, seconded by Jamie Arce and carried 4-0, the Board ratified the following permits:

Revocable Permits: #6504, Property Owner: EOZ Business, LLC

Property: 240 E. Jackson Blvd.

Permit Holder: DJ Construction

Fence, seating, and trees in the right-of-way

#6505, Property Owner: EOZ Business, LLC

Property: 240 E. Jackson Blvd.

Permit Holder: DJ Construction

Construction driveway and limited barriers

#6506, Property Owner: Lucas Williams

Property: 1401 Kilbourn St.

Permit Holder: Lucas Williams

Placing dumpster in the street

#6507, Property Owner: Jay Page

Property: 212 E. Crawford St

Permit Holder: Premier Lifestyle Services

Placing dumpster in the street in front of the house

#6508, Property Owner: Moose Lodge

Property: 1500 CR 6

Permit Holder: Elkhart Feral Cats

Temporary signs placed in the right-of-way

#6509, Property Owner: Rick Stauffer Jr.

Property: 1519 Elliston Ave.

Permit Holder: Rick Stauffer Jr.

Permanent fence in right-of-way except for utility easements

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- Driveway Permit: #4982, Owner: Melvin Stech
2846 Old US 20 W.
Contractor: Hill Excavating
\$1,500.00 bond by contractor
#5021, Owner: Straight Talk Construction
2436 Timberstone Dr. E.
Contractor: Straight Talk Construction
\$600.00 bond by contractor
- Release of Bond: #4982, Contractor: Hill Excavating
Property: 2846 Old US 20 W.
#5021, Contractor: Straight Talk Construction
Property: 2436 Timberstone Dr. E.
#5023, Homeowner: Josefina Abad Meneses
Property: 125 S. Michigan St.
- Sewer Assessment Application: Daljinder Singh
3815 Augusta Ln.
Elkhart, IN 46517
Property: 2632 S. Sixth St.
Paid in full, \$5,875.00
- Water Assessment Application: Daljinder Singh
3815 Augusta Ln.
Elkhart, IN 46517
Property: 2632 S. Sixth St.
Paid in full, \$600.30
R.B. Realty, LLC
2746 Old US Hwy 20 W.
Elkhart, IN 46514
Property: 3112 Lexington Park Dr.
Paid in full, \$3,394.80

7. New Business
Vehicle Policy

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the updated Vehicle Policy. Nancy Wilson read a comment into the record from Patty Goshorn who asked "what if said employee that is provided by a take home vehicle does not live in the City of Elkhart". Jamie included a response to her question in the discussion.

Budget Encumbrances 2021-2022

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the list of encumbrances from the 2021 budget that will be carried over into 2022 for the Utility.

PSA with Stantec's Urban Places

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board ratified a contract with Stantec's Urban Places in an amount not to exceed \$2,500.00. Mike Machlan reminded staff to have the contract in place before the work is started.

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Commission Assistance Program with Indiana Landmarks

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the 2022 contract with Indiana Landmarks for \$7,250.00 plus \$35.00 for each member of the Historic Preservation Commission membership in Indiana Landmarks.

8. Use and Event Permits

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board approved the following Use and Event permits:

- Frosty 5k 2/12- Parade & Public Assembly, ESS, EMS, EPD, Plaza Sign, Special Exception from Noise
- Girls on the Run 5/14- ESS, EMS, Temporary Street Closures, Special Exception from Noise, Public Assembly
- EPD K-9 5K Race/ 1 Mile Walk- ESS, EMS, EPD, Temporary Street Closures, Public Assembly
- EnviroFest 8/20- Portable Stage, Fencing, ESS, EMS, Golf Cars, Event Trailer, EPD, Temporary Street Closures, Plaza Sign, Bridge Banners, Public Assembly, Special Exception to Noise
- Earth Day 4/30- Fencing, Event Trailer, PA System, Plaza Sign, Special Exception from Noise Ordinance, Public Assembly
- Fallen Firefighter Wall Name Reveal 3/11

9. Public Participation

Tory Irwin informed the Board that Edgar Moreno left the City for another opportunity, and Danielle Garlington is moving to be closer to her family. Danielle thanked the City for the time she spent here.

10. Adjournment

On motion by Jamie Arce, seconded by Rose Rivera and carried 4-0, the Board of Works adjourned at 10:19 a.m.

Chad Crabtree Chad Crabtree, Vice-President

Attest: Nancy Wilson Nancy Wilson, Clerk of the Board

BOARD OF ZONING APPEALS

-MINUTES-

Thursday, January 13, 2022 - Commenced at 6:00 P.M. & adjourned at 6:56 P.M.
City Council Chambers – Municipal Building

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Johnny Thomas
Andy Jones

COPY

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director
Ryan Smith, Planner

LEGAL DEPARTMENT

None present

TECHNOLOGY STAFF

Anthony Elkins

RECORDING SECRETARY

Jennifer Drlich

ELECTION OF OFFICERS

Mulvaney nominates Ron Davis as Vice-Chair; Second by Thomas. Voice vote carries.

Jones nominates Mulvaney for President; Second by Davis. Voice vote carries.

APPROVAL OF AMMENDED AGENDA

Jones makes motion to amend the agenda to remove the withdrawn petition 20-BZA-42; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR DECEMBER 9, 2021

Davis makes motion to approve; Second by Thomas. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Davis makes motion to approve; Second by Jones. Voice vote carries.

OPENING STATEMENT

Welcome to the January 13, 2022 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

21-UV-26 PETITIONER IS MINA YOUSSEF AND DIANA MESEHE PROPERTY IS LOCATED AT 1433 W FRANKLIN STREET

To vary from Section 6.2, Permitted Uses in the R-3 District, to allow a Three-Unit Multiple Family Dwelling. Multiple Family Dwellings are not allowed by right in the R-3 District.

Mulvaney calls petitioner forward.

