AGENDA
KOKOMO COMMON COUNCIL
CITY OF KOKOMO, INDIANA
PUBLIC INFORMATIONAL MEETING AT 5:30 P.M.
PUBLIC HEARING AT 6:00 P.M. IN THE COUNCIL CHAMBERS. COUNCIL MEETING IMMEDIATELY FOLLOWING. JUNE 8TH, 2020
COUNCIL CHAMBERS CITY HALL 100 S. UNION ST

CALL TO ORDER:

INVOCATION:

PLEDGE:

ROLL CALL:

APPROVAL OF MINUTES: Council Meeting Minutes 5-18-2020

COMMUNICATIONS:

COMMITTEE REPORTS:

RESOLUTION 2745:

Miklik A RESOLUTION OF THE COMMON COUNCIL OF THE
CITY OF KOKOMO, INDIANA REGARDING TRANSFER
OF CERTAIN FUNDS

RESOLUTION 2746:

McKIBBEN A RESOLUTION OF THE COMMON COUNCIL OF THE
CITY OF KOKOMO, INDIANA REGARDING ACCEPTANCE
OF A BID OF A DEVELOPER FOR THE CHAMPIONSHIP
PARK PROJECT

ORDINANCE 6962: COMMUNITY CROSSING GRANT LOCAL MATCH

MIKLIK
To: Common Council  
From: Controller's Office  
Date: 6/8/2020  
Subject: Cancellation of 2 years old checks

Please approve the cancellation of the following checks that were written in the calendar year of 2017 and still outstanding as of 5/28/2020:

<table>
<thead>
<tr>
<th>Check Number</th>
<th>Vendor #</th>
<th>Vendor Name</th>
<th>Check Date</th>
<th>Check Amount</th>
</tr>
</thead>
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<tr>
<td>1011113</td>
<td>R-99999</td>
<td>ASHburn, ALFRED</td>
<td>2/28/2017</td>
<td>$2,178.43</td>
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<td>1011257</td>
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<td>R-99999</td>
<td>CHAPLIN, BETTY</td>
<td>4/28/2017</td>
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<td>2084824</td>
<td>702 IN ASSOC. OF BUILDING OFFICIALS</td>
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<td>1/6/2017</td>
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<tr>
<td>2087185</td>
<td>99999</td>
<td>Jacorey Smith</td>
<td>4/7/2017</td>
<td>30.00</td>
</tr>
<tr>
<td>2089123</td>
<td>88888</td>
<td>CALDWell JANET L</td>
<td>6/12/2017</td>
<td>1.72</td>
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<tr>
<td>2089389</td>
<td>4774</td>
<td>ASHLEY SAFE AND SECURITY</td>
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<tr>
<td>2090120</td>
<td>629</td>
<td>HARLEY-DAVIDSON &amp; BUell OF KOKOMO</td>
<td>7/17/2017</td>
<td>36.00</td>
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<tr>
<td>2091214</td>
<td>99999</td>
<td>FRESH START MINISTRIES</td>
<td>8/18/2017</td>
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<tr>
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<td>9/1/2017</td>
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<tr>
<td>2091671</td>
<td>88888</td>
<td>CHECKFREE</td>
<td>9/8/2017</td>
<td>30.00</td>
</tr>
<tr>
<td>2091672</td>
<td>88888</td>
<td>CHECKFREE ATTN BACK OFFICE</td>
<td>9/8/2017</td>
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<tr>
<td>2092533</td>
<td>1781</td>
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<td>11/9/2017</td>
<td>165.00</td>
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<tr>
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<tr>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$6,561.64</strong></td>
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Ordinance #6962

WHEREAS, in October 2019 the city of Kokomo was preliminary awarded a Community Crossings Matching Grant in the amount of $1,000,000.

WHEREAS, in March 2020 the city of Kokomo received a distribution of $905,842.48 from the Indiana Department of Transportation for various Hot Mix Asphalt overlay, preventive maintenance street projects.

WHEREAS, IC 8-23-30-3 (2) allows the local unit to use as a local match for Community Crossing Grant from one or more of the following revenue sources:
   A. Any money the local unit is authorized to use for a local road or bridge project.
   B. Money received by the local unit as a special distribution of LIT.
   C. Money in the local unit’s Rainy Day fund.

WHEREAS, it has been determined that it is now necessary to appropriate money in accordance with the LIT supplemental distribution and Rainy Day Restricted - Motor Vehicle Highway fund, and therefore:

SECTION I

Be it ordained by the Common Council of the City of Kokomo, County of Howard, Indiana, that for the expenses of the taxing unit the following additional sums of money:
1. $200,000 are hereby appropriated out of the Fund 2630 Rainy Day Restricted-MVH and transferred to Fund 2690 Community Crossing Grant.
2. $500,000 of the already appropriated in Fund 2030 MVH Restricted for Preservation, Construction and Reconstruction are transferred to Fund 2690 Community Crossing Grant.
3. $205,843 of the already appropriated in Fund 2010 MVH Street Engineering are transferred to Fund 2690 Community Crossing Grant.

to use as local match for the Local Road and Bridge Matching grant fund, subject to the laws governing the same

<table>
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<tr>
<th>AMOUNT REQUESTED</th>
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<tr>
<td><strong>Rainy Day Restricted - MVH Fund/ Community Crossing Grant</strong></td>
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<tr>
<td>2630-3203-431-400-3096/2690-1700-416-400-3015</td>
<td>$200,000</td>
</tr>
<tr>
<td>Local Match for for 2020 Street Resurfacing project</td>
<td></td>
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<tr>
<td>Total Additional Appropriation</td>
<td>$200,000</td>
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SECTION II

That the Common Council of the City of Kokomo, Indiana will conduct a public hearing on **June 29, 2020 at 6:00 P.M.** in the Council Chambers of City Hall to hear all citizens on said additional appropriation. Following the hearing the aforementioned Council will meet at City Hall Council Chambers on **June 29, 2020 at 6:00 P.M.** to consider and adopt the ordinance. Taxpayers appearing at the hearing shall have a right to be heard thereon.

SECTION III

This Ordinance shall remain in full force and effect from and after its passage, signature by the Mayor, and publication as provided by law.
Ordinance #6962

SECTION IV

PASSED by the Common Council of the City of Kokomo, Indiana, this ___ day of June, 2020

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ATTEST:

CITY CLERK

PRESENTED by me to the Mayor of the City of Kokomo, Indiana, this ___ th day of June, 2020.

CITY CLERK

APPROVED by me as Mayor of the City of Kokomo, Indiana, this ___ th day of June, 2020.

TYLER MOORE, MAYOR
CITY OF KOKOMO, INDIANA

ATTEST:


NOTICE TO TAXPAYERS OF PROPOSED ADDITIONAL APPROPRIATIONS

Notice is hereby given to the taxpayers of the City of Kokomo, Howard County, Indiana that the Common Council of the City of Kokomo at their regular meeting place at Kokomo City Hall, 100 South Union, Kokomo Indiana, at 6:00 PM on June 29, 2020 will consider the following additional appropriations for the current budget year.

