CITY OF FISHERS AGENDA

The public may stream the meeting online.

Members of the public may submit comments online before 12pm on Monday, January 1, 0001.

BOARD/COMMISSION: Board of Public Works and Safety Meeting
DATE: 1/9/2024, at 9:00 AM
DIRECTIONS: Fishers City Services Building

BOARD OF PUBLIC WORKS AND SAFETY MEETING, 9:00 A.M., CITY COURT CHAMBERS:

1. **Meeting Called to Order**
2. **Announcements**
3. **Presentations**
4. **Consent Agenda**
   a. Request to review the previous meeting memoranda: Meeting Minutes 12-27-23.
5. **Resolution**
   a. **R010924** – Request to Approve a Professional Services Agreement with Innovative Edit. Board Action Form | Resolution | Exhibit A | Scope
   b. **R010924B** – Request to approve a Professional Service Agreement with Plaid Agency LLC. Board Action Form | Resolution | Exhibit A | Exhibit B | Exhibit C
   c. **R010924C** – Request to approve a Professional License Agreement with Airwavz Solution, Inc. Board Action Form | Resolution | Exhibit A

d. **R010924D** – Request to issue Notice of Award and approve Construction Agreement with Miller Pipeline for 2023 Interceptor Rehabilitation. Board Action Form | Resolution | Exhibit A | Exhibit B | Exhibit C

e. **R010924E** – Request to Approve a Service Fee Agreement for Insurance Broker Services with MJ Insurance. Board Action Form | Resolution | Exhibit A

f. **R010924F** – Request to Approve a Cash Management Agreement with Key Bank for Lockbox Services. Board Action Form | Resolution | Exhibit A

g. **R010924G** – Request to approve renewal of internet service and leased fiber from Crown Castle. Board Action Form | Resolution | Exhibit A | Exhibit B | Exhibit C

h. **R010924H** – Request to approve contract for Internet Service with Everstream. Board Action Form | Resolution | Exhibit A

6. Unfinished/New Business

7. Meeting Adjournment

FISHERS
EST. 1872

CITY OF FISHERS AGENDA

BOARD/COMMISSION: Board of Public Works and Safety
DATE: 12/27/23
DIRECTIONS: Fishers City Services Building

BOARD OF PUBLIC WORKS AND SAFETY MEETING, 9:00 A.M., CITY COURT ROOM:

1. **Meeting Called to Order:**
   - The meeting was called to order at 9:01 a.m. by Scott Fadness. Board members Jeff Lantz, Jason Meyer and Scott Fadness were present.
   - Staff present/Legal: Lisa Bradford, Laura Gropp, Tracy Gaynor, Hatem Mekky, Lindsey Bennett, Tracy Gaynor, and Kari Adriano.
   - Members of the Public: Larry Lannan.
   - Members of the public were able to submit comments to the Board via form submission. No Public Comments were received.

2. **Announcements:**
3. **Presentations:**

CONSENT AGENDA

4a. Request to review the previous meeting memoranda's: Meeting Minutes 12-12-23.
- Jason Meyer made a motion to approve the meeting minutes. Scott Fadness seconded the motion. There was no remonstrance and the motion passed 2 in favor, 0 opposed.

4b. Request to approve the account payable register: Accounts Payable 12-27-23.

4c. **R122723** – A Resolution of the City of Fishers Board of Public Works & Safety Approving the City's 2024 Property and Casualty Insurance Coverage.
Board Action Form | Resolution | Exhibit A
- Jason Meyer made a motion to approve **4b** and **4c** consent agenda. Jeff Lantz seconded the motion. There was no remonstrance and the motion passed 3 in favor, 0 opposed.

RESOLUTION

- **5. R122723C –** A Resolution Confirming the City of Fishers Road Inventory for the Indiana Department of Transportation.
  Board Action Form | Resolution | Exhibit A | Exhibit B
  - Hatem Mekky, Director of Engineering, presented **R122723C** to the board.
  - Jason Meyer made a motion to approve **R122723C**. Jeff Lantz seconded the motion. There was no remonstrance and the motion passed 3 in favor, 0 opposed.

6. **R122723D –** Request to approve resolution amending the City of Fishers Traffic Schedule.
Board Action Form | Resolution
- Hatem Mekky, Director of Engineering, presented **R122723D** to the board.
- Jeff Lantz made a motion to approve **R122723D**. Jason Meyer seconded the motion. There was no remonstrance and the motion passed 3 in favor, 0 opposed.

7. **R122723E –** Request to approve provider agreement.
Board Action Form | Resolution | Exhibit A | Exhibit B

- Laura Gropp, Deputy Director Finance & Operations, Health Department, presented **R122723E** to the board.
- Jason Meyer made a motion to approve **R122723E**. Jeff Lantz seconded the motion. There was no remonstrance and the motion passed 3 in favor, 0 opposed.

REGULAR ITEMS

11. Unfinished/New Business:

12. Meeting Adjournment

- Jeff Lantz made a motion to adjourn the meeting. Jason Meyer seconded the motion.
- There was no remonstrance and the motion passed 3 in favor, 0 opposed.
- The meeting was adjourned at 9:06 a.m.

This meeting was recorded at http://tinyurl.com/CityOfFishers

Respectfully Submitted,

Kari Adriano

Kari Adriano, Board Clerk

RESOLUTION NO. R010924

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT (INNOVATIVE EDIT, INC.)

WHEREAS, the City desires to program the Station portion of the Nickel Plate Trail (the "Station") with various forms of art;

WHEREAS, the City desires to retain the services of Innovative Edit, Inc., a professional artistic firm ("Innovative"), to assist it with curating art within the Station;

WHEREAS, pursuant to an agreement substantially similar to the professional services agreement attached hereto and incorporated herein as **Exhibit A** (the "Agreement"), the City specifically desires for Innovative to (a) create a concept plan for art and light, (b) identify artists to create art using various mediums and serve as the City's owner's representative for delivery and installation of such art, and (c) program light displays, all within the Station.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Board of Public Works & Safety meeting in a duly noticed and regularly scheduled meeting as follows:

Section 1. An agreement substantially similar to the Agreement is hereby approved.

Section 2. This Resolution shall be in full force and effect from and upon its adoption and in accordance with Indiana law.

Section 3. The Mayor is hereby authorized to execute the documents necessary to effectuate the intent of this Resolution.

ALL OF WHICH IS RESOLVED by the City of Fishers Board of Public Works & Safety this 9th day of January, 2024.

BOARD OF PUBLIC WORKS & SAFETY,
CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		**NAY**	**ABSTAIN**
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ________________________DATE: _____________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

""I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____day of January, 2024 (the "Effective Date") by and between the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation (the "City"), and INNOVATIVE Edit Inc., an Indiana corporation (the "Contractor") as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of this Agreement is for the Contractor to collaborate with the City to (a) create a concept plan for art and light, (b) identify artists to create art using various mediums and serve as the City's owner's representative for delivery and installation of such art, and (c) program light displays, all within the Station portion of the City's Nickel Plate Trail as specifically included in the Scope of Work attached hereto and incorporated herein as Exhibit A (individually or collectively, the "Services").

2. **TERM.** This Agreement shall be for a period commencing on the Effective Date and ending on the later of (a) completion of the Services, or (b) February 1, 2025 unless earlier terminated in accordance with the provisions of this Agreement (the "Term"). In no event shall payments be made for work done or Services performed after expiration of the Term.

   A. **Early Termination**. Either Party may terminate this Agreement by giving thirty (30) days written notice of termination to the other Party. Additionally, the City may immediately terminate this agreement upon written notice if (a) Contractor (i) engages in gross misconduct (notwithstanding whether such conduct concerns the subject of this Agreement or Contractor's contractual relationship with the City); or (ii) it becomes generally known that Contractor is insolvent, plans to make a general assignment for the benefit of creditors, is expected to file a voluntary petition of bankruptcy, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, dissolved or liquidated, voluntarily or otherwise; or (b) the Contractor breaches a fiduciary duty owed to City as a result of performance or nonperformance of the Services.

   B. **Termination for Material Default**. In the event of material default, the non-defaulting Party may terminate this Agreement upon three (3) days' written notice which right shall not be subject to the right to cure.

   C. **Survival**. Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of this Agreement, including provisions for payment of amounts owed for work performed under this Agreement during the Term and prior to termination as provided herein. Specifically, if this Agreement is terminated pursuant to subsection (A) – (C), Contractor shall be compensated for any portion of the Services provided prior to City providing written notice of termination.

3. **CONFIDENTIALITY.** Contractor acknowledges that it may be provided certain confidential nonpublic trade secrets, ideas, samples, models, processes, techniques, methods, drafts, know-how, business information, financial information, research, developmental information, client lists, prospect lists, marketing plans and other similar types of information (individually or collectively, "Confidential Information"). Contractor shall exclusively use Confidential Information for the purpose of performing, and assisting in the performance of, the Services. Contractor shall keep all Confidential Information and not disclose any of the same, or any details thereof, or any information relating thereto or derived or developed therefrom, to any third party, without the City's prior written consent. Upon conclusion of the Term, Contractor shall return to City all Confidential Information. This provision shall survive termination of this Agreement.

4. **CONSIDERATION**. For and in consideration of and as a material inducement for Contractor fully satisfying its obligations included herein, Contractor shall be paid One Hundred Seventy Thousand and no/100 Dollars ($170,000.00)(the "Maximum Amount") in twelve (12) equal monthly installments of Fourteen Thousand, One Hundred Sixty-Six Thousand and 66/100 Dollars ($14,166.66) beginning on February 5, 2024 and continuing on or before the 5th day of each consecutive month for eleven (11) months thereafter; provided, however, if the Services are completed prior to December 5, 2024 and Contractor is not in default hereunder, City shall pay the balance of the Maximum Amount within thirty (30) days of Contractor's completion of the Services. Company acknowledges that to be timely paid, Company shall, within ten (10) days of the Effective Date, provide City (a) the completed EFT form attached as <u>Exhibit B</u> (the "EFT Form"), and, if not previously provided to the City during calendar year 2023, (b) a completed W-9 form. All compensation shall be paid to Company by EFT and paid into the account included on the EFT Form. In addition to the Maximum Amount, City shall reimburse Contractor for travel and other related expenses pre-approved in writing by the City.

5. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless City from and against any and all Claims arising from or connected with: (a) breaches by Contractor under contracts to which Contractor is a party, to the extent that such contracts relate to the performance of the Services by Contractor or any party acting by, under, through, or on behalf of Contractor; (b) the negligence or willful misconduct of Contractor or any party acting by, under, through, or on behalf of Contractor; or (c) the breach by Contractor of any term or condition of this Agreement or any Ancillary Agreement. For purposes of this Agreement, "Claims" shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

6. **COMPLIANCE WITH LAWS.** During the Term, Contractor shall fully comply with the Laws while delivering the Services. For purposes of this Section 6, "Laws" shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, as amended. Moreover, Contractor acknowledges and agree that the City must comply with the Laws, including, without limitation, Indiana's Access to Public Records Acts, Ind. Code § 5-14-

3 *et. seq*. and in so complying the City shall disclose the contents of this Agreement and the exhibits attached hereto.

7. GOVERNING LAW.

A. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana.

B. If any section, paragraph, term, condition, or provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, then the section, paragraph, term, condition, or provision so found will be deem severed from this Agreement, but all other sections, paragraphs, terms, conditions, and provisions will remain in full force and effect.

8. CONTRACTOR CERTIFICATIONS. Contractor represents and warrants to the City that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Moreover, Contractor understands and agrees that terms defined in IND. CODE § 22-5-1.7 *et seq*. are adopted and incorporated into this Section 8, and pursuant to IND. CODE § 22-5-1.7 *et seq*., Contractor covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Effective Date, Contractor shall execute the affidavit included as Exhibit C affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Contractor shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Contractor and delivered to the City.

9. MISCELLANEOUS. This Agreement shall inure to the benefit of, and be binding upon, City and Contractor, and their respective successors and assigns; provided, however, Contractor may only assign this Agreement upon written approval of the City. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Contractor waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Contractor may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by City and Contractor. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. To the extent there is a conflict between this Agreement and an Exhibit, this Agreement shall control. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or employment relationship between Contractor and City or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

City of Fishers, Hamilton County, Indiana ________________________

By: ________________________
Scott Fadness, Mayor

EXHIBIT A
SCOPE OF WORK
[*separately provided*]

EXHIBIT B
EFT Form
[*separately provided*]

EXHIBIT C
E-VERIFY AFFIDAVIT

EXHIBIT C
E-VERIFY AFFIDAVIT

Cathleen M. Meisel ("Affiant"), the Business Manager of Innovative Edit, Inc, an Indiana Corporation ("Contractor"), effective as of October 18, 2023 (the "Effective Date"), hereby certifies and affirms the following on behalf of Contractor:

1. Contractor is enrolled in and is participating in the E-Verify program;
2. Contractor does not knowingly employ any unauthorized aliens; and
3. Simultaneously with this E-Verify Affidavit, Contractor has provided documentation that it has enrolled and is participating in the E-Verify program.

Under penalties of perjury, Affiant swears that (a) Affiant has examined this E-Verify Affidavit on behalf of the Contractor and (b) it is true, correct, and complete, and Affiant further declares that Affiant has the authority to sign this E-Verify Affidavit on behalf of Contractor.

____

Cathleen M Meisel

Its: Business Manager

EXHIBIT A
SCOPE OF WORK
(11/09/24 Revision)

719 VIRGINIA AVENUE
#101
INDIANAPOLIS, IN 46203
P: 317.686.6086
F: 317.686.6096
INNOVATIVE
www.innovativei.com

I - CONCEPT PLAN: INNOVATIVE will provide project management, create designs for approval, vet artists, creators and vendors, work with vendors on creative designs and feasibility, gather pricing information, provide monthly updates and present recommendations and considerations of items including production/installation costs, maintenance considerations, and content update schedules to be used in feasibility and budget-making decisions. Formal meetings will be scheduled every month from January ‘24 until Sept ‘24

Overall look and theme to be submitted by 12/18/23

Once a project is approved for production/installation, INNOVATIVE will coordinate with the City of Fishers and the vendor(s) regarding installation timeline, site access requirements and infrastructure needs.

II - OWNER’S REPRESENTATIVE FOR PROCUREMENT:
INNOVATIVE will be responsible for overseeing and reporting on production, delivery and installation of the approved creative art and design. The “all-in” budget for said work is $1,400,000 (1.4 Million Dollars). The “all-in” budget does not include ongoing maintenance and utility costs. Maintaining the completed work should be factored into the City of Fishers yearly DPW operating budget. INNOVATIVE will be responsible for a clear and complete vendor list for updates and ongoing maintenance needs to keep the proposed area safe, creative and pleasurable to the citizens of Fishers and their visitors.

- 116th Street markers above the tunnel (Gateway, focus for folks driving by)
- Markers/Signage for entryways:
    - Plaza between “Another Broken Egg” and the Spark Building
    - Landing at Nickel Plate Hotel
    - Entry at South Street
    - Entry at North Street
    - Entry at Lantern Road
    - Entry at Monumental stairs
    - Monumental Stairs
- Trail Paint
- 116th Street Tunnel Walls/Ceiling
- Supplemental projection over contemporary art design (Tunnel)

EXHIBIT A
SCOPE OF WORK
(11/09/24 Revision)

719 VIRGINIA AVENUE
#101
INDIANAPOLIS, IN 46203
P: 317.686.6086
F: 317.686.6096
INNOVATIVE
www.innovativei.com

BUDGET TARGETS: *Broadbased*

INNOVATIVE Project management	$ 200,000
Design build install custom signage	$ 510,000
Lighting and projection	$ 500,000
Trail paint	$ 50,000
Mapping mural artist	$ 15,000
Light design, Digital Content Programming and Edit	$ 95,000
Misc and overruns as needed to the above	$ 30,000
TOTAL	**$1,400,000**

III - INNOVATIVE Design: To be approved by 12/18/23 (see section I)

- Subcontracted, local vendors will be asked to bid on creative work that is harmonious to eventual approved plan and design. To include:
    - Monumental Stairs, (Warren Butch Harling Plaza)
    - *Key to the City* metal art (73'8 X 5' awarded contract to Zahner Architectural Metal)
    - Artistic lighting and Short Throw Projection over and around contemporary mural in 116th Street Tunnel
    - Up lighting or appropriate embellished illumination on entryway art and signage
    - Lighting Design for large format banners on Switch Garage

NOTES:

- INNOVATIVE design and edit work for 116th Street Garage mural, projection storytelling and content would be outside of the $200,000 project management agreement. Such work would be fully disclosed, agreed to and completed with the City of Fishers approval. The work would fall inside the remaining $1,200,000 designated for the entire project.
- It is understood that individual projects with a budget of $100,000 and above will have to go through an RFP process. It will be important for timing purposes that the RFP process be as streamlined as possible to avoid missing the completion deadline. Approval delays could result in completion timeline adjustments.
- Exhibit A adjustments are reflected as of November 9, 2023 in this document as well as in the detailed location examples document.
- This revised Scope of Work no longer includes previously awarded artwork which includes: the small tunnel north of 116th Street (Zach Medler), the stairs/entrance near Cafe Patachou (Wikinson Brothers) and the Switch Garage Mural (Andrea Haydon).

Board Action Form

MEETING DATE	January 9, 2024			
TITLE	Request to approve Professional Services Agreement with Plaid Agency, LLC.			
SUBMITTED BY	Name & Title: Monica Heltz, Public Health Director Department: Health Department			
MEETING TYPE	☐ Work Session Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☒ Resolution	☐ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☒ 1st Reading	☒ 2nd Reading	☐ Public Hearing	☒ 3rd Reading ☒ Final Reading
	Ordinance #:		Resolution #: R010924B	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☒ Contract required for this item		☐ Signed copy of contract attached	
	☐ Seeking award or other scenario & will provide contract at a later date		☐ No contract for this item	
	☒ Contract over $50,000 Please mark the box in the other column that pertains to this contract.		☒ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document must be recorded with the County Recorder's Office ☐ Wait 31 days prior to filing with the County Recorders' Office		☒ Document does not need recorded with the County Recorder's Office	

Form Revised: 03/20/2019

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☒ Department Head ☐ Deputy Mayor ☐ Mayor ☒ Legal Counsel – *Name of Reviewer:* Lindsey Bennett	☐ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☐ Other:
BACKGROUND (Includes description, background, and justification)	One of the Health Department's goals for 2024 is to improve access and linkage to care through a marketing campaign. This Public Relations and Marketing contract improves health education services across all core service areas. Includes creation of a Communication Strategy and establishing partnerships with key groups and individuals so Fishers residents are informed. PR and Health Department solicited an RFQ in 2023 for services and both departments recommend Plaid Agency.	
BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	$90,000
	Expenditure $:	$90,000
	Source of Funds:	$70,000- HFI funds- 21105058.43100 & $20,000 PR funds 10101016.43100
	Additional Appropriation #:	
	Narrative:	
OPTIONS (Include *Deny Approval* Option)	1.	
	2.	
	3.	
	4.	
PROJECT TIMELINE		
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Staff recommends approval of the Professional Service Agreement with Plaid Agency.	
SUPPLEMENTAL INFORMATION (List all attached documents)		

Form Revised: 03/20/2019

<u>RESOLUTION NO. R010924B</u>

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT (THE PLAID AGENCY, LLC)

WHEREAS, the City of Fishers, Hamilton County, Indiana (the "City) desires certain software, hardware, and consulting services to improve health education services by the City's Health Department and communication services by the City's Communication Department;

WHEREAS, The Plaid Agency, LLC (the "Consultant") has the necessary qualifications, experience and abilities to provide services to the City; and

WHEREAS, the Consultant and the City now desire to enter into an agreement substantially similar to the Professional Services Agreement attached hereto and incorporated herein as **<u>Exhibit A</u>** (the "Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Board of Public Works & Safety meeting in a duly noticed and regularly scheduled meeting as follows:

<u>Section 1</u>. An agreement substantially similar to the Agreement is hereby approved.

<u>Section 2</u>. The Mayor is authorized to execute an agreement substantially similar to the Agreement.

<u>Section 3</u>. This Resolution shall be in full force and effect from and upon its adoption and in accordance with Indiana law.

ALL OF WHICH IS RESOLVED by the City of Fishers Board of Public Works & Safety this 9th day of January, 2024.

BOARD OF PUBLIC WORKS & SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ____________________ DATE: _______________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey Bennett

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 12th day of December 2023 (the "Effective Date") by and between the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation (the "City"), and THE PLAID AGENCY, LLC an Indiana Limited Liability Company (the "Contractor") as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of this Agreement is for the Contractor to provide marketing services for the Fishers Health Department as specifically included in the Scope of Work attached hereto and incorporated herein as Exhibit A (individually or collectively, the "Services").

   This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.

   In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.

2. **TERM.** This Agreement shall be for a period commencing on the Effective Date and ending on the later of (a) completion of the Services, or (b) **December 15, 2024,** unless earlier terminated in accordance with the provisions of this Agreement (the "Term"). In no event shall payments be made for work done or Services performed after expiration of the Term.

   A. **Early Termination**. Either Party may terminate this Agreement by giving thirty (30) days written notice of termination to the other Party. Additionally, the City may immediately terminate this agreement upon written notice if (a) Contractor (i) engages in gross misconduct (notwithstanding whether such conduct concerns the subject of this Agreement or Contractor's contractual relationship with the City); or (ii) it becomes generally known that Contractor is insolvent, plans to make a general assignment for the benefit of creditors, is expected to file a voluntary petition of bankruptcy, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, dissolved or liquidated, voluntarily or otherwise; or (b) the Contractor breaches a fiduciary duty owed to City as a result of performance or nonperformance of the Services.

B. **Termination for Material Default**. In the event of material default, the non-defaulting Party may terminate this Agreement upon three (3) days' written notice which right shall not be subject to the right to cure.

C. **Survival**. Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of this Agreement, including provisions for payment of amounts owed for work performed under this Agreement during the Term and prior to termination as provided herein.

3. CONFIDENTIALITY. Contractor acknowledges that it may be provided certain confidential nonpublic trade secrets, ideas, samples, models, processes, techniques, methods, drafts, know-how, business information, financial information, research, developmental information, client lists, prospect lists, marketing plans and other similar types of information (individually or collectively, "Confidential Information"). Contractor shall exclusively use Confidential Information for the purpose of performing, and assisting in the performance of, the Services. Contractor shall keep all Confidential Information and not disclose any of the same, or any details thereof, or any information relating thereto or derived or developed therefrom, to any third party, without the City's prior written consent. Upon conclusion of the Term, Contractor shall return to City all Confidential Information. This provision shall survive termination of this Agreement.

4. CONSIDERATION. For and in consideration of and as a material inducement for Contractor fully satisfying its obligations included herein, Contractor shall be paid monthly following receipt of invoice by City. Pass-through costs shall be pre-approved in writing by City and will be billed to the City for payment to Contractor unless billed directly to the City (the "Consideration"); provided, however, the Contractor acknowledges that to be timely paid, the Contractor shall within ten (10) days of the Effective Date, provide City (a) the completed EFT form attached as Exhibit B (the "EFT Form"), and, if not previously provided to the City during 2023, (b) a completed 1099 form. All Compensation shall be paid to Contractor by EFT and paid into the account included on the EFT Form.

5. INDEMNIFICATION. Contractor shall indemnify and hold harmless City from and against any and all Claims arising from or connected with: (a) breaches by Contractor under contracts to which Contractor is a party, to the extent that such contracts relate to the performance of the Services by Contractor or any party acting by, under, through, or on behalf of Contractor; (b) the negligence or willful misconduct of Contractor or any party acting by, under, through, or on behalf of Contractor; or (c) the breach by Contractor of any term or condition of this Agreement or any Ancillary Agreement. For purposes of this Agreement, "Claims" shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

6. COMPLIANCE WITH LAWS. During the Term, Contractor shall fully comply with the Laws while delivering the Services. For purposes of this Section 6, "Laws" shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, as amended. Moreover, Contractor acknowledges and agree that the City must comply with the Laws, including, without limitation, Indiana's Access to Public Records Acts, Ind. Code § 5-14-3 *et. seq*. and in so complying the City shall disclose the contents of this Agreement and the exhibits attached hereto.

7. GOVERNING LAW.

A. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana.

B. If any section, paragraph, term, condition, or provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, then the section, paragraph, term, condition, or provision so found will be deem severed from this Agreement, but all other sections, paragraphs, terms, conditions, and provisions will remain in full force and effect.

8. CONTRACTOR CERTIFICATIONS. Contractor represents and warrants to the City that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Moreover, Contractor understands and agrees that terms defined in IND. CODE § 22-5-1.7 *et seq*. are adopted and incorporated into this Section 8, and pursuant to IND. CODE § 22-5-1.7 *et seq*., Contractor covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Effective Date, Contractor shall execute the affidavit included as Exhibit C affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Contractor shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Contractor and delivered to the City.

9. MISCELLANEOUS. This Agreement shall inure to the benefit of, and be binding upon, City and Contractor, and their respective successors and assigns; provided, however, Contractor may only assign this Agreement upon written approval of the City. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Contractor waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Contractor may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by City and Contractor. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or employment relationship between Contractor and City or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

City of Fishers, Hamilton County, Indiana

By: ______________________
Scott Fadness, Mayor

THE PLAID AGENCY, LLC

By: ______________________

Its: ______________________

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
EFT Form
[*included on the following page*]

VENDOR INFORMATION
Fishers Electronic Payment Form
Approved by Mayor, 2018
Approved by City Controller, 2018

Name and telephone number of the person who completed this document must be provided.

Name: ______________________________

Daytime telephone number: ______________________

Print or Type

Legal Name *(Owner of the TIN or SSN as name appears on your tax return. Do not enter business name of a sole proprietorship on this line.)*

Trade Name (Doing Business as Name D/B/A) *(Complete only if payment is to be made payable to the DBA name)*

Remit Address *(number and street, city, state, and ZIP code)*

Purchase Order Address (Optional: *number and street, city, state, and ZIP code)*

Enter 9-digit Taxpayer Identification Number (TIN) of the legal name:
(SSN = Social Security Number, EIN = Employer Identification Number)

(Individual's SSN) __ __ __ - __ __ - __ __ __ __ or EIN __ __ - __ __ __ __ __ __ __

One box must be checked ☐ I am a U.S. Person *(including a U.S. resident alien)* ☐ I am not a U.S. Person *(a W-8 must be filed with the Auditor of State)*

SECTION 1: AUTHORIZATION
According to Indiana law, your signature below authorizes the transfer of electronic funds under the following terms:
Account Holder's Name ______________________ Account Number ______________________

Type of Account ☐ Checking (Demand) ☐ Savings

Please check this box if your direct deposit will be automatically forwarded to a bank account in another

SECTION 2: FINANCIAL INSTITUTION'S APPROVAL ***(Attach a non-altered voided check or have your financial institution complete this section)***

The financial institution identified below agrees to accept automatic deposits under the terms set forth herein:

Name of Financial Institution ______________________________

Telephone (_____) ______________

Address
______________________ Number and Street, and/or P.O. Box No.
______________________ Financial Institution's Authorized Signature
______________________ City, State, and ZIP Code (00000-0000)
______________________ Title
______________________ ABA Transit-Routing Number
______________________, 20______ Date

SECTION 3: ELECTRONIC NOTIFICATION OF ELECTRONIC FUND TRANSFER (EFT) DEPOSITS
(Complete this section only if you are requesting electronic notification. You may provide up to four email addresses.)

I hereby request that all future notices of EFT deposits to the bank account specified above be sent to the following email addresses:

______________________ ______________________
______________________ ______________________

I agree to the provisions contained on the reverse side of this form.

NAME (print or type) ______________________ TITLE ______________________

AUTHORIZED SIGNATURE ______________________ DATE ____________ TELEPHONE NUMBER ____________

EXHIBIT C
E-VERIFY AFFIDAVIT

______________ ("**Affiant**"), the _____________ of The Plaid Agency, LLC an Indiana limited liability company ("**Contractor**"), effective as of __________, 2023 (the "**Effective Date**"), hereby certifies and affirms the following on behalf of Contractor:

1. Contractor is enrolled in and is participating in the E-Verify program;

2. Contractor does not knowingly employ any unauthorized aliens; and

3. Simultaneously with this E-Verify Affidavit, Contactor has provided documentation that it has enrolled and is participating in the E-Verify program.

Under penalties of perjury, Affiant swears that (a) Affiant has examined this E-Verify Affidavit on behalf of the Contractor and (b) it is true, correct and complete, and Affiant further declares that Affiant has the authority to sign this E-Verify Affidavit on behalf of Contractor.

THE PLAID AGENCY, LLC

____

Its: _________________________________
[*SIGNATORY'S POSITION]*

GENERAL SERVICE AGREEMENT

GENERAL SERVICE AGREEMENT (the "Agreement") dated December 1, 2023 (the "Effective Date").

BETWEEN:
Fishers Health Department, with its offices at 2 Municipal Dr, Fishers, IN 46037 (the "Customer")

-AND-
THE PLAID AGENCY, LLC with its offices at 12411 North Pennsylvania Street, Suite 200, Carmel, Indiana 46032 (the "Service Provider").

BACKGROUND:

A. Customer desires certain software, hardware, and consulting services as more particularly described below.

B. The Service Provider has the necessary qualifications, experience and abilities to provide services to the Customer.

C. The Service Provider is agreeable to providing such services to the Customer on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Customer and the Service Provider (individually a "Party" and collectively the "Parties") agree as follows:

Services Provided

1. The Customer hereby agrees to engage the Service Provider to provide the Customer with services (the "Services") consisting of:
    a. Marketing Consulting Services and associated projects as provided as outlined in enclosed Statement of Work (“SOW”)
2. The Services will also include any other tasks which Customer may request, and the Parties may mutually agree on, in writing. The Service Provider hereby agrees to provide such Services to the Customer. The Service Provider also hereby acknowledges that Customer's current intent is that such requests will be made by the Customer's Marketing Committee Chairperson from time to time unless otherwise specified by Customer.

Term of Agreement

3. The term of this Agreement (the "Term") will begin on the Effective Date and will remain in full force and effect for a term twelve (12) months from the Effective Date, subject to earlier termination provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement of the Parties.

Currency

4. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars)

Compensation

5. Subject to all other provisions of this Agreement, for the services rendered by the Service Provider as required by this Agreement, the Customer will provide compensation (the "Compensation") to the Service Provider as denoted in SOW

6. A separate SOW will be provided as an addendum to this Agreement when entering into any additional identified projects. If scope of services changes from SOW, scope change and associated cost differential will be provided as an addendum to this Agreement. Any pass-through costs shall be pre-approved in writing by Customer and will be billed to Customer separately with the following month's invoice unless billed directly to Customer by the third-party. Service Provider will furnish statements to Customer on a monthly basis. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Customer in addition to the Compensation.

Confidentiality

7. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Customer which would reasonably be considered to be proprietary to the Customer including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Customer and where the release of that Confidential Information could reasonably be expected to cause harm to the Customer.

8. The Service Provider agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Service Provider has obtained, except as authorized by the Customer. This obligation will survive the termination of this Agreement.

9. All written and oral information and material disclosed or provided by the Customer to the Service Provider under this Agreement is Confidential Information regardless of whether it was provided before or after the Effective Date or how it was provided to the Service Provider.

Ownership of Materials and Intellectual Property

10. All works created by Service Provider for Customer developed or produced under this Agreement (including any related work in progress), including without limitation, all copyrights, trade secrets, patents, and any other intellectual property and related material (collectively, the "Intellectual Property"), will be "work for hire" and will be the sole and exclusive property of the Customer. The use of the Intellectual Property by the Customer will not be restricted in any manner.

11. The Service Provider may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Customer. The Service Provider will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

Return of Property

12. Upon the expiration or termination of this Agreement, the Service Provider will return to the Customer any property, documentation, records, or Confidential Information which is the property of the Customer.

Capacity/Independent Contractor

13. In providing the Services under this Agreement it is expressly agreed that the Service Provider is acting as an independent contractor and not as an employee. The Service Provider and the Customer acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws shall be Service Provider's sole responsibility and Service Provider shall indemnify and hold Customer harmless from any and all damages, claims and expenses arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments.

Notice

14. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:

a. FISHERS HEALTH DEPARTMENT
2 Municipal Dr,
Fishers, IN 46037
Email: heltzm@fishers.in.us

b. THE PLAID AGENCY, LLC
12411 North Pennsylvania Street
Suite 200
Carmel, Indiana, 46032
Email: samantha@theplaidagency.com

or to such other address as any Party may from time to time notify the other.