Youssef appears via WebEx. He states that he bought the property a couple of months ago as a tri-plex and there have been tenants occupying the apartments for at least one year. He would like the property approved as a three-unit.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioners own a house zoned R-3 built in 1910 on Franklin Street east of Bridge Street. The property has come before the board once before, in 2014. At the time, staff had just learned that the property had been converted illegally into a 4-unit. The owners at the time petitioned the Board to legalize the four-unit and were denied. However, the proper renovations to convert the house back to a two-unit which is allowed by ordinance, and the new owners now come before the Board claiming the house to be a three-unit and asking to legitimize its use as such through the variance process.

The house is currently being taxed as a two unit, however the house is being used as a three-unit, with one unit on the first floor of the house, another unit on the second floor, and a third unit in the garage.

The oldest official zoning map is from 1957. That map indicates the zoning district at that time was R-4, Two Family Dwelling District. Note the difference between the R-4 district in 1957 and the current R-4 district which is multi-family. This means that as far back as 1957 the structure would not have been allowed to be converted into a four unit.

Building permit records reveal a 1988 roof permit signed by R.E. Rohrer, owner. In the space labeled "Existing Construction" the hand written entry is "two family dwelling". Application materials and meeting minutes from the 2014 case indicate that the petitioner at that time believed that the garage was converted "sometime around 1969 or 1970" to a "one-bedroom apartment." No building permits were located to indicate that alterations to the structure were permitted.

It is the assertion of the planning staff that 1433 West Franklin is an illegal conversion and does not merit the granting of a use variance.

STAFF RECOMMENDATION

The Staff recommends denial of the use variance based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals and general welfare of the community because an illegal conversion does not deserve to be rewarded by the granting of a use variance; to do so could act to encourage such action by other property owners;
2. The use and value of the area adjacent to the property may be affected in a substantially adverse manner because the property was never intended to accommodate a four-unit dwelling;
3. The need for the variance does not arise from some condition peculiar to the property because there is none;
4. The strict application of the terms of this Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is being sought because the owner may alter the structure back to a legal two unit dwelling and any hardship is self-imposed;
5. The approval will not be in compliance with the Comprehensive Plan which calls for low density residential uses.

Trotter states there were 41 letters mailed. One returned in favor and one not in favor with no comments.

Mulvaney asks if there are questions from the Board for staff.

Thomas asks how this property was discovered as non-compliant.

Smith states that another planner had a conversation with some sort of inquiry. He believes it was prior to the petitioner purchasing the property, but he was not privy to the conversation. He believes there was discussion about what was legal and what was not.

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – No
Jones – No
Thomas – No
Mulvaney – No

Motion fails.

Davis makes motion to deny; Second by Jones.

Davis – Yes
Jones – Yes
Thomas – Yes
Mulvaney – Yes

Motion carries.

**21-X-14 PETITIONER IS RAFAEL PEREZ / TOMASA AGUIRE A
PROPERTY IS LOCATED AT 322 E INDIANA AVE**

A Special Exception of Section 12.3 of the Community Business District to allow the operation of a tattoo parlor.

Mulvaney calls petitioner forward.

Gerardo Mendez appears in person. He states he is the business partner of Kevin Perez and they would like to operate the site as a tattoo shop. He believes there is enough parking.

Mulvaney asks for questions from the Board.

Davis asks if they have met all the state requirements for a tattoo parlor.

Mendez states that they currently have the checklist, and as soon as they are approved, they will submit.

Mulvaney asks if it will be appointment only, no walk-ins.

Mendez states that is correct. There would be 3 artists. Each would have one person at a time and only one or two tattoos a day.

Jones asks if there is more than one business in the building or could they use the whole thing.

Mendez states that they are only using part of the building. He believes the landlord uses the other part for storage.

Jones asks if it has been vacant for a long time.

Mendez states that there was a business there a long time ago, but he believes it has been vacant since that time.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner proposes to convert a portion of an existing commercial building into a tattoo parlor. Their proposal is to have a private studio with two local artists with an additional chair for accomplished guest artists. The idea would be to promote other accomplished artist to utilize their business. The business is proposed to be appointment only and has parking along May Street.

Jose Botello appears in person and states that he is the pastor of the church. He states that they would like to continue to use the location as a church as it has been since 2007, and to use the parcel behind the building as a playground as it has been for more than 50 years. They were not aware they needed the City's approval for these uses.

Davis asks if this is the church across from Michael's.

Botello states that it is.

Davis asks if there would be an issue with parking.

Botello states that there is plenty of parking. He believes on Sixth Street there are 70 spaces and all around the building there is pavement for parking. He states it is a small congregation of 15 or 20 people so there is plenty of parking.

Jones asks about a boat stored in the back on the playground and to whom it belongs.

Botello states that the boat belongs to a petitioner and it will be parked only temporarily.

Jones notes that it is on a paved surface as well.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns two parcels of land at the intersection of Harrison and 6th Street that is currently being operated as a church. The north property is occupied by the church and the southern parcel is being used as an outdoor playground. As the property is located in a Manufacturing district a Use Variance is needed to allow an accessory use to the church. The applicant states that the church has had a positive influence on the surrounding neighborhood.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community as this use will provide services to the general public;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because there will be little to no physical changes to the property;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would prohibit the property from being used by a less intense use than those permitted in the M-1 District;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

Smith states there were 18 letters mailed. One returned not in favor with no comment.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Yes

Motion carries.

22-X-01 PETITIONER IS BETANIA MINISTRIES INC
PROPERTY IS LOCATED AT 525 HARRISON ST

To vary from Section 13.3 Special Exception Uses in the B-3 Service Business District to allow the property to be used as a Church.

STAFF ANALYSIS

The petitioner owns two parcels of land on Harrison Street that is currently being operated as a church. The north property is occupied by their facility and the southern parcel is being used as an outdoor playground. The applicant states that the church has had a positive influence on the surrounding neighborhood. As the property is located in a commercial district a Special Exception is needed to operate a church.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected as this use will provide services to the general public;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be little to no physical changes to the property;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Smith states there were 18 letters mailed. One returned not in favor with no comment.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Thomas.