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<tr>
<td>Total Additional Appropriation</td>
<td>$200,000</td>
</tr>
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Preceding the meeting the City Council of the City of Kokomo will conduct a public hearing about the proposed additional appropriations. That Public hearing will take place at 6:00 PM, June 29, 2020 in the City Council chambers at Kokomo City Hall, 100 South Union, Kokomo Indiana.

Taxpayers appearing at either meeting shall have the right to be heard.

Weston Reed
City Controller, City of Kokomo
Resolution of the Common Council of the City of Kokomo, Indiana, Regarding Acceptance of a Bid of A Developer for the Championship Park Project

WHEREAS, the City of Kokomo Redevelopment Commission (the “Commission”) on behalf of the City of Kokomo, Indiana (the “City”), has solicited responses from potential offerors for the construction, operation, maintenance, and transfer to the City of a baseball and softball tournament center to be located at 600 S. Goyer Road in the City (the “Project”), pursuant to Indiana Code 5-23-5-1 et seq. (the “BOT Statute”), through a “Request for Proposals and Qualifications” (“RFPQ”) process; and

WHEREAS, the Commission received one RFPQ response from Henke Development, LLC and one RFPQ response from Mid-America Sports Construction; and

WHEREAS, after consideration of the response, the Commission has recommended to the Common Council of the City (the “Council”) that the Council accept the RFPQ response from Henke Development, LLC (the “Accepted Offeror”); and

WHEREAS, the Council has determined that all the procedures required by the BOT Statute have been conducted in accordance with the RFPQ and the BOT Statute, and the Council has reviewed the terms and conditions of bid of the Accepted Offeror and has selected the offer submitted by the Accepted Offeror based on the criteria set forth in the RFPQ and the BOT Statute; and

WHEREAS, having considered the terms and conditions of the Accepted Offeror in the bid, the Commission now desires to select the Accepted Offeror’s bid in accordance with the RFPQ and the BOT Statute; and

WHEREAS, the Council has provided notice of a public hearing to be held pursuant to the BOT Statute, and such hearing was held on this day; and

WHEREAS, there has been submitted to the Council a form of the proposed Build Operate Transfer Agreement for the Project between the City and the Accepted Offeror (the “BOT Agreement”), and the Council now desires to authorize the City to enter into the BOT Agreement.

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

1. The Council hereby accepts the bid of the Accepted Offeror for the Project. The Council further approves the form of BOT Agreement submitted this meeting, and authorizes the Mayor of the City and the President of the Council to execute the BOT Agreement on behalf of the City, in substantially the form submitted. The Mayor and the Council President are further authorized to approve one or more change orders for the project and related amendments to the BOT Agreement, so long as Council has appropriated sufficient funds to cover the costs of such change orders.

2. This Resolution shall be in full force and effect immediately upon adoption and compliance with I.C. § 36-4-6-14.
Passed and adopted by the Common Council of the City of Kokomo, Indiana this ___ day of ________________, 2020.

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ATTTEST:

____________________
Diane Howard, Clerk

PASSED by the Common Council of Kokomo, Indiana by a ____ vote of all members present and voting this ____ day of ________________, 2020.

____________________
Presiding Officer

Presented by me to the Mayor of the City of Kokomo, Indiana, on the ____ day of _____________, 2020, at the hour of ____:____ m.

____________________
Diane Howard, Clerk

This resolution approved and signed by me, the Mayor of the City of Kokomo, Indiana, on the ____ day of _____________, 2020, at the hour of ____:____ m.

____________________
Tyler Moore, Mayor
Memorandum

To: Lynn Rudolph, President  
City of Kokomo Common Council

CC: Diane Howard

From: President  
City of Kokomo Redevelopment Commission

Date: June 3, 2020

Re: Championship Park Project

The City of Kokomo Redevelopment Commission published notice for Request for Proposals and Qualifications for construction of a baseball and softball tournament center at 600 S. Goyer Road, Kokomo, IN. Henke Development Group and Mid-America Sports Construction responded to the Request for Qualifications and Proposals and submitted the enclosed proposals. The Henke Development Group proposal was consistent with the City’s requirements for the project and the City’s project budget.

The City of Kokomo Redevelopment Commission recommends awarding the contract for construction of a baseball and softball tournament center at 600 S. Goyer Road to Henke Development Group in the amount not to exceed $11,423,495, as referenced in the enclosed contract.
BUILD OPERATE TRANSFER AGREEMENT
Kokomo Championship Park

This Build Operate Transfer Agreement (the "Agreement") is entered into this ___ day of __________, 2020, (the "Effective Date") by and between HENKE DEVELOPMENT GROUP, LLC, an Indiana limited liability company (the "Developer") and the CITY OF KOKOMO, INDIANA ("City") pursuant to Ind. Code § 5-23 et seq. on the following terms and conditions:

RECITALS:

WHEREAS, on or about July 26, 2019 the City issued a request for proposals for the design, building and operation of the Project (as defined herein);

WHEREAS, the Developer submitted a proposal pursuant to Ind. Code § 5-23 et seq. and the City has reviewed, negotiated, and recommended said proposal at a duly noticed public hearing on December 9, 2019.

WHEREAS, the City finds that it is in the best interest of the City to enter into this Agreement for the design, construction, operation and transfer of the Project;

WHEREAS, the Parties wish to enter into an Agreement to formalize the terms and conditions upon which the Project shall be delivered.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set forth in this Article I.

ARTICLE II. DEFINITIONS

Act shall mean Ind. Code § 5-23 et seq.

Books and Records shall mean all of the books and records pertaining to: (a) the acquisition of materials to design, procure, bid, construct, and the construction of, the Project in accordance with this Agreement; and (b) the operating of the completed Project during the Operating Period.

Catch-Up Plan shall mean a plan pursuant to which Developer will: (a) avoid falling further behind the dates set forth in the Construction Schedule for construction of the Project and (b) complete the Project in accordance with (and in no event more than thirty (30) days after) the applicable dates set forth in the Construction Schedule.

Certified Cost Statement shall mean an affidavit executed by Developer affirming the Project Costs actually incurred to complete the Project and perform or cause to be performed all items included in Project Budget which amount may not exceed the Maximum Price.
**Change Order** shall mean a change order executed by the City and Developer finalizing the inclusion into the Final Documents and Drawings of a change proposed in a Change Order Request that is approved by the City; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

**Change Order Request** shall mean a written request for a change to the Final Documents and Drawings.

**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.

**Closing** shall mean the closing with respect to the payment of the Project Purchase Price and conveyance of the Project to the City.

**Code** shall mean the City of Kokomo, Indiana Code of Ordinances.

**Construction Drawings** shall mean construction drawings for the Project attached as Exhibit A.

**Construction Meetings** shall mean weekly status meetings on the dates and times to be mutually determined by Developer and the City at which the parties discuss the construction progress for the Project.

**Construction Schedule** shall mean the Project construction schedule attached as Exhibit B that provides for Substantial Completion of the Project by or before November 27, 2020.

**Contingency** shall mean the amount of Two Hundred Twelve Hundred Thousand Dollars ($212,000.00).

**Contract for Goods and Services** shall mean that certain Contract for Goods and Services entered into by and between Developer and City on October 24, 2019.