Indemnification

15. Service Provider will indemnify and hold harmless Customer, to the fullest extent as permitted by law, from and against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever to the extent that any of the foregoing is caused by the negligent or willful acts or omissions of the Service Provider or its agents or representatives and which result from or arise out of Customer's participation in this Agreement. Service Provider will additionally indemnify and hold Customer harmless from and against any and all claims by any third party for any claim of infringement on the intellectual property rights of said third party, provided the infringement arises, in whole or in part, from 'work for hire' rendered by Service Provider. This indemnification will survive the termination of this Agreement.

Termination

16. This Agreement, and the relationship created hereby, may be terminated by either Party at any time upon sixty (60) days prior written notice.

Modification of Agreement

17. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Time of the Essence

18. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

Assignment

19. The Service Provider will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Customer which consent may be withheld or deemed in the sole discretion of the Customer.

Entire Agreement

20. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Succession

21. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

Titles/Headings

22. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

23. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

24. This Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Indiana, without regard to the jurisdiction in which any action or special proceeding may be instituted. Any dispute filed as a result of or relating to this Agreement shall be exclusively venued in the State court(s) sitting in Hamilton County, Indiana.

Severability

25. In the event that any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof.

Waiver

26. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the agreement has been signed by authorized representatives of both Parties as of the Effective Date.

FISHERS HEALTH DEPARTMENT (Customer)

By:________________

Its:_________________

THE PLAID AGENCY, LLC (Service Provider)

By:_________________

Its:__________________

STATEMENT OF WORK Dated: December 1, 2023

Project Name: FHD 2024 Marketing Retainer

This Statement of Work ("SOW") is entered into between THE PLAID AGENCY ("Consultant"), and FISHERS HEALTH DEPARTMENT ("Customer"), pursuant to a General Services Agreement between the parties dated December 1, 2023.

Service	Deliverable	Schedule	Fees

2024 Marketing Retainer	Key Milestone Activities: To be validated, prioritized, and input into overarching calendar/strategy as dictated by Phase I + II, KPIs, and stakeholder input; these are not comprehensive.
	
	Communication Strategy & Partnership Activities
	• Establish partnerships with key groups and individuals
	  • Align programming with Stigma Free Fisher
	  • Develop communications strategy to share and provide more comprehensive data and information via the Fishers Connect app
	  • Potential influencer partnerships
	    o Kristin Corbitt, Fishers Resident, Health and Fitness Advocate, Mother
	    o Larry in Fishers
	  • Partnership blog content on **This is Fishers**
	  • SPARK! Fishers
	    o Set up an event booth and include games, activities, and contests
	  • Establish media partnerships
	    o Identify opportunities for co-producing health-related content or segments
	    o Leverage partnerships for contests, health forums, and live Q&A sessions with Health Department experts
	  • Develop press kit
	    o Create a Health Department press kit to highlight major initiatives, fact sheets, statistics, and research efforts
	  • Crisis communications strategy
	    o Collaborate with the current crisis communications team
	    o Develop a detailed crisis plan, including team identification, key roles, responsibilities, and protocols
	  • Continue/evolve farmers market presence
	    o TikTok/YouTube Short video campaign
		March 2024 – December 2024	$7,000 per month = $70,000
			
			(70-75 hours per month)

	◦ Identify local micro influencers ◦ Develop content and/or marketing swag/materials based on Phase I + Phase II		

Pricing/Billing Notes
Marketing retainer hours to be billed at $7,000 on the first of each month. Consultant not to exceed 700 hours through the contract term without written approval from Customer.

Payment Schedule:
- $7,000 due on or before the first of each month commencing March 1, 2024

Any approved extensions of scope will be billed in the payment milestone immediately following. All payments are due within ten days of invoice receipt.

IN WITNESS WHEREOF the parties hereto have executed this SOW by their representatives each of whom is duly authorized to execute the same, as of the date first indicated above.

FISHERS HEALTH DEPARTMENT

SIGNED BY:
PRINTED NAME: Monica Heltz
TITLE: Public Health Director at Fishers Health Department

THE PLAID AGENCY

SIGNED BY:
PRINTED NAME: Samantha Schwartz
TITLE: Chief Executive Officer

GENERAL SERVICE AGREEMENT

GENERAL SERVICE AGREEMENT (the "Agreement") dated December 1, 2023 (the "Effective Date").

BETWEEN:
City of Fishers with its offices at 3 Municipal Dr, Fishers, IN 46038 (the "Customer")

-AND-
THE PLAID AGENCY, LLC with its offices at 12411 North Pennsylvania Street, Suite 200, Carmel, Indiana 46032 (the "Service Provider").

BACKGROUND:

A. Customer desires certain software, hardware, and consulting services as more particularly described below.

B. The Service Provider has the necessary qualifications, experience and abilities to provide services to the Customer.

C. The Service Provider is agreeable to providing such services to the Customer on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Customer and the Service Provider (individually a "Party" and collectively the "Parties") agree as follows:

Services Provided

1. The Customer hereby agrees to engage the Service Provider to provide the Customer with services (the "Services") consisting of:
    a. Marketing Consulting Services and associated projects as provided as outlined in enclosed Statement of Work (“SOW”)
2. The Services will also include any other tasks which Customer may request, and the Parties may mutually agree on, in writing. The Service Provider hereby agrees to provide such Services to the Customer. The Service Provider also hereby acknowledges that Customer's current intent is that such requests will be made by the Customer's Marketing Committee Chairperson from time to time unless otherwise specified by Customer.

Term of Agreement

3. The term of this Agreement (the "Term") will begin on the Effective Date and will remain in full force and effect for a term twelve (12) months from the Effective Date, subject to earlier termination provided in this Agreement. The Term of this Agreement may be extended by mutual written agreement of the Parties.

Currency

4. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars)

Compensation

5. Subject to all other provisions of this Agreement, for the services rendered by the Service Provider as required by this Agreement, the Customer will provide compensation (the "Compensation") to the Service Provider as denoted in SOW

6. A separate SOW will be provided as an addendum to this Agreement when entering into any additional identified projects. If scope of services changes from SOW, scope change and associated cost differential will be provided as an addendum to this Agreement. Any pass-through costs shall be pre-approved in writing by Customer and will be billed to Customer separately with the following month's invoice unless billed directly to Customer by the third-party. Service Provider will furnish statements to Customer on a monthly basis. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Customer in addition to the Compensation.

Confidentiality

7. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Customer which would reasonably be considered to be proprietary to the Customer including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Customer and where the release of that Confidential Information could reasonably be expected to cause harm to the Customer.

8. The Service Provider agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Service Provider has obtained, except as authorized by the Customer. This obligation will survive the termination of this Agreement.

9. All written and oral information and material disclosed or provided by the Customer to the Service Provider under this Agreement is Confidential Information regardless of whether it was provided before or after the Effective Date or how it was provided to the Service Provider.

Ownership of Materials and Intellectual Property

10. All works created by Service Provider for Customer developed or produced under this Agreement (including any related work in progress), including without limitation, all copyrights, trade secrets, patents, and any other intellectual property and related material (collectively, the "Intellectual Property"), will be "work for hire" and will be the sole and exclusive property of the Customer. The use of the Intellectual Property by the Customer will not be restricted in any manner.

11. The Service Provider may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Customer. The Service Provider will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

Return of Property

12. Upon the expiration or termination of this Agreement, the Service Provider will return to the Customer any property, documentation, records, or Confidential Information which is the property of the Customer.

Capacity/Independent Contractor

13. In providing the Services under this Agreement it is expressly agreed that the Service Provider is acting as an independent contractor and not as an employee. The Service Provider and the Customer acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws shall be Service Provider's sole responsibility and Service Provider shall indemnify and hold Customer harmless from any and all damages, claims and expenses arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments.

Notice

14. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:

a. CITY OF FISHERS
   3 Municipal Dr,
   Fishers, IN 46038
   Email: elroda@fishers.in.us

b. THE PLAID AGENCY, LLC
   12411 North Pennsylvania Street
   Suite 200
   Carmel, Indiana, 46032
   Email: samantha@theplaidagency.com

   or to such other address as any Party may from time to time notify the other.

Indemnification

15. Service Provider will indemnify and hold harmless Customer, to the fullest extent as permitted by law, from and against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever to the extent that any of the foregoing is caused by the negligent or willful acts or omissions of the Service Provider or its agents or representatives and which result from or arise out of Customer's participation in this Agreement. Service Provider will additionally indemnify and hold Customer harmless from and against any and all claims by any third party for any claim of infringement on the intellectual property rights of said third party, provided the infringement arises, in whole or in part, from 'work for hire' rendered by Service Provider. This indemnification will survive the termination of this Agreement.

Termination

16. This Agreement, and the relationship created hereby, may be terminated by either Party at any time upon sixty (60) days prior written notice.

Modification of Agreement

17. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Time of the Essence

18. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

Assignment

19. The Service Provider will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Customer which consent may be withheld or deemed in the sole discretion of the Customer.

Entire Agreement

20. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Succession

21. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

Titles/Headings

22. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

23. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

24. This Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Indiana, without regard to the jurisdiction in which any action or special proceeding may be instituted. Any dispute filed as a result of or relating to this Agreement shall be exclusively venued in the State court(s) sitting in Hamilton County, Indiana.

Severability

25. In the event that any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof.

Waiver

26. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the agreement has been signed by authorized representatives of both Parties as of the Effective Date.

CITY OF FISHERS (Customer)

By:_________________

Its:__________________

THE PLAID AGENCY, LLC
(Service Provider)

By:__________________

Its:___________________

STATEMENT OF WORK Dated: December 1, 2023

Project Name: Fishers Health Department Marketing Services

This Statement of Work ("SOW") is entered into between THE PLAID AGENCY ("Consultant"), and CITY OF FISHERS ("Customer"), pursuant to a General Services Agreement between the parties dated December 1, 2023.

Service	Deliverable	Schedule	Fees
Campaign Strategy	**Phase I: Onboarding/discovery Timeline:** • Review any/all KPIs to establish a baseline • Identify any currently underserved demographics for additional reach • Identify/validate outreach events and programs for editorial and creative planning • Potential qualitative survey to inform outreach efforts and/or messaging inputs • Identify/validate outreach events and programs for editorial and creative planning	December 2023 – January 2024	$4,000

Campaign Development	**Phase II: Develop Department's Cohesive Brand Identity Timeline: February – March 2024**
	• The Department brand is one of your most important assets
	  ○ This is not just a logo or colors–a brand identity is intentionally crafted. It builds trust, communicates value, and creates unity
	  ○ Consumers will more readily identify, recall, and increase their use/loyalty when they recognize and identify with a brand
	• Based on inputs from Phase I, PLAID will develop a brand identity, including visual look/feel and strategic messaging pillars
	  ○ Consistent tone, voice, and visual identity
	  ○ This foundation will allow us to adapt to a specific audience and service as applicable and/or needed
	• Based on the above, PLAID will develop a strategic editorial plan–content creation, earned media, and strategic curation
	  ○ Monthly/quarterly content pillars to be identified and then multipurposed cross-channel, as applicable (i.e. newsletter, blog, social)
	  ○ Collaborate with FHD team to identify newsworthy stories for a 12-month editorial calendar
	  ○ Include events, thought leadership op-eds, topic-specific story focus, Health Department achievements, and "breaking news" options
		February 2024 – March 2024	$11,000

Campaign Activation	**Phase III: Activation** • While Phase I/Phase II work is in progress, PLAID will also execute upon any current tactics (i.e. newsletter, website updates, social posts) to ensure no interruption in ongoing communications • Concurrently, PLAID will develop newly identified templates, educational materials, etc.	January – February 2024	$2,500 per month = $5,000 (20 hours per month)

***Additional Milestone Project**	Additional Milestone Project: Builder Partnership Events
	• "Building Healthy Communities Together"
	  • Activities:
	    o Community events
	    o Health and wellness workshops
	    o Co-branded campaign
	    o Community initiatives
	• Potential Builder Partners (Recognized as a Top 5 Area of Most Activity):
	    o Pulte Group
	    o Fischer Homes
	    o David Weekly
	    o M/I
	    o Lennar Homes
		March – December 2024	$9,000

Pricing/Billing Notes
Phase III: Activation retainer to be billed at $2,500 at the first of each month. Consultant not to exceed 20 hours per month without written customer approval.

- $1,000 media spend may be added to the project with written Customer approval
- *$9,000 builder partnership project may be added to the project with written Customer approval

Payment Schedule:

- Phase I: $4,000
  - 50% due at project onset at $2,000
  - 50% due upon key findings report at $2,000
- Phase II: $11,000
  - 50% due at project onset at Phase II kick off at $5500
  - 50% due post-delivery of brand identity and editorial calendar at $5500
- Phase III: $5,000
  - $2500 invoiced January 1, 2024
  - $2500 invoiced February 1, 2024

Any approved extensions of scope will be billed in the payment milestone immediately following. All payments are due within ten days of invoice receipt.

IN WITNESS WHEREOF the parties hereto have executed this SOW by their representatives each of whom is duly authorized to execute the same, as of the date first indicated above.

CITY OF FISHERS

SIGNED BY:
PRINTED NAME: Ashley Elrod
TITLE: Community and Public Relations Director at City of Fishers

THE PLAID AGENCY

SIGNED BY:
PRINTED NAME: Samantha Schwartz
TITLE: Chief Executive Officer

FISHERS
EST. 1872

Board Action Form

MEETING DATE	January 9, 2024			
TITLE	Request to approve a Professional License Agreement with Airwavz Solution, Inc.			
SUBMITTED BY	Name & Title: Elliott Hultgren, Deputy Mayor Department: Administration			
MEETING TYPE	☐ Work Session Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☒ Resolution	☐ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☒ 1st Reading	☒ 2nd Reading	☐ Public Hearing	☒ 3rd Reading ☒ Final Reading
	Ordinance #:		Resolution #: R010924C	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☒ Contract required for this item		☐ Signed copy of contract attached	
	☐ Seeking award or other scenario & will provide contract at a later date		☐ No contract for this item	
	☒ Contract over $50,000 Please mark the box in the other column that pertains to this contract.		☒ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document must be recorded with the County Recorder's Office ☐ Wait 31 days prior to filing with the County Recorders' Office		☒ Document does not need recorded with the County Recorder's Office	

Form Revised: 03/20/2019

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☒ Department Head ☐ Deputy Mayor ☐ Mayor ☒ Legal Counsel – *Name of Reviewer:* Jennifer C. Messer	☐ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☐ Other:
BACKGROUND (Includes description, background, and justification)	The City's Event Center is under construction with an anticipated opening in Q4 of 2024. In structures of this size, a Cellular Distributed Antenna System (DAS) is necessary to eliminate poor reception within the facility. ME-Engineers, a subcontractor of SCI Architects (Design Firm), conducted a detailed RFP for Cellular DAS companies. Six were selected for a closer analysis, and ultimately Airwavz Solutions was selected based on their physical network design, frequency coordination, proven collaboration with multiple carriers, relevant experience, and cost model. The physical equipment, network design, installation, and licensee maintenance will result in an operational expense of $16,665/month, following the first month of the acceptance of the communications network (Commencement Date). The initial term is for 10 years, with a 3% annual escalator.	
BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	$16,665.00
	Expenditure $:	
	Source of Funds:	Event Center Operational Expense
	Additional Appropriation #:	
	Narrative:	
OPTIONS (Include *Deny Approval* Option)	1.	
	2.	
	3.	
	4.	
PROJECT TIMELINE		
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Staff recommends approval of the Professional License Agreement with Airwavz Solutions, Inc.	
SUPPLEMENTAL INFORMATION (List all attached documents)		

RESOLUTION NO. R010924C

RESOLUTION APPROVING WIRELESS SYSTEM SITE LICENSE AGREEMENT

WHEREAS, the City of Fishers, Hamilton County, Indiana ("City") is constructing its Fishers Event Center, which will be generally located Southeast of the USA Parkway and Ikea Way Roundabout in Fishers, Indiana (the "Event Center");

WHEREAS, the Event Center will be the home of the Indy Fuel hockey and Fishers Freight indoor football teams and will host other types of entertainment, performances, and events that contribute to the educational, recreational, economic, and cultural development of the community (individually or collectively, the "Event(s)");

WHEREAS, to host the Events, the Event Center must have extensive wireless capabilities;

WHEREAS, after considering various commercial wireless service facility and equipment providers, the City desires to enter into an agreement with Airwavz Solutions, Inc. to provide such commercial wireless facilities, equipment and maintenance all pursuant to the Wireless System Site License Agreement attached hereto and incorporated herein as **Exhibit A** (the "Agreement"); and

WHEREAS, capitalized terms used but not defined herein shall have the meaning ascribed to such words in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Board of Public Works & Safety meeting in a duly noticed and regularly scheduled meeting as follows:

Section 1. An agreement substantially similar to the Agreement is hereby approved.

Section 2. The Mayor is authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect from and upon its adoption and in accordance with Indiana law.

ALL OF WHICH IS RESOLVED by the City of Fishers Board of Public Works & Safety this 9th day of January, 2024.

BOARD OF PUBLIC WORKS & SAFETY,
CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		**NAY**	**ABSTAIN**
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: __________________________DATE: ______________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

““I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.” /s/ Lindsey M. Bennett

WIRELESS SYSTEM SITE LICENSE AGREEMENT

THIS WIRELESS SYSTEM SITE LICENSE AGREEMENT ("***License***") is made effective as of the date of last signature of the parties below by and between Licensor and Licensee ("***Effective Date***").

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. PARTIES AND BUSINESS TERMS.

"*Licensor*":	**The City of Fishers, Indiana,** an Indiana municipal corporation
"*Licensor Notice Address*":	**City of Fishers** 3 Municipal Drive Fishers, Indiana 46038 **Attn:** Lindsey Bennett, City Attorney
with a copy to:	Jennifer Messer 202 E. 71st Street Indianapolis, Indiana 46220
"*Licensee*":	Airwavz Solutions, Inc., a Delaware corporation
"*Licensee Notice Address*":	1410 W. Morehead Street, Suite 100 Charlotte NC 28208 Attn: Contracts Manager

"*Building*": Those buildings and other real property improvements known as Fishers Event Center, having an address of 11313 USA Parkway, in Fishers, Hamilton County, State of Indiana.

"*Initial Term*": Ten (10) years.

"*Renewal Terms*": Each of three (3) successive periods of five (5) years.

2. GENERAL DEFINITIONS.

"*Affiliate*": Any entity that: (i) directly or indirectly (through one or more subsidiaries) controls Licensee; (ii) is controlled directly or indirectly (through one or more subsidiaries) by Licensee; (iii) is under the common control directly or indirectly (through one or more subsidiaries) with Licensee by the same parent company; (iv) is the successor or surviving entity by a merger or consolidation of any such entity pursuant to Applicable Law; or (v) purchases substantially all of the assets of Licensee.

"*Applicable Law*": All laws, rules, regulations, ordinances, directives, zoning and land use regulations, permits, building codes, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) having jurisdiction over the Building and Property.

"Commencement Date": The first day of the first full month following the date of the first Sub-Licensee's acceptance of the Communications Network.

"Communications Network": The wireless network and infrastructure (which may include, for example, a distributed antenna system, eRAN, or DRAN solution) to be constructed in accordance with the terms herein and owned by Licensee which provides for the distribution, propagation, and enhancement of Wireless Services to be provided by one or more Wireless Providers, resulting in enhanced or improved coverage for such Wireless Providers' customers in the areas served by the Communications Network on the Property.

***"Environmental Laws"*:** Any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns or Hazardous Substances as may now or at any time hereafter be in effect.

"*FCC*": The Federal Communications Commission and any successor agencies.

"*Hazardous Substances*": Any toxic or hazardous substance, material or waste or any pollutant or infectious or radioactive material, including, but not limited to, those substances, materials or waste now or in the future regulated under Applicable Law pertaining to hazardous substances, materials, wastes, chemical substances or mixtures, toxic substances, air pollutants, toxic pollutants, solid waste or other similar substances or for the protection of health, ecology, or environment.

***"Property*":** Each parcel of land described on <u>Exhibit A</u> including the Building.

"*Sub-License*": An agreement between Licensee and a Wireless Provider for the utilization of the Licensed Premises (as defined in Section 3) for the provision of Wireless Services.

"*Sub-Licensee*": A Wireless Provider that is a licensee of Licensee under a Sub-License.

***"Telecom Site*"**: An area on or within the Building or on the Property utilized by Licensee or a Sub-Licensee for the provision of Wireless Services including all Wireless Equipment used in connection with and/or providing the Communications Network.

"*Wireless Equipment*": Any equipment owned by Licensee or a Sub-Licensee at the Property and used for the construction, operation and provision of a Communications Network, including, without limitation, all power lines, coaxial, fiber optic and telecommunications cables.

"*Wireless Provider*": Any party that provides Wireless Services.

"*Wireless Services*": Wireless Services are "Radio Communication" services as defined in 47 U.S.C. §153(40) as may be amended or superseded ("Radio Communication" is the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission).

3. LICENSE OF PREMISES. Licensor licenses to Licensee the footprint of any Wireless Equipment installed in or about the Building or on the Property (including, without limitation, areas outside of the Building such as rooftops, parapet walls, common areas, plazas and parking garages) and approved by Licensor pursuant to Section 6 ("***Licensed Premises***"). Additionally, Licensor grants to Licensee (a) the non-exclusive right to utilize any existing utility connections and entries into and through the Building and any existing vertical and horizontal risers, raceways, conduits, and telecommunications pathways in the Building, together with any existing conduit located on the Property and leading into and within the Building (including, without limitation, any such conduit running between multiple buildings when there is more than one building being served or is part of a multiphase project); and (b) an exclusive right to install, operate, repair and replace, as necessary the Communications Network and the provision of Wireless Services, such fiber optic fibers, conduits, cables, connecting points, handholes and equipment related thereto from the nearest public right of way and/or adjacent public and private properties and/or buildings, over, under and across the Property and within the Building, including entryways and building entrances thereto. The foregoing rights are for the benefit and use of Licensee and its Sub-Licensees. Licensee shall never make any use of the Licensed Premises which is in violation of Applicable Law or which is in violation of the general rules and regulations (a copy of the present rules and regulations are attached as Exhibit D) as may be modified from time to time, upon written, mutual agreement of Licensor and Licensee. Licensee may not make any use of the Licensed Premises that (i) is a nuisance, or (ii) makes insurance unavailable to Licensor on the Building under the insurer's standard underwriting criteria.

4. PERMITTED USE; FEES.

(a) **Permitted Use.** Pursuant to the License granted hereinabove, Licensor grants Licensee the exclusive right to utilize the Property for the following uses ("***Permitted Use***"):

(i) ***Marketing.*** To market the Property to all Wireless Providers as a location to establish a Communications Network.

(ii) ***Commercial Wireless Services.*** To enter into and maintain Sub-Licenses with all commercial Wireless Providers for the provision of commercial Wireless Services to the Property via a Communications Network and to install, operate, and maintain Wireless Equipment at the Property for said purpose.

(b) **Fees**. Except as expressly may be provided for in this License, all other fees or other amounts to be paid hereunder are provided for in Exhibit C attached hereto.

5. TERM. This License is effective as of the Effective Date. The "***Term***" is the Initial Term, any Renewal Term, and any Holdover Term in effect as provided below:

(a) **Initial Term.** The Initial Term will commence on the Commencement Date and will expire at 11:59 p.m. on the day prior to the tenth (10^{th}) anniversary of the Commencement Date.

(b) **Renewal Terms.** This License will be automatically extended for each Renewal Term unless (i) as to the first Renewal Term, Licensee elects not to extend this License by providing Licensor written notice no less than ninety (90) days prior to the expiration of the Initial Term or ~~then-current~~first Renewal Term, in which case this License shall terminate at the end of the then-current Initial Term or Renewal Term, (ii) as to the second and third Renewal Terms, Licensee or Licensor elects not to extend this License by providing written notice to the other party no less than ninety (90) days prior to the expiration of the then current Renewal Term, in which case this License shall terminate at the end of the then-current Renewal Term, or (iii) this License is otherwise terminated as provided for in this License.

(c) **Holdover Term**. This License shall renew on a year to year basis if neither party provides the other with notice of termination no less than ninety (90) days prior to the expiration of the last Renewal Term. Either party may terminate this License during each such annual renewal period by providing the other with notice of termination no less than thirty (30) days prior to the end of each such annual renewal period.

(d) **Sub-License(s) Terminate upon expiration of Term or Renewal Term**. Any Sub-Licenses shall be subject to the terms and conditions of this License and shall terminate simultaneously with the termination of this License.

6. INSTALLATION, MAINTENANCE, AND RELOCATION.

(a) **Licensor Approval of Plans.** Prior to the installation of any Wireless Equipment, Licensee will submit plans of the proposed installation to Licensor ("***Plans***"). Licensor will reasonably approve or reject the

Plans with specific reasons within fifteen (15) days of receipt of any initial Plans and within ten (10) days of receipt for revisions to rejected Plans. Reasonable basis for Licensor to reject the Plans include, but are not limited to, the following: if the installation would (i) adversely affect the structural integrity of the Building or the proper functioning of any existing mechanical, electrical, sanitary or other systems of the Property; (ii) adversely affect Licensor's ability to lease or operate the Property or the Building; or (iii) infringe upon or conflict with any existing right. Licensor will also provide in writing any special conditions or requirements related to the proposed installation. References in this License to "Plans" will include all subsequent modifications approved by Licensor.

(b) **Required Approvals.** Prior to installing any Wireless Equipment, Licensee will obtain any applicable licenses, permits, authorizations, consents, and approvals required by any government agency ("***Required Approvals***"). Licensor will execute any applications or letters of authorization within ten (10) days of a request and will cooperate with Licensee and Sub-Licensees to obtain any Required Approvals.

(c) **Installation of Equipment.** Licensee shall provide to Licensor a Licensee-signed Notice to Proceed in substantially the same form as Exhibit F attached hereto and incorporated herein by reference, and upon Licensor signing and returning same to Licensee, Licensee shall be authorized to begin installation of the Wireless Equipment in accordance with this Agreement. At its sole cost and expense, Licensee shall install the Wireless Equipment in a good and workmanlike manner in accordance with the Plans, any Required Approvals, Applicable Law, any written technical standards developed for the Property or the Building by the Licensor, and current industry practices. Such installation work will not unreasonably interfere with Licensor's use of the Property. In addition, the Wireless Equipment installed in the Building shall be in strict accordance with the specifications set forth in Exhibit B attached hereto and incorporated herein by reference. Furthermore, Licensee, in the exercise of its rights granted herein, shall not at any time unreasonably disrupt Building operations, including but not limited to, blocking access to or in any way obstructing Building entrances, lobbies, hallways, elevators, or interfere or hinder the use of the Building's loading docks. Any work activities deemed disruptive to Building operations, including but not limited to core drillings, must be performed after normal business hours as defined by Licensor.

Licensee shall notify Licensor when all work has been completed and all work shall be inspected by Licensor. Within ten (10) days following Licensee's completion of the installation, Licensee shall provide Licensor with documentation evidencing that all applicable permits, licenses, and approvals required for the installation, maintenance, and operation of the Wireless Equipment have been obtained.

Licensee shall not make any structural alterations to the Building without the Licensor's prior written approval. Any structural alterations approved by Licensor shall be made at Licensee's sole cost and expense by a qualified contractor approved by Licensor.

(d) **Licensee Maintenance.** Licensee agrees to maintain at its sole cost and expense (i) the Wireless Equipment in good operating condition and repair and within industry accepted safety standards and in accordance with Applicable Law and (ii) the non-structural portions of the Licensed Premises.

The Wireless Equipment (and any other personal property of Licensee or Sub-Licensee in the Building) remains at the sole risk of Licensee.

Licensee shall, in respect to the condition of the Licensed Premises and at Licensee's sole cost and expense, comply with (a) all Applicable Law relating solely to Licensee's specific and unique nature of use of the Licensed Premises; and (b) all building codes requiring modifications to the Licensed Premises due to the improvements being made by Licensee in the Licensed Premises.

Licensee shall, at its sole cost and expense, repair, refinish, or restore any surface of the Building or part of the Property damaged by or during the installation, operation, maintenance or removal of Wireless Equipment and caused by Licensee or anyone acting on Licensee's behalf. All costs of installation, operation, and maintenance of the Licensed Premises and any Wireless Equipment shall be at Licensee's sole and exclusive cost and expense.

(e) **Licensor Maintenance.** During the Term, Licensor shall ensure that the Property (including, in the case of any building usage, the Building, Building systems, and common areas of the Building), and all structural elements of the Property are maintained in compliance with all Applicable Laws. It shall be Licensor's obligation to ensure compliance with all Applicable Law relating to the Property and Building or other personal property or structures in general, without regard to specific use (including, without limitation, modifications required to enable Licensee to obtain all necessary building permits).

(f) **Licensor Work in Licensed Premises; Relocation.** Licensor and its representatives shall have the right to enter the Licensed Premises for any of the following purposes: (i) to maintain the Building; (ii) to make inspections, repairs, alterations, improvements or additions, in or to the Building; and (iii) to perform any acts related to the safety, protection, preservation, or improvement of the Building. Notwithstanding the foregoing, Licensor will use reasonable efforts to provide Licensee at least ten (10) days' notice (or as much notice as feasible in the event of an emergency) prior to performing any work in the Licensed Premises that is likely to interfere with the operation of Wireless Equipment or that may require the relocation of Wireless Equipment. Licensee will cooperate with Licensor and, if required, will relocate any Wireless Equipment to an alternate location in the Building. Licensor will bear the cost of any relocation required by Licensor.

If, at any time during the Term, Licensor, Licensor's representative, Licensor's tenant or similarly situated party request and/or requires Licensee to surrender, make changes to or otherwise modify (temporarily or otherwise) any portion of the Premises to accommodate improvements, modifications to, or changes in the use of Licensee equipment, pathways or similar located in the Building or on the Premises ("Modifications"), the requesting party shall provide notice. For "Major Modifications" including but not limited to headend location/equipment, fiber/telco entrances, outside plant fiber and similar impacting scope Licensor shall provide Licensee with 180 days' notice prior to the requested change date. For "Minor Modifications", any other Modifications that do not rise to the complexity of Major Modifications, Licensor shall provide Licensee with 30 days' notice prior to the requested change date. If required, Licensor will provide Licensee with alternative space, appropriate for the intended use ("Alternative Space") at no additional cost.

Upon receipt of notice of Modifications, Licensee will create a design ("New Design") to accommodate the Modifications and provide a written, itemized estimate of the costs related to the requested Modifications to Licensor or Licensor's designated responsible party. Prior to any Modifications, the New Design shall be reviewed and approved by both Licensor and Licensee, and any Alternative Space shall be subject to the terms and conditions of this Agreement. Upon approval of the submitted estimate a schedule of activities will be developed and submitted for final review/approval.

Licensee will ensure that the New Design will fulfill the service obligations of this agreement.

Licensor or Licensor's designated responsible party shall reimburse Licensee for all costs associated with these Modifications. Should the Licensor and Licensee disagree on any changes in locations, Licensor's decision will be final. Licensor agrees that Licensee shall not in any way be liable for any degradation signal as a result of the New Design in comparison to the original deployment of the Communications System due to any limitations outside Licensee's control, foreseeable or otherwise, as a result of the Modifications and the impact on the overall operations of the Communications System throughout the Building and Premises.

7. ACCESS. The authorized personnel of Licensee and each Sub-Licensee will have 24-hour, 7 days per week access over, across, and to the Property, using common access roads, driveway, paths, walkways, and such other agreed-upon ways or routes necessary to conduct any activities consistent with the Permitted Use or the allowed use under any License, including access to common areas and facilities of the Property and Building, including but not limited to parking spaces, restrooms, lobbies, elevators, escalators, and stairways. Licensee will not be required to pay any fee to access the Property. All access is subject to the reasonable regulations in effect at the Property, of which Licensor will inform Licensee in writing.

8. INTERFERENCE.

(a) **Licensee and Sub-Licensee Interference.** Licensee will ensure that the Wireless Equipment will not interfere with any systems or components at the Property existing as of the Commencement Date, provided however that said systems and components are functioning within normal operating parameters and are in compliance with Applicable Law. As to such existing systems and components, Licensee agrees to take all reasonable actions as soon as practicable, including but not limited to ceasing all operations (except for testing as approved by Licensor), until interference has been corrected to the reasonable satisfaction of the Licensor. Licensor shall not allow installation of any equipment at the Property that will measurably interfere with the Wireless Equipment and if there is any such measurable interference, Licensor agrees to take all reasonable actions as soon as practicable, including but not limited to ceasing all operations (except for intermittent testing), until interference has been corrected to the reasonable satisfaction of the Licensee. All operations by Licensee and Sub-Licensees will comply with FCC and rules and regulations.