Davis – Yes
Jones – Yes
Thomas – Yes
Mulvaney – Yes

Motion carries.

22-BZA-02 PETITIONER IS 756 PATRICIA CT – ELKHART LLC
PROPERTY IS LOCATED AT 756 PATRICIA CT

To vary from Section 26.10.D.4.d which requires freestanding signs to be centered on the property line to allow for the installation of a new freestanding sign at the corner of Patricia Court and Middlebury Street.

Trotter asks if petitioner is present in person or online. No petitioner appears.

Davis makes motion to table for one month; Second by Jones. Voice vote carries.

22-BZA-03 PETITIONER IS PAUL GREGORY
PROPERTY IS LOCATED AT 1440 S NAPPANEE ST

To vary from Section 26.7.C.7.1.b.2, Parking Lot Landscaping, which requires that parking lots with between one (1) and 75 spaces have a ten (10) foot landscape strip when adjacent to a right-of-way, to allow a parking lot with a six (6) foot landscape strip adjacent to Nappanee Street, a variance of four (4) feet.

Mulvaney calls petitioner forward.

Alec Seaman with Technical Group appears via WebEx for petitioner. He states this is an existing Burger King and they are redeveloping the entire site. The existing curb cuts do not meet setbacks as required, so they are redeveloping to match them as much as possible; however, along the street there is a drive aisle for access to the drive-thru that cannot be shifted any further or it would be too small to fit any car, making it impossible for the drive-thru to function from Nappanee Street without the variance.

Mulvaney asks for questions from the Board.

Davis asks if it will be a new and improved Burger King.

Seaman states it will be a full interior, exterior, and site remodel.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The property has an existing Burger King restaurant built in 1985 that was damaged in a fire and is currently being demolished. The applicant intends to rebuild the restaurant and redesign the drive thru facilities. The current design of the building and parking areas do not meet the current code requirements.

The redesign will allow the site to meet most of the setback requirements. Because of the size of the property a drive lane will encroach into the front setback along Nappanee Street by 4 feet. The redesign of the site will allow for screening requirements to be met along Nappanee Street.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community as the design of the drive lane will not affect traffic flow or visibility along Nappanee Street;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property has been used as a restaurant in the past;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted as the redesign of the site will bring it more into compliance with the current ordinance requirements;
4. Special conditions and circumstances do exist which are particular to the land involved and which are not applicable to other lands or structures in the same district as the property has been a restaurant but is too small to accommodate the drive lanes needed for onsite traffic flow;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints on rebuilding the restaurant with an appropriate design;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the property was originally designed as a restaurant;
7. This property does not lie within a designated flood area.

Smith states there were 16 letters mailed, none returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Yes

Motion carries.

22-X-02 PETITIONER IS MAC REAL ESTATE, CLAIR MCKINLEY PROPERTY IS LOCATED AT 2501 S NAPPANEE ST

To vary from Section 12.3 Special Exception Uses in the B-2 Community Business District to all a Meeting Hall/Banquet Facility

Mulvaney calls petitioner forward.

Octavia Ray appears in person. She states that she is both owner and renter of the property. She would like to operate The Jubilant Den event hall. The event hall has been used for a lot of community events. They have taken in water for Benton Harbor's water crisis. They host entrepreneur trainings, prayer breakfasts, women's conferences, and plan to offer bridal showers, and birthday parties to select citizens to keep the neighborhood safe and be respectful of other local businesses in the corridor.

Mulvaney asks for questions from the Board.

Davis asks if there will be cooking.

Ray states they will be working with local chefs to offer catering, but no preparation in the hall.

Jones asks if there will be a pre-approved list of caterers or if it is up to whoever is renting the venue for the day.

Ray states that the renter would be able to bring in their food or book with an outside caterer. She does have a list of recommendations that come highly recommended from the South Bend and Mishawaka area.

Jones asks if she owns the entire building.

Ray states that she does not. The property manager, Clair McKinley. She is renting out the last unit on that building.

Jones asks if the part she is leasing has two exterior doors and it two units or just one because the rest of the building looked vacant.

Ray states there are 8 units in the corridor, 4 are vacant, and she is in one of those. She is on the end and they do have two exits, one at the back and one at the front. It is one unit at 2,700 square feet.

Jones asks how many people the one unit will accommodate.

Ray states that because of COVID she does not expect any more than 100 people at a maximum.

Jones states that it will be plenty of parking.

Davis asks if parking will be an issue with the liquor store at the other end.

She states it will not be an issue at all.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is leasing tenant space within an existing multitenant commercial building. The intended use of the tenant space is an event center. The petitioner states that the space could be used for conferences and educational training. The petition states that the space would be able to accommodate 200 people. Primary operation of the facility will be on Sundays but the facility will be available throughout the week from 10 AM till 11 PM.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected as this use will provide services to the general public;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be little to no physical changes to the property;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Smith states there were 17 letters mailed, 0 returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

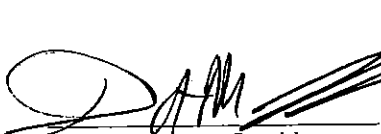
Davis makes motion to approve; Second by Jones.

- Davis – Yes
- Jones – Yes
- Thomas – Yes
- Mulvaney – Yes

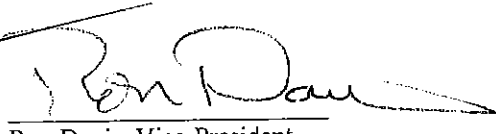
Motion carries.

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Jones makes motion to adjourn and is seconded by Davis. Meeting is adjourned and all are in favor.