**Cost of the Work** shall mean those items included on the attached Exhibit H.

**Cure Period** shall mean a period of: (a) ten (10) days after written notice of an Event of Default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the Event of Default; provided that, if such Event of Default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the Event of Default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than sixty (60) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under Section 8.04, any specific cure periods for such defaults being expressly set forth in Section 8.04.

**Declaration** shall mean the "Declaration of Covenants and Easements" attached hereto and incorporated herein as Exhibit C.

**Design Development Documents** shall mean detailed design development documents for the Project included with the Constructions Drawings as Exhibit A.

**Developer's Fee** shall mean six percent (6%) of the Cost of the Work.
Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by the Developer under Section 8.04(A), One Dollar ($1.00); and (b) a default by the Developer under Section 8.04(B), the costs actually and commercially reasonably incurred by the Developer for the work or product of third parties since the immediately prior payment of invoices that would otherwise qualify for payment pursuant to this Agreement had the City not exercised the Power of Termination; which amount shall be paid by the City. The foregoing subsection (b) shall not be interpreted to include profit or other costs incurred by Developer for payment to its owners, principals, employees or members.

Effective Date shall mean the date set forth in the opening paragraph of this Agreement.

Event of Default shall have the meaning set forth in Section 8.01.

Final Documents and Drawings shall mean, collectively the Design Development Documents, Construction Drawings, Construction Schedule, and Final Project Budget.

Final Inspection shall mean an inspection of the Project after Substantial Completion thereof.

Final Project Budget shall mean the Final Budget approved by the City.

Force Majeure shall mean, with respect to Developer or City any cause that is not within the reasonable control of Developer or City, respectively (including, without limitation: (a) unusually inclement weather but not prolonged cold, ice, sleet, snow or hail; (b) the unusual unavailability of materials, equipment, services, or labor; and (e) utility or energy shortages or acts or omissions of public utility providers); provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary delays in obtaining Required Permits shall not be deemed Force Majeure.

Graystone shall mean, Graystone Earthworks Inc., an Indiana corporation.

Inspector shall mean such party or parties designated by the City as its inspector.

Latent Defect shall mean a defect that is not discovered, and reasonably is not discoverable, by the City or Inspector during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Code of Ordinances, the Americans with Disabilities Act and the Act.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents and Drawings; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Maximum Price shall mean Eleven Million Four Hundred Twenty Three Thousand Four Hundred Ninety Five and 00/100 Dollars ($11,423,495.00), subject to Section 6.02, which amount includes the Contingency.

Non-Compliance Notice shall mean a written notice from the City to Developer that identifies Material Defects with respect to the Project discovered by the City or the Inspector during a Permitted Inspection and/or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is _______ months after the Substantial Completion Date; or
(ii) that is specified in a written notice delivered by City to Developer; provided, however, Developer and City may mutually agree to extend the Operating Period beyond the period specified.

**Permitted Change** shall mean any change to a portion of the Construction Drawings, so long as such change: (a) is not inconsistent with the Schematic Design Drawings approved by the City; (b) is not inconsistent with the Design Development Documents approved by the City; (c) is in conformity with each of the Site Plan, the Required Permits, and the Laws; (d) does not result in the Final Documents and Drawings containing structurally flawed elements; (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule; and (g) does not result in an increase in the Project Budget.

**Permitted Inspection** shall mean, as applicable, an inspection by the Inspector of any item or component of the Project when deemed to be necessary or appropriate by any of the City Bodies and/or the Inspector, in either of their sole discretion.

**Power of Termination** shall mean the City's unilateral right to terminate this Agreement as set forth in Section 8.04.

**Project** shall mean the Championship Park and related improvements to be constructed on the Project Site, all in accordance with the Final Documents and Drawings.

**Project Budget** shall mean the budget attached at **Exhibit D** including any agreed upon amendments to the same after completion of Schematic Design Drawings and Design Development Documents which budget includes, among other items, the line-item cost incurred by Developer to complete the Project.

**Project Costs** shall mean the actual cost to design, develop, construct, complete, operate and maintain the Project, perform or cause to be performed all items included in the Project Budget, and fund other soft costs, fees, and expenses incurred by Developer in connection with the foregoing or otherwise completing its other obligations under this Agreement, including the Cost of the Work, and all fees and expenses paid by City pursuant to the Contract for Goods and Services. The Developer guarantees that the Project Costs plus the Developer's Fee shall not exceed the Maximum Price.

**Project Improvements** shall mean any portion(s) of the constructed Project prior to Substantial Completion.

**Project Purchase Price** shall mean an amount equal to the amount affirmed in the Certified Cost Statement.

**Project Budget** shall mean a detailed budget for the construction of the Project in accordance with the Final Documents and Drawings that shows line-item estimated costs.

**Project Site** shall mean the property located at 600 S. Goyer Road, Kokomo as is generally depicted on **Exhibit E**.

**Required Permits** shall mean all permits, licenses, approvals, and consents required by the Laws for construction and use of the Project.

**Sales Tax Exemption Form** shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which City shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.
Schematic Design Documents shall mean the documents included with the Construction Drawings, which will be attached hereto and incorporated herein as Exhibit A once completed.

Site Plan shall mean the site plan attached hereto as Exhibit F.

Substantial Completion shall mean the later of the date that Developer's architect certifies that the construction of the Project is substantially complete in compliance with all Laws, this Agreement, the Final Documents and Drawings, and the Required Permits subject only to minor punch list items that do not interfere with the operation and use thereof.

ARTICLE III. OBLIGATIONS OF THE PARTIES/TERM

3.01 The City's Obligations. The City shall:

(a) schedule and participate in Construction Meetings;
(b) make monthly progress payments to Developer of ninety-five percent (95%) of the Cost of the Work properly incurred plus the Developer's Fee, provided that Developer shall submit payrolls, receipted invoices, and any other evidence required by the Owner, with the retained five percent (5%) to be paid upon Substantial Completion;
(c) pay the outstanding Project Purchase Price to Developer at Closing;
(d) accept fee simple title to the Project on the Closing Date(s);
(e) upon properly submitted applications by Developer, review and issue the City's development and permit applications necessary to develop the Project Site and construct the Project, to the extent allowed by the Laws; and
(f) perform its other obligations set forth herein.

3.02. Developer's Obligations. Developer shall:

(a) schedule and participate in Construction Meetings;
(b) construct and complete the Project consistent with the Final Documents and Drawings and this Agreement;
(c) determine that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (a) in adjoining public rights-of-way or properly granted utility easements; and (b) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement;
(d) maintain and operate the Project;
(e) convey any portion of the Project Site owned by Developer or its affiliates to the City within two (2) weeks of the Effective Date via warranty deed, which said deed shall be subject only to liens and encumbrances as reasonably are acceptable to the City;
(f) convey the Project to the City on the Closing Date;
(g) reach Substantial Completion of the Project by or before such date as mutually agreed by the parties but not later than November 27, 2020;
(h) deliver to the City, not less than ten (10) days prior to the Closing, the Certified Cost Statement;
(i) within three (3) business days of request by the City, provide Developer's books and records to verify costs incurred to the date of such request;
(j) perform its other obligations set forth herein.