(b) **Emergencies.** If an emergency exists that Licensor reasonably attributes to Wireless Equipment, Licensor will immediately notify Licensee by phone and Licensee will diligently remedy the emergency. If an emergency attributable to the Wireless Equipment poses an immediate threat to either life or human safety or is likely to result in significant property damage, and Licensee cannot remedy the emergency in time to prevent loss or damage, then Licensor may take any reasonable actions to avoid such consequence. Thereafter, Licensee shall promptly respond to the emergency and restore any services that were disrupted at its sole cost and expense.

9. ASSIGNMENT AND SUBLETTING.

(a) **Licensee Assignment.** Licensee may assign this License in whole or in part without consent to (i) an Affiliate or (ii) to any lender or provider of financing to Licensee or to its Affiliate. Otherwise, Licensee may not assign this License to any other party without the prior written consent of Licensor, which such consent shall not be unreasonably withheld. If Licensee or any Affiliate is an entity whose equity interests are listed and traded on a nationally-recognized securities exchange or over-the-counter market, the transfer, sale, or other disposition (including issuance) of stock or other equity interests in such entity will not be deemed an assignment of this License.

(b) **Licensee Sublicensing.** Licensee need not obtain consent of Licensor for any Sub-License.

(c) **Licensor Assignment.** Licensor may assign this License in its sole discretion; provided that Licensor shall provide notice of such assignment to Licensee.

10. TAXES AND ASSESSMENTS. Licensee will pay or cause to be paid any taxes, assessments, charges, or fees identifiable and directly attributable to Wireless Equipment and the use of the Licensed Premises by Licensee or Sub-Licensees levied under any Applicable Law, including any increase in real property taxes chargeable to Licensor resulting from the installation of Wireless Equipment. Licensee will have no liability for any excess profit taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, or other taxes applicable to Licensor's general or net income or chargeable to Licensor as a result of Licensor's business.

11. INSURANCE AND INDEMNITY.

(a) **Licensee's Insurance.** Prior to accessing the Building, establishing any Telecom Site, installing any Wireless Equipment, or performing any other work in the Building, Licensee will procure and continue in force during the Term at its own expense:

(i) workers' compensation insurance (at statutory limits) and employer's liability insurance with minimum limits of $1,000,000;

(ii) commercial general liability and property damage insurance providing occurrence form coverage for operations and for contractual liability with respect to liability assumed by Licensee hereunder, such insurance including a designated location general aggregate limited endorsement equivalent to ISO form CG 25 04, and with limits of coverage for such insurance not being less than $1,000,000, with a combined limit for bodily injury and/or property damage for any one occurrence and $2,000,000 in the aggregate;

(iii) excess liability (umbrella) insurance with a minimum limit of $5,000,000 per occurrence; and

(iv) special form endorsement for causes of loss with replacement value coverage insuring the Licensed Premises and Licensee's personal property for its full replacement cost.

All policies will be written by an insurer acceptable to Licensor licensed to do business within the state where the Property is located and will provide that such coverage will not be cancelled or materially, adversely changed without a minimum of thirty (30) days' written notice to Licensor. The policies listed in clauses (ii) and (iii) above will list Licensor and its property manager as additional insureds, by endorsement or otherwise. Licensee may procure the coverage required under this paragraph under one or more blanket policies of insurance covering the Building and other locations of Licensee. Upon request of Licensor, Licensee will provide a certificate of insurance to Licensor evidencing such coverage.

(b) **Licensor's Insurance**. Licensor will procure and continue in force during the Term at its own expense a commercial general liability and property damage insurance policy on an occurrence basis in an amount not less than $1,000,000 combined single limit. Upon request of Licensee, Licensor will provide a certificate of insurance to Licensee evidencing such coverage.

12. REMOVAL OF EQUIPMENT UPON TERMINATION OR EXPIRATION. Following the termination or expiration of this License, Licensee will remove any Wireless Equipment owned by Licensee from the Property, and following any termination or expiration of any License during the Term, Licensee will cause the applicable Sub-Licensee to remove any Wireless Equipment owned by said Licensee from the Property. In performing the removal, Licensee will restore any portion of the Building and/or Property that is damaged or disturbed by the use or removal of Wireless Equipment to as good a condition as it was in prior to the installation of Wireless Equipment, reasonable wear and tear and casualty excepted. If Wireless Equipment is not removed within ninety (90) days after expiration or earlier termination of this License, Licensor may remove and store it, and Licensee will reimburse Licensor for the costs of removal and restoration of the Building and/or Property and any storage costs. Licensor may not sell or dispose of Wireless Equipment until four (4) months after the expiration or sooner termination of this License.

13. DEFAULT; REMEDIES; TERMINATION.

(a) **Default.** It will be a "***Default***" if any one or more of the following events occurs:

(i) if any party's representations or warranties are false in any material respect;

(ii) if either party fails to pay when due any sum of money due to the other party, and the non-complying party does not remedy the failure within ten (10) business days after written notice by the other party;

(iii) if either party files any petition or action for relief under any creditor's law (including bankruptcy, reorganization, or similar action), either in state or federal court, or has such a petition or action filed against it which is not stayed or vacated within 60 days after filing;

(iv) if either party makes any transfer in fraud of creditors as defined in Section 548 of the United States Bankruptcy Code (11 U.S.C. 548, as amended or replaced), has a receiver appointed for its assets (and the appointment is not stayed or vacated within (30) days), or makes an assignment for benefit of creditors; or

(v) if either party fails to perform any other obligation and does not remedy the failure within thirty (30) days after written notice by the other party or, if the failure cannot reasonably be remedied in such time, if the non-complying party does not commence a remedy within thirty (30) days and exercise reasonable efforts to prosecute the remedy to completion.

(b) **Remedies.** Upon the occurrence of a Default, the non-defaulting party will be entitled to terminate this License upon thirty (30) days' written notice to the defaulting party and to pursue any additional legal and equitable remedies permitted by Applicable Law. The non-defaulting party will have the obligation to mitigate its damages arising out of or resulting from such Default and subsequent events.

(c) **Waiver of Consequential Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER NOR TO ANY THIRD PARTY FOR LOSS OF ANTICIPATORY PROFITS OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST BUSINESS OPPORTUNITIES OR MARKET SHARE (COLLECTIVELY, "CONSEQUENTIAL DAMAGES") INCURRED IN CONNECTION WITH THIS LICENSE, INCLUDING BUT NOT LIMITED TO, ANY CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO ANY NETWORK DISRUPTION, MALFUNCTION, DISRUPTION OF SERVICE, VANDALISM, ACTS OF GOD (INCLUDING, WITHOUT LIMITATION, LIGHTNING, WIND, RAIN, HAIL, FIRE OR STORMS), OR ANY OTHER REASON, EVEN IF THE PARTIES CONTEMPLATED THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

(d) **Termination by Licensee**. Licensee may terminate this License for any reason by providing no less than ninety (90) days' written notice to Licensor.

14. UTILITIES.

(a) **Utilities Required.** The parties acknowledge that utilities, including but not limited to electricity, telephone service, and internet access, are essential to the operation of Wireless Equipment and Licensee and Sub-Licensees shall have access and the right to same at all times during the Term. Licensor shall provide utilities in all locations where Wireless Equipment will be located on the Property, including, without limitation, riser closets, and to the extent that any of the Wireless Equipment requires internet service, Licensor shall provide internet service to those locations at Licensee's request, all at Licensor's sole cost and Licensee shall have no obligation to pay for such utility or internet services. If Licensee is requested by Licensor to coordinate the delivery of internet service to the Wireless Equipment, Licensee may do so, but Licensor shall be responsible for all costs incurred by Licensee for such delivery and Licensor shall thereafter pay for any recurring charges for the internet services.

(b) **Electrical Service Outages and Interruptions.** Licensor will reasonably schedule any planned utility outage outside of the Property's normal business hours and will notify Licensee at least two (2) business days in advance of any planned utility outages of which Licensor has notice that may interfere with the use and operation of Wireless Equipment. Licensor will reasonably cooperate with Licensee in obtaining alternate power during planned utility outages at Licensee's sole cost and expense and Licensor will use reasonable diligence to restore any interruption in electrical service as soon as possible to the extent Licensor has the ability to do so.

(c) **Lighting and HVAC for Interior Areas.** To the extent the Licensed Premises includes any interior areas of the Building, Licensor will supply to those areas at no cost to Licensee lighting and HVAC in normal quantities consistent with that supplied to the remainder of the Building. In the event of any interruption to lighting or HVAC, Licensor will restore said services as soon as reasonably possible.

15. CASUALTY AND CONDEMNATION.

(a) **Casualty.** In case of damage to any part of the Property that is essential to the Permitted Use, Licensor will at its own expense repair the Property to a condition as nearly as practicable to that existing prior to the damage unless Licensor reasonably decides not to repair or rebuild the Property because of the following: (i) the casualty is not insured under standard fire policies with extended type coverage; (ii) the holder of any mortgage, deed of trust, or similar security interest encumbering the Building does not permit the application of adequate insurance proceeds for repair or rebuilding; or (iii) the damage affects a significant portion of the Building. Within sixty (60) days from the date of casualty, Licensor will provide written notice to Licensee of its intent to either repair the damage, which will include an estimated date of completion, or to terminate this License. If Licensor's estimate to repair the damage exceeds one hundred eighty (180) days from the date of casualty, Licensee will have the option to terminate this License upon written notice to Licensor. In the event that either party terminates the License pursuant to this Section, the termination will be effective as of the date of casualty.

(b) **Condemnation.** If all or "substantially all" (meaning the remaining portion thereof is not of sufficient size or condition to permit the continuation of any of the Permitted Use in a reasonable manner) of the Property is taken by eminent domain, or by deed in lieu of condemnation, then Licensee may terminate this License by providing written notice to Licensor within thirty (30) days of such condemnation or eminent domain action, which will be effective as of the date of the vesting of title in such taking and any amounts prepaid to Licensor will be apportioned as of said date and reimbursed to Licensee, and Licensor and Licensee may pursue their own separate awards. In the event of any taking of less than all or substantially all of the Property, this License will continue and Licensor and Licensee may pursue their own separate awards.

16. LICENSOR REPRESENTATIONS AND WARRANTIES.

(a) Licensor represents, warrants and covenants that (i) no lead-based paint, asbestos or other hazardous substance, as defined by any applicable state, federal or local law or regulation, is present at the Property; (ii) Licensor owns the Property or otherwise has the right to grant the rights given in this License; (iii) the Licensor has obtained all required consents or approvals from any person or entity having an interest in the Licensed Premises that may be necessary to enter into and fulfill its obligations under this License; (iv) Licensor is not in default under any lease or other agreement affecting the Property; (v) the Property and all personal property and structures thereon are in compliance with all laws, including any applicable building codes, regulations, or ordinances which may exist with regard to same, or any part thereof; (vi) except as provided for below, there are no liens, judgments or impediments of title on the Property, or affecting Licensor's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Property by Licensee as set forth herein; and (vii) to Licensor's knowledge, any building on the Property in which any portion of the Licensed Premises is located, including without limitation the roof, foundations, exterior walls, interior load bearing walls, and utility systems, is in good condition, structurally sound, and free of any leakage. If a breach of the representations and warranties contained in this Section 16 is discovered at any time during the Term, Licensor shall, promptly after receipt of written notice from Licensee setting forth a description of such non-compliance, rectify same at Licensor's expense.

(b) Except as expressly provided for in this License, Licensor is making no other warranties, express or implied, or statutory, including as to the merchantability or fitness for a purpose, of the Property or as to any other matter, all of which warranties are excluded and disclaimed.

17. QUIET ENJOYMENT AND TITLE. Licensor represents that: (i) Licensor has good, marketable, fee simple title to or a long-term lease for the Property free and clear of any restrictions, conditions, covenants, easements, leases or licenses that will interfere with, impair or adversely affect the right of Licensee and Sub-

Licensees to conduct the Permitted Use at the Property; (ii) Licensor's execution and performance of this License will not violate any Applicable Laws, covenants, or the provisions of any mortgage, deed of trust, encumbrance or lease binding on Licensor; (iii) Licensor is not in default of any underlying leases or other agreements from which the Licensor derives its interest in, or related to, the Property or any mortgage or deed of trust that encumbers the Property, and has committed no act that with the mere passage of time or if the giving of notice will ripen into a default; and (iv) Licensee will have the quiet enjoyment of the Licensed Premises as long as there is no Default by Licensee.

18. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT. This License is subject and subordinate to all existing licenses and/or leases for the Property and to all mortgages, deeds of trust and similar security documents that may now or in the future exist encumbering the Property or any portion thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof.

19. WAIVER OF LIENS. Licensor waives any statutory liens with respect to the Wireless Equipment. Licensee or Sub-Licensees may pledge or collaterally assign their ownership rights in Wireless Equipment to any financing source. The collateral assignment or pledge will not affect the Property or any Building and the Licensee or Sub-Licensees may not create a lien or encumbrance on the real estate to which the Wireless Equipment is affixed. So long as any lender has cured any failure of Licensee to perform its obligations under the License within the cure or grace periods set forth in this License, Licensor agrees not to dispossess Licensee or terminate this License as a result of such failure and agrees to accept performance of the lender in curing such failure as that of the Licensee.

20. NOTICES. Except as otherwise stated, all notices must be in writing and personally delivered, mailed via U.S. certified mail return receipt requested, or transmitted by courier for next business day delivery to the Notice Addresses of Licensor and Licensee in Section 1. Either party may change its Notice Address by sending written notice to the other party, and the new Notice Address will be effective fifteen (15) days after receipt by the other party. Notices will be deemed to have been given upon either receipt or rejection. Any notice that is given by a party may be given by the attorneys for that party.

21. HAZARDOUS SUBSTANCES.

(a) **Use of Hazardous Substances.** Licensee agrees that it will not use, generate, store or dispose of Hazardous Substances on, under, about or within the Property; except for those materials that are necessary and directly related to the Permitted Use, in which case, the use, storage and disposal of such Hazardous Substances will be in compliance with Environmental Laws. Notwithstanding anything contained in this License to the contrary, Licensee will not have any liability to Licensor resulting from any conditions existing, or events occurring, or any Hazardous Substances existing or generated at, in, on, under or in connection with the Property prior to the Commencement Date, except to the extent Licensee has been notified of the existence thereof by Licensor and exacerbates the same through its negligence or willful misconduct and then only to the extent of such exacerbation.

(b) **Hazardous Substances at the Property.** Licensor represents and warrants to Licensee that the Property is and shall be throughout the Term, free of all Hazardous Substances that are in violation of any Environmental Laws. In the event there are Hazardous Substances at the Property, Licensor will provide any and all information regarding the presence or absence of such Hazardous Substances. Licensor acknowledges that in the absence of confirming data or reports, Licensee may conduct further testing to ensure compliance with Environmental Laws. Specifically excepted are de minimus amounts of Hazardous Substances being used by Licensor and Licensees and occupants of the Property in connection with such parties' ordinary and regular conduct of business at the Property in accordance with Environmental Laws. In the event there is a breach of Licensor's representations and warranties regarding Hazardous Substances at the Property during the Term, and such breach arises from the acts or omissions of a party other than Licensee or those acting for or under Licensee, Licensor shall rectify same at Licensor's expense.

(c) **Environmental Laws.** Licensor will be responsible for all obligations of compliance with any and all Environmental Laws in any way related to the Property, unless such compliance issues are caused by the specific activities of Licensee in the Licensed Premises. Licensor shall hold Licensee harmless and indemnify Licensee from, and assume all duties, responsibility and liability at Licensor's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding (collectively, "***Claims***") which is in any way related to failure of Licensor to fulfill its obligations under this Section 20(c). Licensee in conducting its activities pursuant to this License will comply with all Environmental Laws and shall hold Licensor harmless and indemnify Licensor from and assume all duties, responsibility and liability at Licensee's sole cost and expense, for all Claims arising from or in any way related to the failure to comply with Environmental Laws applicable to Licensee by Licensee or any party acting on Licensee's behalf.

22. ESTOPPEL CERTIFICATES. Within fifteen (15) days after either party's request, the other party will deliver a statement stating: (i) that this License is in full force and effect and whether any options granted to Licensee have been exercised; (ii) the amount of fees paid and the payment dates, and any overpayment, underpayment, or prepayment (iii) to the actual knowledge of the certifying party, whether or not there is a Default by either party; (iv) whether Licensee has any rights to offsets or abatement of any fees due hereunder; and (v) certifying such other facts as the requesting party reasonably requests.

23. LICENSE RUNS WITH PROPERTY. This License will run with the land and will be binding upon and inure to the benefit of the parties and their respective successors and assigns.

24. AUTHORITY. Each party warrants that (i) it legally exists and is in good standing in its state of domicile and the state in which the Property is located, (ii) it is qualified to do business in the state in which the Property is located, and (iii) it has authority to enter into this License and has obtained all necessary consents to perform its obligations. Upon either party's request, the other party will provide evidence reasonably satisfactory to the requesting party confirming the foregoing warranties.

25. EQUIPMENT AS PERSONALTY. Except as otherwise provided hereinabove, the Wireless Equipment will remain the personal property of the Licensee or any Sub-Licensee, as appropriate, notwithstanding the fact that it may be affixed or attached to the Property and will be removable consistent with the provisions of this License.

26. BROKERS. Each party hereto will be responsible for any obligations or liability, contingent or otherwise, for brokerage or finder's fees or agent's commissions or other like payment arising out of such party's dealings with third parties.

27. MECHANICS LIENS. Licensee shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the Building and the Property or any part thereof by reason of work, labor, services, or materials requested and supplies claimed to have been requested by either Licensee or any Sub-Licensee; and if such lien shall at any time be so filed, Licensee shall cause it to be canceled and discharged of record (by bonding or otherwise), within thirty (30) days after notice of the filing thereof, and Licensee shall indemnify and hold harmless Licensor from any loss incurred in connection therewith.

28. MISCELLANEOUS.

(a) **Business Days.** If the day for performance falls on a Saturday, Sunday or holiday for which banking institutions in the state in which the Property is located are generally closed, then the day for such performance will be the next business day.

(b) **Force Majeure.** The period of time during which either party is prevented or delayed in the performance of any non-monetary obligation required to be performed under this License due to delays caused by fire, catastrophe, strikes, labor trouble, civil commotion, acts of God or the public enemy, governmental prohibitions or regulations or other causes beyond such party's reasonable control, will be added to such party's time for performance thereof, and such party will not be deemed in default hereunder as a result of such delay.

(c) **Entire Agreement; Amendment.** This License embodies the entire agreement between the parties and it may not be amended, modified or terminated except by a writing duly signed by the party to be charged. There are no representations or understandings existing prior to the date hereof between Licensor and Licensee that are not stated in this License.

(d) **Severability.** If any of the provisions of this License, or the application thereof to any person or circumstances, will, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected thereby, and every provision of this License will be valid and enforceable to the fullest extent permitted by Applicable Law.

(e) **Non-Waiver.** A party's failure to exercise its rights with respect to a breach of any term of this License or to insist on the strict performance of any term of this License will not be a waiver of such term.

(f) **Relationship of Parties.** Licensor and Licensee acknowledge and agree that the relationship between them is solely that of Licensor and Licensee, and nothing will be construed to constitute the parties as employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party, nor its employees or agents will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

(g) **Interpretation.** The pronouns of any gender will include the other gender, and either the singular or the plural will include the other. References in this License to sections, paragraphs or clauses will refer to those sections, paragraphs or clauses set forth in this License unless the context expressly requires otherwise. Headings of sections or paragraphs are for convenience only and will not be considered in construing the meaning of the contents of thereof.

(h) **Memorandum.** Licensee intends on recording, at its expense, memorandum of this License at the Hamilton County Register of Deeds. Upon Licensee's request, Licensor agrees to execute such instrument in recordable form. Such memorandum shall be substantially in that form attach hereto as Exhibit E.

(i) **Consent.** Whenever the consent of a party is required by this License, consent may not be unreasonably withheld, delayed, or conditioned unless it is specifically stated that consent is in the party's sole discretion. It will not be reasonable for any party to request additional payments, fees, or other consideration from the other party in exchange for consent.

(j) **Attorneys' Fees.** Should either party institute any legal proceedings against the other for breach or failure to perform any provision contained in this License and prevail in such action, the non-prevailing party will in addition be liable for the cost and expenses of the prevailing party, including its reasonable attorneys' fees at trial and through appeal.

(k) **Survival.** Any provisions of this License that in order to have effect must survive the expiration or termination of this License will be deemed to survive.

(l) **Copies.** This License, and any exhibits hereto or documents related to this License, may be executed in multiple counterparts, each of which will, for all purposes, be deemed an original, but which together will constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this License or any exhibits hereto or related documents will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof or thereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this License, such exhibit or related document, and without the requirement that the unavailability of such original, executed counterpart of each such document first be proven.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date below each signature.

LICENSOR:	**LICENSEE:**
City of Fishers, Indiana, **a __________**	**AIRWAVZ SOLUTIONS, INC.,** **a Delaware corporation**
By: ____________________	By: ____________________
Name: ____________________	Name: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

EXHIBIT A

DESCRIPTION OF PROPERTY

[attach description of property]

EXHIBIT B

WIRELESS EQUIPMENT, EQUIPMENT ROOM, CONSTRUCTION SPECIFICATIONS

The Wireless Equipment to be installed will be based on the design file (formatted as an .ibw and/or .pdf file) for the Communications Network to be installed within and on Licensed Premises. Such Wireless Equipment will be installed to the specifications provided for the applicable design; provided that such Wireless Equipment may be replaced by a similar substitute that fits within such design. Once a design is finalized and during deployment, there may be substitutions of the equipment as long as there is no negative impact to performance and functionality of system design.

EXHIBIT C

Pricing Exhibit

A. CARRIER COMMITMENT FEE.

1. Commencing on the Commencement Date, and continuing through the Initial Term and each successive Renewal Term, Licensor shall pay to Licensee a monthly Wireless Provider commitment fee (the "Carrier Commitment Fee") in the monthly amount of Sixteen Thousand Six Hundred Sixty Five Dollars ($16,665.00). The price is conditioned on Licensor providing head end space in the Building for use by Licensee and Sub-Licensees and the placement of Wireless Equipment therein, and (ii) use of all available conduit on the Property by Licensee and Sub-Licensees.

2. On the first anniversary of the Commencement Date, and on such date every year thereafter (each an "Adjustment Date") during the Term, the Carrier Commitment Fee shall increase by an amount equal to three percent (3%) of the Carrier Commitment Fee in effect for the month immediately preceding the Adjustment Date.

B. PAYMENT TERMS.

1 Licensor and Licensee acknowledge and agree that the initial Carrier Commitment Fee payment shall be delivered to Licensee by Licensor on or before the Commencement Date and subsequent Carrier Commitment Fees payments shall be due in advance on or before the first day of each succeeding calendar month.

2. Any and all amounts owed prior to the date of expiration or earlier termination of this License shall survive such expiration or termination and be paid in accordance with the terms herein. Any payments due hereunder not paid within fifteen (15) business days of written notice of non-payment from Licensee shall bear interest until paid at the lesser of (i) the rate of ten percent (10%) per annum; or (ii) the maximum rate allowed under the laws of the jurisdiction in which the Communications Network is located. This late charge is not a waiver of Licensee's right to declare Licensor in default if any payments are not made when due in accordance with the terms of this License.

3. All payments shall be made to Licensee at its mailing address provided in the first paragraph of this License, or to such other person or place as designated in writing by Licensee to Licensor pursuant to the notice provisions of this License.

<u>EXHIBIT D</u>

RULES AND REGULATIONS

EXHIBIT E

Memorandum of Agreement

Prepared By and Return To:
____
____
____

Tax Parcel: ____________

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (this "Memorandum") is entered into as of this _______ day of __________, 20____, by and between ______________________, whose principal place of business is _________________________ ("Licensor"), and AIRWAVZ SOLUTIONS, INC., a Delaware corporation, whose principal place of business is 1410 W Morehead St, Suite 100, Charlotte, NC 28208 ("Licensee").

1. Licensor and Licensee entered into a Wireless System Site License Agreement dated _________________, 20____ (as may be amended from time to time, the "Agreement"), for use of a portion of that property owned by Licensor located at ________________, ____________, ______________, ____________________ _______, being described in more detail in Exhibit A attached hereto (the "Property"). Licensor and Licensee desire to execute and record this Memorandum to provide notice of the Agreement.

2. Licensor has granted Licensee a right to use certain space within the Building located thereon, and such other portions of the Property, all in accordance with the terms and conditions of the Agreement, which is incorporated herein by this reference. All capitalized terms used in the Memorandum have those meanings ascribed to them in the Agreement unless otherwise defined in this Memorandum.

3. The initial term of the Agreement is ten (10) years beginning on the Commencement Date, with three (3) automatic five (5) year renewal terms, unless earlier terminated by Licensor or Licensee as provided for in the Agreement. The first day of the first full month following the date of the first Sub-Licensee's acceptance of the Communications Network.

4. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum under seal as of the date first above written.

Licensor:

________________________,
a ____________________

By:_________________________________(SEAL)
Print Name:__________________________
Title:_______________________________

STATE OF ____________________

COUNTY OF __________________

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that they signed the foregoing Memorandum of Agreement under seal: __________________________, a __________________________, by:_______________________________, its:_________________________________.

Date: ____________________

By: _________________________
Print Name:___________________
Notary Public
My Commission Expires: _______

[SEAL OR STAMP]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum under seal as of the date first above written.

Licensee:

Airwavz Solutions, Inc.,
a Delaware corporation

By:_________________________(SEAL)
Print Name:___________________
Title:________________________

STATE OF ____________________

COUNTY OF __________________

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he/she signed the foregoing Memorandum of Agreement under seal: Airwavz Solutions, Inc., a Delaware corporation, by ____________________________________, its ___________________________.

Date: ____________________

By: _________________________
Print Name:___________________
Notary Public
My Commission Expires: _______

[SEAL OR STAMP]

Exhibit A To Memorandum Of Agreement

PROPERTY

[will need to attach property description]

EXHIBIT F

NOTICE TO PROCEED

To: ___________________________ ("Licensor")
____
____
____
Attn: ______________________

From: Airwavz Solutions, Inc. ("Licensee")
1410 W. Morehead Street, Suite 100
Charlotte, NC 28208
Attn: _______________________

Notice to Proceed Date: _______________, 20____

RE: Authority to begin the work related to the Communications Network and Wireless Equipment pursuant to that Wireless System Site License Agreement having an Effective Date of ________________ ("Agreement"), for that Property and Building located at ___________________________________ [address].

Licensor has approved the Plans and Licensee has received all other necessary approvals, including the Required Approvals, to begin installation of Wireless Equipment to construct the Communications Network on the Property and/or in the Building. Pursuant to the terms and subject to the conditions of the Agreement, Licensee is hereby notifying Licensor that Licensee intends to commence installation and construction of the Communications Network and Wireless Equipment on or after the Notice to Proceed Date provided above, all of which work shall be performed in accordance with the terms and conditions of the Agreement. By signing below, Licensor acknowledges that Licensee has the authority to begin such work commencing on or after the Notice to Proceed Date, provided such work is performed in accordance with the Agreement.

Signed and Provided:	Signed and Acknowledged:
Airwavz Solutions, Inc.	________________________
By: ________________	By: __________________
Name: ________________	Name: __________________
Title: ________________	Title: __________________
Date: ________________	Date: __________________

Board Action Form

MEETING DATE	January 9, 2024			
TITLE	Request to issue Notice of Award and approve Construction Agreement with Miller Pipeline for 2023 Interceptor Rehabilitation			
SUBMITTED BY	Name & Title: Jonathan Valenta, Director of Water Quality Department: Public Works – Water Quality Division			
MEETING TYPE	☐ Work Session ☐ Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☒ Resolution	☐ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☐ 1st Reading	☐ 2nd Reading	☐ Public Hearing	☐ 3rd Reading ☐ Final Reading
	Ordinance #:		Resolution #: R010924D	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☐ Contract **required** for this item		☒ Signed copy of contract attached	
	☐ Seeking award or other scenario & **will provide contract** at a later date		☐ **No contract** for this item	
	☒ Contract **over** $50,000 Please mark the box in the other column that pertains to this contract.		☐ Services ☒ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document **must** be recorded with the County Recorder's Office ☐ Wait 31 days **prior to** filing with the County Recorders' Office		☒ Document **does not need** recorded with the County Recorder's Office	

Form Revised: 03/20/2019

<table>
<tr><td></td><td></td><td></td></tr>
<tr><td rowspan="5">APPROVALS/REVIEWS</td><td>☒ Assistant/Deputy Department Head</td><td>☐ Controller's Office</td></tr>
<tr><td>☐ Department Head</td><td>☐ Finance Committee</td></tr>
<tr><td>☐ Deputy Mayor</td><td>☐ Technical Advisory Committee</td></tr>
<tr><td>☐ Mayor</td><td rowspan="2">☐ Other:</td></tr>
<tr><td>☒ Legal Counsel –
Name of Reviewer: Lindsey Bennett</td></tr>
<tr><td>BACKGROUND
(Includes description, background, and justification)</td><td colspan="2">This construction agreement is to rehabilitate approximately 2,000 feet of 15-inch, 21-inch, and 27-inch sanitary interceptor sewer using cured-in-place pipe. This also includes manhole rehabilitation. This rehab project focuses on large diameter concrete pipe in the collection system in two locations: Sunblest Blvd/ Allisonville Road and parallel to Lantern Road north of 106th Street. This was bid as a base bid (Sunblest/Allisonville) with an alternate (Lantern).

Three bids were received on November 21, 2023 with Miller Pipeline being the lowest, responsive, and responsible bidder.</td></tr>
<tr><td rowspan="5">BUDGETING AND FINANCIAL IMPACT
(Includes project costs and funding sources)</td><td>Budgeted $:</td><td></td></tr>
<tr><td>Expenditure $:</td><td>$707,617.50</td></tr>
<tr><td>Source of Funds:</td><td>Water Quality Capital Improvement</td></tr>
<tr><td>Additional Appropriation #:</td><td>N/A</td></tr>
<tr><td>Narrative:</td><td>Funded using part of Water Quality Division's capital improvement budget.</td></tr>
<tr><td rowspan="4">OPTIONS
(Include Deny Approval Option)</td><td>1.</td><td>Approve the award and agreement for base bid plus alternate</td></tr>
<tr><td>2.</td><td>Deny approval</td></tr>
<tr><td>3.</td><td>Take no action</td></tr>
<tr><td>4.</td><td></td></tr>
<tr><td>PROJECT TIMELINE</td><td colspan="2">Project construction will be completed within 180 days of notice to proceed.</td></tr>
<tr><td>STAFF RECOMMENDATION
(Board reserves the right to accept or deny recommendations)</td><td colspan="2">Staff recommends approval of this award and agreement.</td></tr>
<tr><td>SUPPLEMENTAL INFORMATION
(List all attached documents)</td><td colspan="2">1. Resolution
2. Exhibit A – Notice of Award
3. Exhibit B – Construction Agreement
4. Exhibit C – Engineer's Recommendation Letter/Bid Tabulation</td></tr>
</table>

RESOLUTION NO. R010924D

A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY AWARDING AND APPROVING A CONTRACT FOR CONSTRUCTION (MILLER PIPELINE, LLC)

WHEREAS, the City of Fishers, Hamilton County, Indiana ("City") owns and operates a municipal sewer utility pursuant to Ind. Code §36-9-23 et. seq., that provides sewer service within and outside of the City of Fishers;

WHEREAS, the City needs to rehabilitate approximately 2,000 feet of 15-inch, 21-inch, and 27-inch sanitary interceptor sewer using cured-in-place pipe and rehabilitate a manhole, all occurring at Sunblest Boulevard and Allisonville Road and parallel to Lantern Road north of 106th Street ("Project");

WHEREAS, the City put the Project out to bid and received three (3) responses with Miller Pipeline, LLC being the lowest, responsible, responsive bidder;

WHEREAS, the City desires to award the Project to Miller Pipeline, LLC with a not to exceed base bid price of $707,617.50 as set forth in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the City additionally desires to approve the Agreement with Miller Pipeline, LLC in Exhibit B, attached hereto and incorporated herein.

NOW THEREFORE, be it resolved by the City of Fishers Board of Public Works & Safety meeting in regular session as follows:

Section 1. The Board hereby awards the Project to Miller Pipeline, LLC as set forth in Exhibit A.

Section 2. The Board hereby approves the Agreement as set forth in Exhibit B.

Section 3. The Board hereby authorizes the Mayor and/or the Director of Water Quality to execute the Agreement any documents necessary to award the Project to Miller Pipeline, LLC and issue a Notice of Award.