Doug Mulvaney, President



Ron Davis, Vice-President

LERNER THEATRE BOARD
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President Gary Boyn called the Regular Meeting of the Lerner Theatre Board to order at 10:00 a.m. on Wednesday, January 12, 2022. The Clerk of the Board, Nancy Wilson called the roll. Gary Boyn, Dallas Bergl, and Ashley Martin attended in-person. Dina Harris and Diana Lawson attended on WebEx. Jamie Arce was absent.

1. AGENDA

On motion by Dina Harris, seconded by Dallas Bergl and carried 5-0, the agenda was approved.

2. ELECTION OF 2022 OFFICERS

On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the Board retained the 2021 Officers in 2022, Gary Boyn, President, Dina Harris Vice-President, and Dallas Bergl, Treasurer.

3. MINUTES: Regular Meeting December 8, 2021

On motion by Dina Harris, seconded by Ashley Martin and carried 5-0, the Board approved the minutes from December 8, 2021.

4. TREASURER'S REPORT

Financials-November 30, 2021

Lenndra Helm of Kruggel, Lawton and Co. attended the meeting on WebEx. The November 30, 2021 financial report was submitted to the Board for review. Total operational expenses of \$717,447 were covered by a City contribution of \$441,454 (62%) and a Lerner contribution of \$275,993 (38%). This compared with 2020 City's contribution of 88% and the Lerner's contribution of 12%. The YTD net income from Theatre operations only (shown as gross profit) at the end of the period was \$244,532 which was an increase of \$115,978 from 2020. The YTD net income for all Lerner operations (including City expenses) at the end of the period was \$429,700 which was an increase of \$568,854 from the net loss on last year's statement of \$139,154. On budgeted City Operational Expenses alone we were under-budget by \$687,546 year to date.

Claims

On motion by Dallas Bergl, seconded by Diana Lawson and carried 5-0, the Board approved the claims and allowance docket totaling \$325,716.77 as listed on the register consisting of 28 pages as prepared on December 6, 2021 at 3:21 p.m.

5. PRESIDENT'S REPORT

Gary Boyn noted he will have discussions with Michelle regarding the policies and whether or not any new policies are needed.

6. FRIENDS OF THE LERNER

Dallas Bergl reported their meeting was postponed. They are making good progress with fundraising. Gary said they will continue to grow the fund.

7. CRYSTAL BALLROOM CATERING

Kurt Janowsky said December was decent, however they did lose three or four events to COVID. They year was down 37% from 2019 all in the first two quarters. Kurt said they were on par from August-December. COVID directly effects events and gatherings. Two years into COVID and we are still struggling.

8. PREMIER ARTS

Tanner Smale reported they have 620 2022 Season Tickets sold, 123 Purple package which is just the Lerner Theatre performances, and 397, the majority are

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Gold package which includes the Goshen Theatre shows! The numbers are picking back up. They are currently rehearsing for Nunsense at the Goshen Theatre. It will be a great kick-off for the season and a lot of fun. Little Shop of Horrors auditions are Saturday, January 22, 2022.

9. GENERAL MANAGER'S REPORT

The General Managers report has been inserted in the minutes as presented.

GENERAL MANAGER REPORT PREPARED BY: MICHELLE FRANK

Activity (Jan-March)	As % of 90 days	
20 Events	22%	Activity in theatre
12 Ticketed Events	13%	Ticketed events
2 Non-Ticketed Events	2%	Non-Ticketed events
6 Rehearsal Dates	7%	Rehearsal Space

Compare to 2021 Board Report Ticketed Events: 1

Compare to 2021 Board Report Non-Ticketed Events +Rehearsals:

11

- Happy New Year! We ended 2021 with an enormous line-up of shows and put an exclamation point on a great second half of 2021 coming out of our Covid shutdown. I'm proud of the team at The Lerner for how they handled the schedule of events, demanding show day hours and logistics to each individual event, specifically during that stretch of shows from December 2nd to December 18th, where we had 100% occupancy in the theatre.
- During our show schedule in the month of December, members of our management team also began training on Prism. We are now fully operational on the system, with the exception of Kruggel Lawton, who will need to do their orientation once Michelle Adams is back from leave. We are excited for how Prism is integrating into our Lerner operations for shows, specifically around show communication and efficiency.
- The City has launched performance evaluations for all full-time City employees, which is tied to the merit salary raises. Our Lerner management team that oversees full-time employees is completing those performance evaluations. The merit increases should take effect in March 2022.
- I am working on revising job descriptions and writing new job descriptions for positions that do not currently have one created. The positions that we will be posting and hiring for in 2022 are:
 - FT Marketing Coordinator
 - PT Facilities Coordinator - NEW
 - PT Development Coordinator
 - PT Floor Manager
- In December, I presented the concept of "Lerner on The Lawn" to Friends of The Lerner Board Members, which was approved for funding at the December meeting. "Lerner on The Lawn" will be a partnership with Premier Arts, who is taking over ArtWalk in 2022. "Lerner on The Lawn" will be a free series that will provide diverse live entertainment during ArtWalk's from May

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to October. The Rex and Alice A. Martin Foundation has graciously offered to sponsor the series, along with Inter Cambio Express, who will be sponsoring the artist fee for a pending artist (to be announced).

OPERATIONS MANAGER REPORT PREPARED BY: SARAH MACER

Accomplished in November:

- Prepared Show Closing documents for every show we were having in December, so our accounting firm was ready for closing purposes.
- Hired additional Ushers and Box Office staff and will continue to do next year.
- Updated shows in December in Show Manager, wrote checks and closed out information for accounting.
- Sent off December facility numbers so the City knows what is going on in the building.
- Updated the Lerner Show files as new shows were added and documents sent out, sent out front of house advances to the team.
- Updated all calendars and contracts for the shows in the theatre.

Goals for January:

Smart Goals for 2022:

I will work on my review and get with Michelle to plan my 2022 Smart Goals for the City.

Peer Committee:

I'll be meeting with Peer Committee to see if they have any issues that need to be addressed after we come out of a very busy December.