3.03 Term. This Agreement shall take effect on the Effective Date, and shall remain in effect until the earliest of (a) completion of the Closing, or (b) the termination of this Agreement as provided herein (the
"Term"). Notwithstanding the foregoing or anything contained herein to the contrary, any provision that by its terms specifically survives termination shall continue in full force and effect as specified.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Section 4.01. By Developer

A. Required Permits. Developer has determined that that they (A) obtained; or (B) shall be able to obtain all Required Permits.

B. Financial Ability. Developer has determined that it has adequate funds (cash on hand), to construct the Project and complete the terms of this Agreement.

C. Authority. Developer represents and warrants to the City that: (i) Developer is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Developer has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Developer has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Developer; (vi) neither Developer nor any party affiliated with Developer has engaged or dealt with any real estate broker or agent in connection with the Project or this transaction and no such person or entity is entitled to claim a commission or fee in connection with this Agreement by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer.

D. Non-Discrimination. As required by Laws, Developer agrees: (a) that in the hiring of employees for the performance of the work under this Agreement, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age, discriminate against any citizen who is qualified and available to perform the work to which the employment relates pursuant to Ind. Code 5-16-6-1 or Section 33.18(c) or Section 33.24 of the Code; (b) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of the work under this Agreement on account of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age in accordance with the provisions of Ind. Code 5-16-6-1 or Section 33.18(c) or Section 33.24 of the Code; (c) that there may be deducted from the amount payable to Developer by City a penalty of five dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and (d) that this Agreement may be cancelled or terminated by City, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of Ind. Code 5-16-6-1.

E. Unauthorized Aliens. The “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
(a) "Unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

(b) As required by Ind. Code § 22-5-1.7, Developer shall enroll in and verify the work eligibility status of all newly hired employees of Developer through the E-Verify program, unless the E-Verify program no longer exists. This provision applies to any contract for services entered into or renewed between City and Developer after June 30, 2011.

(c) Not later than the date of execution of the Agreement, Developer shall sign an affidavit affirming that Developer does not knowingly employ an unauthorized alien.

(d) Developer may not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Developer subsequently learns is an unauthorized alien.

(e) As required by Ind. Code § 22-5-1.7, Developer shall require the subcontractors to certify to Developer that the subcontractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and has enrolled and is participating in the E-Verify program. Developer shall maintain on file such certifications throughout the duration of the contract with the subcontractors.

Section 4.02. By the City.

A. Final Documents and Drawings. Upon receipt, the City will not delay in review of the Final Documents and Drawings and will not unreasonably withhold their approval.

B. Statutory Procedure. The City has completed or shall complete all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved this Agreement and authorized the performance of the City’s obligations hereunder.

C. No Violation. This Agreement and compliance with the terms hereof are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

D. Purchase Proceeds. As of the Closing Date, the City, using commercially reasonably efforts, shall have: (i) taken all action necessary and prudent to procure and expend the funds necessary to satisfy the Project Purchase Price and accept transfer of the Project; and (ii) demonstrated that such funds shall be sufficient to satisfy the Project Purchase Price.

E. Authority. The City represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings or take any action or fail to take action that would limit, conflict with, or constitute a breach of this Agreement; (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) subject to the necessary proceedings required by law relating to funding the purchase of the Project, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (iv) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (v) this Agreement is the legal, valid, and binding obligation of it; and (vi) it has not engaged or dealt with any real estate broker or agent in connection with the Project or this transaction and no such person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of the City.

ARTICLE V. REPORTING
Section 5.01 Developer's Obligations. The Developer shall provide the City with a detailed budget including timing and estimated needed cash flow for the Project.

Section 5.02 Construction Meeting. The City and the Developer shall meet (telephonically, via email, or in person) as needed but no less than once a month to discuss budget, progress, timing, and next steps.

Section 5.03 Reporting Requirements. The Developer shall provide the City with monthly updates of the budget, progress, estimated completion, next steps, summary of any Permitted Changes, and summary of any Approved Change Orders per Section 6.03.

ARTICLE VI. CONSTRUCTION & INSPECTION

Section 6.01. Compliance with Final Documents and Drawings and Laws. At all times, Developer shall construct the Project consistent with the Final Documents and Drawings and the Laws, and any failure to so construct shall be deemed a violation of and a default under this Agreement.

Section 6.02. Bidding.

A. Developer shall obtain a minimum of three (3) bids for each portion of the work from subcontractors and suppliers who are qualified to perform that portion of the work. The Developer shall deliver such bids to the Owner with an indication as to which bids the Developer intends to accept. The Owner then has the right to review the Developer's list of proposed subcontractors and suppliers and to object to any subcontractor or supplier. Any approval or objection by the Owner, shall not relieve the Developer of its responsibility to perform the work in accordance with the Agreement. The Developer shall not be required to contract with anyone to whom the Developer has reasonable objection.

B. Notwithstanding Section 6.02(A), City and Developer agree to use Graystone for a certain portion of the work to be completed as more fully set forth in Exhibits A-H. Any improper performance or non-performance of work by Graystone shall not relieve the Developer of its responsibility to perform the work in accordance with the Agreement, provided however that Developer may at any time prior to completion of the work to be performed by Graystone and upon any improper performance or non-performance of work by Graystone, reasonably object to the continued use of Graystone by providing the City with a commercially reasonable description of the improper performance or non-performance. Thereafter, the City, in its sole discretion and within fifteen (15) days of receiving said notice, shall elect in writing, as follows: (i) to mutually agree with Developer on a Change Order authorizing Developer to engage another subcontractor to complete the work initiated by Graystone, with Developer remaining fully responsible for performance of such work, or (ii) require that Developer retain Graystone, with Developer relieved of its responsibility for performance of the work to be completed by Graystone.

Section 6.03. Change Orders. If Developer or the City desires to make any changes to the Final Documents and Drawings, then Developer, on its behalf or at the direction of the City, shall submit a Change Order Request acceptable to it to the City for review and approval. Within ten (10) days after the City receives the Change Order Request, the City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) the City shall not withhold its approval unreasonably; and (ii) if the City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that the City is rejecting; and (i) include the specific basis for such rejection. If the City approves a Change Order Request, then the City and Developer shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the
approval of the City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer; provided that, with respect to a Permitted Change, Developer shall submit a copy of the Change Order to the City for its review prior to the execution and implementation thereof. Changes to the Final Documents and Drawings that are not identified in a Change Order approved by the City, other than Permitted Changes in a Change Order submitted to the City for review in accordance with the foregoing, shall not be deemed a Permitted Change and shall constitute an Event of Default hereunder.

Section 6.04. Permits. Developer acknowledges that any reviews or approvals obtained in connection with the services completed pursuant to the Contract for Goods and Services are in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws for the construction of the Project hereunder, and such reviews and approvals shall not be deemed a warranty or representation of any kind by the City that the Final Documents and Drawings comply with, or are approved under, applicable Laws. Prior to commencing construction of the Project, Developer shall obtain Required Permits with respect to the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. The City shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits. Developer acknowledges that the City cannot (and does not) guarantee that Developer will be able to obtain the Required Permits.

