

Agenda

Wednesday, September 20, 2023 2:52 PM

AGENDA

**MONTGOMERY COUNTY BOARD OF COMMISSIONERS MEETING
MONDAY, SEPTEMBER 25, 2023
8 AM
1580 Constitution Row - Room E109
Crawfordsville, IN 47933**

CALL TO ORDER Board President John E. Frey

PLEDGE ALLIGENCE and PRAYER

CONSENT AGENDA

Approval of Claims
Accounts Payable - \$
Payroll 9/22 - \$
Minutes - September 11, 2023

NEW BUSINESS

Approve Affidavit for Construction Fund Disbursement Request #3 -
Tempur Project Taxable Economic Development Revenue Bonds of 2022
Highway Department - Bridge182
Award Bid
Approve Contract
Notice to Proceed
Inspection Contract w/CivilCon

ORDINANCES

Final Reading Ordinance 2023-16 Amending Tax Rate for Cumulative Bridge Fund
Introduction Ordinance 2023-17 Creating Montgomery County Health Department
Social Impact Partnership Program Fund
Introduction Ordinance 2023-18 Creating Mace SWIF Grant Fund
Introduction Ordinance 2023-19 Creating Tempur SWIF Grant Fund

RESOLUTIONS

OTHER BUSINESS

ADJOURNMENT

Agenda Memo

Wednesday, September 20, 2023

2:52 PM

AGENDA MEMO

MONTGOMERY COUNTY BOARD OF COMMISSIONERS MEETING

MONDAY, SEPTEMBER 25, 2023

8 AM

1580 Constitution Row - Room E109

Crawfordsville, IN 47933

CALL TO ORDER Board Vice President Jim Fulwider

PLEDGE ALLIGENCE and PRAYER

CONSENT AGENDA

Approval of Claims

Accounts Payable - \$

Payroll 9/22 - \$

Minutes - September 11, 2023

NEW BUSINESS

Approve Affidavit for Construction Fund Disbursement Request #3 -

Tempur Project Taxable Economic Development Revenue Bonds of 2022

Taxable Economic Development Revenue Bonds of 2022 (IAW/CSD Project) requesting

Regions Bank (Bond Trustee) to make a disbursement in the aggregate amount of \$900,678.60 for rail infrastructure expenditure incurred by Tempur -Pedic and Corridor & Program Management expenses incurred by Lochmueller Group. For July and August, 2023.

Highway Department - Bridge182 Replacement on CR750 East over Big Raccoon Creek - *\$850,000 Engineers Estimate*

Award Bid - *Highway Director Jake Lough stated after a review of the three bids submitted, he is recommending that lowest bid submitted by Conexco, Inc. in the amount of \$673,615*

Approve Contract - *The bid submittal has all required bid documents and is below engineer's estimate*

Notice to Proceed - *Based on awarding the bid to Conexco, Inc. Director Lough is requesting that the Commissioners approve the Notice to Proceed.*

Inspection Contract w/CivilCon - *NTE \$45,000. Director Lough is requesting permission to engage the designer of Bridge 182 CivilCon to be responsible for the construction inspection .*

ORDINANCES

Final Reading Ordinance 2023-16 Amending Tax Rate for Cumulative Bridge Fund
Ordinance 2023-16 amends Section 2 of Ordinance 2023-1 is hereby amended to read as follows:

"Section 2. Tax Rate. The County Board of Commissioners now levies a tax on all real and personal property in Montgomery County to provide funds to the Cumulative Bridge Fund. The property tax will not exceed \$0.055 on each \$100 of assessed valuation. This tax rate will be levied beginning with taxes for 2023, due and payable in 2024.'

Introduction Ordinance 2023-17 Creating Montgomery County Health Department
Social Impact Partnership Program Fund - \$10,000 Grant

This ordinance creates a fund for the \$10,000 grant. The fund is a non-reverting fund. Proceeds can only be used for diapers and wipes.