Prism Updates:

I want to start educating myself on the ins and outs of Prism which will include contract creation and calendar updates. We did not have time to process this in December and I look forward to diving into it in January.

MEDIA SPECIALIST REPORT

PREPARED BY: SONNY LISI

E-Blast Reporting – December 2021

Email Statistics	
Campaigns Sent	11
Total Emails Sent	47,492
Emails Opened	19,108
Emails Clicked Through	1,338
Starting Subscribers	17,654
Ending Subscribers	19,111
Average Emails Per Campaign	4,317

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Tickets Purchased by City

City	Tickets
Elkhart	3,720
Goshen	830
South Bend	510
Bristol	454
Mishawaka	390
Granger	293
Middlebury	222
Osceola	168
Niles	123
Union	97
Edwardsburg	77
Fort Wayne	76

December Accomplishments

- Worked with the rest of management staff to successfully put on nine straight days of events, including four national tours, right before Christmas, with nine performances at over 500 attendees each and three performances at or above 1,000 attendees each.
- Began inventory of The Lerner's full collection of artwork by taking pictures of the photographable pieces and creating a database of piece names, artist names and birth years, and mediums.
- Finalized and mailed our annual Lerner Christmas card to all current and past supporters of the theatre.

January Goals

- Program a solution to automate the turning off of lights throughout the theatre at a specified time every night. This way, if any lights are missed when the building is closed, they will automatically turn off to save energy and utility cost.
- Continue inventory of The Lerner's full collection of artwork by completely photo inventory, then creating new labels for all pieces. Finally, designing a brochure for patrons that highlights some of our pieces.
- Continue virtual coursework to become a Certified Administrator in the PatronManager ticketing software.
- Develop a solution for controlling and viewing the auditorium's stage camera via computer and phone while in the building on the Lerner's private network.

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BOX OFFICE MANAGER PREPARED BY: TRISTIN PAUFF

Date	Time	Event Name	On Sale Date	Sold	Net Revenue	Hist. Fee	Total Revenue
12/2/2021	7:00 PM	Kimball Organ Concert and Silent Movie: Grandma's Boy	10/21/2021	35	\$235.00	\$105.00	\$340.00
12/3/2021	8:00 PM	Kansas	9/24/2019	55	\$5,378.50	\$137.50	\$5,516.00
12/10/2021	7:30 PM	Premier Arts: A Christmas Carol (12/10/2021 - 12/12/2021 - 3 performances)	5/25/2021	363	\$8,304.00	\$1,089.00	\$9,393.00
12/11/2021	3:00 PM	Premier Arts: Madeline's Christmas	10/8/2021	80	\$1,880.00	\$240.00	\$2,120.00
12/13/2021	7:30 PM	REO Speedwagon	9/9/2021	348	\$31,301.00	\$1,044.00	\$32,345.00
12/14/2021	7:00 PM	Steven Curtis Chapman Acoustic Christmas	9/9/2021	121	\$5,248.75	\$363.00	\$5,611.75
12/16/2021	7:30 PM	A Motown Christmas	7/16/2021	210	\$10,875.00	\$630.00	\$11,505.00
12/17/2021	8:00 PM	Martina McBride - The Joy of Christmas 2021	9/14/2021	195	\$15,217.50	\$585.00	\$15,802.50
12/18/2021	7:00 PM	Epic Holiday!	12/1/2021	983	\$17,977.25	\$2,949.00	\$20,926.25
12/31/2021	8:00 PM	MI Live (Rescheduled)	TBD	20	\$1,140.00	\$60.00	\$1,200.00
2/4/2022	7:30 PM	Premier Arts Season Tickets 2022 (Gold Package - 7 Events, Purple Package - 5 Events)	10/29/2021	481	\$65,327.00	\$1,443.00	\$66,770.00
2/4/2022	7:30 PM	Premier Arts: Nunsense the Musical (2/4/2022 - 2/6/2022 - 3 performances at Goshen Theatre)	10/29/2021	6	\$234.00	\$18.00	\$252.00
2/6/2022	4:00 PM	Elkhart County Symphony: Next Generation	8/24/2021	2	\$69.25	\$6.00	\$75.25
2/24/2022	8:00 PM	Get the Led Out	12/2/2021	344	\$17,381.75	\$1,032.00	\$18,413.75
2/25/2022	7:00 PM	Rodney Carrington: Let Me In!	10/6/2021	142	\$9,575.25	\$426.00	\$10,001.25
3/18/2022	8:00 PM	Aaron Lewis: Frayed at Both Ends, The Acoustic Tour	11/9/2021	185	\$12,248.00	\$555.00	\$12,803.00
3/27/2022	4:00 PM	Elkhart County Symphony: New Adventures, Brahms, and Video Games	8/24/2021	6	\$204.00	\$18.00	\$222.00
4/8/2022	7:30 PM	Chicago	11/19/2021	475	\$50,576.75	\$1,425.00	\$52,001.75
4/23/2022	7:00 PM	Zach Williams	11/1/2021	138	\$8,528.25	\$414.00	\$8,942.25
5/15/2021	4:00 PM	Elkhart County Symphony: New Directions, New Possibilities (Comp tickets per Karen Braden)	8/24/2021	4	\$0.00	\$0.00	\$0.00
5/21/2022	8:00 PM	Gordon Lightfoot	12/12/2019	28	\$1,960.85	\$70.00	\$2,030.85
7/26/2022	7:30 PM	"Weird Al" Yankovic	12/9/2021	758	\$67,865.25	\$2,274.00	\$70,139.25
9/9/2022	7:30 PM	Premier Arts: The Odd Couple (9/9/2022 - 9/11/2022 - 3 performances at Goshen Theatre)	10/29/2021	6	\$234.00	\$18.00	\$252.00
10/1/2022	8:00 PM	Napoleon Dynamite: A Conversation with Jon Heder, Efrén Ramirez, and Jon Gries	12/2/2021	378	\$26,476.25	\$1,134.00	\$27,610.25
Total Ticket Revenue					\$276,271.60		

Accomplishments for December 2021

- Successfully trained 1 new part-time Box Office Team Member.
- Completed Premier Arts Season Tickets 2022 returning subscribers.
- Planned and organized a meeting for the part-time staff (Box Office and Usher) to happen in January 2022.
 - Goal is to introduce all Part-time staff to each other.
 - Have a better understanding of each role.