Section 6.05. Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Documents and Drawings (as modified by Change Orders); and (iii) in compliance with the Laws and the Required Permits.

Section 6.05. Use of Contingency. Developer, upon notice to and approval by the Owner, may use funds in the Contingency for the following: purposes:

(a) work being performed and not included in the existing Project Budget for any trades;
(b) costs incurred due to excusable delays but not reimbursed by Change Order;
(c) costs due to latent conditions which could not be foreseen;
(d) costs of completing the Work as a defaulted or bankrupt subcontractor; and
(e) deductible expenses for builder’s risk insurance if Developer is responsible for such costs.

All funds remaining in the Contingency at Closing shall be credited to the Owner by Change Order.

Section 6.07. Permitted Inspection. At any time during construction of the Project, the City may perform a Permitted Inspection and the City may deliver to Developer a Non-Compliance Notice. If the City delivers a Non-Compliance Notice, then Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted by the City.

Section 6.08. Final Inspection. If Developer delivers to the City a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Developer. Upon receipt of a Non-Compliance Notice, Developer shall promptly correct or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. Developer and City shall identify the “punch-list” items that are not considered to be Material Defects under this Agreement. Developer shall complete all “punch-list” items within 30 days after the “punch-list” items are identified.
Section 6.09. Failure to Cure. If Developer fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by the City, in each case, within thirty (30) days of the receipt of such notice, then the City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to (a) a credit to the Purchase Price (reflected in the Certified Cost Statement), if prior to Closing; or (b) payment, if occurring post-Closing in the amount of Five Hundred and no/100 Dollars ($500.00) per day from Developer for each day after the expiration of such 30-day period that any items in any (i) Non-Compliance Notice remain incomplete; or (ii) other notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for Developer to remedy such Material Defect or Latent Defect (not to exceed sixty (60) days) so long as Developer commences to remedy such Material Defect or Latent Defect within the thirty (30) day period and thereafter continuously and diligently pursues such remedy to completion.

Section 6.10. Cure of Defects. Upon receipt of a Non-Compliance Notice, the City and Developer shall agree when and how Developer shall remedy the Material Defect or Latent Defect that is the subject of the Non-Compliance Notice in such manner and at such times as to minimize disruption (to the extent commercially reasonable) to the operation of the Project.

Section 6.11. Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by the City pursuant to this Article shall be applicable with respect to any Latent Defects. Upon discovery of any Latent Defects by the City, the City shall promptly provide a Non-Compliance Notice thereof to Developer that shall trigger the cure procedure set forth in Section 6.09. Developer shall be responsible for all costs incurred in correcting or remedying Latent Defects. This Section 6.11 shall survive termination of the Agreement.

Section 6.12. General; Testing. In the case of a Permitted Inspection or the Final Inspection, the parties shall: (i) comply with all Laws of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. The City and Developer each shall have the right to accompany the inspecting party during any Permitted Inspection or Final Inspection.

Section 6.13. No Waiver of Police Power. The foregoing rights in favor of the City shall be in addition to, and not in lieu of, any rights and remedies the City may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in the City under applicable Laws.

Section 6.14. Information Review. Upon the City’s request, Developer agrees to permit the City to review and inspect copies of any and all (i) Books and Records, Project documents, designs, budgets; and (ii) any inspections and reports related to the Project.

Section 6.15. Insurance. Until Closing, Developer shall maintain the policies of insurance described on Exhibit G. Each such policy shall: (a) be written by a company reasonably acceptable to the City; and (b) provide that it shall not be modified or canceled without written notice to the City at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name the City as an additional insured. Developer shall deliver to the City certificates of the insurance policies required by this Agreement. If the City has other insurance that is applicable to the loss, such other insurance will be on an excess or contingent basis and the amount of Developer’s insurance company's liability under the insurance policy will not be reduced by the existence of such other insurance. Developer shall purchase and maintain until the termination of the Operating Period, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located,
property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis.

Section 6.16. Operation. Developer shall operate the completed Project during the Operating Period; provided that City shall be responsible for the direct payment of all costs and expenses incurred in connection with such operation and Developer shall have no obligation to make any payment related to the operation of the Project during the Operating Period.

Section 6.17. Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. Nothing contained in this Section 6.17 shall be construed as making the Books and Records public records under the applicable Laws.

ARTICLE VII. CLOSING

Developer shall convey and the City shall acquire the Project at the Closing. The Closing shall occur at such time as mutually agreed by the parties, but in no event later than June 30, 2020.

ARTICLE VIII. DEFAULT

Section 8.01 Events of Default. "Event of Default" shall mean, with respect to either party, a material breach of this Agreement, if such breach is not cured within the applicable Cure Period.

Section 8.02 General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it.

Section 8.03 No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party in exercising any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. The non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

Section 8.04 Special Defaults and Remedies.
A. No Commencement. Subject to Force Majeure, if Developer has not commenced construction of the Project by December 31, 2020, then, at any time until Developer commences construction of the Project, the City may elect, in addition to any other legal and equitable remedies available to the City, to (i) unilaterally terminate this Agreement; and (ii) exercise its Power of Termination without any liability or obligation to Developer, except as provided in this paragraph. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of written notice delivered at any time after December 31, 2020 but prior to commencement of construction. Such notice shall be accompanied by the Divestiture Payment. Upon delivery of such notice and payment of the applicable Divestiture Payment to Developer, Developer shall abandon the Project Site and remove all equipment and personal property from the Project Site. No delay or failure by City to enforce any of the covenants, conditions, reservations and rights contained in this Section 8.04(A) or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by the City of the right to do so thereafter, or an estoppel of the City to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

B. Work Stop. Subject to Force Majeure, and after construction has begun, if (i) Substantial Completion of the Project has not occurred by November 27, 2020; or (ii) all construction work of a material nature ceases with respect to the Project for a period of at least sixty (60) days, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement and re-enter the Project Site and exercise its Power of Termination without any liability or obligation to Developer, except as provided in this paragraph and in the Contract for Goods and Services. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to (A) Developer of written notice (1) at any time after the expiration of the time period set forth in clause (i) of the preceding sentence (but prior to Substantial Completion of the Project); or (2) prior to material resumption of the construction work. Upon delivery of such notice and payment, if applicable, Developer shall abandon the Project Site and remove all equipment and other forms of personal property from the Project Site and surrender possession of the Project Improvements and convey title thereto, and all estates and interests of Developer in the Project Improvements to the City. Any such vesting of the Project Improvements shall be free and clear of any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to Developer's commencement of construction on the Project and Developer shall immediately execute releases of any mortgages, assignments and any other instruments encumbering Project whether or not such instruments are deemed released or extinguished by operation of law. No delay or failure by the City to enforce any of the covenants, conditions, reservations and rights contained in this Section 8.04(B), or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by the City of the right to do so thereafter, or an estoppel of the City to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