Introduction Ordinance 2023-18 Creating Mace SWIF Grant Fund - \$466,200

This ordinance creates a fund for the funds awarded by the Indiana Finance Authority Transportation and Stormwater Water Grant Fund to assist in addressing stormwater issues in the unincorporated areas of Mace. The fund is a non-reverting fund.

Introduction Ordinance 2023-19 Creating Tempur SWIF Grant Fund - \$3,000,000

This ordinance creates a fund for the funds awarded by the Indiana Finance Authority from the State Water Infrastructure Fund (SWIF) . The grant funds may only be used towards costs related to installation of water infrastructure by Indiana American Water for the Tempur Project. The fund is a non-reverting fund.

Claim - AP

Wednesday, September 20, 2023 2:52 PM

Payroll

Wednesday, September 20, 2023 2:52 PM

Minutes - September 11, 2023

Wednesday, September 20, 2023 2:53 PM

MINUTES
MONTGOMERY COUNTY COMMISSIONER MEETING
MONDAY, SEPTEMBER 11, 2023

The Montgomery County Commissioners met in regular session on Monday, September 11, 2023 at 8:00 am at the Montgomery County Government Center, 1580 Constitution Row – Room E109, Crawfordsville, Indiana.

CALL TO ORDER

On call of the roll, the members of the Board were shown to be present as follows: President, John E. Frey; Commissioner Jim Fulwider and Commissioner Dan Guard.

Also present: County Attorney Dan Taylor; Auditor Mindy Byers; Sheriff Ryan Needham; Building Administrator Marc Bonwell; Highway Director Jake Lough; Assessor Sherri Bentley; Treasurer Heather Laffoon; and Executive Assistant Lori Dossett.

PLEDGE & PRAYER

Board President Commissioner John Frey led the pledge of allegiance and Commissioner Dan Guard led the prayer.

CONSENT AGENDA

Approval of Claims - August 28, 2023 to September 11, 2023

Approval of Claims

Accounts Payable - \$1,819,966.95

Payroll 8/25 - \$461,982.95

Minutes - August 28, 2023

Treasurer's Office - 2023 Invoice Cloud Contract - Price Increase

Invoice Cloud notified the Treasurer's office that the 2023 rates would be increasing on July 6, 2023 and the agreement requires acknowledgement of the increase.

Highway Department - Unofficial Detour Reimbursement Contract - \$3,146.30

Unofficial local detour reimbursement contract for the SR234 closure that routed down a gravel road and a contractor that applied a dust control on the road in front of residence living on the road.

Commissioner Fulwider moved to approve the Consent Agenda. Seconded by Commissioner Guard. Motion carried 3-0 votes in favor.

NEW BUSINESS

Open Bridge 182 Bids - CR750E over Big Raccoon Creek.

County Attorney Dan Taylor opened the following Bridge 182 Bids:

- 1) Collom Construction - \$862,802.00
- 2) Conexco Construction - \$673,615
- 3) HIS Constructors - \$795,692

Commissioner Guard moved to approve the take the bridge bids under advisement for review. Seconded by Commissioner Fulwider. Motion carried 3-0 votes in favor.

BZA Appointment

Commissioner Fulwider moved to appoint Jason Ramsey to the BZA (Board of Zoning Appeals). Seconded by Commissioner Guard. Motion carried 3-0 votes in favor.

ORDINANCES

Final Reading Ordinance 2023-15: Amending the Speed Limit on County Road 100 South between Nucor Road and County Road 600 East

The Highway Department received a request to change the speed limit on County Road 100 South between Nucor Road and County Road 600 East. According to the new policy for the consideration of changing a speed limit, a speed study is required. The 85th percentile of the speed in the speed study will be used to determine the appropriate speed limit for the road in question. The Highway Department conducted a speed study and the 85th percentile was 42 mph. As a result, the Highway Department is recommending that the speed limit for this section of road be established at 45 mph.