Goals for January 2021

- Successfully train 1 to 2 new part-time Box Office Team Members.
- Start review process for myself and my team.
- Attend meeting for all part-time staff; hopefully come away with a better understanding of each other and roles.

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TECHNICAL THEATRE MANAGER PREPARED BY: ANDREW KREIDER

Overview:

December was a month full of shows. I was very pleased with how the tech in the building held up under the stress of so many shows back-to-back. I was even more pleased with how well the Lerner backstage team worked together to support both national acts and local performers. Two quotes from the month stick with me. One national tour manager said "We play in a lot of older theaters, and this building is by far the cleanest we have been in. Your staff are doing an amazing job." And the sound engineer with another national tour leaned over to me after sound check and simply said, "Thanks for having a great rig." That made me so happy. Deen worked hard all month to keep adjusting our lighting to work for each group as they came in. Lerner Services turned dressing rooms around night after night. City IT kept us connected to the internet. All in all, it was a very good month. And everyone richly earned their time off after December 19.

Accomplished in December

- Multiple shows, working seven days a week between Thanksgiving and Dec 19.
- Ongoing meetings regarding Lerner HVAC.
- End of year inventory and ordering.

Upcoming tasks:

- Annual maintenance tasks set for January.
- Network switch adjustments.
- Planning for roll-out of new networked security camera system.

ASSISTANT TECHNICAL COORDINATOR PREPARED BY: DEEN TUGGLE

Overview:

To quote Madeline's Christmas, "I am busy, busy, busy, and there's no relief in sight." December was by far the busiest month of this year full of non-stop, back-to-back shows, rehearsals, and events. To keep it short and sweet, all of December I was helping facilitate rehearsals, events, and shows. I assisted many national tours in integrating with our lighting system. It was an extremely busy and restless month but went extremely smooth and well.

Accomplished in December:

- Helped facilitate Premier Arts rehearsals and performances.
- Provided lighting for multiple stage shows.
- Provided lighting assist for multiple touring shows.

Upcoming tasks:

- Prepare the 2022 annual maintenance schedule.
- Begin annual maintenance on lighting equipment.
- Clean and reorganize all storage areas.

FACILITIES MANAGER PREPARED BY: DAN GOULD

2021 was the busiest year I have experienced since I started working at The Lerner and the only way to end your busiest year, is to have your busiest month. December

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Wednesday, January 12, 2022

of 2021 was the busiest December since I have been employed at The Lerner; counting the last week of November and the first three weeks of December. Between the auditorium and the ballroom events, Lerner Services had just three days off, performing all the tasks that were required to keep the building clean and functioning. From unloading and loading trucks for the national tours that rolled through to cleaning the entire building every day for a month, it was routine to work until midnight after a show then return at 8 AM to prepare the building for the show that night. Then, take a break, only to return at 8 PM to work that night's show. Then start the whole process all over again. We also spent some time helping the Tech Department because they were even busier than we were. Andrew Kreider and Deen Tuggle showed what they are made of in December. Quite often they were here when we left at midnight only to see them again when we returned in the morning. When you have the best team in the city. It makes it possible to have a month like December and not miss a beat. I have always taken pride in my duties here at The Lerner. What our team accomplished at the end of 2021, makes me feel proud to be a member of the best team in the city.

With all the shows we had in November and December, it made it difficult to work on the projects I am working to complete. I did manage to replace the can emergency lights in the restrooms and grand hallway to LED. I still have seven can lights that need to be changed to LED. Those fixtures are in the box office entrance and the Premier Arts entrance. When I started the project of switching the can emergency lights to LED, I always planned on switching the fixtures in the entrances last mainly because they are still functioning. A lot of the fixtures in the restrooms had stopped working - or were about to stop working - and both of those entrances have traffic at night because of ballroom events or Premier Arts rehearsals. And of course, I spent time working on our HVAC system. I took advantage of some warm weather in November and December to do some more troubleshooting in the system to try and work out some bugs before the cold weather arrived. My main duty in December was cleaning. I knew with the size and frequency of the events in both the auditorium, and the ballroom. That Lerner Services would be swamped, so I made assisting Lerner Services my top priority. I am proud of the way they performed, and I still say. They are the best crew this city has. I might be slightly biased on that opinion.

January brings the cold weather with the new year, so when we are not clearing snow and ice we will be concentrating on inside tasks. Finishing the LED emergency light project will be a top priority. We will also take advantage of the lack of events in January, to deep clean the restrooms, dressing rooms, carpets, and concrete floors. We will also be fixing wall damage and touching up paint. Can't forget deep clean the auditorium. No rest for the wicked. If we want The Lerner Theatre to remain the premier theater for concerts and other events, we know we cannot rest. Thank you for the opportunity to be part of the great team that The Lerner family has become.

LERNER SERVICES COORDINATOR PREPARED BY: DANIEL REECER

We expected to be busy in December and our expectations were met. With a steady cluster of back-to-back events, I am proud to say my team and I successfully maintained our standard of cleanliness throughout the building. In times like this a

LERNER THEATRE BOARD
Wednesday, January 12, 2022

large crowd attending your venue is equal parts inspiring and frightening. Our routines of building turnover, thorough disinfecting, and no short supply of elbow grease saw us through. All elements considered, the Lerner team worked together for an amazing month of community, festivities, and revelry abounding. Now, a new year and familiar winter projects are coming into focus. We will be treating our carpets and our concrete, as well as restoring the brass kick plates.