Section 4. This Resolution shall be of full force and effect from and upon its adoption and in accordance with Indiana law.

SO RESOLVED by the City of Fishers Board of Public Works & Safety this 9th day of January, 2024.

BOARD OF PUBLIC WORKS & SAFETY,
CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ______________________ DATE: _________________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett

NOTICE OF AWARD

Owner:	CITY OF FISHERS, INDIANA	Owner's Contract No.:	
Engineer:	CLARK DIETZ, INC.	Engineer's Project No.:	F0230145
Project:	2023 INTERCEPTOR REHABILITATION		
Contractor:	MILLER PIPELINE, LLC		
	8850 CRAWFORDSVILLE ROAD, INDIANAPOLIS, IN 46234		

TO CONTRACTOR:

The OWNER has considered the Bid submitted by you for the Project in response to its Notice to Bidders published October 11, 2023 and October 18, 2023, with Bids opened on November 21, 2023.

You are hereby notified that your Bid has been accepted, as shown in the submitted Bid Form, in the total amount of **$707,617.50**, which includes $637,617.50 in unit price/lump sum pay items and $70,000.00 in contingency allowance for work as described in the contract documents.

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Performance Bond, Payment Bond, and Insurance documentation within fifteen (15) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within fifteen (15) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such rights as may be granted by law.

Owner: CITY OF FISHERS, INDIANA

____
Authorized Signature

By: Scott Fadness

Title: Mayor

Date: ______________________________

ACCEPTANCE OF NOTICE

Receipt of this Notice of Award is hereby acknowledged and accepted by: MILLER PIPELINE, LLC

____
Authorized Signature

This the ____________ day of ______________, 20____

By: Chris Schuler

Title: Vice President

AGREEMENT

THIS AGREEMENT is by and between CITY OF FISHERS, INDIANA ("Owner") and

MILLER PIPELINE, LLC ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Pipeline rehabilitation via Cured-in-Place (CIPP) installation to address corrosion and other issues of approximately 905 feet of 21-inch and 280 feet of 15-inch sanitary interceptor as the base bid, plus 890 feet of 27-inch sanitary interceptor sewer as an additional mandatory alternate bid. The base bid pipeline consists of two 21-inch segments and one 15-inch segment near Allisonville Rd and Sunblest Blvd, while the additional alternate bid consists of three 27-inch segments near 106th Street and Lantern Road. The base bid also includes manhole rehabilitation via lining.

ARTICLE 2 - THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

2023 Interceptor Rehabilitation, City of Fishers, Indiana

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Clark Dietz, Inc.

3.02 The Owner has retained Clark Dietz, Inc. ("Engineer" or "Design Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Days

A. The Work shall be substantially completed within 150 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 30 calendar days after the date when the Work is accepted as Substantially Complete.

B. The Contract Time includes a period for product submittals and preparatory activities prior to moving onto the sites in such a way as to disrupt wastewater flow, traffic, or access to businesses or residences.

1. Contractor is to coordinate closely with the Owner, Engineer, and, where applicable, Contractor's bypass pumping, traffic control, and/or manhole lining subcontractor(s) regarding schedule so that on-site impacts to the public are minimized.

2. For the Allisonville Rd and Sunblest Blvd overall base bid site, a maximum of 12 consecutive calendar days will be allowed for all CIPP lining activities (including lateral reinstatement) and for manhole rehabilitation, once bypass pumping setup is complete and ready for use. The start of lining activities shall begin as soon as possible once bypass pumping is ready for use. Completion of lining (including lateral reinstatement) and manhole rehabilitation activities to the point at which bypass pumping can be removed will be considered achievement of Milestone 1.

3. For the 106th St and Lantern Rd alternate bid site, a maximum of 6 consecutive calendar days will be allowed for lining activities once bypass pumping setup is complete and ready for use. The start of lining activities shall begin as soon as possible once bypass pumping is ready for use. Completion of lining activities to the point at which bypass pumping can be removed will be considered achievement of Milestone 2.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner $250 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final

payment, Contractor shall pay Owner $100 for each calendar day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner $250 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved. Contractor shall pay Owner $250 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 2, until Milestone 2 is achieved.

5. Liquidated damages for failing to timely attain Milestone 1 and 2 may be additive and may be imposed concurrently.

4.04 Special Damages

A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete, and (3) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for achieving either Milestone 1 or 2 (as duly adjusted pursuant to the Contract), until the Work included in each milestone is complete.

B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

C. Additional engineering, construction observation, inspection, and administrative services costs for Special Damages specified in Paragraph 4.04 shall be determined in accordance with the following hourly rate schedule:

1. Construction Engineering (RE) - $205 per hour
2. Construction Observation (RPR) $155 per hour
3. Administrative Services $100 per hour
4. Travel and Reimbursable Expenses at Cost plus 10%

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. Total Contract Price of $707,617.50, consisting of the following amounts:

1. Contract Price of $386,117.50 for all Base Bid Work, consisting of the following amounts:

a. Contract Price of $326,117.50 for all Unit Price (with Lump Sum Items) Work.

b. Contract Price of $60,000.00 for all Base Bid Allowance items Work.

2. Contract Price of $321,500.00 for all Mandatory Alternate Additional Bid Work, solely at Owner's discretion and if approved by the Owner, consisting of the following amounts:

a. Contract Price of $311,500.00 for all Mandatory Alternate Additional Unit Price (with Lump Sum Items) Work.

b. Contract Price of $10,000.00 for all Mandatory Alternate Additional Allowance items Work.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. One Hundred (100%) percent of Work completed.

b. One Hundred (100%) percent of cost of materials and equipment not incorporated in the Work.

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to one hundred (100%) percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less two hundred (200%) percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment or a minimum amount determined by the Engineer.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests, if any, of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement.
2. Performance bond.
3. Payment bond.
4. Other bonds (N/A).
5. General Conditions.
6. Supplementary Conditions.
7. Owner's Project Criteria and/or Technical Specifications.
8. Addenda (numbers 1 to 2, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid.
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed.
    b. Work Change Directives.
    c. Change Orders.
    d. Field Orders.

B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above) or to be considered attached by reference.

C. There are no Contract Documents other than those listed above in this Article 8.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Contractor's Certifications

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the solicitation process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

9.06 Other Provisions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on ________________ (which is the Effective Date of the Contract).

OWNER:		CONTRACTOR:	
CITY OF FISHERS, INDIANA		MILLER PIPELINE, LLC	
By:		By:	
Print:	Scott Fadness	Print:	Chris Schuler
Title:	Mayor	Title:	Vice President
		(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)	
Attest:		Attest:	
Print:		Print:	
Title:		Title:	
Address for giving notices:		Address for giving notices:	
CITY OF FISHERS DEPT. OF PUBLIC WORKS		MILLER PIPELINE, LLC	
3 MUNICIPAL DRIVE		8850 CRAWFORDSVILLE ROAD	
FISHERS, IN 46038		INDIANAPOLIS, IN 46234	
		License No.:	N/A
			(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

<u>EXHIBIT A</u>

BID OF MILLER PIPELINE, LLC

ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

City of Fishers ("Owner")
1 Municipal Drive
Fishers, Indiana 46038

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bid Documents to perform all Work as specified or indicated in the Bid Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bid Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all the terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bid Documents, and any data and reference items identified in the Bid Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date
Addendum 1	October 24, 2023
Addendum 2	November 14, 2023

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work including recently amended House Enrolled Act No. 1019 and associated section of the Indiana Code, specifically the following:

1. General or Prime Contractor must contribute at least 15% of the contract price in work, materials, services, or any combination thereof.

2. Contractor cannot pay employees in cash.

3. Contractor must E-Verify each employee working on the project.

4. Contractor must certify that they are in compliance with the Federal Fair Labor Stands Act (FLSA) and the Indiana Minimum Wage Law.

5. Contractor may be required to have a drug testing program in accordance with Indiana Code 4-13-18.

6. Contractor must maintain required levels of general liability insurance.

D. Bidder has carefully studied all: (1) reports of explorations and tests, if any, of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bid Documents; and any Site-related reports and drawings identified in the Bid Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price proposed and within the times required, and in accordance with the other terms and conditions of the Bid Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bid Documents.

H. Bidder has given Design Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bid Documents and confirms that the written resolution thereof by Design Engineer is acceptable to Bidder.

I. The Bid Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bid Documents.

K. Bidder acknowledges that the quantities shown on the Bid Form for unit price items, if any, are estimated for bidding purposes and subject to change/adjustment. Quantities may be increased or decreased throughout the construction contract; however, no adjustment in the Bid Unit Price will be allowed except as may be specifically provided for in these Contract Documents.

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the solicitation process to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

ARTICLE 5 - BASIS OF BID

5.01 BASE BID (ALLISONVILLE RD AND SUNBLEST BLVD)

A. Bidder will complete the Work in accordance with the Contract Documents for the TOTAL of all Unit Price (with Lump Sum (LS) items) plus Allowance items shown.

B. Unit Price (with Lump Sum items) Work for lining sanitary sewer segments 100207342 and 100207294 from Manholes 100229291 to 100230221 and sanitary sewer segment 100207480 from Manhole 100230597 to 100230462.

No.	Item	Quantity	Unit	Unit/LS Price	Extended Price
1	Mobilization and Demobilization	1	LS	$40,000.00	$40,000.00
2	Construction Administration	1	LS	$6,500.00	$6,500.00
3	Sewer Cleaning and Televising for 21" RCP	905	LFT	$8.00	$7,240.00
4	Sewer Cleaning and Televising for 15" VCP	280	LFT	$8.00	$2,240.00
5	CIPP Liner for 21" RCP	905	LFT	$140.00	$126,700.00
6	CIPP Liner for 15" RCP	280	LFT	$103.00	$28,840.00
7	Bypass Pumping	1	LS	$106,250.00	$106,250.00
8	Lateral Reinstatement	11	EA	$435.00	$4,785.00
9	MH Interface Sealing	6	EA	$593.75	$3,562.50
				Base Bid Unit/LS Price Sub-Total	$326,117.50

C. Base Bid Allowance items.

No.	Allowance Item	Allowance Amount
10	Contingency Allowance for Undefined Work[(1)]	$10,000
11	Traffic Control with Setup and Removal	$38,000
12	Structural Lining of MHs 100230341 and 100229291	$12,000
	Base Bid Allowance Sub-Total	$60,000

[1] Contingency Allowance is for undefined or potential Work as described in the Owner's Project Criteria. Use of the Contingency Allowance is solely at the Owner's discretion. Bidder is to be aware there is no obligation by Owner to utilize any of the Contingency Allowance. A detailed cost breakdown and justification must be submitted for approval by Owner and Design Engineer prior to proceeding with any Work requiring use of the Contingency Allowance.

D. TOTAL Base Bid Price for the combination of Unit Price (with Lump Sum Items) plus Allowance Items.

TOTAL Base
Bid Price
(written out in figures) $386,117.50

TOTAL Base
Bid Price
(written out in words) three hundred eighty-six thousand one hundred seventeen dollars and fifty cents

5.02 MANDATORY ALTERNATE ADDITIONAL BID (106th ST AND LANTERN RD PHASE 2)

A. Solely at Owner's discretion, Bidder will complete this Alternate Additional Work in accordance with the Contract Documents for the TOTAL of all Unit Price (with Lump Sum (LS) items) plus Allowance items shown below in addition to the Work included in the Base Bid.

B. Mandatory Alternate Additional Unit Price (with Lump Sum items) Work for lining sanitary sewer segments 100208073, 100207502A and 100207502 from Manholes 100229616 to 100229310.

No.	Item	Quantity	Unit	Unit/LS Price	Extended Price
A1	Mobilization and Demobilization	1	LS	$40,000.00	$40,000.00
A2	Construction Administration	1	LS	$6,500.00	$6,500.00
A3	Sewer Cleaning and Televising for 27" RCP	890	LFT	$10.00	$8,900.00
A4	CIPP Liner for 27" RCP	890	LFT	$165.00	$146,850.00
A5	Bypass Pumping	1	LS	$106,250.00	$106,250.00
A6	MH Interface Sealing	6	EA	$500.00	$3,000.00
Mandatory Alternate Additional Unit Price/LS Sub-Total					$311,500.00

C. Mandatory Alternate Additional Bid allowance items.

No.	Allowance Item	Allowance Amount
A7	Contingency Allowance for Undefined Work(1)	$10,000
Mandatory Alternate Additional Allowance Sub-Total		$10,000

(1) Contingency Allowance is for undefined or potential Work as described in the Owner's Project Criteria. Use of the Contingency Allowance is solely at the Owner's discretion. Bidder is to be aware there is no obligation by Owner to utilize any of the Contingency Allowance. A detailed cost breakdown and justification must be submitted for approval by Owner and Design Engineer prior to proceeding with any Work requiring use of the Contingency Allowance.

D. TOTAL Mandatory Alternate Additional Bid Price for the combination of Unit Price (with Lump Sum Items) plus Allowance Items.

TOTAL Alternate Addtl Bid Price *(written out in figures)*	$321,500.00
TOTAL Alternate Addtl Bid Price *(written out in words)*	three hundred twenty-one thousand five hundred dollars

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ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement or noted herein.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages and penalties.

ARTICLE 7 - ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

A. Evidence of authority to do business in the State of Indiana.

1. Contractor's License No.: N/A .

ARTICLE 8 - DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 - BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

Miller Pipeline, LLC

By:
[Signature] Ch Sh

[Printed name] Chris Schuler

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] Jada Graves

[Printed name] Jada Graves

Title: Witness

Submittal Date: November 16, 2023

Address for giving notices:

Miller Pipeline, LLC

8850 Crawfordsville Road

Indianapolis, IN 46234

Telephone Number: 317-653-2597

Fax Number: 317-293-8502

Contact Name and e-mail address: Jeff Newman

Jeff.newman@millerpipeline.com

Bidder's License No.: N/A
(where applicable)

END OF SECTION

CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)
Prescribed by State Board of Accounts

PART I
(To be completed for all bids. Please type or print)

Date *(month, day, year)*: November 20, 2023

1. Governmental Unit (Owner): City of Fishers
2. County : Hamilton County
3. Bidder (Firm): Miller Pipeline, LLC

   Address: 8850 Crawfordsville Road

   City/State/ZIPcode: Indianapolis, IN 46234
4. Telephone Number: 317-293-0278
5. Agent of Bidder *(if applicable)*: N/A

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of City of Fishers - 2023 Interceptor Rehabilitation (Governmental Unit) in accordance with plans and specifications prepared by Clark Dietz and dated November 2023 for the sum of Seven hundred seven thousand six hundred seventeen dollars and fifty cents $ 707,617.50 total base plus alternate

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS
(If applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this ____________ day of ________________, ________, subject to the following conditions: ____

____

Contracting Authority Members:

________________________ ________________________

________________________ ________________________

________________________ ________________________

PART II

(For projects of $150,000 or more – IC 36-1-12-4)

Governmental Unit: City of Fishers

Bidder (Firm) Miller Pipeline, LLC

Date *(month, day, year)*: November 20, 2023

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner
3,972,844.90	Sewer Rehab	July 2023	City of Lawrence, 9201 Harrison Park Court, Lawrence, IN 46216
1,744,906.44	Sewer Rehab	Aug 2023	City of Martinsville, 59 S Jefferson St., Martinsville, IN 46151
732,375.00	Sewer Rehab	Aug 2023	City of Bloomington, 600 E Miller Dr., Bloomington 47401
173,144.93	Sewer Rehab	July 2023	Village of New Lebanon, 198 S. Clayton Rd., New Lebanon, OH 45345

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner
316,656.75	Sewer Rehab	2/24	Village of West Milton, 701 S. Miami St., West Milton, OH 45383
4,567,111.34	Sewer Rehab	11/24	Sanitation District No 1, 1045 Eaton Dr., Ft. Wright KY 41017
841,091.75	Sewer Rehab	1/24	City of Lancaster, OH, 104 East Main St., Lancaster, OH 43130

3. Have you ever failed to complete any work awarded to you? No If so, where and why?

4. List references from private firms for which you have performed work.

See Attached Reference List

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

The plan for completing this work is to first clean and CCTV the lines to be lined. Verify size and length of the lines and order material. On the day the lines are to be lined another CCTV inspection is performed and then the liner is installed. Once the liner has been processed and cooled, the lateral connections are reinstated.

2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

Spectra Tech - PO Box 2181 Noblesville, IN 46061 - Manhole Rehabilitation

Conco Contracting - PO Box 36726 Indianapolis, IN 46236 - Epoxy Coating

Culy Contracting - 5 Industrial Park Dr. Winchester, IN 47394 - Manhole Rehabilitation

Dieg Bros. - 2804 A Street Evansville, IN 47719 - Sewer Rehab

BLD Services, LLC - 2424 Tyler Street Kenner, LA 70062 - Lateral Lining

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

No Bond Required -

US Hydro Vac - 601 S Girls School Rd Indianapolis, IN 46231

MacAllister CAT - 8686 BROOKVILLE RD INDIANAPOLIS, IN 46239

Spectra Tech - PO Box 21714, Noblesville, IN

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

Miller Pipeline has an equipment fleet valued in excess of 150 million dollars

the fleet includes excavation equipment, directional drilling, sewer lining equipment,

cctv camera equipment, dump trucks, and pick up trucks.

An asset specific detailed listing can be provided upon request.

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

Yes, all materials are included

SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

SECTION IV CONTRACTOR'S NON – COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

SECTION V OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated at Indianapolis, Indiana this 20th day of November, 2023

Miller Pipeline, LLC
(Name of Organization)

By Ch Schuler

Vice President
(Title of Person Signing)

ACKNOWLEDGEMENT

STATE OF Indiana)
) ss
COUNTY OF Marion)

Before me, a Notary Public, personally appeared the above-named Chris Schuler and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this 15th day of November, 2023.

Jada Graves
Notary Public

My Commission Expires: October 10, 2031

County of Residence: Marion

Part of State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)

BID OF

Miller Pipeline, LLC

(Contractor)

8850 Crawfordsville Road

(Address)

Indianapolis, IN 46234

FOR

PUBLIC WORKS PROJECTS

OF

City of Fishers, Indiana

Department of Public Works 3 Municipal Dr.

Fishers, Indiana 46038

Filed ______________________, ________

Action taken ______________________

____

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:
(Name, legal status and address)

Miller Pipeline, LLC
8850 Crawfordsville Road
Indianapolis, IN 46234

SURETY:
(Name, legal status and principal place of business)

Atlantic Specialty Insurance Company
605 Highway 169 North, Suite 800
Plymouth, MN 55441

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

City of Fishers
1 Municipal Drive
Fishers, IN 46038

BOND AMOUNT: $ 5% Five Percent of Amount Bid

PROJECT:
(Name, location or address, and Project number, if any)

2023 Interceptor Rehabilitation

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 21st day of November, 2023

Emy R Belich
(Witness)

Miller Pipeline, LLC
(Principal) *(Seal)*

By: [signature]
(Title)

(Witness) Julia Zalesky

Atlantic Specialty Insurance Company
(Surety) *(Seal)*

By: Jordan Fisher
(Title) Jordan Fisher Attorney-in-Fact
Surety Phone No. 952-852-2431

Atlantic Specialty Insurance Company Corporate Seal 1986 New York

S-0054/AS 8/10

[intact] INSURANCE

Power of Attorney

Surety Bond No: Bid Bond

Principal: Miller Pipeline, LLC
Obligee: City of Fishers

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: Jordan Fisher, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **sixty million dollars ($60,000,000)** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this fifth day of March, 2020.

ATLANTIC SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1986 NEW YORK

By [signature]
Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this fifth day of March, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.

ALISON DWAN NASH-TROUT
NOTARY PUBLIC - MINNESOTA
My Commission Expires
January 31, 2025

[signature]
Notary Public

I, the undersigned, Assistant Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 21st day of November, 2023.

ATLANTIC SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1986 NEW YORK

[signature]
Christopher V. Jerry, Secretary

intact INSURANCE specialty solutions

Atlantic Specialty Insurance Company
Period Ended 12/31/2022

Dollars displayed in thousands

Admitted Assets	
Investments:	
Bonds	$ 2,216,201
Preferred Stocks	-
Common Stocks	752,567
Mortgage Loans	-
Real Estate	-
Contract Loans	-
Derivatives	-
Cash, Cash Equivalents & Short Term Investments	306,498
Other Investments	20,805
Total Cash & Investments	3,296,071
Premiums and Considerations Due	332,718
Reinsurance Recoverable	39,231
Receivable from Parent, Subsidiary or Affiliates	2,250
All Other Admitted Assets	79,777
Total Admitted Assets	3,750,047

Liabilities and Surplus	
Liabilities	
Loss Reserves	$ 1,093,968
Loss Adjustment Expense Reserves	347,884
Total Loss & LAE Reserves	1,441,852
Unearned Premium Reserve	735,813
Total Reinsurance Liabilities	42,785
Commissions, Other Expenses, and Taxes due	68,767
Derivatives	-
Payable to Parent, Subs or Affiliates	-
All Other Liabilities	632,508
Total Liabilities	2,921,725
Capital and Surplus	
Common Capital Stock	9,001
Preferred Capital Stock	-
Surplus Notes	-
Unassigned Surplus	174,558
Other Including Gross Contributed	644,763
Capital & Surplus	828,322
Total Liabilities and C&S	3,750,047

State of Minnesota
County of Hennepin

I, Kara L.B. Barrow, Secretary of Atlantic Specialty Insurance Company do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company, on the 31st day of December, 2022, according to the best of my information, knowledge and belief.

Kara B Barrow

Secretary

Subscribed and sworn to, before me, a Notary Public of the State of Minnesota on this 16th day of March, 2023.

KERRI RIECHERS
Notary Public
Minnesota
My Commission Expires January 31, 2025

Kerri Riechers

Notary Public

SECRETARY'S CERTIFICATE

OF

MILLER PIPELINE, LLC

February 2, 2023

I, the undersigned, Chief Legal Officer and Secretary of Miller Pipeline, LLC, a limited liability company organized and existing under the laws of the State of Indiana (the "Company"), do hereby certify, solely in my capacity as an officer of the Company that I am authorized to execute and deliver this Certificate on behalf of the Company and not in my individual capacity. Under such authority, I do hereby certify that the following individuals are authorized by Company to make, execute, endorse and deliver in the name of and on behalf of the Company, but shall not be limited to, any and all written instruments, agreements, documents, execution of deeds, powers of attorney, transfers, assignments, contracts, obligations, certificates and other instruments of whatever nature to carry out all actions without limitations which may be deemed necessary to carry out the Company's business:

Dale Anderson
Frank Bracht
Chad Davis
Butch McAreavy
Josh Sargent
Chris Schuler
Dan Short
Jeff Sutcliffe
Dave Tucker
Jim Wilson

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first set forth above.

MILLER PIPELINE, LLC

DocuSigned by:
By: Melanie M. Nealis
65D8F4A79DAE45F...
Name: Melanie M. Nealis
Title: Chief Legal Officer & Secretary

STATE OF INDIANA

OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF EXISTENCE

To Whom These Presents Come, Greeting:

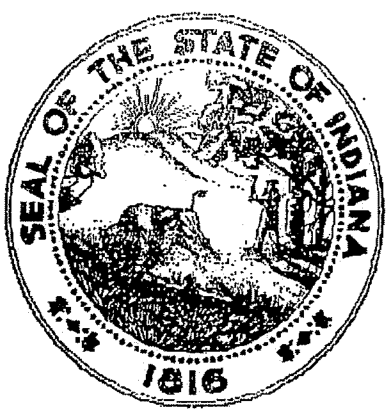
I, SUE ANNE GILROY, Secretary of State of Indiana, do hereby certify that I am, by virtue of the laws of the State of Indiana, the custodian of the corporate records and the proper official to execute this certificate.

I further certify that records of this office disclose that

MILLER PIPELINE CORPORATION

filed Articles of Incorporation on July 19, 1995, and is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana.

I further certify this corporation has filed its most recent annual report required by Indiana law with the Secretary of State, or is not yet required to file such annual reports, and that Articles of Dissolution have not been filed.



In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Sixth day of November, 1995.

Sue Anne Gilroy

SUE ANNE GILROY, Secretary of State

Deputy

State of Indiana
Office of the Secretary of State

CERTIFICATE OF AMENDMENT

of

MILLER PIPELINE CORPORATION

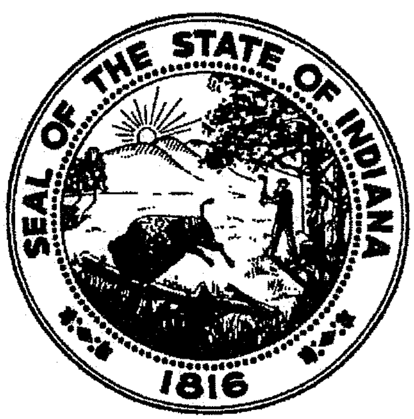
I, CHARLES P. WHITE, Secretary of State of Indiana, hereby certify that Articles of Amendment of the above Domestic Limited Liability Company (LLC) have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Flexibility Act.

The name following said transaction will be:

MILLER PIPELINE, LLC

Indiana Secretary of State
Packet: 1995070787
Filing Date: 12/30/2010
Effective Date: 12/31/2010

NOW, THEREFORE, with this document I certify that said transaction will become effective Friday, December 31, 2010.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, December 30, 2010.

Charles P. White

CHARLES P. WHITE,
SECRETARY OF STATE

1995070787 / 2011010358707

CERTIFICATE OF QUALIFICATION
to provide
CONSTRUCTION SERVICES
for
PUBLIC WORKS PROJECTS
to the
STATE OF INDIANA

This Certification Board, having duly considered application for qualification in terms of apparent experience and financial resources; and under the applicable Indiana Code 4-13.6-4 and adopted rules of this Board, hereby issues a Certificate of Qualification to provide construction services to the State of Indiana for Public Works Projects to:

MILLER PIPELINE LLC

8850 CRAWFORDSVILLE RD
PO BOX 34141
INDIANAPOLIS IN 46234

Phone 317-293-0278
Fax 317-328-4561

Company Official
DALE ANDERSON

for the twenty-seven month period stated herein, unless revoked by this Board for cause, and in the classifications of services stated below. This certificate supercedes any previous certificate.

1623.03 Sewers and/or Water Lines
1623.04 Sewer Maintenance and Rehabilitation

CERTIFICATION DATE **9/11/2021** EXPIRATION DATE **12/11/2023**

THIS CERTIFICATE ISSUED BY THE STATE OF INDIANA, PUBLIC WORKS DIVISION CERTIFICATION BOARD, 402 WEST WASHINGTON STREET, ROOM W467, INDIANAPOLIS, INDIANA 46204, ALSO ACTS AS THE OFFICIAL NOTICE OF EXPIRATION.

Tracy L. Cross

Tracy L. Cross, Executive Secretary
Certification Board

DAPW PQ2 State Form 3983R Rev. 07/06

SEAL OF THE STATE OF INDIANA 1816

Company ID Number: 243437

Approved by:

Employer Miller Pipeline Corporation

Neha Arora	
Name (Please Type or Print)	Title
Electronically Signed	08/31/2009
Signature	Date

Department of Homeland Security – Verification Division

USCIS Verification Division	
Name (Please Type or Print)	Title
Electronically Signed	08/31/2009
Signature	Date

Company ID Number: 243437

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	Neha Arora		
Telephone Number:	(317) 293 - 0278 ext. 161	Fax Number:	(317) 293 - 8502
E-mail Address:	Neha.Arora@Millerpipeline.com		

E-Verify
Employment Eligibility Verification

Welcome	User ID	Last Login	
Neha Arora	NARO5147	09:45 AM - 09/24/2012	Log Out

Click any ? for help

Home
My Cases
New Case
View Cases
Search Cases
My Clients
Add New Client
View Existing Clients
My Profile
Edit Profile
Change Password
Change Security Questions
My Company
Edit Company Profile
Add New User
View Existing Users
Close Company Account
My Reports
View Reports
My Resources
View Essential Resources
Take Tutorial
View User Manual
Contact Us

Company Information

Company Name: Miller Pipeline LLC — View / Edit

Company ID Number: 243437
Doing Business As (DBA) Name:
DUNS Number:

Physical Location:		Mailing Address:	
Address 1:	8850 Crawfordsville Road	Address 1:	
Address 2:		Address 2:	
City:	Indianapolis	City:	
State:	IN	State:	
Zip Code:	46234	Zip Code:	
County:	MARION		

Additional Information:

Employer Identification Number: 351959522
Total Number of Employees: 1,000 to 2,499
Perform verifications for your company's employees: Yes
Parent Organization: Vectren Corporation
Administrator:

Organization Designation:

Employer Category: None of these categories apply

NAICS Code: 238 - SPECIALTY TRADE CONTRACTORS — View / Edit

Total Hiring Sites: 1 — View / Edit

Total Points of Contact: 2 — View / Edit

View MOU

U.S. Department of Homeland Security - www.dhs.gov U.S. Citizenship and Immigration Services - www.uscis.gov Accessibility Download Viewers

MILLER PIPELINE

AN ARTERA COMPANY

MILLER PIPELINE, LLC

Financial Statements

December 31, 2022

(With Independent Accountants' Report Herein)

MILLER PIPELINE, LLC

Table of Contents

KPMG

KPMG LLP
Suite 2000
303 Peachtree Street, N.E.
Atlanta, GA 30308-3210

Independent Accountants' Report

The Board of Directors
Artera Services, LLC:

Management is responsible for the accompanying financial statements of Miller Pipeline, LLC, which comprise the balance sheet as of December 31, 2022 and the related statements of operations, changes in members' equity, and cash flows for the year then ended, and the related notes to the financial statements in accordance with U.S. generally accepted accounting principles. We have performed the compilation engagement in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any assurance on these financial statements.

KPMG LLP

Atlanta, Georgia
March 22, 2023

MILLER PIPELINE, LLC
Consolidated Balance Sheet
December 31, 2022
(In thousands)

Assets		**December 31, 2022**
Current assets:		
Cash	$	80
Accounts receivable		41,119
Prepaid expenses and other current assets		2,774
Inventory		15,760
Related-party receivables - current		132,202
Total current assets		191,935
Property and equipment, net		183,102
Right-of-use assets - operating leases		21,281
Right-of-use assets - finance leases, net		21,158
Goodwill, net		131,622
Other intangible assets, net		149,409
Other assets		443
Total assets	$	698,950
Liabilities and Members' Equity		
Current liabilities:		
Accounts payable	$	40,787
Accrued liabilities		42,376
Current portion of operating leases		8,843
Current portion of finance leases		5,606
Total current liabilities		97,612
Non-current liabilities:		
Operating lease obligations, net of current portion		12,620
Finance lease obligations, net of current portion		15,366
Related party-payables, non-current		149,038
Total non-current liabilities		177,024
Total liabilities		274,636
Members' equity		424,314
Total liabilities and members' equity	$	698,950

See accompanying notes to the Consolidated Financial Statements and Independent Accountants' Report.

MILLER PIPELINE, LLC
Consolidated Statement of Operations
Year Ended December 31, 2022
(In thousands)

	2022
Revenue	$ 962,103
Cost of revenue	864,132
Gross margin	97,971
General and administrative expenses	37,560
Amortization of goodwill and other intangible assets	29,003
Income from operations	31,408
Other expense:	
Interest expense	102
Other expense, net	4,079
Total other expense, net	4,181
Net income	$ 27,227

See accompanying notes to the Consolidated Financial Statements and Independent Accountants' Report.

MILLER PIPELINE, LLC
Consolidated Statement of Changes in Members' Equity
Year ended December 31, 2022
(In thousands)

		Total
Balance as of December 31, 2021 - as reported	$	449,811
Pushdown accounting		(52,436)
Balance as of December 31, 2021 - as revised		397,375
Net income		27,227
Other		(288)
Balance as of December 31, 2022	$	424,314

See accompanying notes to the Consolidated Financial Statements and Independent Accountants' Report.

MILLER PIPELINE, LLC

Consolidated Statement of Cash Flows

Year Ended December 31, 2022

(In thousands)

		2022
Cash flows from operating activities:		
Net income	$	27,227
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation		44,240
Amortization of goodwill and intangible assets		29,003
Amortization of right-of-use assets and lease liabilities, net		182
Loss on disposal of property and equipment		183
Changes in operating assets and liabilities:		
Accounts receivable		(2,808)
Inventories		(8,850)
Prepaid expenses and other current assets		288
Accounts payable and accrued liabilities		22,878
Net cash provided by operating activities		112,343
Cash flows from investing activities:		
Purchases of property and equipment		(2,086)
Cash paid for acquisitions, net of cash acquired		(25,918)
Related-party receivables		3,767
Net cash used in investing activities		(24,237)
Cash flows from financing activities:		
Related-party payables		(90,054)
Payments on finance leases		(3,724)
Net cash used in financing activities		(93,778)
Net change in cash and cash equivalents		(5,672)
Cash and cash equivalents, beginning of year		5,752
Cash and cash equivalents, end of year	$	80

See accompanying notes to the Consolidated Financial Statements and Independent Accountants' Report.