C. Right of Conveyance for Project Improvements. In lieu of exercising the Power of Termination as a result of a default under Section 8.04(A) or (B), the City may alternatively elect, upon ten (10) business days' written notice to Developer, to require Developer to abandon the Project Site and remove all equipment and personal property from the Project Site and relinquish any interest in and to the Project Improvements in accordance with the terms and conditions of this Section 8.04(C), in which case the City and Developer shall close the conveyance within fifteen (15) days after such election. At the closing of such conveyance, Developer shall execute and deliver closing documents for the Project Improvements to the City, which deed shall be subject only to liens as reasonably are acceptable to the City. Developer shall also execute and deliver to
the City any documents necessary or requested to formally terminate Developer interest in the Project Improvements. No delay or failure by the City to enforce any of the covenants, conditions, reservations and rights contained in this Section 8.04(C), or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by the City of the right to do so thereafter, or an estoppel of the City to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

D. Delay. Subject to Force Majeure, if, after construction commences, Developer falls sixty (60) or more days behind the applicable dates set forth in the Construction Schedule, then:

1. The City, by delivery of written notice to Developer, may require Developer to submit, within fifteen (15) days, a Catch-Up Plan for the City’s approval, which approval shall not be withheld unreasonably. At such time as the RDC has approved a Catch-Up Plan, Developer shall implement, and diligently pursue the application of, such Catch-Up Plan.

2. If Developer: (a) fails to timely submit a Catch-Up Plan; (b) submits a Catch-Up Plan that is rejected by the City; (c) fails to implement an approved Catch-Up Plan; (d) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or implements an approved Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls sixty (60) or more days behind the applicable dates set forth in the Construction Schedule; then the City may:

   (i) develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan; or

   (ii) complete the Project for and on behalf of Developer, then Developer shall be obligated to pay to the City (or to reimburse the City for) all costs of completing the Project that are in excess of the Maximum Price. Notwithstanding the foregoing, if the City rejects a Catch-Up Plan, the City shall: (i) specify the part or parts that the RDC is rejecting; and (ii) include the specific basis for such rejection; then Developer shall revise and resubmit the Catch-Up Plan to the City within seven (7) days of such notice, and the parties shall work together in good faith to develop a reasonable Catch-Up Plan.

3. Developer shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including the reasonable costs and expenses incurred by the City pursuant to this Subsection). Developer’s liability for such costs and expenses shall survive termination of this Agreement. Nothing in this Section 8.04(D) shall prevent or preclude the City from exercising its rights under Section 8.04(B). No delay or failure by the City to enforce any of the covenants, conditions, reservations and rights contained in this Section 8.04(D), or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by the City of the right to do so thereafter, or an estoppel of the City to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

Section 8.05. Delay in Substantial Completion. As a material inducement for and in consideration of the City’s obligations herein, Developer has affirmed and hereby guarantees that it can reach Substantial Completion on the Project no later than November 27, 2020 (the “Final Date”). In the event that the Project has not reached Substantial Completion by the Final Date then City, at Closing, shall receive a
credit in the amount of Two Hundred Fifty and 00/100 Dollars ($250.00) per day for each day after the Final Date that the Project has not reached Substantial Completion.

Section 8.06. Injunctive Remedies. If an Event of Default occurs, the non-defaulting party shall be entitled to seek specific performance or injunctive relief and in each case, the other party hereby waives any claim or defense that the non-defaulting party has an adequate remedy at law.

Section 8.07. No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this Article VIII are not exclusive and shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity.

ARTICLE IX. INDEMNIFICATION & ASSIGNMENT

Section 9.01. By Developer. Developer shall indemnify, defend, and hold harmless the City from and against any and all Claims arising from or connected with: (i) liens and claims filed against the Project or the Project Site for work performed by Developer or any party acting on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement. Notwithstanding the foregoing, the City and any party acting on behalf of the City shall be financially responsible for its own gross negligence or willful misconduct and in no event shall Developer indemnify the City for any Claim arising in connection therewith. Notwithstanding anything to the contrary set forth herein, Developer's obligations under this Section 9.01 shall survive the termination of this Agreement.

Section 9.02. Assignment. Prior to Substantial Completion of the Project, no party hereto shall assign this Agreement without the prior written approval of the other party; provided that: (a) without the prior written approval of Developer, the City may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of the City, Developer may not assign or transfer any rights, responsibilities, or obligations under this Agreement. This does not exclude the hiring of subcontractors, professionals, or others to provide services in pursuant to the Agreement.

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 10.01. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be deemed to have been given: (i) when delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows:

To the City:  
City of Kokomo  
Attn: Director of Development  
100 S. Union Street  
Kokomo, IN 46901

With copy to:  
Barnes & Thornburg, LLP  
Attn: Bruce Donaldson  
11 S. Meridian Street
Indianapolis, IN 46204

To the Developer: Henke Development Group, LLC
     Attn: Steve Henke
     1100 Chatham Hills Blvd.
     Westfield, IN 46074

Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 10.02. Authority. Each undersigned person executing this Agreement on behalf of the City and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by the City and Developer, respectively; provided, however, the City's ability to finance the Project is subject to completion of certain procedures required by the Laws which City agree to undertake to completion with diligence and in good faith.

Section 10.03. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice thereof to the other party as soon as reasonably practical; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 10.04. Merger. Except for the Contract for Goods and Services, all prior agreements, understandings, and commitments between the parties regarding the Project are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 10.05. Statutory Authority. This Agreement is intended to be a public-private agreement authorized by Indiana Code Section 5-23, et seq. If and to the extent this Agreement is not a public private agreement under this section, then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a public-private agreement.

Section 10.06. Termination/Costs. In the event of the termination of this Agreement on or before Closing, except as otherwise provided herein, each party shall bear their own costs in connection with negotiation and performance of this Agreement.

Section 10.07. Investment Activities with Iran. Developer represents that it is not engaged in investment activities with Iran as prohibited by Ind. Code § 5-22-16.5-8 and that it is not on the list published and/or endorsed by the State of Indiana pursuant to Ind. Code § 5-22-16.5-9 as a company engaged in investment activities with Iran. Developer agrees to sign and return the Certification Regarding Investment Activities in Iran contemporaneously with the execution of this Agreement, as required by Indiana Law.

Section 10.08. Independent Contractor. Developer shall perform its duties hereunder as an independent contractor and not as an employee of City. Neither Developer nor any agent or employee of Developer shall be or shall be deemed to be an agent or employee of City. Developer shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Agreement. Developer acknowledges that Developer and its employees are not entitled
to tax withholding, worker’s compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Developer shall have no authorization, express or implied, to bind City to any agreements, liability, or understanding except as expressly set forth herein. Developer shall be solely responsible for the acts of Developer, its employees, and agents.

Section 10.09. Miscellaneous. This Agreement shall inure to the benefit of, and be binding upon, the City and Developer, and their respective successors and assigns. This Agreement may be signed in multiple counterparts which, when taken together, 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 Howard County, Indiana, or the federal courts with venue that includes Howard County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer 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 the City and Developer. 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 shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Developer and the 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.