Commissioner Guard moved to approve Ordinance 2023-15 Amending the Speed Limit on CR100South between Nucor Road and CR600E. Seconded by Commissioner Fulwider. Motion carried 3-0 votes in favor.

Introduction Ordinance 2023-16: Amending Tax Rate for Cumulative Bridge Fund

Ordinance 2023-16 amends Section 2 of Ordinance 2023-1 is hereby amended to read as follows:

"Section 2. Tax Rate. The County Board of Commissioners now levies a tax on all real and personal property in Montgomery County to provide funds to the Cumulative Bridge Fund. The property tax will not exceed \$0.055 on each \$100 of assessed valuation. This tax rate will be levied beginning with taxes for 2023, due and payable in 2024.'

ADJOURNMENT

There being no further business before the Board, meeting adjourned. Meeting adjourned @ 8:07 am.

Minutes prepared by Commissioners Executive Assistant Lori Dossett.

The next regular meeting will be held on Monday, September 25, 2023 @ 8:00 am @ Montgomery County Government Center-Room E-109.

MONTGOMERY COUNTY BOARD OF COMMISSIONERS:

Jim Fulwider, Vice President

Attest:

Mindy Byers, Auditor

Affidavit for Disbursement #3 Taxable ED Revenue Bonds of 2022 IAW-CSX Project

Thursday, September 21, 2023 2:33 PM

FIRST SUPPLEMENTAL TRUST INDENTURE

Between

MONTGOMERY COUNTY, INDIANA

and

REGIONS BANK
As Trustee

TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF 2022
(IAW/CSX PROJECT)

Dated as of December 1, 2022

4880-2663-6098.1

FIRST SUPPLEMENTAL TRUST INDENTURE

THIS FIRST SUPPLEMENTAL TRUST INDENTURE, executed and dated as of the first day of December, 2022 ("First Supplemental Indenture"), supplementing the Trust Indenture dated as of April 1, 2022 ("Original Indenture"), by and between MONTGOMERY COUNTY, INDIANA ("Issuer" and "County"), a political subdivision duly organized and existing under the laws of the State of Indiana, and REGIONS BANK, an Alabama state-chartered banking corporation, with a corporate trust office in the City of Clayton, Missouri ("Trustee") (the Original Indenture as supplemented by this First Supplemental Trust Indenture and as further supplemented and amended from time to time is referred to as the "Indenture").

WITNESSETH:

WHEREAS, pursuant to the Original Indenture the Issuer authorized, sold and delivered \$7,735,000 of its Taxable Economic Development Revenue Bonds of 2022 (IAW/CSX Project), dated April 19, 2022 to finance the costs of constructing or causing the construction of utility and rail infrastructure improvements, together with all necessary appurtenances, related improvements and equipment;

WHEREAS, the Original Indenture is being supplemented and amended pursuant to Sections 9.1(a) of the Original Indenture; and

The Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective owners, from time to time, of the bonds or any part thereof, as follows, that is to say:

(End of preamble)

SECTION 1. Section 4.3(b) of the Original Indenture is amended and restated as follows:

"(b) Moneys on deposit in the Construction Fund shall be paid out from time to time by the Trustee upon the order of the Issuer to pay costs of issuance of the Bonds, and to pay, or as reimbursement to the Contracting Parties or the Issuer for payment made, for the Costs of Construction, upon receipt by the Trustee of an invoice showing the Costs of Construction and to whom payment is owed and a Written Request in the form set forth on Exhibit B, signed by the ~~Authorized Representative of the Company and approved by the~~ Issuer:"

SECTION 2. Exhibit B of the Original Indenture is hereby amended and restated as follows:

"EXHIBIT B

AFFIDAVIT OF CONSTRUCTION FUND
DISBURSEMENT REQUEST AND DEPOSIT

NO. 3

Regions Bank
Attention: Corporation Trust Department
8182 Maryland Avenue, 12th Floor
Clayton, MO 631054
Attention: Corporate Trust Department