(1) Organization and Business

Miller Pipeline, LLC (the "Company") installs, repairs, and maintains underground pipelines used in natural gas, water, and sewer systems. The Company operates throughout the United States with its customer base primarily concentrated in the eastern half of the United States. The Company is a wholly-owned subsidiary of Artera Services, LLC ("Parent") under an intermediate corporate subsidiary of the Parent, MMN Infrastructure Services, LLC formerly known as Vectren Infrastructure Services Corporation ("Member"). The Company's operating subsidiary, K.R. Swerdfeger Construction, LLC ("KRS") was acquired on July 2, 2021. Located in Pueblo West, Colorado, KRS is a contractor specializing in underground utilities including natural gas distribution, sanitary and storm sewer, and water infrastructure.

As a limited liability company, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the Company, and no holder of members' equity shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a holder of members' equity.

Financial Statements Presentation

The accompanying Consolidated Financial Statements reflect all adjustments that, in the opinion of management, are necessary to present fairly the Company's financial position as of December 31, 2022, and the Company's results of operations, changes in equity and cash flows for the year ended December 31, 2022. Such adjustments are of a normal, recurring nature and did not impact the operating results of the Company.

Accounting Policy Changes

Except as noted below, there have been no material changes in the significant accounting policies followed by us during year ended December 31, 2022, from those described in our Consolidated Financial Statements for the year ended December 31, 2021.

Adoption of Lease Standard

During 2022, the Company adopted Accounting Standards Codification ("ASC") *Topic 842 – Leases ("ASC 842")*. See Note 3 – *New Accounting Standards*, for more information about the adoption of ASC 842.

Election of Pushdown Accounting

During 2022, the Company elected to subsequently apply pushdown accounting, that included recording acquisition accounting transactions that were previously recorded by the Parent. As such, the property and equipment, goodwill and other intangible assets balances have been adjusted to reflect the subsequent application of pushdown accounting. See Note 2 – *Summary of Significant Policies*, subtopics *Property and Equipment* and *Goodwill and Other Intangible Assets* for more information.

(2) Summary of Significant Accounting Policies

(a) Principles of Consolidation

The accompanying Consolidated Financial Statements of Miller have been prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). Intercompany transactions and balances have been eliminated in consolidation.

(b) Change in Accounting Principles

The Company adopted Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 805-50 *Business Combinations – Pushdown Accounting. ("Topic 805").* This ASC allows the Company to apply pushdown accounting in its separate financial statements when there is a change-in-control event. If the entity does not elect to apply pushdown accounting upon a change-in-control event, it can elect to apply pushdown accounting in a subsequent reporting period as a change in accounting principle in accordance with ASC 250 – *Accounting Changes and Error Corrections,* paragraph 250-10-45-2. This allows entities to apply pushdown accounting in a subsequent reporting period if the entity justifies that it is preferable. The Company believes it is preferable as it results in reflecting acquired assets and liabilities at their fair values, results in the recognition of previously unrecognized assets that have economic value and aligns with the acquirer's required accounting under Topic 805. The election was applied as of the beginning of the year ended December 31, 2022. The new basis of accounting is reflected in the Company's Consolidated Financial Statements.

On April 9, 2020, the Company acquired Miller Pipeline and Minnesota Limited (together "MVerge") for $853.9 million in cash, subject to customary purchase price adjustments. The final purchase price included $3.9 million cash paid in 2021 related to the final net working capital adjustments. Miller Pipeline is headquartered in Indianapolis, Indiana and Minnesota Limited is headquartered in Big Lake, Minnesota. The assets acquired and liabilities assumed were recognized at their acquisition-date fair values, with goodwill representing the excess of the purchase price over the fair value of the net identifiable assets acquired.

The following table summarizes the final allocation of the purchase price pertaining to the Company and reflects the net assets pushed down at the date of acquisition, the subsequent activity and the impact on the financial statements as of January 1, 2022 (in thousands):

Assets acquired:	Net assets pushed down at acquisition date April 9, 2020	Subsequent activity	Impact of pushdown accounting January 1, 2022
Current assets	$ 136,386	$ (136,386)	$ —
Property and equipment, net	199,081	(69,330)	129,751
Goodwill, net	109,263	(18,848)	90,415
Intangible assets, net	133,000	(15,181)	117,819
Other assets	360	(360)	—
Current and other liabilities	(69,266)	65,414	(3,852)
Total assets acquired	$ 508,824	$ (174,691)	$ 334,133

The application of pushdown accounting decreased net income and retained earnings by $52.4 million at December 31, 2021.

(c) *Use of Estimates and Assumptions*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of estimates and assumptions by management in determining the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities known to exist as of the date the financial statements are published, and the reported amount of revenue and expenses recognized during the periods presented. The Company reviews all significant estimates affecting its financial statements on a recurring basis and records the effect of any necessary adjustments prior to their publication. Judgments and estimates are based on the Company's beliefs and assumptions derived from information available at the time such judgments and estimates are made. Uncertainties with respect to such estimates and assumptions are inherent in the preparation of financial statements. Estimates are primarily used in the Company's assessment of the allowance for doubtful accounts, useful lives of assets, fair value assumptions analyzing goodwill, and other intangible and long-lived asset impairments, liabilities for insurance and other claims, and revenue recognition for proportional performance contracts.

(d) *Cash and Cash Equivalents*

The Company considers all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash equivalents. Book overdrafts occur when the amount of outstanding checks exceed the cash deposited at a given bank. Book overdrafts, if any, are included in "*Accounts payable*" in the Consolidated Balance Sheet and in operating activities in the Consolidated Statement of Cash Flows.

The Company participates in a centralized cash management arrangement with its Parent. Cash balances are swept daily by the Parent and, as the Company has the right of offset, the net receivable or payable to the Parent is recorded as related-party receivables or payables in the Consolidated Balance Sheet. Changes in net related-party receivables are classified as investing activities and changes in net related-party payables are classified as financing activities in the Consolidated Statement of Cash Flows.

(e) *Allowance for Doubtful Accounts*

The Company provides an allowance for doubtful accounts when collection of an account is considered doubtful. Receivables are written off against the allowance when deemed uncollectible. The Company considers receivables that are at least 90 days past due in its analysis of the allowance for doubtful accounts. The Company also includes accounts receivable balances that relate to customers in bankruptcy or with other known difficulties in its analysis of the allowance for doubtful accounts. Inherent in the assessment of the allowance for doubtful accounts are certain judgments and estimates including, among others, the customer's access to capital, the customer's willingness or ability to pay, general economic and market conditions, and the ongoing relationship with the customer. Material changes in the Company's customers' business or cash flows, which may be impacted by negative economic and market conditions, could affect the Company's ability to collect amounts due from them. The allowance for doubtful accounts was $0.8 million at December 31, 2022.

(f) Property and Equipment

Property and equipment are stated at cost, and depreciation is computed using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are capitalized and amortized over the lesser of the life of the lease or the estimated useful life of the asset. Expenditures for repairs and maintenance are charged to expense when incurred. Expenditures for major additions and improvements extending the useful lives of existing equipment are capitalized and depreciated over the adjusted remaining useful life of the assets. Upon retirement or disposition of property and equipment, the cost and related accumulated depreciation are removed, and any resulting gain or loss is reflected in "*Other expense, net*", in the Consolidated Statement of Operations.

Management reviews property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Based on our assessment, management determined there was no impairment during the year ended December 31, 2022.

(g) Goodwill and Other Intangible Assets

(i) Goodwill

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. In accordance with Accounting Standards Update ("ASU") 2014-02, *Intangibles – Goodwill and Other (Topic 350): Accounting for Goodwill*, the Company has elected to amortize goodwill on a straight-line basis over 10 years. In addition, the Company has elected to test goodwill for impairment at the entity level whenever events or changes in circumstances indicate that the carrying amount of goodwill may not be recovered.

Upon occurrence of a triggering event, the Company performs a qualitative assessment to determine whether it is more likely than not that the fair value of the Company is less than its carrying amount. If the Company determines it is more likely than not that the fair value of the Company is less than its carrying value, the Company will recognize an impairment loss for the amount by which the carrying amount exceeds its fair value. No triggering events were identified in the year ended December 31, 2022 and, therefore, no impairment loss was recorded.

(ii) Other Intangible Assets

The Company's finite-lived intangible assets comprise of customer relationships, tradenames and noncompete arrangements. Intangible assets, other than goodwill, are amortized over their estimated useful lives on a straight-line basis. The estimated useful lives of our customer relationships range from eleven years to fourteen years, and the estimated useful lives of our trade names range from sixteen years to twenty years. Management reviews finite lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be realizable.

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. No triggering event was identified in the year ended December 31, 2022 and, therefore, no impairment loss was recorded.

(h) Contingent Liabilities

The Company provides for contingent liabilities when it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements, and the amount of the loss can be reasonably estimated.

(i) Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy that prioritizes the inputs used to measure fair value is described below. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities.

- Level 2 – Inputs other than quoted prices included within Level 1 that are either directly or indirectly observable through correlation with market data.

- Level 3 – Unobservable inputs that are supported by little or no market data, which require the reporting entity to develop its own assumptions.

The carrying values of cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximate fair value due to the short-term nature of these instruments.

(j) Insurance

The Company is insured for certain losses relating to its property and casualty program.

Insurance expenses and related accrued insurance liabilities are determined based on actual claims reported and actuarial estimates of claims incurred but not reported. Incurred but not reported claims are determined by taking into account historical claims payments and known trends such as claim frequency and severity. Insurance liabilities are based on the total estimated costs of claims filed and estimates of claims incurred but not reported, less amounts paid against such claims, limited by a deductible. The Company continually monitors claim activity and incidents and makes necessary adjustments based on these evaluations.

The Company's liability for unpaid claims and associated expenses, including incurred but not reported losses related to these policies, totaled $9.4 million as of December 31, 2022 and are reflected in "*Accrued liabilities*" on the Consolidated Balance Sheet.

(k) Legal Proceedings

The Company is involved in various legal proceedings and claims arising in the ordinary course of business, none of which are expected to have a material adverse effect on the Company's financial position, results of operations, or cash flows. The Company records reserves when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. Costs incurred for litigation are expensed as incurred.

(l) Leases

For any new or modified lease, the Company, at the inception of the contract, determines whether a contract is or contains a lease. The Company records right-of-use ("ROU") assets and lease obligations for its finance and operating leases, which are initially recognized based on the discounted future minimum lease payments over the term of the lease. As the rate implicit in the Company's leases is not easily determinable, the Company utilizes the portfolio approach in applying an incremental borrowing rate for its ROU operating and finance leases and adjusts such rate on a quarterly basis.

Lease term is defined as the non-cancelable period of the lease plus any options to extend or terminate the lease when it is reasonably certain that the Company will exercise the option. The Company has elected not to recognize ROU asset and lease obligations for its short-term leases, which are defined as leases with an initial term of 12 months or less.

For a majority of all classes of underlying assets, the Company has elected to not separate the lease from the non-lease components. For leases in which the lease and non-lease components have been combined, the variable lease expense includes expenses such as common area maintenance, utilities, and repairs and maintenance.

See Note 3 – *New Accounting Standards*, for further information about the Company's adoption of the new leasing standard and its related amendments and Note 10 – *Commitments and Contingencies* for more information about the composition of leases.

(m) Revenue Recognition

The Company applies the Financial Accounting Standards Board ("FASB") ASU 2014-09, "Revenue from Contracts with Customers" (ASC 606). Under this ASU and subsequently issued amendments, an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

Revenue from service arrangements is recognized when services are performed. The satisfaction of a performance obligation occurs when the transfer of control of the goods or services occur, which may be at a point in time or over time; resulting in revenue being recognized over the course of the underlying contract or at a single point in time based upon the delivery of the goods or services to customers.

The Company works under three main types of service contracts: unit price, time and expense, and fixed price contracts. The Company recognizes revenue from time and expense contracts based on actual labor as the service is performed and recognizes revenue on materials and equipment as incurred. Unit based contracts occur when the Company has contracted with the customer to provide all of the labor, equipment, material and services (except for those services and materials furnished by the customer) for installation and maintenance services based on instructions/technical specifications/construction drawings provided by the customer. The Company recognizes revenue on unit-based services over time as units are completed. Revenue for fixed price contracts is recognized over time using the cost-to-cost method, measured by the percentage of costs incurred to date to total estimated costs for each contract. Fixed price contracts are comprised of construction services that are integrated or incorporated to deliver the combined output promised to the customer. As such, all the construction tasks are bundled to form a single performance obligation that together meet the criteria for being distinct. These contracts provide for a fixed amount of revenue for the entire project. Such contracts provide that the customer accept completion of progress to date and compensate the Company for services rendered. Customer acceptance occurs when the customer obtains control of the good or service being provided by the Company. Contract costs are immaterial in nature and include all direct material, labor, and subcontract costs, as well as indirect costs related to contract performance, such as indirect labor, tools, repairs, and depreciation.

The cost estimation process is based on the professional knowledge and experience of project managers, field construction supervisors, operations management, and financial professionals. Changes in job performance, job conditions, estimated profitability, and final contract settlements may result in revisions to costs and revenue and their effects are recognized in the period in which the revisions are determined. Provisions for losses on uncompleted contracts are made in the period in which the losses become evident.

With respect to the Company's contracts, interim payments are typically received as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals or upon achievement of contractual milestones. As a result, under fixed price contracts the timing of revenue recognition and contract billings results in contract assets and contract liabilities. Contract assets represent revenues recognized in excess of amounts billed for fixed price contracts and are current assets that are transferred to accounts receivable when billed or the billing rights become unconditional. Contract assets are not considered a significant financing component as they are intended to protect the customer in the event the Company does not perform on its obligations under the contract.

Contract liabilities represent billings in excess of revenues recognized for fixed price contracts. These arise under certain contracts that allow for upfront payments from the customer or contain contractual billing milestones, which result in billings that exceed the amount of revenues recognized for certain periods. Contract liabilities are current liabilities and are not considered a significant financing component, as they are used to meet working capital requirements that are generally higher in the early stages of a contract and are intended to protect the Company from the other party failing to meet its obligations under the contract. Contract assets and liabilities are recorded on a performance obligation basis at the end of each reporting period. Contract liabilities are reflected within "*Accrued liabilities*" on the Consolidated Balance Sheet. At December 31, 2022, the Company had no contract assets or liabilities.

Balances billed but not paid by customers pursuant to retainage provisions in certain contracts are generally due upon completion of the contracts and acceptance by the customer. Current retainage balances were $2.8 million as of December 31, 2022 and are included in "*Accounts receivable, net*" in the Consolidated Balance Sheet. Retainage is not considered to be a significant financing component because the intent is to protect the customer.

(n) Income Taxes

As a limited liability company electing to be treated as a partnership for tax purposes, a provision for income taxes is not made in the individual accounts since such taxes are the responsibility of the individual members of the Company.

(o) Collective Bargaining Agreement

The Company is party to various collective bargaining agreements with unions that represent certain of their employees. The collective bargaining agreements expire at various times and have typically been renegotiated and renewed on terms similar to those in the expiring agreements. The agreements require the Company to pay specified wages, provide certain benefits to their union employees, and contribute certain amounts to multiemployer pension plans and employee benefit trusts. The Company's multiemployer pension plan contribution rates generally are specified in the collective bargaining agreements (usually on an annual basis), and contributions are made to the plans on a "pay-as-you-go" basis, based on its union employee payrolls. See Note 11–*Union Multi-Employer Pension Plans* for more details on union employees.

(3) New Accounting Pronouncements

In October 2021, the FASB issued ASU 2021-08, "*Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*". The amendments in this update require an acquirer in a business combination to recognize and measure contract assets and contract liabilities (deferred revenue) using the recognition and measurement guidance in Topic 606 - *Revenue from Contracts with Customers*. Under the 'Topic 606 approach', the acquirer applies the revenue model as if it had originated the contracts. This is a departure from the current requirement to measure contract assets and contract liabilities at fair value. Under current practice, measuring deferred revenue at fair value typically results in a reduction to the deferred revenue balance as reported by the acquiree just before the acquisition. This practice causes the acquirer to recognize less revenue post-combination than the acquiree would have recognized absent the acquisition. Additionally, the timing of contractual payments affects the amount of the acquirer's post-acquisition revenue. The Topic 606 approach will eliminate the deferred revenue reduction and narrow the differences caused by the timing of payments. The FASB has indicated that the increase in the contract liability will generally result in an offsetting increase to goodwill. This will result in more post-acquisition GAAP revenue and profit for many contracts in a contract liability position. The amendments in this update are effective for private companies for annual and interim periods beginning after December 15, 2023. Management is currently evaluating this ASU to determine its impact on the Company's Financial Statements.

In February 2016, the FASB issued ASU 2016-02, "*Leases (Topic 842)*", which requires lessees to recognize a ROU asset and a liability on the balance sheet for all leases, with the exception of short-term leases. The lease liability will be equal to the present value of lease payments and the ROU asset will be based on the lease liability, subject to adjustments such as for initial direct costs. The standard requires the classification of leases as either operating or finance in the balance sheets.

The Company adopted ASU 2016-02 and all related amendments with an effective date of January 1, 2022, using the modified retrospective approach and has elected certain practical expedients permitted under the transition guidance, including: (i) the retention of historical lease classifications; (ii) relief from reviewing expired or existing contracts to determine whether they contain leases; and (iii) to not reassess initial direct costs for any existing leases. The Company elected not to utilize the hindsight practical expedient in adopting ASC 842. The Company adopted certain accounting policy elections, and as such, exempted leases with an initial term of twelve months or less from balance sheet recognition, utilized the portfolio approach in applying the discount rate, and combined non-lease components with lease components. In connection with the adoption of ASU 2016-02, the Company implemented a new lease accounting system.

The adoption of ASU 2016-02 did not have a significant impact on the Company's Consolidated Statement of Operations and Consolidated Statement of Cash Flows as the amount of expense recognized following adoption did not materially change from that which was recognized under the leasing standard in effect at December 31, 2021. In connection with the adoption of ASU 2016-02, the Company recorded an increase in both total assets and total liabilities of $20.5 million due to the recognition of operating lease assets and liabilities in its Consolidated Balance Sheet.

(4) Business Combinations

Business Combinations

1127 Construction

On April 1, 2022, the Company acquired the assets of 1127 Construction, Inc. ("1127 Construction") pursuant to an asset purchase agreement for a cash purchase price of $24.0 million paid at closing, and $1.9 million of customary working capital and purchase price adjustments paid in the third quarter of 2022. The preliminary purchase price includes goodwill of $1.5 million recorded in conjunction with the acquisition. During the third quarter of 2022 and during the measurement period, the Company recorded an additional $2.7 million of goodwill resulting from certain purchase price allocations related to customer relationships, accounts receivables and inventory. Located in northeast Ohio, 1127 Construction is a family-owned company founded in 2005 and provides natural gas distribution and related infrastructure services. The acquisition will expand the Company's existing operations in the Ohio Region of Miller Pipeline and expand its core offerings of maintenance, replacement, and upgrade services.

When determining the fair values of assets acquired and liabilities assumed, management made significant estimates, judgments and assumptions which are subject to change upon final valuation. Changes to the preliminary estimates are made within one year following the acquisition date based on management's review of property and equipment, customer relationships, other assets and liabilities, and final valuation inputs and results.

The assets acquired, liabilities assumed and the results of operations of the acquired business are included in the Company's consolidated results for the period from the date of acquisition.

(5) Accounts Receivable

At December 31, 2022, accounts receivable consisted of the following (in thousands):

	December 31, 2022
Billed accounts receivable	$ 115,716
Securitization	(132,202)
Unbilled accounts receivable	55,627
Retainage	2,753
Accounts receivable	41,894
Less allowance for doubtful accounts	(775)
Accounts receivable	$ 41,119

(6) Property and Equipment

At December 31, 2022, property and equipment consisted of the following (in thousands):

	Useful lives	December 31 2022
Machinery and equipment	2–7 years	$ 265,793
Buildings and leasehold improvements	2–30 years	21,144
Office furniture and fixtures	5–15 years	2,603
Property and equipment, at cost		289,540
Less accumulated depreciation		(106,438)
Property and equipment, net		$ 183,102

In connection with the January 1, 2022 adoption of ASC 842, the Company reclassified $7.9 million of its property and equipment from each respective asset class to "*Right-of-use assets – finance leases, net*" in its Consolidated Balance Sheet.

Resulting from the application of push-down accounting, property and equipment, net increased $10.4 million at January 1, 2022. See Note 2 – *Summary of Significant Accounting Policies*, subtopic *Change in Accounting Principles* for more details.

Depreciation expense for both property and equipment and finance leases were $44.2 million for the year ended December 31, 2022 and is included within "*Cost of revenue*" and "*General and administrative expenses*" in the accompanying Consolidated Statement of Operations.

(7) Goodwill and Other Intangible Assets

The Company amortizes goodwill on a straight-line basis over a period of 10 years. Effective January 1, 2022, the Company elected pushdown accounting, which extended the useful life of goodwill. See Note 2 – *Summary of Significant Accounting Policies*, subtopic *Change in Accounting Principles* for more details. At December 31, 2022, the weighted average remaining amortization period for goodwill was 7.7 years. Changes in the carrying amount of goodwill for the year ended December 31, 2022 follows (in thousands):

	Goodwill
Goodwill, net at December 31, 2021	$ 86,226
Acquisition accounting - pushdown	58,112
Adjusted Balance at December 31, 2021	144,338
Addition from 1127 Construction acquisition	4,201
Amortization expense	(16,917)
Goodwill, net at December 31, 2022	$ 131,622

The future estimated goodwill amortization expense is expected to be as follows (in thousands):

	Goodwill, Net
Years Ending December 31:	
2023	$ 17,023
2024	17,023
2025	17,023
2026	17,023
2027	17,023
Thereafter	46,507
Total	$ 131,622

The Company's other intangible assets consists of customer relationships and tradenames. The change in the carrying amount of customer relationships and trade names for the year ended December 31, 2022, follows (in thousands):

	Customer Relationships	Trade Names	Total
Other intangible assets, net as of December 31, 2021 - as reported	$ 38,677	$ 10,725	$ 49,402
Acquisition accounting - pushdown	32,948	74,944	107,892
Adjusted Balance at December 31, 2021 - as adjusted	71,625	85,669	157,294
Addition from 1127 Construction acquisition	4,201	—	4,201
Amortization expense	(6,286)	(5,800)	(12,086)
Other intangible assets, net as of December 31, 2022	$ 69,540	$ 79,869	$ 149,409

Effective January 1, 2022, the Company elected pushdown accounting, which extended the useful lives of its intangible assets. See Note 2 – *Summary of Significant Accounting Policies*, subtopic *Change in Accounting Principles* for more details. At December 31, 2022 the weighted average remaining useful lives for customer relationships, and tradenames were 10.9 years and 13.0 years, respectively, and the future estimated amortization expense was expected to be as follows (in thousands):

	Customer Relationships	Tradenames	Total
Years Ending December 31:			
2023	$ 6,382	$ 5,800	$ 12,182
2024	6,382	5,800	12,182
2025	6,382	5,800	12,182
2026	6,382	5,800	12,182
2027	6,382	5,800	12,182
Thereafter	37,630	50,869	88,499
Total	$ 69,540	$ 79,869	$ 149,409

(8) Accrued Liabilities

At December 31, 2022, accrued liabilities consisted of the following (in thousands):

	December 31, 2022
Payroll related liabilities	$ 30,521
Claims reserve	9,388
Union dues payable	852
Income tax payable	14
Other	1,601
Accrued liabilities	$ 42,376

(9) Related-Party Transactions

Accounts Receivable Securitization

On December 21, 2018, the Parent entered into an Accounts Receivable Securitization Facility (the "Securitization") with a financial institution to provide additional liquidity to the Parent. The Securitization is secured by substantially all of the Parent's accounts receivable and expires on December 20, 2024.

At December 31, 2022, the Company had assigned, $132.2 million of eligible accounts receivables to Artera Special Funding Entity, a related-party, under the Securitization, which is reflected in "*Related-party receivables – current*" on the Consolidated Balance Sheet.

Related-Party Receivables and Payables

In the normal course of business, the Company, the Parent, and other subsidiaries of the Parent make payments on behalf of each other for services including but not limited to workers' compensation insurance premiums, medical insurance premiums, and other expenses which are paid by the Parent and other related entities. The Company has a right of offset from the resulting receivables and payables between itself, the Parent and other related entities. Therefore, the net receivables from or net payables to the Parent or other related entities are, accordingly, recorded as related-party receivables or related-party payables on the Consolidated Balance Sheet.

As of December 31, 2022, related-party payables were $149.0 million and were reflected in "*Related-party payables, non-current*" on the Consolidated Balance Sheet.

The Parent's long-term debt is secured by substantially all the assets of the Parent and its subsidiaries. The Parent's subsidiaries guarantee the obligations of the Parent's long-term debt.

(10) Commitments and Contingencies

(a) Leases

Description of Leases

The Company primarily leases buildings, vehicles, construction equipment and office equipment under both operating and finance lease arrangements in which we are the lessee.

The Company has remaining lease terms that expire at various dates through 2027, some of which may include options to extend the terms in increments of up to five years or options to terminate. In determining our lease term, we include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. The exercise of lease extensions is at our sole discretion. If it is reasonably certain that we will exercise such renewal options, the periods covered by such renewal options are included in the lease term and are recognized as part of our right-of-use assets and lease liabilities.

Certain leases also include options to purchase the leased asset. The depreciable life of assets and leasehold improvements are limited by the expected lease term unless there is a transfer of title or a purchase option that is reasonably certain of exercise.

Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

At December 31, 2022, the aggregate minimum lease payments under operating and finance leases were as follows (in thousands):

	Operating Lease	Finance Lease
Years Ending December 31:		
2023	$ 10,429	$ 6,969
2024	6,924	5,506
2025	4,344	4,177
2026	2,192	5,141
2027	368	2,691
Thereafter	75	—
Total undiscounted lease obligations	24,332	24,484
Less imputed interest	(2,869)	(3,512)
Net lease obligations	$ 21,463	$ 20,972

Lease expense is recognized on a straight-line basis over the term of the lease. The components of lease costs for operating and finance leases in the accompanying Consolidated Statement of Operations were as follows (in thousands):

	Year Ended December 31, 2022
Operating lease cost	$ 11,988
Finance lease cost:	
Amortization of right-of-use assets	2,465
Interest on lease obligations	102
Variable lease cost [1]	17,643

[1] Short-term leases including variable lease costs.

Other lease information pertaining to the Company's operating and finance leases follows (dollar amounts in thousands):

	Year Ended December 31, 2022
Cash paid for amounts included in measurement of lease obligations:	
Operating cash flows from operating leases (payments)	$ 11,806
Financing cash flows from finance leases (payments)	3,724
Assets obtained in exchange for:	
Operating lease obligations[1]	11,459
Weighted average remaining lease term as of December 31, 2022:	
Operating leases	2.9 yrs
Finance leases	3.6 yrs
Weighted average discount rate as of December 31, 2022:	
Operating leases	8.3%
Finance leases	8.1%

[1] Excludes opening balance of $20.5 million upon the adoption of ASC 842.

Discount Rate

The Company's leases generally do not provide an implicit rate, and therefore the Company uses its incremental borrowing rate as the discount rate when measuring operating lease liabilities. The incremental borrowing rate represents an estimate of the interest rate the Company would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of a lease. The Company used a portfolio incremental borrowing rate as of January 1, 2022 for operating leases that commenced prior to January 1, 2022 to establish the lease liabilities when adopting ASC 842. For operating and finance leases that commenced after January 1, 2022, the portfolio incremental rates applicable at the closest quarterly period to the inception date of the lease was used to establish the new ROU liability applicable to the respective lease.

See Note 2 – *Summary of Significant Accounting Policies*, for further information about the Company's accounting policy for leases and Note 3 – *New Accounting Standards*, for further information about the Company's adoption of ASU 2016-02 and its related amendments.

(b) Performance Bonds

During the course of normal contracting activities, the Company may be required to obtain performance and payment bonds. Bonds outstanding were $108.4 million as of December 31, 2022.

(c) Concentrations of Credit Risk

For the year ended December 31, 2022, two customers accounted for 38.8% of revenue and two customers accounted for 20.5% of trade accounts receivable. No other single customer accounted for more than 10% of revenue or trade accounts receivable.

(11) Union Multi-Employer Pension Plans

The Company contributes to various multi-employer defined-benefit pension plans under the terms of collective bargaining agreements (the "Plan") that cover its union represented employees. Approximately 89.6% of the Company's labor force is covered by a collective bargaining agreement as of December 31, 2022. These Plans generally provide for retirement, death, and/or termination benefits for eligible employees within the applicable collective bargaining units, based on specific eligibility participation requirements, vesting periods, and benefit formulas. The risks of participating in these multi-employer plans are different from single employer plans in the following aspects:

- Assets contributed to the multi-employer plan by one employer may be used to provide benefits to employees of other participating employers;
- If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers; and
- If the Company chooses to stop participating in some of its multi-employer plans, the Company may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

As of December 31, 2022, the Company had not undertaken to terminate, withdraw, or partially withdraw from any of these multi-employer plans. Any withdrawal liability would be based on the Company's proportional share of each plan's unfunded vested benefits. The Company's participation in these plans for the year ended December 31, 2022, is outlined in the table below. The "EIN/pension plan number" column provides the Employee Identification Number (EIN) and the three-digit plan number, if applicable. Unless otherwise noted, the most recent Pension Protection Act (PPA) zone status available as of December 31, 2022 pertains to the Plan's prior twelve-month period. The zone status is based on information that the Company received from the Plan and is certified by the Plan's actuary. Among other factors, plans in the red zone are generally less than 65% funded, plans in the yellow zone are less than 80% funded, and plans in the green zone are at least 80% funded. The “FIP/RP status” column indicates Plans for which a financial improvement plan (FIP) or a rehabilitation plan (RP) is either pending or has been implemented. The last column lists the expiration dates of the collective bargaining agreements (CBA) to which the plans are subject.

Fund	EIN/pension plan number	PPA Zone Status December 31, 2022	FIP/RP status	Contributions (*in thousands*) December 31, 2022	Surcharge Imposed	Expiration date of CBA
Central Pension Fund of IUOE & Participating Employees	36-6052390/001	Green	N/A	$ 5,429	No	5/31/2024
IN Laborers Pension Fund	35-6027150/001	Green	N/A	5,200	No	5/31/2027
Laborers Dist Council & Contractor Pension Fund	31-6129964/001	Green	N/A	3,821	No	5/31/2027
Operating Engineerings Local 324	38-1900637/001	Red	RP	3,639	No	Varies through 12/31/2026
OH Operating Eng Fringe Benefit Programs	31-6129968/001	Green	N/A	2,826	No	5/31/2024
Laborers National Pension Fund	75-1280827/001	Yellow	RP	1,949	No	5/31/2027
Laborers' Local Union No. 158 Pension Plan	23-6580323/001	Green	N/A	1,653	No	5/31/2027
Michigan Laborers Fringe Benefit Funds	38-6233976/001	Green	RP	1,420	No	Varies through 12/31/2023
UA Local 190 Pension Plan	38-6065579/001	Green	N/A	1,404	No	5/31/2025
Laborers Pension Trust Fund for Northern California	94-6277608/001	Green	N/A	1,324	No	Varies through 12/31/2023
All other plans				8,067		
Total				$ 36,733		

(12) Subsequent Events

The Company evaluated the effects of all subsequent events through March 22, 2023, the date financial statements were issued.