Section 10.09. Exhibits. The following exhibits are attached hereto and incorporated herein as if fully set forth:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>Construction Drawings</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Construction Schedule</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Declaration of Covenants and Easements</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Project Budget</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Project Site</td>
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<tr>
<td>Exhibit F</td>
<td>Site Plan</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Insurance</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>Cost of the Work</td>
</tr>
</tbody>
</table>

[Remainder of page intentionally left blank. Signature page to follow.]
IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the day and year first written above.

DEVELOPER:

Henke Development, LLC

By: ______________________

Printed: ____________________

Title: ______________________

CITY:

City of Kokomo, Indiana

By: ______________________

Printed: ____________________

Title: ______________________

KOKOMO COMMON COUNCIL:

By: ______________________

Printed: ____________________

Title: ______________________
Exhibit A

Construction Drawings
Exhibit B

Construction Schedule
Exhibit C

Declaration of Covenants and Easements
Exhibit D

Project Budget
Exhibit E

Project Site
Exhibit F

Site Plan
Exhibit G

Insurance

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation:</td>
<td>Statutory limits mandated by State and Federal Laws</td>
</tr>
<tr>
<td>Employer’s Liability:</td>
<td>$1,000,000.00 Each Accident</td>
</tr>
<tr>
<td></td>
<td>$1,000,000.00 Disease – Policy Limit and Each Employee</td>
</tr>
<tr>
<td>Commercial General Liability:</td>
<td>$1,000,000.00 Each Occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000.00 General Aggregate</td>
</tr>
<tr>
<td></td>
<td>$1,000,000.00 Personal and Advertising Injury</td>
</tr>
<tr>
<td></td>
<td>$2,000,000.00 Products-Completed Operations Aggregate</td>
</tr>
</tbody>
</table>

Products and Completed Operations insurance shall be maintained for a minimum period of at least three (3) years after either ninety (90) days following Substantial Completion or final payment, whichever is later. Commercial General Liability shall include coverage for Premises Operations, Independent Contractor’s Protective, Products and Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage and including coverage for Explosion, Collapse and Underground hazards.

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability:</td>
<td>$1,000,000.00 Combined Single Limit</td>
</tr>
<tr>
<td>Excess Liability:</td>
<td>$5,000,000.00</td>
</tr>
</tbody>
</table>
Exhibit H

Cost of the Work

The term Cost of the Work shall mean costs necessarily incurred by the Developer in the proper construction of the Project. The Cost of the Work shall include only the items set forth in paragraphs 1 through 6.

1. **Labor Costs.** Wages or salaries of construction workers directly employed by the Developer or a related party to perform the construction of the Project at the site and of the Developer’s supervisory and administrative personnel when stationed at the site and performing work, with the Owner’s prior approval. Costs paid or incurred by the Developer, as required by law, for taxes, insurance, contributions, assessments and benefits and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under this paragraph.

2. **Subcontract Costs.** Payments made by the Developer or a related party to subcontractors in accordance with the requirements of the subcontracts and this Agreement.

3. **Costs of Materials and Equipment.** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

4. **Costs of Temporary Facilities and Related Items.** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, and equipment that are provided by the Developer. Rental charges for temporary facilities, machinery, equipment, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, and equipment. Rates and quantities of equipment owned by the Developer, or a related party as defined in paragraph 7, shall be subject to the Owner’s prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item; costs of removal of debris from the site of the Project and its proper and legal disposal; costs of the Developer’s site office, including general office equipment and supplies.

5. **Miscellaneous Costs.** Premiums for that portion of insurance and bonds required by the Agreement that can be directly attributed to this Agreement. Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Developer is required to pay. Fees of laboratories for tests required by the Agreement; except those related to defective or nonconforming work. Costs for communications services, electronic equipment, and software, directly related to the Project and located at the site, with the Owner’s prior approval. Costs of document reproductions and delivery charges. That portion of the reasonable expenses of the Developer’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Project.

6. **Other Costs and Emergencies.** Other costs incurred in the performance of the Work, with the Owner’s prior approval. Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property. Costs of repairing or correcting damaged or nonconforming work executed by the Developer, subcontractors, or suppliers, provided that such damaged or nonconforming work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Developer, and only to the extent that the cost of repair or correction is not recovered by the Developer from insurance, sureties, Subcontractors, suppliers, or others.

7. **Related Party Transactions.** For purposes of this paragraph 7, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common
management with, the Developer; (2) any entity in which any stockholder in, or management employee of, the Developer holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Developer; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Developer. If any of the costs to be reimbursed arise from a transaction between the Developer and a related party, the Developer shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Developer shall procure the work, equipment, goods, or service, from the related party, as a subcontractor. If the Owner fails to authorize the transaction in writing, the Developer shall procure the Work, equipment, goods, or service from some person or entity other than a related party.

8. **Costs Not To Be Reimbursed.** The Cost of the Work shall not include the items listed below:

   (a) Salaries and other compensation of the Developer’s personnel stationed at the Developer’s principal office or offices other than the site office;

   (b) Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Developer or paid to any subcontractor or vendor, unless the Owner has provided prior approval;

   (c) Expenses of the Developer’s principal office and offices other than the site office;

   (d) Overhead and general expenses, except as may be expressly included in paragraphs 1 to 6;

   (e) The Developer’s capital expenses, including interest on the Developer’s capital employed for the Project;

   (f) Except as provided in paragraph 6, costs due to the negligence of, or failure to fulfill a specific responsibility of the Agreement by, the Developer, subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

   (g) Any cost not specifically and expressly described in paragraphs 1 to 6; and

   (h) Costs, other than costs included in Change Orders approved by the Owner, that would cause the Maximum Price to be exceeded.
Ordinance #6962

WHEREAS, in October 2019 the city of Kokomo was preliminarily awarded a Community Crossings Matching Grant in the amount of $1,000,000.

WHEREAS, in March 2020 the city of Kokomo received a distribution of $905,842.48 from the Indiana Department of Transportation for various Hot Mix Asphalt (HMA) overlay, preventive maintenance street projects.

WHEREAS, IC 8-23-30-3 (2) allows the local unit to use as a local match for Community Crossing Grant from one or more of the following revenue sources:
   A. Any money the local unit is authorized to use for a local road or bridge project.
   B. Money received by the local unit as a special distribution of LIT.
   C. Money in the local unit’s Rainy Day fund.

WHEREAS, it has been determined that it is now necessary to appropriate money in accordance with the LIT supplemental distribution and Rainy Day Restricted - Motor Vehicle Highway fund, and therefore:

SECTION I

Be it ordained by the Common Council of the City of Kokomo, County of Howard, Indiana, that for the expenses of the taxing unit the following additional sums of money:

1. $200,000 are hereby appropriated out of the Fund 2630 Rainy Day Restricted-MVH and transferred to Fund 2690 Community Crossing Grant.
2. $500,000 of the already appropriated in Fund 2030 MVH Restricted for Preservation, Construction and Reconstruction are transferred to Fund 2690 Community Crossing Grant.
3. $205,843 of the already appropriated in Fund 2010 MVH Street Engineering are transferred to Fund 2690 Community Crossing Grant.