Accomplished:

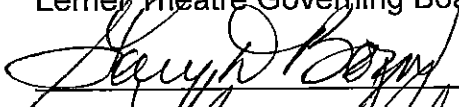
- Great Shows

Upcoming:

- Shampoo Carpets
- Restore Brass Kick Plates
- Basement Wax + Restripe

10. ADJOURNMENT

On motion by Dallas Bergl, seconded by Ashley Martin and carried 5-0, the Lerner Theatre Governing Board was adjourned at 10:34 a.m.



Gary Boyn, President

Attest: 

Nancy Wilson, Clerk of the Board

City of Elkhart Parks & Recreation Park Board Minutes



DATE: January 18, 2022

TIME: 3:30 PM

LOCATION: City of Elkhart Parks & Recreation
Council Chambers,
229 S. 2nd Street, Elkhart, IN 46516

Call to Order at 3:32 PM.

**1. Roll Call- Quorum Present
BOARD MEMBERS PRESENT**

Sarah Santerre President	Nekeisha Alayna Alexis Vice President	Kim Henke Secretary	Mark Datema Treasurer

2. Approval of Agenda

Motion to Approve Agenda
Motion: NAA
Second: KH
Motion Passes with unanimous voice vote

3. Election of Park Board Officers

- a. Mrs. Santerre opens the floor for nominations of Park Board Officers
- b. Mr. Datema nominates himself for Treasurer
 - i. Mr. Datema is elected by unanimous voice vote
- c. Mrs. Henke nominates herself for Secretary
 - i. Mrs. Henke is elected by unanimous voice vote
- d. Ms. Alexis nominates herself for Vice President
 - i. Ms. Alexis is elected by unanimous voice vote
- e. Mrs. Santerre nominates herself for President
 - i. Mrs. Santerre is elected by unanimous voice vote

4. Approval of Minutes

December 21, 2021
Motion: MD
Second: KH
Motion Passes with unanimous voice vote

5. Approval of Financials

Claims: \$28,583.40

Donations: None
Grants: None

Motion to discuss, approve and place on file
Motion: NAA
Second: MD
Motion passes with unanimous voice vote

City of Elkhart Parks & Recreation

Park Board Minutes



As the docket was not available to the Board before the meeting, Mrs. Henke confirms with Mrs. Wingard that the Department is on track with the budget.

6. New Business

a. Lease Agreement for Laydown Yard/Stage Area

The Department was contacted by Tonn & Blank Construction who are working with Elkhart General Hospital on their renovation of the 6th floor. Mr. Ross Warner of Tonn & Blank Construction explains that they would like to use the park area next to the hospital to store equipment and supplies. A few benches may need to be removed, but they will be replaced when the project is over.

Mr. Datema inquires if they plan to take before and after photos.

Mr. Czarnecki explains that any damage incurred will be fixed by the company when they are finished.

Mr. Datema inquires about the liability of anyone entering the space and getting hurt.

Ms. Rivera states that Tonn & Blank Construction is required to add the City to their liability insurance

Motion to ratify

Motion: MD

Second: NAA

Motion passes with unanimous voice vote

7. Old Business - NONE

8. Use and Event Permit Requests

a. None

9. Approval of Department Report

Mr. Czarnecki informs the Board that the New Year's Eve Fireworks and free skating with Inova was well attended.

The Department is currently hiring for 2 full-time positions. The open positions are Volunteer Coordinator and the Program and Recreation Coordinator. For the Program and Recreation Coordinator, the Department is seeking someone with a park and recreation background, that has an understanding of program development already. It is hoped that the person in this position will be able to obtain the Certified Park and Recreation Professional certification which will enhance the Department.

Planning for Spring and Summer has started.

Upcoming events include a Frozen Skate and the Frosty 5 Run.

Mr. Czarnecki introduces Mr. Clarence Thomas to the Board. Mr. Thomas has joined the Department as the Facilities and Operations Manager.

Mr. Thomas introduces himself to the Board.

Ms. Alexis inquires where jobs are being advertised.

Mr. Czarnecki states that jobs are posted on the Indiana Park and Recreation Association website, Indeed, Facebook, and the City website.

10. Approval for Correspondence

Holiday cards were received by the Department from the Human Resources Department, Sunny 101.5, NuToys, and ULead.

11. Public Input/Privilege of the Floor

Mrs. Santerre opens privilege of the floor

Mrs. Santerre closes privilege of the floor.

City of Elkhart Parks & Recreation Park Board Minutes



12. Approval for Adjournment

Motion to adjourn
 Motion: MD
 Second: NAA
 Motion passes with unanimous voice vote
 Adjourn 4:08 pm

PARKS & RECREATION STAFF MEMBERS IN ATTENDANCE

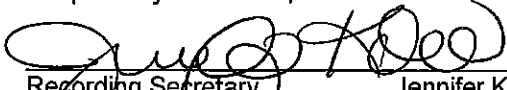


Jamison Czamecki, Superintendent Clayton Brown, Program Coordinator, via Webex Cara Montana, Office Manager	Clarence Thomas, Facilities and Operations Manager Leslie Wingard, Accounting Specialist Jennifer Kobie, Recording Secretary
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ADDITIONAL CITY EMPLOYEES AND GUESTS IN ATTENDANCE

Mr. Matt Riggs, IT Department Ms. Tonda Hines, City Council	Ms. Rose Rivera, Legal Department Mr. Ross Warner, Tonn & Blank Construction	Ms. Corinne Straight, Mayor's Office
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Minutes Certification:

Respectfully Submitted,

 _____ Recording Secretary Jennifer Kobie	
 _____ Park Board President Sarah Santerre	
 _____ Park Board Secretary Kim Henke	

2/15/22 _____ Date
2-15-22 _____ Date
2-15-22 _____ Date

Rod Roberson
Mayor

Adam Amsden
Interim Department Head



City of Elkhart
Elkhart City Communications

574.293.2175
Fax: 574.294.5530

Elkhart City Communications
135 East Franklin Street
Elkhart, Indiana 46516

Date: February 9, 2022

To: Mayor Rod Roberson
Elkhart City Board of Public Safety
Common Council

From: Adam Amsden, Interim Department Head
Elkhart Communications Center

Re: **January 2022 Month End Report**

We processed 8481 incoming & outgoing emergency and non-emergency phone calls. This was a decrease of 745 calls from January of 2021. Below is a summary of the calls we handled in Communications.