Miller Pipeline CIPP References

Customer	Contact	Contract Amount	Method	CIPP Quantity	Start Date	End Date
City of Greenfield, IN (3 projects) 809 S. State Street Greenfield, IN	Dave Scheiter 317-477-4360	$ 300,000.00	Water	800' of 15" 150' of 16"	8/1/2009	8/25/2009
		$ 300,000.00	Water	175' of 15"	11/1/2008	11/5/2008
		$ 300,000.00	Water	825' of 18"	3/10/2007	3/25/2007
City of St. Clairesville, OH 154 S. Marietta Street St. Clairsville OH 43950	Jeff Vaughn 740-695-7256	$ 150,000.00	Steam	667' of 15" 598' of 12" 633' of 10"	2/9/2009	4/15/2009
City of Fairfield Oh (3 projects) 4799 Groh Lane Fairfield, Ohio 45014	Drew Young 513-858-7760	$ 178,000.00	Water	1,100' of 30" 319' of 33"	1/15/2009	1/25/2009
		$ 140,000.00	Water	4781' of 8" 347' of 10"	1/13/2006	3/1/2006
	Ben Mann 513-867-4213	$ 215,000.00	Steam	5090' of 8" 739' of 12" 255' of 15" 591' of 24"	10/29/2012	11/19/2012
City of Sanford 800 W. Fulton Street P.O.Box 1788 Sanford, FL 32772	Russ Sheivenberger 407-688-5080	$ 1,100,000.00	Water	1161' of 60" 718' of 48" 840' of 36" 70' of 30"	6/1/2009	8/20/2009
City of Fort Wayne One Main Street Room 480 Fort Wayne, IN 46802	Dan Cuney 260-427-2689	$ 392,000.00	Steam	8,578 of 8" 2,413 of 10" 2,656 of 12" 787 of 15"	4/15/2009	7/20/2009
City of Jackson, OH 150 East Campus View Blvd, Suite 130 Columbus, OH 43235	Tim Clapper 614-885-1700	$ 856,000.00	Steam	495' of 24' 428' of 18"	5/31/2008	5/31/2008
Village of Farmersville, OH 101 N. Barron St. Eaton, OH 45320	Mike Brobeck 937-456-1332	$ 308,000.00	Steam	322' of 24" 602' of 18" 277' of 15"	6/20/2009	7/10/2009

Huber Heights OH 6131 Taylorsville Rd. Huber Heights, OH 45424	Randy Gabbard 937-233-1423	$ 38,000.00	Steam	1383' 10"	11/7/2007	12/2/2007
City of Bloomington, IN 600 E. Miller Drive Bloomington, IN 47402	Phil Peden 812-349-3634	$ 855,000.00	Steam	14,420' of 8" 3,820' of 10" 4,240 of 12"	10/15/2009	3/1/2010
Town of Riley, IN 3050 Poplar St Suite B Terre Haute, IN 47803	Eric Smith 812-234-2551	$ 345,000.00	Steam	7,580' of 8" 2490' of 10" 1,968' of 12"	1/15/2010	3/25/2010
City of Vandalia, OH 333 James E Bohanan Memorial Drive Vandalia, OH 45377	Rob Cron 937-415-2323	$ 190,000.00	Steam	5,081' of 8" 223' of 10" 1,477' of 12"	3/1/2010	4/15/2010
City of Jackson Center, OH 2000 West Central Ave Toledo, OH 43606	Peter Latta 419-473-8924	$ 280,000.00	Steam	11,405' of 8" 315' of 10" 122' of 12"	4/1/2010	5/15/2010
City of Fort Wayne One Main Street Room 480 Fort Wayne, IN 46802	Dan Smith 260-427-5065	$ 530,000.00	Steam	647' of 8" 3,217' of 10" 9,100' of 12" 2,363' of 15"	1/5/2010	4/30/2010
City of Fort Wayne One Main Street Room 480 Fort Wayne, IN 46802	Jon Moore 260-427-1460	$ 370,000.00	Steam	1,239' of 8" 4,944' of 10" 4,751' of 12" 769' of 15"	9/20/2013	12/4/2013
CH & M Excavating - Wesport IN 3687 North County Road 500 East Milan, Indiana 47031	Jeff Meinder 812-654-2030	$ 1,325,000.00	Steam	99' of 6" 23,984' of 8" 10,272' of 10" 2,710' of 12"	2/10/2012	6/29/2012
City of Florence, Ky (2 Projects) 466 Erlanger Rd. Erlanger, KY 41018	Michelle Bollman 859-727-3293	$ 390,000.00	Steam	16,119' of 8"	8/13/2013	9/24/2013
		$ 315,000.00	Steam	13,181' of 8" 268' of 12"	9/12/2012	10/30/2012
Driftwood Utilities 3871 Mill Place Columbus, IN 47201	Marty Wessler 317-788-4551	$ 370,000.00	Steam	4,625' of 8" 5,323' of 12"	7/10/2013	9/25/2013
City of Mason, OH (2 Projects) 3200 Mason Morrow Millgrove Rd Mason Ohio 45040	Ed Smith 513-229-8570x7012	$ 395,000.00	Steam	8,024' of 8" 1,409' of 12"	8/25/2013	9/25/2013
		$ 375,000.00	Steam	7,363' of 8" 3,097' of 10"	9/12/2012	10/30/2012

Culy Contrating - (2 Projects) 5 Industrial Park Dr. Winchester, IN 47394	Craig Closser 765-584-8509	$ 445,000.00	Steam	737' of 6" 11,437' of 8' 7,176' of 10"	4/29/2013	12/5/2013
		$ 290,000.00	Steam	7,995' of 8" 695' of 10" 1,503' of 12"	10/14/2013	11/5/2013
Anne Arundel Co. 2660 Riva Road Annapolis, MD 21401	Bruce Wright 410-222-7560	$ 505,000.00	Steam	10,329' of 8" 2,291' of 10" 663' of 12" 158' of 15"	2/20/2013	8/14/2013
City of Fort Lauderdale, FL 100 North Andrews Ave, Engineering 4th Floor Fort Lauderdale, Florida 33301	Jean Examond 954-492-2852	$ 1,240,000.00	Steam/Water	26,400' of 8" 1,350' of 10" 15,100' of 12" 1,050' of 12" 360' of 16"	4/7/2010	5/1/2013
City of Winter Haven, FL 401 6th Street SW Winter Haven, FL 33880	Steve Rheiner 863-298-5490	$ 375,000.00 $ 470,133.50	Steam	18,854' of 8" 20,017' of 8"	6/25/2013 3/25/2014	9/18/2013 8/16/2014
City of Fort Wayne, Bd. Public Works 200 E. Berry St. Room 240 Fort Wayne, IN 46802	Pat Dooley 260-427-5065	$ 372,324.00	Steam	1,239' of 8" 4,944' of 10" 4,751' of 12" 769' of 15"	9/23/13	11/6/13
City of Sarasota 1565 First St. Room 205 Sarasota, FL 34236	Carlos Marin 941-954-4151	$323,360.40 $367,692.45	Water	1,495' of 30" 1,264' of 8", 3,528' of 10", 1,083' of 15", 1,328' of 18", 62' of 24"	6/17/14 1/8/2015	7/18/14 2/6/2015
City of DeBary 16 Columbia Rd. DeBary, FL 32713	Kevin Hare 386-668-2040	$146,341.50	Steam	1,096' of 18"	5/28/14	8/19/14
Orange County BOCC - Utilities 9150 Curry Ford Road Orlando, FL 32825	James Montalvo 407-506-2120	$883,308	Steam	28,904 of 8" 2,216 of 10"	12/16/2013	1/2/2015
Manatee County Public Works 551 39th St East Bradenton, FL 34203	Kent Bontrager 941-748-4501	$200,055	Water	1,243' of 30"	6/30/2014	12/23/2014
City of Tampa Public Works 306 E. Jackson St Tampa, FL 33602	Jeffrey Taylor 813-630-3911	$664,405	Water	21,759' of 8" 4,073' of 10"	8/14/2014	2/9/2015

City of Largo PO Box 296 Largo, FL	Tim Calvit 727-586-7413	$603,445.65	Water	1,194' of 12" 7,433' of 18"	8/21/2014	10/23/2014
City of Valdosta, GA 1016 Myrtle St Valdosta, GA 31603	David Frost 229-259-3592	$223,486.17	Water	2,866' of 8" 893' of 12" 1,556 of 18"	3/30/2015	5/14/2015

*More references available, MPC has installed over 1,000,000 LF of CIPP

Miller Pipeline is one of the nation's premier contractors, providing a comprehensive range of pipeline contracting and rehabilitation services for sewer pipelines, water, wastewater, and gas, as well as specialty products and services for the industrial and telecommunications industries.

Miller Pipeline has exceeded $962,103,168 in revenues.

We believe there are many reasons why **Miller Pipeline** is regarded as a premier and well-respected national contractor. Certainly our combination of innovative thinking, technical expertise, and customer service have played a big part. We continue to research and improve our products and processes in order to offer our customers cost-effective and value-added products and services.

We pride ourselves in our ability to provide our customers with a full range of rehabilitation methods to meet individual needs and specific application constraints. Miller was one of the first contractors to import trenchless technologies from Europe and the Far East. We acquire the latest high-tech equipment that is so vital to doing the job right and in a safe, efficient manner.

We realize that our employees are the backbone of our existence. They are never taken for granted. Many of **Miller Pipeline** employees have spent their entire career with Miller. This proves to us that **Miller Pipeline** provides the security and growth necessary to retain quality personnel. This is key to our success and it shows.

Miller Pipeline has been in the business for 70 years and has demonstrated resilience to economic downturns and will remain secure for the future. Our organization is solid, not only from an economic standpoint, but the issue at hand, demonstrating our knowledge to correct **(I/I) problems and overflows**.

Miller Pipeline prides itself by being recognized around the globe as an industry leader in trenchless technology rehabilitation as well as a solid foundation of gas construction services.

Miller Pipeline has been providing our customers with experience and an admirable list of core capabilities and customer centered solutions since 1953. **Miller Pipeline** is headquartered in Indianapolis, IN and has 32 additional offices nationwide. Currently, the Company maintains more than 700 construction crews made up of skilled, professional employees, many of whom have been with the Company their entire careers. We are an organization with over 3,500 employees and an equipment fleet nearing $200,000,000.

As a recognized leader in the industry we attribute much of our success and longevity to the quality of work we provide to our customers and the professional and stable leadership at all levels within the company. The values and principals, on which the company was originally founded, remain today as the cornerstone of our commitment to quality and value-added service. It is in this way our Company stays on the leading edge and achieves maximum efficiencies to provide greater value.

At **Miller Pipeline** we are committed to outstanding performance, customer satisfaction, and the highest quality standards in the industry. Since 1970, Miller has been in the pipeline rehabilitation business and has specialized in all phases of pipeline installation, rehabilitation and related services. **Miller Pipeline's** current capabilities include the following:

Gas
- Distribution
- Main and Service Installations
- New, Replace, and Rehabilitation
- Directional Drilling
- Cathodic Protection
- Distribution Stations / Fabrication
- Vacuum Excavation
- External and Internal Joint Repair
- Internal Joint Repair Sales
- Transmission
- Extensions
- Replacement
- Rehabilitation
- Relocation

Telecommunications
- Trenching
- Directional Drilling
- Manhole Installation
- Fiber Optic Installation
- Verification and Daylighting

Wastewater
- Cured-In-Place Pipe
- Pipe Bursting
- High strength PVC Internal Lining Systems
- CCTV
- Point Repairs
- Manhole Rehabilitation Products

Water
- Mainline and Service Installation
- New / Rehabilitation
- Directional Drilling
- HDPE Pipe Expertise
- WEKO Internal Joint Sealing

Vacuum Excavation
- Gas Line Rehabilitation
- External Joint Sealing
- Utility Verification / Daylighting
- Cathodic Protection
- Anodes / Test Stations / Fault Finding

ClarkDietz

Engineering Quality of Life®

January 2, 2024

Jonathan Valenta
Director of Water Quality
City of Fishers, Department of Public Works
10210 Eller Road
Fishers, IN 46038

Re: 2023 Interceptor Rehabilitation
Bid Tabulation and Award Recommendation

Dear Jonathan:

Three submitted Bids were opened November 21, 2023 for the 2023 Interceptor Rehabilitation project with the totals as follows (Bid Tabulation attached):

Miller Pipeline, LLC	$707,617.50
Inliner Solutions, LLC	$795,357.50
Insituform Technologies USA, LLC	$831,618.95

The average of the three bids is $778,197.98, or 10% higher than the low bid by Miller Pipeline. The overall spread between high and low bids is 16% of the average, indicating consensus among the bidders regarding project requirements, complexity, and risk.

We have reviewed the bid documents and discussed the Bid with Miller Pipeline. We have also received positive feedback from clients we contacted for which Miller Pipeline recently completed CIPP rehabilitation. We believe that Miller Pipeline, LLC is the lowest, responsive, and responsible Bidder. We therefore recommend award of the project to Miller Pipeline, LLC.

Sincerely,

Clark Dietz, Inc.

John D. Dufek, P.E.
Design Manager
E-mail: john.dufek@clarkdietz.com

cc: Jeremy Schmitt

Attachment

CITY OF FISHERS, INDIANA
2023 INTERCEPTOR REHABILITATION
NOVEMBER 21, 2023 BID OPENING
SUMMARY AND CHECKLIST OF BIDS RECEIVED

PLAN HOLDERS AS OF 11/21/23 (Prime Bidders Only)	RECEIPT OF ADDENDUM (00 41 43, Page 1)		BASIS OF BID (00 41 43, Pages 4-7)						TOTAL OF BASE PLUS MANDATORY ALTERNATE ADDITIONAL BIDS	AUTHORITY TO DO BUSINESS IN INDIANA (00 41 43, Page 7)	SIGNATURE PAGE SIGNED AND NOTARIZED (00 41 43, Page 8)	FORM 96 SIGNED AND NOTARIZED	BID SECURITY
			BASE BID (ALLISONVILLE & SUNBLEST)			MANDATORY ALTERNATE ADDITIONAL BID (106th & LANTERN)							
	#1	#2	SUB-TOTAL (5.01 B.)	CONTINGENCY ALLOWANCE (5.01 C.)	**TOTAL BASE BID (5.01 D.)**	SUB-TOTAL (5.02 B.)	CONTINGENCY ALLOWANCE (5.02 C.)	**TOTAL ALT BID (5.02 D.)**					
Inliner Solutions, LLC	Yes	Yes	$353,777.50	$60,000.00	**$413,777.50**	$371,580.00	$10,000.00	**$381,580.00**	***$795,357.50***	Yes	Yes	Yes	Yes
Insituform Technologies USA, LLC	Yes	Yes	$453,516.24	$60,000.00	**$513,516.24**	$308,102.71	$10,000.00	**$318,102.71**	***$831,618.95***	Yes	Yes	Yes	Yes
Miller Pipeline, LLC	Yes	Yes	$326,117.50	$60,000.00	**$386,117.50**	$311,500.00	$10,000.00	**$321,500.00**	***$707,617.50***	Yes	Yes	Yes	Yes
SAK Construction, LLC	--	--	--	$60,000.00	--	--	$10,000.00	--	--	--	--	--	--

CITY OF FISHERS, INDIANA
2023 INTERCEPTOR REHABILITATION
NOVEMBER 21, 2023 BID OPENING
TABULATION OF BIDS RECEIVED - BASE BID

				MILLER PIPELINE, LLC		INLINER SOLUTIONS, LLC		INSITUFORM TECHNOLOGIES USA, LLC	
No.	Item	Quantity	Unit	Unit/LS Price	Extended Price	Unit/LS Price	Extended Price	Unit/LS Price	Extended Price
1	Mobilization and Demobilization	1	LS	$ 40,000.00	$ 40,000.00	$ 10,000.00	$ 10,000.00	$ 2,500.00	$ 2,500.00
2	Construction Administration	1	LS	$ 6,500.00	$ 6,500.00	$ 16,000.00	$ 16,000.00	$ 7,500.00	$ 7,500.00
3	Sewer Cleaning and Televising for 21" RCP	905	LFT	$ 8.00	$ 7,240.00	$ 10.50	$ 9,502.50	$ 11.88	$ 10,751.40
4	Sewer Cleaning and Televising for 15" VCP	280	LFT	$ 8.00	$ 2,240.00	$ 12.50	$ 3,500.00	$ 8.28	$ 2,318.40
5	CIPP Liner for 21" RCP	905	LFT	$ 140.00	$ 126,700.00	$ 115.00	$ 104,075.00	$ 118.98	$ 107,676.90
6	CIPP Liner for 15" RCP	280	LFT	$ 103.00	$ 28,840.00	$ 95.00	$ 26,600.00	$ 73.84	$ 20,675.20
7	Bypass Pumping	1	LS	$ 106,250.00	$ 106,250.00	$ 180,000.00	$ 180,000.00	$ 299,659.34	$ 299,659.34
8	Lateral Reinstatement	11	EA	$ 435.00	$ 4,785.00	$ 100.00	$ 1,100.00	$ 85.00	$ 935.00
9	MH Interface Sealing	6	EA	$ 593.75	$ 3,562.50	$ 500.00	$ 3,000.00	$ 250.00	$ 1,500.00
				Base Bid Unit/LS Price Sub-Total	*$ 326,117.50*		*$ 353,777.50*		*$ 453,516.24*

No.	Allowance Item		Allowance Amount		Allowance Amount		Allowance Amount
10	Contingency Allowance for Undefined Work		$ 10,000.00		$ 10,000.00		$ 10,000.00
11	Traffic Control with Setup and Removal		$ 38,000.00		$ 38,000.00		$ 38,000.00
12	Structural Lining of MHs 100230341 and 100229291		$ 12,000.00		$ 12,000.00		$ 12,000.00
		Base Bid Allowance Sub-Total	*$ 60,000.00*		*$ 60,000.00*		*$ 60,000.00*
		TOTAL Base Bid Price	*$ 386,117.50*		*$ 413,777.50*		*$ 513,516.24*

CITY OF FISHERS, INDIANA
2023 INTERCEPTOR REHABILITATION
NOVEMBER 21, 2023 BID OPENING
TABULATION OF BIDS RECEIVED - MANDATORY ALTERNATE ADDITIONAL BID

No.	Item	Quantity	Unit	MILLER PIPELINE, LLC Unit/LS Price	MILLER PIPELINE, LLC Extended Price	INLINER SOLUTIONS Unit/LS Price	INLINER SOLUTIONS Extended Price	INSITUFORM TECHNOLOGIES USA, LLC Unit/LS Price	INSITUFORM TECHNOLOGIES USA, LLC Extended Price
A1	Mobilization and Demobilization	1	LS	$ 40,000.00	$ 40,000.00	$ 6,000.00	$ 6,000.00	$ 2,500.00	$ 2,500.00
A2	Construction Administration	1	LS	$ 6,500.00	$ 6,500.00	$ 20,000.00	$ 20,000.00	$ 7,500.00	$ 7,500.00
A3	Sewer Cleaning and Televising for 27” RCP	890	LFT	$ 10.00	$ 8,900.00	$ 12.00	$ 10,680.00	$ 9.62	$ 8,561.80
A4	CIPP Liner for 27” RCP	890	LFT	$ 165.00	$ 146,850.00	$ 170.00	$ 151,300.00	$ 196.29	$ 174,698.10
A5	Bypass Pumping	1	LS	$ 106,250.00	$ 106,250.00	$ 180,000.00	$ 180,000.00	$ 112,652.81	$ 112,652.81
A6	MH Interface Sealing	6	EA	$ 500.00	$ 3,000.00	$ 600.00	$ 3,600.00	$ 365.00	$ 2,190.00
	Mandatory Alternate Additional Unit/LS Price Sub-Total				*$ 311,500.00*		*$ 371,580.00*		*$ 308,102.71*

No.	Allowance Item	MILLER PIPELINE, LLC Allowance Amount	INLINER SOLUTIONS Allowance Amount	INSITUFORM TECHNOLOGIES USA, LLC Allowance Amount
A7	Contingency Allowance for Undefined Work	$ 10,000.00	$ 10,000.00	$ 10,000.00
	Mandatory Alternate Additional Allowance Sub-Total	*$ 10,000.00*	*$ 10,000.00*	*$ 10,000.00*

	MILLER PIPELINE, LLC	INLINER SOLUTIONS	INSITUFORM TECHNOLOGIES USA, LLC
TOTAL Mandatory Alternate Additional Bid Price	*$ 321,500.00*	*$ 381,580.00*	*$ 318,102.71*

FISHERS
EST. 1872

Board Action Form

MEETING DATE	January 9, 2024			
TITLE	Request to Approve a Service Fee Agreement for Insurance Broker Services with MJ Insurance.			
SUBMITTED BY	Name & Title: Lisa Bradford, Controller Department:			
MEETING TYPE	☐Work Session ☐Executive	☒Regular	☐Special	☐Retreat
AGENDA CLASSIFICATION	☐Consent	☐Ordinance	☐Resolution	☒Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☐1st Reading	☐2nd Reading	☐Public Hearing	☐3rd Reading
	Ordinance #:		Resolution #: R010924E	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☒Contract **required** for this item		☐Signed copy of contract attached	
	☐Seeking award or other scenario & **will provide contract** at a later date		☐ **No contract** for this item	
	☒Contract **over** $50,000 Please mark the box in the other column that pertains to this contract.		☒ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐Document **must** be recorded with the County Recorder's Office ☐Wait 31 days **prior to** filing with the County Recorders' Office		☐ Document **does not need** recorded with the County Recorder's Office	

Form Revised: 08222017

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☐ Department Head ☐ Deputy Mayor ☒ Mayor ☒ Legal Counsel – *Name of Reviewer:* Lindsey Bennett	☐ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☐ Other:
BACKGROUND (Includes description, background, and justification)	The City has engaged with MJ Insurance Company for insurance brokerage services for the past few years. The initial agreement with MJ Insurance Company, entered into in late 2018, provided compensation for services on a fee basis, with insurance policies issued net of commission. This fee has continued to remain flat at $100,000 for the past 5 years while the City budgeted has doubled and premiums have risen close to 50%. MJ Insurance has also placed additional policies for the City for which the standard commission percentage used by the insurance company was collected. MJ Insurance Co. has proposed a fee of $125,000 for 2024 with the previously issued policies with commission renewed net of commissions.	

BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	$100,000
	Expenditure $:	$125,000
	Source of Funds:	General, Sewer, and Storm Water
	Additional Appropriation #:	
	Narrative:	

OPTIONS (Include *Deny Approval* Option)	1.	Approve the agreement
	2.	Deny the agreement
	3.	Negotiate other agreement terms
	4.	

PROJECT TIMELINE	Effective immediately upon approval, the City will enter into the updated service fee agreement with MJ Insurance Company.
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Staff recommends the approval of agreement to the Board of Public Works and authorize the Mayor to execute on behalf of the Board.
SUPPLEMENTAL INFORMATION (List all attached documents)	Service Fee Agreement

Form Revised: 08222017

RESOLUTION NO. R010924E

A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY APPROVING INSURANCE BROKER SERVICES (MJ INSURANCE COMPANY)

WHEREAS, the City of Fishers, Hamilton County, Indiana ("City") purchases and maintains property & casualty, inland marine, general liability, public official, law enforcement, automobile, umbrella, cyber and crime, fiduciary, and other miscellaneous insurance coverage for the protection of the City ("Insurance");

WHEREAS, the City has historically engaged an insurance broker through which the City solicits annual proposals for Insurance;

WHEREAS, the City now desires to enter into an agreement with MJ Insurance Company in a form substantially similar to the Agreement attached hereto and incorporated herein as Exhibit A (the "Agreement").

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY MEETING IN REGULAR SESSION AS FOLLOWS:

Section 1. The Board of Public Works & Safety hereby approves the Agreement, attached hereto and incorporated herein as Exhibit A.

Section 2. The Board hereby designates the Mayor or the Controller to execute any and all documents necessary to effectuate the Agreement.

Section 3. This Resolution is of full force and effect from and upon its adoption and in accordance with Indiana law.

SO RESOLVED BY THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY THIS 9th DAY OF JANUARY, 2024.

BOARD OF PUBLIC WORKS & SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ______________________ DATE: ____________________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett

SERVICE FEE AGREEMENT

This Service Fee Agreement ("Agreement") is made and entered into the 1st day of January 2024 ("Effective Date"), by and between MJ Insurance, Inc., having a place of business at 571 Monon Blvd., Suite 400, Carmel, IN 46032, USA ("MJ") and City of Fishers, having its principal place of business at One Municipal Drive, Fishers, IN 46038 ("Client").

WHEREAS, MJ has the capability to provide certain risk management consulting and insurance brokerage services with respect to commercial property and casualty coverages, policies, and programs;

WHEREAS, Client desires to retain MJ as its named "broker of record" or "agent of record" for matters related to Client's risk management program(s) and commercial property and casualty insurance needs, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, MJ is willing to perform such services for Client in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises described herein, the parties hereto agree as follows:

1. **Performance of Services.**
    a. This Agreement sets forth risk management consulting and/or commercial property and casualty insurance brokerage services that MJ intends to perform; a list of which services is attached hereto as **EXHIBIT A** (collectively, the "Services"). The list of Services in Exhibit A is non-exhaustive and is intended to be illustrative of the scope of Services that MJ customarily provides to clients similarly situated to Client. In the event that there is any conflict or inconsistency between a term in **EXHIBIT A** and this Agreement, the terms set forth in this Agreement shall control.
    b. Client acknowledges and agrees, with respect to MJ's performance of Services, that:
        i. MJ's work product with respect to Services (*e.g.*, reports, summaries, quotes, analyses, recommendations, guidance, marketing, communications, compliance initiatives, project deliverables, *etc.*) are highly dependent upon the accuracy, completeness, and timeliness of the information that MJ periodically requests from Client or its employees, officers, directors, representatives, vendors, contractors, and subcontractors;
        ii. Client shall remain solely responsible for accepting or rejecting policy terms and limits, as well as the placement of insurance carriers, third-party service providers, and other vendors with respect to Client's risk management and insurance program(s); and
        iii. MJ and its employees do not provide legal, accounting, actuarial, tax, investment, or employment-related advice (though MJ may employ licensed professionals with such expertise).
2. **Compensation.**
    a. ***Fee for Services.*** Client agrees to pay MJ all fees ("Fee" or "Fees") as set forth in this Agreement. Fee amounts and payment terms are set forth in the schedule, attached hereto and incorporated herein, as **SCHEDULE A**.
    b. ***Additional Projects or Services***. Client may request MJ to perform additional projects or services that are outside the ordinary scope of this Agreement. In such event, MJ will

provide Client with a separate statement of work ("SoW") (in the form of **EXHIBIT B**) to define the scope of work and any terms particular to the additional project and/or services to be performed, as well as any additional Fees and expenses related thereto. Any separate SoW, unless otherwise specifically stated therein, shall be incorporated under this Agreement once executed by the parties.

c. ***Additional Compensation***. MJ may enter into arrangements with certain insurance carriers or service providers under which additional compensation may be earned, but not readily calculated at the time this Agreement is executed, renewed, or extended. This additional compensation (*e.g.*, bonuses or overrides) is generally calculated at the end of the calendar year and may be contingent upon such factors as the overall volume, retention, growth, and profitability of the total business placed by MJ with the particular insurance carrier or service provider during a specified measurement period. Accordingly, this contingent compensation may not be allocable to a particular client, product, or line of coverage placed.

d. ***Taxes***. In addition to all Fees and charges required to be paid by Client to MJ under this Agreement, Client shall be responsible for and shall pay any and all fees, taxes, and other costs or charges on such payments and transfers to MJ, exclusive of any income taxes calculated on MJ's income, revenues, gross receipts, personnel, or real or personal property or other assets for which MJ is solely responsible. To the extent that Client is required by law to withhold income-based taxes based upon MJ's income, Client may deduct such tax from the Fees payable to MJ and remit them to the appropriate government authorities.

3. Expenses. The Fees paid to MJ are inclusive of all of its customary business expenses and overhead charges, including, but not limited to, telephone, fax, postage, word processing, delivery and research charges, and ordinary travel expenses, including to/from Client's office(s). This provision does not pertain to expenses incurred for additional project work requested by Client that are outside the scope of this Agreement (*e.g.,* attorneys fees).

4. Independent Contractors. The relationship established by this Agreement between MJ and Client is that of an independent contractors, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other; (b) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (c) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

5. Warranties.

a. MJ represents and warrants that:

i. Services provided under this Agreement shall be performed in accordance with, and shall not violate, applicable laws, rules, regulations, or standards prevailing in the industry, and MJ shall obtain all licenses required to comply with such laws, rules or regulations;

ii. Each of MJ's employees and/or agents to whom MJ may delegate the performance of any of the Services rendered under this Agreement possess all of the skills, experience, expertise, and professionalism necessary to perform the Services; and

iii. MJ shall perform the Services in a good and workmanlike manner consistent with commercially reasonable standards.

b. Each party represents and warrants to the other party that:
    i. It is duly organized, validly existing and in good standing as an entity as represented under the laws and regulations of its jurisdiction of organization;
    ii. It has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
    iii. The execution of the Agreement by its representative has been duly authorized by all necessary action of such party; and
    iv. When executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against each party in accordance with its terms.

c. ***Disclaimer***. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION, MJ HEREBY SPECIFICALLY DISCLAIMS ALL WARRANTIES, ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

6. **Confidentiality; Non-Disclosure of Proprietary Information**.
    a. ***Definitions***. The term "Confidential Information" means all confidential and proprietary information of a party hereto ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether received orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The parties hereto agree that any and all terms and conditions of this Agreement, including Services listed in **EXHIBIT A** and Fees described in **SCHEDULE A**, shall be regarded as Confidential Information.
    b. ***Confidentiality***. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party except to perform its obligations or exercise its rights under this Agreement, except with the Disclosing Party's prior written permission on a case-by-case basis. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like-kind, but in no event with less than reasonable care. If the Receiving Party is compelled by law or a government authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent practicable and legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. In the event the parties previously entered into a non-disclosure agreement ("NDA") with one another, that NDA is incorporated into this Agreement. In the event of a conflict between this Section and that NDA, the parties agree that whichever terms provide greater protection to the confidential and proprietary information of the parties shall control.
    c. ***Exceptions***. The parties agree that the limitation of this Section shall not apply to any information that: (a) is or becomes publicly available without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

d. ***Remedies.*** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that such unauthorized disclosure or use may cause irreparable harm to Disclosing Party for which any other available remedies will be insufficient.

e. ***Data Aggregation and Use***. Client acknowledges and agrees that MJ may de-identify and aggregate its data with other client data for statistical analysis, benchmarking, or other commercial use contemplated by this Agreement and permitted by applicable law. Further, Client agrees that such de-identified and aggregated data will not be considered Confidential Information pursuant to this Agreement.

f. ***MJ's Use of Client Name, Logo***. Client agrees that MJ may use Client's name and logo on MJ's client list, website, or related promotional materials throughout the term of this Agreement.

7. Indemnification.

a. MJ agrees to indemnify, defend and hold harmless, Client and its directors, officers, employees, agents or assigns from and against any and all actions, claims, suits, demands whatever, and from all damages, liabilities, costs, charges, debts and expenses whatever (including reasonable attorneys' fees and actual expenses related to any litigation or other defense of claims), arising out of or in connection with, MJ's: (i) material breach of this Agreement; or (ii) gross negligence, fraud or willful misconduct with respect to its provision of Services under this Agreement.

b. Client shall indemnify and hold harmless, MJ and its directors, officers, employees, agents, subcontractors, affiliates or assigns from and against any all actions, causes of actions, claims, suits and demands whatever, and from all damages, liabilities, costs, charges, debts and expenses whatever (including reasonable attorneys' fees and expenses related to any litigation or other defense of claims), arising out of or in connection with, Client's: (i) material breach of this Agreement; (iii) gross negligence, fraud or willful misconduct; or (iii) misuse of the Services.

8. Limitation of Liability. IN NO EVENT SHALL MJ BE LIABLE TO CLIENT FOR LOSS OF PROFITS OR FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING FROM THE RELATIONSHIP OR THE CONDUCT OF BUSINESS UNDER THIS AGREEMENT, EVEN IF MJ HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. Except to the extent attributable to MJ's willful misconduct or fraud, MJ's aggregate liability to Client and all of its affiliates (and their respective successors and permitted assigns), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, arising out of or in connection with MJ's performance of Services under this Agreement or otherwise, shall be limited to the compensation actually paid to MJ for the Services performed during the Term.

9. **Term and Termination**.
    a. ***Term.*** The term of this Agreement will commence on the Effective Date and end January 1, 2025 ("Term").
    b. ***Termination for Cause.*** The non-breaching party shall have the right to terminate this Agreement prior to expiration of the Term, by written notice, if the other party breaches a material term of this Agreement and has not cured such breach within fifteen (15) days after receipt of such written notice from the non-breaching party (or such other reasonable amount of time if the breach cannot be cured within fifteen (15) days) stating the alleged material breach.
    c. ***Bankruptcy, Insolvency.*** Either party may terminate this Agreement, prior to expiration of the Term, by giving written notice to the other party in the event that such other party: (i) files for bankruptcy; (ii) is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver; (iii) makes a general assignment for creditors of all or substantially all of its assets (except in connection with financing).
    d. ***Termination without Cause.*** Unless the parties mutually agree in writing, neither may terminate the Agreement, without cause, prior to expiration of the Term.
    e. ***Effect of Termination***. Upon the effective date of termination or expiration of this Agreement, MJ shall promptly cease providing Services. Client shall be responsible for any compensation, including Fees, earned but unpaid to MJ through the date of termination or expiration.