To use as local match for the Local Road and Bridge Matching grant fund, subject to the laws governing the same

<table>
<thead>
<tr>
<th>AMOUNT REQUESTED</th>
<th>AMOUNT APPROPRIATED</th>
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<tbody>
<tr>
<td>Rainy Day Restricted - MVH Fund/ Community Crossing Grant</td>
<td></td>
</tr>
<tr>
<td>2630-3203-431-400-3096/2690-1700-416-400-3015</td>
<td>$200,000</td>
</tr>
<tr>
<td>Local Match for 2020 Street Resurfacing project</td>
<td></td>
</tr>
<tr>
<td>Total Additional Appropriation</td>
<td></td>
</tr>
</tbody>
</table>
SECTION II

That the Common Council of the City of Kokomo, Indiana will conduct a public hearing on June 29, 2020 at 6:00P.M. in the Council Chambers of City Hall to hear all citizens on said additional appropriation. Following the hearing the aforementioned Council will meet at City Hall Council Chambers on June 29, 2020 at 6:00P.M. to consider and adopt the ordinance. Taxpayers appearing at the hearing shall have a right to be heard thereon.

SECTION III

This Ordinance shall remain in full force and effect from and after its passage, signature by the Mayor, and publication as provided by law.
Ordinance #6962

SECTION IV

PASSED by the Common Council of the City of Kokomo, Indiana, this ___ day of June, 2020

AYE


NAY


ATTEST:


CITY CLERK

PRESENTED by me to the Mayor of the City of Kokomo, Indiana, this ___ day of June, 2020.

CITY CLERK

APPROVED by me as Mayor of the City of Kokomo, Indiana, this ___ day of June, 2020.

TYLER MOORE, MAYOR
CITY OF KOKOMO, INDIANA

ATTEST:


NOTICE TO TAXPAYERS OF PROPOSED ADDITIONAL APPROPRIATIONS

Notice is hereby given to the taxpayers of the City of Kokomo, Howard County, Indiana that the Common Council of the City of Kokomo at their regular meeting place at Kokomo City Hall, 100 South Union, Kokomo Indiana, at 6:00 PM on June 29, 2020 will consider the following additional appropriations for the current budget year.

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</tr>
<tr>
<td>Total Additional Appropriation</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

preceding the meeting the City Council of the City of Kokomo will conduct a public hearing about the proposed additional appropriations. That Public hearing will take place at 6:00 PM, June 29, 2020 in the City Council Chambers at Kokomo City Hall, 100 South Union, Kokomo Indiana.

Taxpayers appearing at either meeting shall have the right to be heard.

Weston Reed
City Controller, City of Kokomo
RESOLUTION NO. 2745

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF KOKOMO, INDIANA REGARDING TRANSFER OF CERTAIN FUNDS

WHEREAS, it has been determined that it is now necessary to transfer certain appropriations within the same fund.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of Kokomo, Indiana, that for the expenses of the taxing unit the following sums of money are hereby appropriated and the following sums transferred within the funds named and for the purposes specified below, subject to the laws governing the same.

SECTION I

Be it resolved by the Common Council of the City of Kokomo, County of Howard, Indiana, that the following balances be and hereby are transferred for the purposes herein specified, subject to the laws governing the same.

<table>
<thead>
<tr>
<th>TRANSFERRED FROM</th>
<th>TRANSFERRED TO</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>GENERAL FUND</td>
<td>GENERAL FUND</td>
<td></td>
</tr>
<tr>
<td>Common Council-Health Insurance 1010-1000-411-400-1035 (Badges)</td>
<td>Common Council-Other Supplies 1010-1000-411-400-2027</td>
<td>$100</td>
</tr>
<tr>
<td>Public Maintenance-Wages &amp; Benefits 1010-3000-432-400-1011 to 1035 (Demolition debris removal)</td>
<td>Board of Works-Waste Removal 1010-1901-413-400-3055</td>
<td>$60,000</td>
</tr>
<tr>
<td>Public Maintenance-Wages &amp; Benefits 1010-3000-432-400-1011 to 1035 (Legal Fees)</td>
<td>Attorney-Legal 1010-1400-415-400-3011</td>
<td>$40,000</td>
</tr>
<tr>
<td>Dept of Dev-Health Ins 1010-6400-465-1035 (Changes in Manpower)</td>
<td>Human Res-Wages &amp; Benefits 1010-1500-415-400-1011 to 1035</td>
<td>$30,000</td>
</tr>
<tr>
<td>Dept of Dev-Health Ins 1010-6400-465-1011 to 1035</td>
<td>Mayor Dept-Wages 1010-1200-415-400-1011 to 1035</td>
<td>$5,000</td>
</tr>
</tbody>
</table>
Transportation-Repair Parts
1010-1802-451-400-2034
Area 5, Transportation Grant-Repair Parts
2700-5100-451-400-2034
$6,000

Transportation-Repair Parts
1010-1802-451-400-2034
(Spirit of Kokomo Bus Repairs)
Area 5, Transportation Grant-Vehicle Repairs
2700-5100-451-400-3066
$9,000

Public Maintenance-Repair Parts
1010-3000-432-400-2034
Central Garage-Repair Parts
1010-1801-417-400-2034
$40,000

Police-Repair Parts
1010-2100-421-400-2034
Central Garage-Repair Parts
1010-1801-417-400-2034
$30,000
(Transfer of budget to Central Garage for Repair Parts and due to switching the cost method from Departmentalized to Centralized)

PARK & RECREATION FUND

Park-Buildings
2040-5001-452-400-4021
Park-Baseball H/H & institutional
2040-5004-452-400-2027
(H/H & Institutional and Other Supplies at Municipal Stadium)
$20,000

Park-Buildings
2040-5001-452-400-4021
Park-Baseball Utilities, Bdg & Grounds
2040-5004-452-400-3015
(For Utilities and Other Contractual work at Municipal Stadium)
$55,000

Aquatic Center-Improvements
2040-5003-452-400-4031
Park-Baseball Utilities, Bdg & Grounds
2040-5004-452-400-3015
(Untilities and Other Contractual work at Municipal Stadium)
$110,000

Aquatic Center-Improvements
2040-5003-452-400-4031
Park-Baseball Utilities, Bdg & Grounds
2040-5004-452-400-4044
(Capital Improvements at Municipal Stadium)
$15,000

SECTION II
Be it further resolved that any sum remaining unused out of this Resolution shall remain in the fund from which the transfer was made.

SECTION III
This Resolution shall be in full force and effect from and after its passage, signature by the Mayor, as provided by law.
Passed and adopted by the Common Council of the City of Kokomo, Indiana this ___ day of June, 2020.

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<thead>
<tr>
<th>AYE</th>
<th>NAY</th>
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ATTEST:

__________________________
Diane Howard, Clerk

PASSED by the Common Council of Kokomo, Indiana by a _____ vote of all members present and voting this ____ day of ______________, 2020.

Presented by me to the Mayor of the City of Kokomo, Indiana, on the ____ day of _____________, 2020, at the hour of ____:____ m.

__________________________
Diane Howard, Clerk

This resolution approved and signed by me, the Mayor of the City of Kokomo, Indiana, on the __ day of _____________, 2020, at the hour of ___:___ m.

__________________________
Tyler Moore, Mayor