CALL SOURCES	911 *This includes Landlines, Wireless, VoIP, TextTTY, and abandoned.* (as reported by ECats State reporting online)	Administrative Incoming/Outgoing (non-emergency)	TOTAL
	1909	6536	8481
2021 TOTALS	2030	7196	9226

By shift, we entered 6908 calls into the CAD, an increase of 663 calls from January of 2021. Below is a breakdown of the call volume by shift.

	POLICE CALLS	FIRE CALLS	OTHER	TOTALS
Day Shift	1999	384	240	2623
Afternoon Shift	2217	333	292	2842
Midnight Shift	1149	182	112	1443
All Shifts	5365	899	644	6908
2021 TOTALS	4914	794	537	6245

*Other Calls refers to calls made to communications that either required a response by other departments, such as Parks Dept., Street Dept., etc. This also includes calls that are dispatched out as attempts to locate, repossessions and/or private impounds.

OTHER BUSINESS

- For the month of January 2021, we handled 43 AUDIO REQUESTS for the Prosecutor's Office and Police Dept. We provided 9 (FOIA) Public Records Requests to individuals.
- We currently have 2 dispatch positions open, with one of those being filled very soon. In addition, we continue to have 1 administrative position open.

Call Summary

Elkhart City 911 Communications Center

135 E. Franklin St

Elkhart, IN 46516

County: Elkhart

Year: 2022

Agency Affiliation: Police

Report Date: 02/08/2022 08:31:51

Report Date From: 01/01/2022

Report Date To: 01/31/2022

Period Group: Month

Days Of Week: All

Call Type: All

Abandoned Filters: Include Abandoned

NSI Filters: NSI Included in 911 Totals

Agency Affiliation: All

	January 2022	Total	County Average
911			
Inbound	1,909	1,909	2,782
Abandoned	33	33	218
Abandoned %	1.70%	1.70%	7.26%
Unparsed	3	3	1
Total	1,945	1,945	3,001
10-Digit Emerg			
Inbound	0	0	0
Abandoned	0	0	0
Outbound	0	0	0
Unparsed	0	0	0
Total	0	0	0
Administrative			
Inbound	4,731	4,731	3,780
Abandoned	3	3	41
Outbound	1,799	1,799	1,527
Unparsed	3	3	4
Total	6,536	6,536	5,352
Avg Call Duration	92.5	92.5	97.1
Total	8,481	8,481	8,355

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

574.295.7275
Fax: 574.522-7808

MEMO

To: Board of Elkhart Parks and Recreation

From: Jamison Czarnecki, Superintendent

Date: February 15, 2022

Re: Parks Department Report

Superintendent's Update

- The Park's Department remains cautious with COVID-19 and is following protocols set by the administration for our programs and events.
- The wintry months have been hard on some of the residents, but the department has been in full swing offering opportunities for people to get out of the house and have some fun still. NIBCO has enhanced their programs with theme skates and will host a Fiesta Themed Weekend on February 25th to 27th.
- Elkhart Parks is offering a youth soccer league May 14th through June 25th and is looking for volunteer coaches to help coach the kids.

Events Report

- On Saturday, January 22nd we hosted the Frozen Skate at NIBCO. We held two sessions of skating for 100+ people and both sessions were sold out! Characters included were Elsa, Anna, Kristof, and Olaf!
- 523 people enjoyed the Valentine Weekend Skate at NIBCO on February 11-13.
- Frosty 5 K/5M was held at Studebaker Park on Saturday February 12th. Kudos to City staff and Paula Turk for making this event a great success! Huge thank you to our sponsors- KemKrest, Martin's Supermarkets, and The Craftsman's Daughter. Final count of those participating in the race was 199!

Programming and Recreation Report

- Big Bad Bingo continues to host youth averaging 16 every Tuesday evening.
- Open Gym Pickleball Wednesday evenings hosted 23 players, largest attendance in the evening yet, February 2
- Registration for Youth Soccer League has opened. Youth ages 6-12 are encouraged to sign up. Games are held on Saturday mornings and registration is \$75 per player. May 14-June 25
- Ladies Inspiring Fitness Together (LIFT) has opened registration for its first season. LIFT is a free fitness course that encourages women 18 and up to participate in a judgement free fitness environment. The course takes place at High Dive Pavilion Monday and Tuesday evenings.
- Parks and Girls on the Run has partnered to open a Girls on the Run of Michiana group for girls grades 3rd-5th at Studebaker Park and Pavilion. The group takes place on Wednesday and Sunday evenings March 16-May 22 and parents are encouraged to sign their youth up at girlsontherunmichiana.org

Ranger Report

January 1 -31, 2022 – Ranger Stan McCray

The Honorable
Rod Roberson
Mayor

Jamison Czarnecki
Parks Superintendent



Parks & Recreation
1320 Benham Ave.
Elkhart, IN 46516

574.295.7275
Fax: 574.522-7808

Citations

- None written.

Various Park Activities and number of people participating.

- Biking (9), Fishing (8), Parking/Sitting (194), Ice Skating (112), Playground (13), Sledding (22), Walking/jogging (146), and Walking Dog (11). Grand Total 513 patrons.

Damage

- None reported.

Other

- January 4 & 8, 2022 – Tolson Center sponsored C.P.R., A.E.D. and First Aid Training for city employees to get certifications. At least 13 people participated in the training from Human Resources, the Parks Dept. and Police Dept.
- January 20, 2022 – While patrolling, Ranger Geib found a Homeless Encampment in Studebaker Park. The encampment was reported to MyElkhart311.

End of Report