10. **Force Majeure**. Except for the payment of compensation, neither party shall be liable to the other for a failure to perform any of its obligations under this Agreement during any period in which such performance is delayed due to circumstances beyond its reasonable control, provided such party notifies the other of the delay.

11. **No Third-Party Beneficiaries.** This Agreement is between Client and MJ. No third-party beneficiaries are intended.

12. **Waiver of Breach.** The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

13. **Assignment**. Client may not assign this Agreement without the prior written consent of MJ.

14. **Severability**. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect parties' original intentions, and the remainder of the provisions shall remain in full force and effect.

15. **Survival**. The terms and conditions contained in this Agreement, which by their nature and context are intended to survive expiration or termination of this Agreement, including but not limited to the provisions of Section 2 (Compensation), Section 6 (Confidentiality), Section 7 (Indemnification), Section 8 (Limitation of Liability), Section 14 (Severability), and Section 20 (Governing Law; Venue) shall survive the termination of this Agreement for any reason.

16. **Notices.** All notices, deliveries or other communications required or permitted to be given hereunder shall be in writing, addressed to the respective parties at their addresses set forth in the introduction, and shall be deemed to be delivered (a) upon hand delivery, (b) three (3) days after deposit in a regularly maintained official depository of the United States Mail located

in the continental United States, and mailed by registered or certified mail, postage prepaid, or (c) on the following business day when sent by overnight delivery service.

17. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between MJ and Client with respect to the Services and compensation described herein; unless expressly permitted, it shall not be amended, altered, or changed except by a written agreement signed by the parties.

18. **Headings**. The headings and subheadings used in this Agreement and in the exhibits hereto are only used for convenience of reference and are not to be considered in construing this Agreement.

19. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

20. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Indiana. Any disputes under this Agreement shall be brought in the state or federal courts located in Marion County, Indiana, and the parties hereby consent to the personal jurisdiction and venue of these courts.

[*Signatures on Following Page*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, as of the Effective Date, by their duly authorized representatives.

MJ INSURANCE, INC.	**CITY OF FISHERS**
By: ____________________	By: ____________________
Name: ____________________	Name: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

SCHEDULE A
Fee Schedule and Payment Terms

Client: City of Fishers
As-of Date: January 1, 2024

S-1. ***Fee Schedule***.

Direct Fee Structure
For the Services to be rendered by MJ, Client shall pay an annual Fee of One Hundred Twenty-Five Thousand Dollars ($125,000), payable in semi-annual installments of Sixty-Two Thousand Five Hundred Dollars ($62,500), with the first installment due immediately and the second installment becoming due July 1, 2024.
ANY FEES DESCRIBED HEREIN WILL GENERALLY BE *IN LIEU OF* COMMISSIONS NORMALLY PAID TO MJ BY THE INSURANCE COMPANY IN CONNECTION WITH PROPERTY, AUTOMOBILE, WORKERS' COMPENSATION, GENERAL LIABILITY, CRIME, EMPLOYMENT PRACTICES LIABILITY, CYBERLIABILITY, EXCESS UMBRELLA, DIRECTORS & OFFICERS, ENVIRONMENTAL/POLLUTION, INLAND MARINE, PROFESSIONAL LIABILITY, AND BUILDERS RISK LINES OF COVERAGE. NOTWITHSTANDING THIS, TO THE EXTENT COMMISSIONS CANNOT BE NETTED-OUT FOR A PARTICULAR POLICY TO WHICH THE FEE IS APPLICABLE, MJ WILL COLLECT AND APPLY SUCH AMOUNTS TOWARD CLIENT'S PAYMENT OF THE NEXT INSTALLMENT. CLIENT ACKNOWLEDGES THAT OTHER LINES OF COVERAGE FOR WHICH MJ RECEIVES COMMISSIONS MAY BE ADDED BY CLIENT AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, WHICH COMPENSATION IS NOT CURRENTLY ADDRESSED IN THIS DISCLOSURE. FEE SHALL BE IN ADDITION TO COMMISSIONS EARNED FOR ANY NEW POLICIES BOUND OR WRITTEN DURING THE TERM.

S-2. ***Payment of Fees.*** Client agrees to pay each Fee installment within thirty (30) days from the date of receipt of the invoice, commencing with the first month of the Agreement. As each Fee installment is paid, the amount will be considered fully earned by MJ.

S-3. ***Charge for Late Payment.*** Client shall pay a 1.5% late charge per month, calculated from the first day of the month on all non-fully paid amounts that are past due.

EXHIBIT A
Risk Management Consulting and Commercial P&C Insurance Brokerage Services

Client: City of Fishers
As-of Date: January 1, 2024

List of Services
MJ shall provide Client certain risk management consulting and/or commercial property and casualty insurance brokerage services, which may include, but not be limited to, the following: + Exposure Identification and Evaluation + Market Identification, Evaluation and Development + Market Submission, Preparation and Review + Program Comparisons and Recommendations + Program Execution (binders, identification cards, policy review and revision) + Endorsement Processing + Claims Services + Certificate Processing + Ongoing Review of Loss Exposures + Ongoing Miscellaneous Client Service + Aperture – Data analytics

MJ DOES NOT PROVIDE LEGAL, ACCOUNTING, ACTUARIAL, TAX, EMPLOYMENT, OR INVESTMENT ADVICE. THIS SERVICES LIST IS NON-EXHAUSTIVE AND GENERALLY REPRESENTATIVE OF THE SCOPE OF SERVICES PROVIDED FOR COMPENSATION.

FISHERS
EST. 1872

Board Action Form

MEETING DATE	January 9, 2024			
TITLE	Request to Approve a Cash Management Agreement with KeyBank for Lockbox Services			
SUBMITTED BY	Name & Title: Lisa Bradford, Controller Department:			
MEETING TYPE	☐ Work Session ☐ Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☐ Resolution	☒ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☐ 1st Reading	☐ 2nd Reading	☐ Public Hearing	☐ 3rd Reading
	Ordinance #:		Resolution #: R010924F	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☒ Contract **required** for this item		☐ Signed copy of contract attached	
	☐ Seeking award or other scenario & **will provide contract** at a later date		☐ **No contract** for this item	
	☐ Contract **over** $50,000 Please mark the box in the other column that pertains to this contract.		☐ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document **must** be recorded with the County Recorder's Office ☐ Wait 31 days **prior to** filing with the County Recorders' Office		☐ Document **does not need** recorded with the County Recorder's Office	

Form Revised: 08222017

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☐ Department Head ☐ Deputy Mayor ☐ Mayor ☒ Legal Counsel – *Name of Reviewer:* Lindsey Bennett	☒ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☐ Other:

BACKGROUND (Includes description, background, and justification)	The City wishes to engage KeyBank's lockbox services for the City's sewer and stormwater utilities. The City has been with its current lockbox provider since 2015 and over the past year has seen a decrease in customer service and increase in processing errors by our current provider and current provider has not demonstrated any initiative to help eliminate errors or determine the cause. The City has discussed lockbox processing with KeyBank and now wishes to engage them to provide these services to the City.

BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	N/A
	Expenditure $:	N/A
	Source of Funds:	Sewer and Stormwater
	Additional Appropriation #:	
	Narrative:	

OPTIONS (Include *Deny Approval* Option)	1.	Approve the agreement
	2.	Deny the agreement
	3.	Negotiate other agreement terms
	4.	

PROJECT TIMELINE	Effective immediately upon approval, the City will terminate its agreement with its current lockbox provider, providing the appropriate notice, and begin working with KeyBank to setup the lockbox services for the sewer and stormwater utilities.
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Staff recommends the approval of agreement to the Board of Public Works and authorize the Mayor to execute on behalf of the Board.
SUPPLEMENTAL INFORMATION (List all attached documents)	Resolution Cash Management Services Agreement

<u>RESOLUTION NO. R010923F</u>

RESOLUTION APPROVING CASH MANAGEMENT SERVICES AGREEMENT (KEY BANK NATIONAL ASSOCIATION)

WHEREAS, the Controller's office of City of Fishers, Hamilton County, Indiana (the "City") desires certain lockbox services for its sewer and stormwater utilities;

WHEREAS, Keybank National Association (the "Bank") has the necessary qualifications, experience and abilities to provide lockbox services to the City; and

WHEREAS, the Bank and the City now desire to enter into an agreement substantially similar to the Cash Management Agreement attached hereto and incorporated herein as **<u>Exhibit A</u>** (the "Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Board of Public Works & Safety meeting in a duly noticed and regularly scheduled meeting as follows:

<u>Section 1</u>. An agreement substantially similar to the Agreement is hereby approved.

<u>Section 2</u>. The Mayor is authorized to execute an agreement substantially similar to the Agreement.

<u>Section 3</u>. This Resolution shall be in full force and effect from and upon its adoption and in accordance with Indiana law.

ALL OF WHICH IS RESOLVED by the City of Fishers Board of Public Works & Safety this 9th day of January, 2023.

BOARD OF PUBLIC WORKS & SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ____________________ DATE: _______________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey Bennett

For Bank Use Only
TIN # (required):
Account # (optional):
Document Type: Treasury Services Agreement
Aux Doc Type: Client Master Agreement
Contact Name:
Phone:
Agreement Modified ☐ Yes or ☐ No

CASH MANAGEMENT SERVICES MASTER AGREEMENT

KEYBANK NATIONAL ASSOCIATION ("Bank")
127 Public Square
Cleveland, Ohio 44114

Client Name **("Client"):**
Client Street Address:
City, State, ZIP:

Bank, or any Bank Affiliate(s), as the case may be, agree to perform, and Client agrees to purchase, cash management Service(s), as defined below. Client understands and agrees that Bank, in providing Services to Client from time to time, is relying on Client's representations, warranties and agreements herein, and all Services shall be and remain subject to this Cash Management Services Master Agreement (this "**Agreement**") whether Services were purchased prior to the date hereof, on the date hereof, or after the date hereof. Client and Bank agree to the terms and conditions below.

1. Definitions.

(a) "Bank" shall mean KeyBank National Association and any Bank Affiliate(s), which may, from time to time, provide Service(s) for the Client.

(b) "Bank Affiliate(s)" shall mean any direct or indirect subsidiary (other than the Bank) of KeyCorp and its successors.

(c) "Banking day" shall mean any day other than a Saturday, Sunday, or a day on which Bank is authorized or required to close according to applicable law.

(d) "Client" shall mean the entity identified above as "Client" and shall include all entities listed on Exhibit A attached hereto and made a part hereof.

(e) "Client Affiliate" shall mean any entity that is a subsidiary of, or is affiliated with, Client, as identified on Exhibit A attached hereto and made a part hereof.

(f) "Deposit Account Agreement" shall mean the Deposit Account Agreement and Funds Availability Policy and Deposit Account Fees and Disclosures as amended from time to time governing the Client's deposit account with the Bank.

(g) "Internet" means the global, publicly accessible, network of interconnected computer networks that transmit data using the standard internet protocol.

(h) "Master Agreement" shall mean this Master Agreement, any Service Schedules and the Deposit Account Agreement.

(i) "MICR" shall mean magnetic ink character recognition.

(j) "Service(s)" shall mean any cash management services undertaken by the Bank for the Client, now or in the future, including, without limitation, services with separate Service Schedules, and services without separate documentation.

(k) "Service Schedule(s)" shall mean a written agreement other than the Master Agreement, including without limitation service agreements or schedules by which Bank undertakes to provide Services to the Client, regardless of whether such Service Schedule is executed at the same time as this Master Agreement or at an earlier or later date.

(l) "Setup Documentation" shall mean, collectively, Client's selections, designations, authorizations and/or other instructions set forth in Bank's standard set-up documentation for any of the Services, either delivered by Client to Bank or completed by Bank based upon Client's instructions to Bank, or otherwise, from time to time.

2. Account Documentation. Client will execute and deliver to Bank such account documentation as Bank deems necessary. Bank will, in its sole discretion, determine the adequacy of such documentation, and may refuse to provide the Service(s) until such documentation is received by Bank. Client agrees to promptly notify Bank of (a) any material change to any information presented by Client in any documentation relating to the Services promptly and in any event within five (5) calendar days of any of such material change (e.g., without limitation, removal of a financial officer or account signatory), and (b) any non-material change to any information presented by Client in any documentation relating to the Services (e.g., without limitation, a street address change respecting any Client Affiliate), within thirty (30) days of any such change. Client has received a copy of Bank's Deposit Account Agreement and agrees that such terms shall govern the deposit account servicing provided by Bank.

3. Client's Records and Media. Prior to the implementation of the Service(s), Client agrees to provide to Bank all records and data processing media necessary to perform the Service(s). The records will be legible, correct, complete and in the format specified in the Service Schedule(s), service manual(s) and related schedules. Checks will be MICR encoded according to the Bank's specifications. Bank will, in its sole discretion, determine the adequacy of the information and the format in which it is submitted, and may refuse to provide the Service(s) until such information and/or format is deemed satisfactory.

4. Software Provided in Connection with Performance of Service(s). All software, specifications, tapes or other media, programs and procedures owned by the Bank or its service providers and used in connection with the performance of the Service(s), will be and remain the sole property of the Bank and will not be modified or altered in any way or used for any other purpose by the Client. The terms of all license and copyright notice requirements shall be complied with by the Client.

5. Client Failure to Furnish Satisfactory Records and Media. The Bank's performance under this Master Agreement is subject to the Bank's receiving timely, accurate and complete data for each Service, in form and on media specified by the Bank. If any of these requirements are not met by Client, the Bank shall: a) no longer be bound to any delivery schedule set forth in the Service Schedule(s), and b) be authorized to deliver as complete and finished whatever portion of the Service(s) that can be performed with the data available.

6. Client's Duty to Inspect. Client must inspect all Service(s) performed and notify the Bank within thirty (30) days after the material containing the error or of a report or statement reflecting the error is mailed or otherwise made available. Except to the extent required by law, failure to notify the Bank of errors within this time will relieve the Bank of any and all liability.

7. Confidentiality.

(a) Confidentiality of Client Information. Bank acknowledges that Bank may receive certain non-public information, material, or data of a confidential nature in connection with the Service(s) that Bank provides to the Client under the terms of this Agreement (collectively, "**Client Confidential Information**"), and Bank will maintain the confidentiality of such Client Confidential Information in accordance with Bank's normal procedures for safeguarding customer information in effect from time to time. Notwithstanding the foregoing, the following Client information shall be deemed to be non-confidential and shall be excluded from this Section 7(a): (i) any information which was or is already in the public domain at the time of disclosure, or subsequently becomes part of the public domain other than through the gross negligence or willful misconduct of Bank or any its authorized representatives; (ii) any information which is used or disclosed by Bank or any of Bank Affiliates with the prior written approval or consent of Client; (iii) any information which was received by Bank from a third party (other than Client), and, at the time of such receipt, such third party was not known by Bank to have any confidentiality obligations to the Client with respect thereto; and (iv) any information which was independently developed by Bank or any of Bank Affiliates. Notwithstanding any of the provisions of this Section 7(a) to the contrary, Bank may use and/or disclose Client Confidential Information to the extent that: (A) any such information is required to be disclosed by Bank to any state or federal regulator or examiner or regulatory body pursuant to any state or federal statute, rule or regulation, or is required to be disclosed by Bank under applicable law or by a subpoena or by any judicial or governmental order, decree, regulation or rule; (B) any such information is disclosed to (x) any of Bank Affiliates, (y) any officers, directors, employees or authorized representatives or agents of Bank or any of Bank Affiliates, or (z) any independent attorneys, advisors, consultants, auditors or accountants of Bank or any of Bank Affiliates or any of their respective employees, not employed by or affiliated with Bank, who in each case, (x), (y) and (z), have, in Bank's sole determination, a need to know such information to assist Bank in communications with Client or the evaluation of any such information, and who have been advised of the confidential nature of such information and the terms and restrictions provided for in this Agreement; or (C) any such information is used or disclosed as and to the extent considered necessary by Bank or any of Bank Affiliates in connection with Bank's enforcement or collection of any loans, extensions of credit or other financial accommodations made by Bank or any of Bank Affiliates, on the one hand, to Client or any of its affiliates, on the other.

(b) Confidentiality of Bank Information. Client understands and acknowledges that (i) Client may gain access to software or documentation owned or licensed by, or to certain information, material or data of a confidential nature, including, without limitation, Bank trade secrets relating to, Bank or its businesses or operations, and (ii) all such information, materials, and data are strictly confidential, material and important, and that such confidentiality substantially affects the effective and successful conduct of the business of the Bank. Client agrees to keep all such information, materials, and data confidential, and to limit use thereof and access thereto as provided in the Master Agreement. Client further acknowledges that any breach or threatened breach with respect to this Section 7(b) or any other confidentiality provision contained in the Master Agreement will cause immediate irreparable injury to Bank and that the remedies at law for such breach will be inadequate, and the Client agrees not to assert to the contrary in any action for preliminary or other injunctive relief brought by Bank. Client shall not use Bank's name, trademark or service mark, or refer to Bank directly or indirectly, in any solicitation, marketing material, advertisement, news release or other release to any publication, without receiving Bank's specific prior written approval or consent for each such use or release.

(c) Notwithstanding anything herein or in any confidentiality and/or non-disclosure agreement between Bank and Client (or any of Client Affiliates) to the contrary, the provisions of this Section 7 hereby replace and supersede any such confidentiality and/or non-disclosure agreement in its entirety.

8. Limitation of Liability; Disclaimer of Warranties. Except to the extent required by law, the Bank's duties and liabilities will be limited to those set forth herein. The Bank will exercise reasonable care in providing the Services. The Bank's liability shall be limited to actual damages sustained by Client and only to the extent such damages are a direct result of the Bank's gross negligence or willful misconduct. The liability of the Bank in all these instances shall not exceed the recovery of funds erroneously processed or not processed. The Bank shall not be liable for damages caused by any act or omission of any third party, or for any charges imposed by any third party. In no event shall the Bank be liable for special, incidental, punitive or consequential loss or damage of any kind including, but not limited to, lost profits (whether or not the Bank has been advised of the possibility of such loss or damage). Bank shall have no liability hereunder to any third party. The Bank shall be relieved of liability where the Bank performs any Service in accordance with any instruction or information provided by Client hereunder or under any Service Schedule(s), and the Bank may rely on the accuracy of any information set forth in the Service Schedule(s). Bank does not make any warranties, expressed or implied, with respect to the Service(s), Client's direct access thereto, or the software, components, systems, specifications, programs, documentation, manuals and accessories used in conjunction therewith.

BANK HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO CLIENT OR ANY OTHER PARTY.

9. Fees; Expenses. Client shall compensate the Bank for Service(s) in accordance with the Bank's standard fee schedule, unless otherwise agreed in writing, and shall be liable for all taxes applicable to the Service(s). The Bank may amend the fee schedule at any time and will give written notice to Client of changes in fees for Service(s) then used by Client. Client shall pay, upon demand by Bank, all costs and expenses of Bank of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) incurred by Bank in connection with this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services. Bank may debit Client's account for payment of any such fees, charges or expenses then due unless Client arranges for another payment procedure acceptable to Bank.

10. Overdrafts; Set-off. In the event any actions by Client should result in an overdraft in any of its accounts, Client is responsible for repaying the overdraft immediately, without notice or demand, together with interest thereon at a rate determined in accordance with Bank's fee schedule in effect from time to time. Bank has the right, in addition to all other rights and remedies available to it, to set off the unpaid balance of any amount owed it in connection with the Service(s) against any debt or deposit owing to the Client by the Bank or any Bank Affiliate, or property of Client in Bank's or Bank Affiliate's possession or control.

11. Financial Condition and Credit Limits. The Client shall, upon any request by the Bank provide Bank with financial statements (the quality of which to be defined by the Bank) for any time period requested by the Bank. The Client also authorizes the Bank to obtain credit reports on the Client at any time. In the event the Service(s) selected by Client result in unacceptable credit exposures to the Bank or affect the amount of capital required or expected to be maintained by the Bank or its parent under any law, regulation, guideline, or request from any central bank or governmental authority; or if the Client fails to provide the Bank with any credit, financial or other information the Bank may require from time to time, the Bank may, in its discretion, immediately cancel the Services contemplated herein, or limit Client's transaction volume or dollar amount. Any limits established by Bank under this Section 11 shall be at Bank's sole and absolute discretion and shall be communicated by Bank to Client within a commercially reasonable time-period following Bank's determination that such limits are required.

12. Security Procedures. If the Service(s) are subject to security procedures described herein or in the applicable Service Schedules and/or the Setup Documentation, Client agrees that it shall be solely responsible to assure that such security procedures are followed by Client, as they may be amended from time to time. If such procedures are violated or breached, Client agrees to promptly (and in any event within one (1) Business Day of any such violation or breach) notify Bank of any such violation or breach. Client acknowledges that it has reviewed all applicable security procedures provided, or otherwise made available, to Client herein or in the applicable Service Schedules and/or the Setup Documentation, has selected its preferred security procedure where applicable, and has determined that such procedures are commercially reasonable. Client agrees that it will keep the security procedures strictly confidential and will take all steps to make sure neither Client nor any agent, employee, representative or any other affiliated party of Client reveals or provides access to any confidential information or security procedures to anyone other than Client's authorized users, and then only within Client's use of the Services for purposes of conducting transactions. Client shall be responsible for any unauthorized use or disclosure of any security procedures and all security procedure materials entrusted to it. Client agrees to regularly read the security messages on the Bank's websites (including without limitation KeyNavigator℠ and to implement and maintain safe and secure computing practices. Bank shall not be liable for any loss, damage, or liability which may arise from the unauthorized use of the security procedure. Client shall notify Bank immediately if Client or any of its agents have reason to believe that any security procedure has or may become known to an unauthorized person.

13. Third Party Provider. Client agrees that Bank may arrange for some or all of the Services and/or software to be provided or performed by third party providers including Bank Affiliates (each a "Provider"). The use of a Provider to perform Services shall not relieve Bank of its obligations under this Agreement.

14. Client Liability; Indemnification.

(a) Client will be liable to Bank for any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) incurred by the Bank relating to or arising out of this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services, in each case except to the extent any such claim, demand, liability, loss, damage, cost or expense is directly caused by the Bank's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) The Client shall defend, indemnify and hold the Bank harmless from any and all claims, demands, liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of Bank's counsel) asserted by a third party relating to or arising out of this Master Agreement, any Service Schedule(s), any of the Setup Documentation, any of the Deposit Accounts or any of the Services, in each case except to the extent any such claim, demand, liability, loss, damage, cost or expense is directly caused by the Bank's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(c) Notwithstanding anything in this Section 14 to the contrary, Bank may at all times select its own legal counsel to represent its interests and will control all aspects of its own defense, and Client shall: (i) reimburse Bank for its reasonable attorneys' fees and costs immediately upon request as they are incurred; (ii) remain responsible to Bank for any losses, claims, liabilities, costs and expenses (including, without limitation, Bank's attorneys' fees) indemnified under this Section, and (iii) in the case of a third party claim, reasonably participate and cooperate in the Bank's defense.

15. Client Internet Use and Security. Certain of the Services or functionality of the Services may be provided through the Internet. Client acknowledges that Bank does not control the Internet or other information systems operated or controlled by a third party. In no event will Bank have any liability in connection with and shall not be responsible for Client's inability to connect to or use any Service via the Internet or inability to communicate with Bank via the Internet or any website resulting from any failures, acts, or omissions of any third party or any failure of, defects in, or malfunctions of, Client's systems, or otherwise.

Client shall be solely responsible for maintaining and applying appropriate security measures for Internet use, including, without limitation, anti-virus software, security patches, firewalls, and other security measures with respect to Client's operating systems, hardware, and software, and for protecting, securing, and backing up any data and information stored in or on Client's operating systems. In no event will Bank have any liability in connection with and shall not be responsible for (a) any unauthorized interception of, or access to, alteration, theft, or destruction of Client's information, data or transactions resulting from any failures, acts, or omissions of any third party or any failure of, defects in, or malfunctions of, Client's systems, or otherwise, (b) any malicious software or computer viruses (including programs commonly referred to as "Trojan horses," "malware," "keystroke loggers," and/or "spyware") installed on, infecting or otherwise affecting Client's systems, any problems or malfunctions resulting from any such malicious software or computer viruses, or any related problems in connection with the use of the Internet, or (c) any failures or errors resulting from any failure of, defects in, or malfunctions of, Client's systems.

16. KeyNavigator℠. KeyNavigator℠ is Bank's online banking system ("**KeyNavigator℠**"). After completion of the appropriate Setup Documentation, acceptance of applicable online agreements, and upon notice from Bank, Client may communicate instructions and other information, enter into transactions and access Services by accessing the Internet. Client acknowledges receipt of the security procedures for KeyNavigator℠ provided, or otherwise made available, to Client herein, in the applicable Service Schedules, in the Setup Documentation, or on KeyNavigator℠, and agrees that such security procedures are commercially reasonable for the instructions, transactions, communications and Services accessed by Client using KeyNavigator℠. Client agrees that it is responsible for each request, transaction, or other communication initiated using Client identifiers and security procedures issued by Bank to Client. Client covenants and agrees that Client may only use KeyNavigator℠ to initiate funds transfers on its own behalf and in Client's own name. Client will not use KeyNavigator℠ to initiate funds transfers on behalf of Client's customers or other third parties.

17. E-mail. Client acknowledges that Bank may provide email notifications relating to Client's use of KeyNavigator℠ or otherwise regarding the Services ("**E-mail Notices**"). Except as set forth in Section 30 regarding Electronic Records Disclosures below, Client agrees that Bank provides E-mail Notices as a courtesy only to Client. Client waives any claim based on any erroneous or incomplete E-mail Notice, Client's failure to receive an E-mail Notice, or Bank's failure to send any E-mail Notice. Client agrees that it is Client's responsibility to access KeyNavigator℠ in order to view transactions and information regarding activity in KeyNavigator℠ and to monitor Client's Services and accounts hereunder. Client's receipt or lack of receipt of any E-mail Notice has no effect as to the transactions or information. Unencrypted e-mail is not secure. Client agrees not to rely on e-mail if Client needs to communicate with Bank immediately. Client should not use e-mail, or reply to any e-mail, to send Bank Client's confidential information. Bank will not take action based on Client's e-mail request until Bank actually receives Client's message and has a reasonable opportunity to act. Client agrees to continuously update its e-mail address on Bank's records and to maintain at all times a valid and active e-mail address at an Internet service provider.

18. Term. Either party may terminate this Agreement or any Service Schedule at any time for any reason or no reason upon written notice to the other party, provided, however, unless otherwise stated in the notice, such termination shall not be effective until thirty (30) days after receipt of such notice by the receiving party. Notwithstanding the foregoing, Bank may terminate this Agreement or any Service Schedule immediately (i) if termination of this Agreement or any Service Schedule or closure of any of Client's accounts is required under any legal or regulatory process, legal notice, injunction or court order; (ii) in the event that the Bank reasonably believes that any fraudulent or illegal activity has occurred or is or may be occurring with regard to the Services, or (iii) for any failure on the part of Client, or inability of the Bank, to comply with all laws and regulations applicable to the Services, including without limitation the applicable terms of the federal and state Electronic Funds Transfer Acts, the Uniform Commercial Code Article 4A or the Rules of the National Automated Clearing House Association. In the event of any termination, all fees, expenses and other charges incurred or otherwise payable, and all other amounts payable under or in connection with this Agreement so terminated shall become immediately due and payable. All warranties of the Client made herein and obligations of Client that arose prior to termination shall survive the termination of this Agreement and the processing of any item, entry or payment order which may be applicable thereto, shall bind the successors and permitted assigns of the Client and shall inure to the benefit of Bank, its successors and assigns.

19. Force Majeure. The Bank shall bear no responsibility for non-performance of one or more Service(s) caused by an event beyond its reasonable control, such as: fire, casualty, breakdown in equipment or failure of telecommunications or data processing services, lockout, strike, unavoidable accident, act of God, epidemic, pandemic or other public health emergency, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or any local or national disturbance, disaster or emergency that prevents the Bank from operating normally.

20. Severability. If any provision of this Master Agreement or any Service Schedule(s) shall be determined by a court of competent jurisdiction to be unenforceable, that provision shall be interpreted so as to achieve, as much as possible, the purposes intended by the original provision, and the remaining provisions of the Service Schedule(s) and this Master Agreement shall continue intact.

21. Governing Law. This Agreement and Service Schedule(s), and all deposit accounts ("**Accounts**") held at Bank shall be governed by the laws of the State of Ohio (without regard for conflict of law rules) and applicable federal law, but with respect to all fees and charges related to your Account(s) and the Services provided herein, federal law alone shall control.

22. Other Agreements. The parties agree that the Service Schedule(s), Deposit Account Agreement and this Master Agreement constitute the terms and conditions for the Service(s) and the matters covered hereunder. To the extent there is any conflict among this Agreement, the Service Schedules, or the Deposit Account Agreement, the terms of the Service Schedule shall control. Services are provided subject to other laws, regulations, and agreements which are incorporated into this Agreement by reference: service documentation such as set-up guides and user manuals as provided by Bank from time to time; the Uniform Commercial Code, as enacted in the State of Ohio; the most recent Deposit Account Agreement; applicable clearing house rules; and laws and regulations applicable to Bank or Client.

23. Independent Contractor. Client agrees that in performing the Service(s) hereunder, the Bank will be acting as an independent contractor and not as an employer, employee, partner, or agent of Client.

24. Amendments. The Bank may change, add or delete the terms of this Master Agreement and any Service Schedule(s) upon thirty (30) days prior notice to Client in writing or by electronic means. Client's continued use of or failure to terminate any Service after the effective date of the change will evidence Client's agreement to the change.

25. Assignment. This Master Agreement and Service Schedule(s) shall not be assigned or otherwise transferred by the Client without the prior written consent of the Bank.

26. Authorization. (a) Client, and each of them if more than one, warrants and represents on the date hereof and on any date any Service is performed, that (i) Client is duly organized, validly existing, and in good standing in the jurisdiction in which it is organized; (ii) there are no provisions of any law, or any certificate of incorporation or by-laws, or any agreement of any kind, nature or description binding upon Client which prohibits Client from entering into or performing under this Master Agreement and Service Schedule(s); (iii) the execution and performance of this Master Agreement and Service Schedule(s) has been duly authorized; and (iv) this Master Agreement and Service Schedule(s) are binding obligations of Client.

(b) The undersigned warrants and represents as to Client, and each of them if more than one, that (i) the undersigned is an officer of Client duly authorized to act on behalf of Client ("**Authorized Officer**"); (ii) Client has taken all action required by its organizational documents to authorize the Authorized Officer to execute and deliver this Master Agreement and Service Schedules and to bind Client thereto; (iii) Authorized Officer is duly authorized to designate employees or agents of Client to act in the name of and on behalf of Client with regard to the Services; (iv) without limiting the generality of the foregoing, Authorized Officer is duly authorized to give Bank direction regarding the withdrawal, disbursement, or other transfer of funds by wire, computer, automated clearing house, or other electronic means and to delegate employees and agents of Client to give Bank direction regarding such transfers; and (v) Client has received a copy of the Master Agreement.

(c) Client, and each of them if more than one, covenants and agrees that Bank is relying on the authority of the Authorized Officer to act on behalf of Client, including any and all of the entities listed on Exhibit A, and waives any defense or other claim that the Authorized Officer was not authorized to act on behalf of any Client in regard to the Services.

27. Compliance with Law. Client shall comply with all valid laws and regulations now in effect or hereafter promulgated by any properly constituted governmental authority having jurisdiction over Client and Client's business.

28. Waiver. Failure of a party to insist upon strict adherence to any term of this Master Agreement on any occasion shall not deprive the forbearing party of the right thereafter to insist on strict adherence to that term or any other term in this Master Agreement. Any waiver of a breach shall not be construed as a waiver of any subsequent breach, whether or not similar.

29. Communications. Unless otherwise specified in a Service Schedule, all notices required to be given hereunder or under any Service Schedule(s) must be given in writing, addressed to the Bank or the Client at the address appearing on the first page of this Master Agreement or such other address as specified by either party in writing. Notices shall be effective upon receipt except as otherwise specified. Any notice which is required to be given to Client pursuant to this Master Agreement or any Service Schedule, shall be sufficient as to each and every Client if more than one, when provided to Client at the address listed on the first page of this Master Agreement. If Client chooses to use unencrypted electronic mail ("**e-mail**") or other insecure method to communicate with Bank, Client agrees to bear the risk that its e-mail may be corrupted, modified, or hacked, or its confidentiality may be otherwise breached by a third party, and the risk that Bank may rely on the e-mail, which appears to be from Client, but is unauthorized, and such reliance results in a loss.

30. Electronic Records Disclosure. (a) Client agrees to receive electronic delivery of statements, images, records, agreements, disclosures, notices, and other information ("**Electronic Records**") for Client's accounts at Bank as designated by Client in writing to Bank from time to time ("**Designated Accounts**"). The Electronic Records will be available via access through a secure website such as KeyNavigator℠ or Key Business Online or such other website as Bank establishes from time to time ("**Website**"). Client may elect to receive one or more Electronic Records for each Designated Account. Bank will notify Client from time to time regarding what records are available as Electronic Records.

(b) For records that Client has not selected to receive electronically through the Service, Bank will deliver such records in paper form and Bank's standard fee then in effect and charged for paper delivery of records will apply. For records that Client has selected to receive electronically through the Service, Client may request a paper copy of an Electronic Record previously delivered and Bank's standard fee then in effect and charged for paper delivery of records will apply. Even though Client has requested electronic delivery of selected Electronic Records through the Website, Bank may, at its discretion, deliver certain Electronic Records in paper form, however, in such case no fee will be charged. A paper copy of Electronic Records can be obtained until the copy is no longer required to be maintained as a record for the Designated Account under applicable law or regulation.

(c) Client will receive notice advising Client that Electronic Records of Statements and Wire Advices for Designated Accounts have been posted to the Website by e-mail ("**Alert Notice**") sent to the e-mail address selected and confirmed by Client ("**E-mail Address**"). Client may select and confirm one or more E-mail Addresses, however, Client agrees that an Alert Notice sent to any one of the E-mail Addresses shall constitute notice to Client. This Alert Notice will be the only notice Client will receive. As used herein, "Statement" means the account statement for an account and "Wire Advice" means a notice to Client of an incoming wire transfer to an account; both are "Electronic Records" hereunder. Client agrees that any and all Alert Notices sent by Bank to any of the E-mail Addresses will constitute sufficient and effective delivery and notice to Client of information contained in Client's Statements and Wire Advices whether or not Client accesses or reviews the Alert Notice, Website or specific Electronic Record, and shall be deemed to have been delivered to Client, whether actually received or not.

Client agrees to maintain computer capability and access to the Website in a manner that gives Client continuous ability to access, review, download and print Client's Electronic Records and to receive and access e-mail Alert Notices to Client at each of the E-mail Addresses. Client must immediately advise Bank of all changes or updates to any E-mail Address or if such E-mail Address becomes inoperative or inactive and to immediately identify another E-mail Address to be used for the Service. If Bank attempts to send an Alert Notice to any E-mail Address and receives two (2) consecutive reports from an e-mail service provider or other source that the e-mail is undeliverable, Bank may, at Bank's sole discretion, automatically unenroll Client and cancel the Service for all Designated Accounts and Client may begin receiving account records through the U.S. Mail subject to the terms hereof, including, without limitation, any applicable fees. It is Client's sole responsibility, whether the content of such Alert Notice is delivered by mail, electronic mail or other electronic means, to access and review promptly its own Electronic Records for its Designated Account. The Electronic Records are delivered in a manner to allow Client immediate access to download and print the Electronic Records on its personal computer.

(d) Certain risks are associated with the transmission of confidential Electronic Records and Alert Notices through the internet including but not limited to unauthorized access, systems outages, delays, disruptions in telecommunications services and the Internet. E-mail is not private or secure. Alert Notices sent to Client by e-mail are unencrypted, automatic alerts. Client acknowledges that an Alert Notice could be seen or intercepted by others if delivered to Client's business address or other computers or electronic devices not exclusively under Client's control. This means that a person who is able to access Client's e-mail will be able to view information relating to Client's Designated Account contained in the Alert Notice. Client will not respond to the Alert Notice by return e-mail, or use it to request information, service, paper copies or other items or to revoke consent. Bank will not be responsible to act upon requests made in that manner.

31. Jury Trial Waiver. **BOTH THE CLIENT AND THE BANK HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER THE CLIENT OR BANK AGAINST THE OTHER.**

32. Fraud. This Agreement provides certain precautions Client can take to decrease the risk of fraud, which are in addition to other reasonable precautions Client can or should take to decrease the risk of fraud generally, and as relates to Client's particular circumstances. Bank will make available to Client certain products and services that will assist Client in decreasing the risk of fraud. Client agrees that if Client fails to implement any of these products or services and if Client otherwise fails to take such other precautions as may be established by Bank from time to time to decrease the risk of fraud, Client will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service or precaution was designed to detect or deter, and that Bank will not be required to pay such item, re-credit Client's account, or otherwise be liable for such item.

33. Lockbox. If Client utilizes Bank's lockbox services ("**Lockbox Services**"), Client agrees that the following terms and conditions shall apply: (a) Foreign items received through the Lockbox Services will be credited to Client's account at such time as Bank receives final payment for such items. The term "foreign item" is an item (check) not drawn on a U.S. bank, or is not payable in U.S. dollars; and (b) If in regard to the Lockbox Services Client requests, verbally or in writing, that Bank return checks bearing a restrictive endorsement or legend (e.g., "final payment", "paid in full" or words of similar meaning), Client agrees that Bank does not accept responsibility for Bank's failure to discover and return such items.

34. Credit Cards.If Client utilizes Bank's Credit Card services ("**Credit Card Services**"), credit card processing is designated for the processing of credit or debit card payments and/or the handling of cardholder information in a Payment Card Industry (PCI) Data Security Standard (DSS) compliant manner. Client must ensure that Bank is aware of which forms, pages or fields within the documents to be received by Bank contain cardholder data (as that term is defined in the PCI DSS Glossary) and therefore must be protected according to PCI DSS requirements. Bank will protect the security of cardholder data it receives from Client or otherwise stores, processes or transmits on behalf of Client, according to PCI DSS requirements.

Correspondence is processed as received and is not handled as cardholder information. Bank will apply commercially reasonable security controls around its customers' correspondence. The correspondence service is not intended to be PCI DSS compliant.

35. Client Affiliates. Any Client Affiliate(s) shall, if they are identified on Exhibit A hereto, also be deemed to be parties to this Master Agreement and any Service Schedule(s) executed by Client. Client represents and warrants, on behalf of, and at the direction of, each Client Affiliate that the Authorized Officer appointed by Client (a) is hereby deemed to be an authorized representative of each Client Affiliate, and is duly authorized to act on behalf of each Client Affiliate, (b) each Client Affiliate has taken all action required by its organizational documents to authorize such Authorized Officer to execute and deliver this Master Agreement and any Service Schedule(s) and to bind each Client Affiliate thereto, and (c) unless otherwise designated in writing by both Client and any respective Client Affiliate, the Authorized Officer is authorized to act in the name of, and on behalf of, each Client Affiliate with regard to this Master Agreement and any Service Schedule(s). Client further represents and warrants that each Client Affiliate has received a copy of this Master Agreement and any Service Schedule(s). By executing this Master Agreement, Client, on behalf of itself, and any Client Affiliate, agrees that Client shall be liable for any obligations of Client or any Client Affiliate under this Master Agreement and/or any Service Schedule(s). Client, for itself, and on behalf of any Client Affiliate, further agrees to indemnify and hold Bank harmless for any claim, loss, cost, expense, or damages resulting from any action taken as a result of Bank's reliance on Client's signature on this Master Agreement, whether for itself or on behalf of any Client Affiliate. Any notice which Bank is required by this Master Agreement or any Service Schedule(s) to provide to Client or any Client Affiliate shall be provided only to Client. Each such notice shall be deemed to constitute notice to all parties to this Master Agreement and any Service Schedule(s) and shall satisfy the notice requirement set forth herein.

By signing below, the undersigned Authorized Officer of Client understands and agrees that he/she is signing on behalf of the Client whose name appears immediately below and on behalf of each and every other Client and Client Affiliate listed on the "Client List," attached hereto as Exhibit A, and made a part hereof. Exhibit A may be amended from time to time by adding or removing a Client Affiliate from the Client List. Addition or removal of a Client Affiliate on Exhibit A shall be effective only upon receipt by Bank of a new Exhibit A in a form acceptable to Bank in its sole discretion.

Client:

By:____
Signature Date

____
Printed Name

____
Title

KEYBANK NATIONAL ASSOCIATION

By:____
Signature Date

____
Printed Name

____
Title

ADDENDA AND SERVICE SCHEDULES ATTACHED

- ☐ Guaranty Addendum to Master Agreement
- ☐ ACH Direct Service Schedule
- ☐ Aptexx Referral Services Service Schedule
- ☐ Automated Clearing House Debit Protection Service Schedule
- ☐ Automated Credit Sweep Service Schedule
- ☐ Automated Clearing House Electronic Data Interchange Service Schedule
  Exhibit A
- ☐ Automated Clearing House Returned Check (RCK) Service Schedule
- ☐ Automated Clearing House Accounts Receivable Conversion **(ARC)** Back Office Conversion **(BOC)** Service Schedule
- ☐ Automated Investment Sweep Account Service Schedule
- ☐ Bill Pay Consolidator Service Schedule
- ☐ Centralized Returns Items
- ☐ Consolidated Payables Service Schedule
- ☐ E-Bill & Collect Service Schedule
- ☐ Electronic Record Delivery Service Schedule & Exhibit A
- ☐ Health Plan Solution Service Schedule
- ☐ Health Plan Solution Claims Settlement Services Addendum
- ☐ Health Plan Solution – Member Payments Services Addendum
- ☐ International ACH Transactions Addendum to Automated Clearing House/Electronic Data Interchange Service Schedule
- ☐ International Draft Payment Facility Addendum
- ☐ International Draft – Payment Facility Service Schedule
- ☐ Key2Benefits Service Schedule
- ☐ Key2Business Client Agreement
- ☐ Key2Payroll® Service Schedule
- ☐ Key2Prepaid Service Schedule
- ☐ Key2Purchase Client Agreement
- ☐ Key Accounts Manager Agreement
- ☐ Key Capture® Service Schedule
- ☐ Key Capture® Service Schedule Third Party Provider/Related Entity
- ☐ Key Capture® Plus Service Schedule
- ☐ Key Capture® Plus Service Schedule Use of Third Party
- ☐ Key Liquid Reserve Service Schedule
- ☐ KeyPatient POS(SM) Service Schedule
- ☐ Payment Protection Service Schedule
- ☐ Payment Management Services Service Schedule
- ☐ Positive Pay Service Schedule
- ☐ Real Time Payment Message Schedule
- ☐ Third Party Funds Transfer Addendum to Wire Transfer Service Schedule
- ☐ Third Party Service Provider Agreement
- ☐ Third Party Sender Agreement – ACH Services
- ☐ Wire Transfer Service Schedule
- ☐ Wire Transfer Service Payment Authorization Form
- ☐ Universal Payment Code (UPIC) Addendum
- ☐ Modification Addendum (to be used for revisions to any of the foregoing)

CASH MANAGEMENT MASTER AGREEMENT
EXHIBIT A
CLIENT LIST

Client Name: (“Client”)

Entity Name	TIN	Address	Title of Authorized Officer

The foregoing is a current list of all Entities that are a “Client” as defined in the Master Agreement executed by and between Client and KeyBank on .

Board Action Form

MEETING DATE	1/9/24			
TITLE	Request to approve renewal of internet service and leased fiber from Crown Castle.			
SUBMITTED BY	Name & Title: Tracy Gaynor Information Technology			
MEETING TYPE	☐ Work Session Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☒ Resolution	☐ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☒ 1st Reading	☒ 2nd Reading	☐ Public Hearing	☒ 3rd Reading ☒ Final Reading
	Ordinance #:		Resolution #: R010924G	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☐ Contract required for this item		☐ Signed copy of contract attached	
	☐ Seeking award or other scenario & will provide contract at a later date		☒ No contract for this item	
	☐ Contract over $50,000 Please mark the box in the other column that pertains to this contract.		☒ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document must be recorded with the County Recorder's Office ☐ Wait 31 days prior to filing with the County Recorders' Office		☒ Document does not need recorded with the County Recorder's Office	

Form Revised: 03/20/2019

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☒ Department Head ☐ Deputy Mayor ☐ Mayor ☒ Legal Counsel – *Name of Reviewer:* Lindsey Bennett	☐ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☒ Other: Sean Totten, CISO
BACKGROUND (Includes description, background, and justification)	The city has used Crown Castle for various fiber and Internet services for over 10 years. Our last contract expired in 2023 and we have been paying the same rate month to month since then. This request covers 3 services. Dual 10GB diverse path leased fiber from Fishers to our primary data center in Indianapolis, an upgrade from 1GB internet service to 10GB, and also a dedicated 1GB direct connection to Amazon Web Services in Chicago. We also requested the AWS circuit be moved from our primary data center to Fishers. There is no charge for the circuit move and no build out costs. The end result is the city will continue service it is happy with, and 10 times the internet bandwidth, for $12,800 less annually than we had been paying.	
BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	$96,140.
	Expenditure $:	$83,340. (annually for 3 years)
	Source of Funds:	2024 IT Operating Budget
	Additional Appropriation #:	
	Narrative:	
OPTIONS (Include *Deny Approval* Option)	1.	Approve this request
	2.	Deny this request
	3.	
	4.	
PROJECT TIMELINE	Q1 2024	
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)		
SUPPLEMENTAL INFORMATION (List all attached documents)	CrownCastle aws eline move renewal sof 121423.pdf CrownCastle dia upgrade sof 121423.pdf CrownCastle metro 10gb renewal sof 121423.pdf	

RESOLUTION NO. R010924G

A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY APPROVING THE RENEWAL OF A PRIVATE FIBER CONTRACT (CROWN CASTLE)

WHEREAS, in 2012, the City of Fishers, Indiana ("City") entered into an agreement with FiberTech (predecessor in interest to Crown Castle) whereby the City leased several 10Gb fiber lines from the City's municipal center to the LifeLine Data Center in Indianapolis, Indiana ("Agreement"), which the City renewed in 2017 and 2020 and expired at the end of 2023;

WHEREAS, due to their initial infrastructure investment, Crown Castle has presented the City with a unique opportunity to obtain supplies and services at a substantial savings to the City by proposing a three-year contract renewal which will save approximately $30,000 in build out costs, move 1GB direct connection to AWS from our data center in Indianapolis to Fishers at no cost to the City and provide monthly services at 30-40% discount compared to new customers, all as further described in Exhibit A, which is attached hereto and incorporated herein (collectively, the "Special Purchase");

WHEREAS, pursuant to Ind. Code §5-22-10-5, the City can make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the City;

WHEREAS, pursuant to Ind. Code §5-22-10-8, the City can make a special purchase when (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements; and

WHEREAS, the City now desires to approve the Special Purchase with Crown Castle as further described herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY MEETING IN REGULAR SESSION AS FOLLOWS:

Section 1. The Board of Public Works & Safety hereby approves the Special Purchase with Crown Castle, as more specifically described in Exhibit A, which is attached hereto and incorporated herein.

Section 2. The Board hereby authorizes the Mayor and/or IT Director to execute the Special Purchase and any and all documents necessary to effectuate its intent.

Section 3. This Resolution shall be of full force and effect from and upon its adoption and in accordance with Indiana law.

SO RESOLVED BY THE BOARD OF PUBLIC WORKS & SAFETY OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA THIS 9th DAY OF JANUARY, 2024.

BOARD OF PUBLIC WORKS & SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: ________________________ DATE: ______________________

Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett

Order Form

Order Type: Renewal/Replacement
SO # 2023-114437

Licensee or Customer Contact Detail

Licensee or Customer	**City of Fishers**
Address & Contact	**Address** 1 MUNICIPAL DR **City, State** FISHERS, IN 46038 **Phone** 317-595-3111 **Fax**
Billing Address & Contact	**Name** City of Fishers (12408) **Email** **Billing Address** 1 Municipal Dr **Phone** 3175953111 **City, State** Fishers, IN 46038 **Fax**
Technical Contact	**Name** Sean Totten **Primary Phone** 3175953440 **E-mail** tottens@fishers.in.us **Alternate Phone**

Product Detail

Ethernet

Product Type E-Line **Total Bandwidth** 1Gbps

	Standard EVC	Business Priority EVC	Business Critical EVC	Mission Critical EVC
CoS Bandwidth	1 Gbps	0 Mbps	0 Mbps	0 Mbps
CoS MRC	$1,095.00	$0.00	$0.00	$0.00

MRC **$1,095.00** **NRC** **$0.00** **Service Level** 99.9%

Install Lead Time **30 Days**

Comments Relocating ALoc of CID 196088-ENET-CCF to 3 Municipal with a 36-month renewal.

Existing Product ID S252799

Location A Product Details	**Handoff Type** 1000LX **SM**
Location A	3 Municipal Dr, 1st Floor, Fishers, IN 46038
Location Z Product Details	**Handoff Type** 1000LX **SM**
Location Z	350 E Cermak Rd, 8th Floor, 820, Chicago, IL 60616

Order Summary

Pricing & Contract Terms

Salesperson Marc Schneider **Term (Months)** 36
Client Service Mgr Julia Goralka
Order Contact Sean Totten **Contact Email** tottens@fishers.in.us

	NRC *	MRC*
Ethernet	$0.00	$1,095.00
Total	**$0.00**	**$1,095.00**

*Pricing shown does not reflect applicable taxes and fees.

ORDER ACCEPTANCE

This Order Form is entered into between Provider (or "Company") and Customer (or "Licensee") effective as of the date of the last signature below, and is subject to the provisions of the Master Telecommunications License Agreement or other master agreement between the parties dated **1/1/2016** ("Agreement"), which is incorporated herein by reference. In the event the date in the previous sentence is blank, or the Agreement is no longer in effect, then this Order Form will be governed by the "Crown Castle Terms and Conditions Version 5.0" available at https://www.crowncastle.com/terms-and-conditions ("Online Terms"). In addition, if Company and Licensee have not executed a Supplement or Service Level Agreement applicable to the type of product contemplated by this Order Form, then the product-specific portion of the Online Terms applicable to the product under this Order Form shall apply.

	Licensee or Customer		Company or Provider
	City of Fishers		**Crown Castle Fiber LLC**
Signature		Signature	
Name/Title		Name/Title	
Date		Date	

CROWN CASTLE

Order Form

Order Type: Renewal/Change
SO # 2023-114430

Licensee or Customer Contact Detail

Licensee or Customer	**City of Fishers**
Address & Contact	**Address** 1 MUNICIPAL DR **City, State** FISHERS, IN 46038 **Phone** 317-595-3111 **Fax**
Billing Address & Contact	**Name** City of Fishers (12408) **Email** **Billing Address** 1 Municipal Dr **Phone** 3175953111 **City, State** Fishers, IN 46038 **Fax**
Technical Contact	**Name** Sean Totten **Primary Phone** 3175953440 **E-mail** tottens@fishers.in.us **Alternate Phone**

Product Detail

Internet *	**Product Type** Dedicated Internet Access **Bandwidth** 10Gbps **MRC** **$2,100.00** **NRC** **$0.00** **Service Level** IP **Connector** 10 GigE - **IPv4 Block** /29 - /27 * Internet Service is subject to Provider's Acceptable Use Policy posted at http://fiber.crowncastle.com at the bottom of the page. **Install Lead Time** **60 Days** **Comments** Move order from 3 Municipal Drive Fishers to 401 N Shadeland Indianapolis. Both circuits are to run concurrently with no overlap billing for 5 days. **Existing Product ID** S388740
Location A Product Details	**Handoff Type** 10 GigE
Location A	401 Shadeland Ave, 1st Floor, Indianapolis, IN 46219
Location A Contact	**Name** Sean Totten **Primary Phone** 3175953440 **E-mail** tottens@fishers.in.us

Order Summary

Pricing & Contract Terms

Salesperson Marc Schneider **Term (Months)** 36
Client Service Mgr Julia Goralka
Order Contact Sean Totten **Contact Email** tottens@fishers.in.us

	NRC *	MRC*
Internet	$0.00	$2,100.00
Total	**$0.00**	**$2,100.00**

*Pricing shown does not reflect applicable taxes and fees.

ORDER ACCEPTANCE

This Order Form is entered into between Provider (or "Company") and Customer (or "Licensee") effective as of the date of the last signature below, and is subject to the provisions of the Master Telecommunications License Agreement or other master agreement between the parties dated **1/1/2016** ("Agreement"), which is incorporated herein by reference. In the event the date in the previous sentence is blank, or the Agreement is no longer in effect, then this Order Form will be governed by the "Crown Castle Terms and Conditions Version 5.0" available at https://www.crowncastle.com/terms-and-conditions ("Online Terms"). In addition, if Company and Licensee have not executed a Supplement or Service Level Agreement applicable to the type of product contemplated by this Order Form, then the product-specific portion of the Online Terms applicable to the product under this Order Form shall apply.

	Licensee or Customer		Company or Provider
	City of Fishers		**Crown Castle Fiber LLC**
Signature		Signature	
Name/Title		Name/Title	
Date		Date	

CROWN CASTLE

Order Form

Order Type: Renewal
SO # 2023-114322

Licensee or Customer Contact Detail

Licensee or Customer	**City of Fishers**
Address & Contact	**Address** 1 MUNICIPAL DR **City, State** FISHERS, IN 46038 **Phone** 317-595-3111 **Fax**
Billing Address & Contact	**Name** City of Fishers (12408) **Email** **Billing Address** 1 Municipal Dr **Phone** 3175953111 **City, State** Fishers, IN 46038 **Fax**
Technical Contact	**Name** Sean Totten **Primary Phone** 3175953440 **E-mail** tottens@fishers.in.us **Alternate Phone**

Product Detail

Ethernet #1

Product Type	Metro-E Advanced Private Line
Total Bandwidth	10Gbps
MRC	**$1,875.00**
NRC	**$0.00**
Service Level	99.9%
Install Lead Time	**30 Days**
Comments	36-month renewal of CID 198625-ENET-CCF.
Existing Product ID	S251576

Location A Product Details	**Handoff Type** 10 Gbps
Location A	3 Municipal Dr, 1st Floor, Fishers, IN 46038
Location Z Product Details	**Handoff Type** 10 Gbps
Location Z	401 Shadeland Ave, 1st Floor, Indianapolis, IN 46219

Ethernet #2

Product Type	Metro-E Advanced Private Line
Total Bandwidth	10Gbps
MRC	**$1,875.00**
NRC	**$0.00**
Service Level	99.9%
Install Lead Time	**30 Days**
Comments	36-month renewal of CID 198627-ENET-CCF.
Existing Product ID	S251577

Location A Product Details	**Handoff Type** 10 Gbps
Location A	401 Shadeland Ave, 1st Floor, Indianapolis, IN 46219
Location Z Product Details	**Handoff Type** 10 Gbps
Location Z	3 Municipal Dr, 1st Floor, Fishers, IN 46038

Order Summary

Pricing & Contract Terms

Salesperson Marc Schneider **Term (Months)** 36
Client Service Mgr Julia Goralka
Order Contact Sean Totten **Contact Email** tottens@fishers.in.us

	NRC *	MRC*
Ethernet	$0.00	$3,750.00
Total	**$0.00**	**$3,750.00**

*Pricing shown does not reflect applicable taxes and fees.

ORDER ACCEPTANCE

This Order Form is entered into between Provider (or "Company") and Customer (or "Licensee") effective as of the date of the last signature below, and is subject to the provisions of the Master Telecommunications License Agreement or other master agreement between the parties dated **1/1/2016** ("Agreement"), which is incorporated herein by reference. In the event the date in the previous sentence is blank, or the Agreement is no longer in effect, then this Order Form will be governed by the "Crown Castle Terms and Conditions Version 5.0" available at https://www.crowncastle.com/terms-and-conditions ("Online Terms"). In addition, if Company and Licensee have not executed a Supplement or Service Level Agreement applicable to the type of product contemplated by this Order Form, then the product-specific portion of the Online Terms applicable to the product under this Order Form shall apply.

	Licensee or Customer	Company or Provider
	City of Fishers	**Crown Castle Fiber LLC**
Signature		
Name/Title		
Date		

Board Action Form

MEETING DATE	1/09/2024			
TITLE	Request to approve contract for Internet Service with Everstream.			
SUBMITTED BY	Name & Title: Tracy Gaynor Department: Information Technology			
MEETING TYPE	☐ Work Session Executive	☒ Regular	☐ Special	☐ Retreat
AGENDA CLASSIFICATION	☐ Consent	☐ Ordinance	☒ Resolution	☐ Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	☒ 1st Reading	☒ 2nd Reading	☐ Public Hearing	☒ 3rd Reading ☒ Final Reading
	Ordinance #:		Resolution #: R010924H	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	☐ Contract required for this item		☐ Signed copy of contract attached	
	☐ Seeking award or other scenario & will provide contract at a later date		☐ No contract for this item	
	☒ Contract over $50,000 Please mark the box in the other column that pertains to this contract.		☒ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐ Document must be recorded with the County Recorder's Office ☐ Wait 31 days prior to filing with the County Recorders' Office		☒ Document does not need recorded with the County Recorder's Office	

Form Revised: 03/20/2019

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head ☒ Department Head ☐ Deputy Mayor ☐ Mayor ☐ Legal Counsel – *Name of Reviewer:*	☐ Controller's Office ☐ Finance Committee ☐ Technical Advisory Committee ☒ Other: Sean Totten, CISO
BACKGROUND (Includes description, background, and justification)	The city has solicited updated pricing for internet service from all vendors the city currently uses (5 service providers engaged currently for variety of use cases). The city has no desire or need to introduce a 6th carrier, and any new carrier would have build-out costs to run fiber to city facilities. On average, a typical build out can be around $30,000. Of the 4 updated proposals received, the city would like to proceed with two of them. This is one of the two, but is more urgent due to special end of year promotions we would like to receive. Everstream is offering 4 significant discounts and special end of year promotions: 1. No build out costs (~$30,000 one-time up-front cost savings). 2. Discount of $3,150 per month for service compared to normal list price ($113,400 total savings over 36 months). 3. Included redundancy at the data center where we will take service (would normally double the monthly price $66,600 total savings over 36 months). 4. Everstream is offering one month free for each year of the 3-year contract ($5,5550 toal savings). This is for 10Gb of bandwidth.	

BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)		
	Budgeted $:	$59,050 (over 3 years)
	Expenditure $:	$61,050 (over 3 years)
	Source of Funds:	2024 – 2026 Operating budgets
	Additional Appropriation #:	
	Narrative:	

OPTIONS (Include *Deny Approval* Option)		
	1.	Approve this request
	2.	Deny this request
	3.	
	4.	

PROJECT TIMELINE	45-60 days
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Approve this contract
SUPPLEMENTAL INFORMATION (List all attached documents)	Everstream 10G DIA[63].pdf

Form Revised: 03/20/2019

RESOLUTION NO. R010923H

A RESOLUTION OF THE CITY OF FISHERS BOARD OF PUBLIC WORKS & SAFETY APPROVING AGREEMENT FOR INTERNET SERVICE PROVIDER (EVERSTREAM)

WHEREAS, the IT Department of the City of Fishers, Indiana ("City") manages, administers and protects the City's technology equipment, communications, and data generated and stored to conduct business;

WHEREAS, the IT Department solicited proposals from five (5) internet service providers and received responses from four (4) providers including Everstream, which is a current City provider;

WHEREAS, utilizing a current provider saves the City from incurring build out costs in the amount of approximately $30,000.00 and Everstream has provided a discount of $3,150.00 per month, included redundancy at the data center at no cost, a savings of $66,600 and is offering one month free in the amount of $5,550.00; and

WHEREAS, the City now desires to enter into an agreement with Everstream as set forth in Exhibit A, attached hereto and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Board of Public Works & Safety meeting in a duly noticed and regularly scheduled meeting as follows:

Section 1. The Board hereby approves the Agreement in Exhibit A.

Section 2. The Board hereby further authorizes the Mayor to execute the Agreement and any and all documents necessary to implement this purchase.

Section 3. This Resolution shall be of full force and effect from and upon its adoption and in accordance with Indiana law.

SO RESOLVED, by the City of Fishers Board of Public Works & Safety meeting this 9th day of January, 2024.

BOARD OF PUBLIC WORKS & SAFETY,
CITY OF FISHERS
HAMILTON COUNTY, INDIANA

YAY		NAY	ABSTAIN
	Scott Fadness, Chairman		
	Jeff Lantz, Member		
	Jason Meyer, Member		

ATTEST: _________________________DATE: _____________
Kari Adriano, Board Clerk

This instrument prepared by: Lindsey M. Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

""I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Lindsey M. Bennett

everstream
FASTER FIBER. BETTER BUSINESS.

Quote #:	Q-73924-1
Date:	12/4/2023
Expires On:	12/31/2023

Sales Agent: Jim Cross
jcross@everstream.net
(317) 727-3988

Customer Details

Contact Name	Sean Totten	**Account Name**	City of Fishers
Email	tottens@fishers.in.us	**Bill to Contact Name**	Sean Totten
		Phone	317-595-3440
		Billing Address	1 Municipal Dr Fishers IN, 46038-1574

401 N Shadeland Ave
A Location: Headend
Z Location: 401 N Shadeland Ave, Indianapolis, IN 46219-4913

QTY	Product Name	Bandwidth (Mbps)	Term	Non-Recurring Charges	Monthly Recurring Charges
1.00	Dedicated Internet Access	10000	36		$1,850.00
1.00	IPv4 Blocks /27 (1 Gateway, 29 Usable)		36		$0.00
1.00	Ever-versary Promotion: 3 Months Free		36		$0.00

Total NRC (Non-Recurring Charges)	**$0.00**	**Total MRC (Monthly Recurring Charges)**	**$1,850.00**

Comments

Credit Offer: As a promotional offer to Subscriber, Everstream agrees to provide one (1) month free service for eligible Service Orders for each contract term year (“Credit Offer”). #To be eligible for the Ever-versary Promotion, services must have minimum contract term of three (3) years and minimum monthly spend of $500 per eligible service. The maximum promotion redeemable is $20,000 per customer. #The Credit Offer will be issued as an invoice credit during the final month of each contracted year. #This Service Order must be executed by Subscriber on or before December 31, 2023. The Credit Offer does not apply to Service(s) that are not on the Everstream Network, requiring another carrier solution or usage-based charges. Subscriber shall be liable for the MRC associated with the Credit Offer upon any uncured payment failure which persists thirty (30) days beyond notice by Everstream, or upon early termination. All other early termination charges and terms of the applicable MSA remain in effect. Credit Offer is subject to select service locations.
Customer responsible for cross-connects.

Service Order Details

Subscriber approves and accepts this Services Order Amendment is governed by the Master Services Agreement between Subscriber and Everstream (the 'MSA') [as amended]. Subscriber agrees to be bound by the terms and conditions of the MSA. The Requested FOC (Firm Order Commitment) date is subject to Everstream's internal provisioning, and an actual FOC Date will be issued to Subscriber in accordance with the MSA. Terms of Service, including all active Subscriber Service Order Amendment(s), together with your Everstream Master Services Agreement, constitute the entire agreement between you and Everstream relating to these Services. You are not entitled to rely on any other agreements or undertakings relating to Services provided by Everstream. Invoicing of service(s) shall begin with the issue of a Service COFA document post-installation. The delivered service(s) will be considered accepted by SUBSCRIBER as certified to be error free and built to “Service Order” specifications at the conclusion of a five (5) day acceptance period. Unless otherwise specified above, Internet service provides one (1) public-facing IPV4 /30 address. Subscriber shall formally demonstrate usage requirement(s) prior to IPv4 Addresses being issued by Everstream. Unless otherwise specified above, Services up to one (1) Gbps will be delivered at a single one (1) Gbps port, Services ranging from one (1) Gbps to ten (10) Gbps will be provided by way of one (1) ten (10) Gbps port, and Services greater than ten (10) Gbps will be provide by way of one (1) one hundred (100) Gbps port. Unless otherwise specified, any service location that is within a datacenter, point of presence, or similar, the Service(s) will not include a cross connection within any such third party facility.

Subscriber shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products provided to Subscriber that are the subject of this Service Order, including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable, excluding any taxes not normally paid by the consumer.

Everstream shall construct the required infrastructure to provide the Service(s) following all applicable building and permitting standards and conditions. Subscriber shall ensure Everstream has all required access to provide the Service(s) from the right of way to the Demarcation Point(s) (“Access Rights”). Any delay in Everstream providing the Service(s) due to Subscriber’s inability to provide Everstream required Access Rights shall not constitute an Everstream delay or breach of this Agreement.

SIGNATURES

SUBSCRIBER AUTHORIZED SIGNATURE

Signature:

Print:

Title Position:

Date:

EVERSTREAM

Signature:

Print:

Title Position:

Date:

Blank Page Do Not Use