Re: Montgomery County, Indiana
Taxable Economic Development Revenue Bonds of 2022 (IAW/CSX Project)

Ladies and Gentlemen:

This request for disbursement is submitted to you pursuant to Section 4.3(b) of the Trust Indenture dated as of April 1, 2022 ("Indenture") between Montgomery County, Indiana ("County") and Regions Bank ("Bond Trustee"). You are hereby requested to make the following disbursements in the aggregate amount of \$ 900,678.60 from the Construction Fund for the reimbursement and/or payment of Costs of Construction (as defined in the Indenture) incurred since the previous Written Request and in the individual amounts stated on Schedule 1 attached hereto.

We hereby certify the following as the Issuer under the Indenture:

(i) The costs of an aggregate amount set forth in this Written Request have been made or incurred and were necessary for the construction of the Project to be funded from bond proceeds. The costs were made or incurred in accordance with the contracts, plans, and specifications for the Project. The amount set forth in this Written Request is for allowable Costs of Construction or site development costs of the Project.

(ii) The amount paid or to be paid, as set forth in this Written Request, is reasonable and represents a part of the amount payable for the Costs of Construction or site development costs all in accordance with the cost budget. No payment was paid in advance of the time, if any, fixed for payment. All payments listed on Schedule 1 are made in accordance with the terms of contracts applicable thereto and in accordance with usual and customary practice under existing conditions.

(iii) No part of any cost listed in this Written Request was included in any Written Request previously filed with the Trustee.

(iv) The costs are appropriate for the expenditure of proceeds of the Bonds under the Act.

(v) The attached Schedule 1 includes the amount requested since the previous Written Request and the total amount paid toward construction costs paid from bond proceeds to date.

The undersigned verifies that he has full and complete authority to execute this Affidavit and that all of the allegations contained herein are true.

MONTGOMERY COUNTY, INDIANA

By: _____
Print: Mindy Byers _____
Title: County Auditor

SCHEDULE 1

List of eligible costs toward land acquisition, site development costs and/or construction costs since the previous Written Request.

| <u>Payee</u> | <u>Amount</u> |
|---|---------------------|
| Lochmueller Group – Invoice #312852 | \$ 226.30 |
| Lochmueller Group – Invoice #313038 | \$ 452.30 |
| Tempur-Pedic – Invoice 01-1407 (Rail Infrastructure) | <u>\$900,000.00</u> |
| TOTAL | \$900,678.60 |

(Attach invoices for above)

| | |
|--|-----------------------|
| TOTAL reimbursements or payments from bond proceeds (including present Written Request) | \$5,581,397.23 |
|--|-----------------------|

SECTION 3. This First Supplemental Indenture may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

SECTION 4. The Indenture shall otherwise remain in full force and effect.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Montgomery County, Indiana, has caused these presents to be signed in its name and behalf by its Board of Commissioners and its corporate seal to be hereunto affixed and attested by its County Auditor, and to evidence its acceptance of the trusts hereby created, Regions Bank has caused these presents to be signed in its name and behalf by its duly authorized officer, all as of the day and year first above written.

MONTGOMERY COUNTY, INDIANA

Board Vice President
Commissioner Jim Fulwider

Board Member
Commissioner Dan Guard

ATTEST:

Mindy Byers, County Auditor

SEAL

REGIONS BANK, as Trustee

By: _____
(Written Signature)

(Printed Signature)

Bridge #182 Bid Award & Approve Contract

Thursday, September 21, 2023 9:02 AM

MONTGOMERY COUNTY PUBLIC WORKS CONSTRUCTION AGREEMENT

This Contract, dated September 25, 2023, is hereby entered by and between the Montgomery County Board of Commissioners ("Board") and Conexco Inc. ("Contractor").

The Board and Contractor, in consideration of the mutual covenants set forth below, agree as follows:

1. **Work.** Contractor shall complete all work as specified or indicated in the plans and specifications contained in the request for quotes. The accompanying specifications are attached to this contract and shall be considered terms of this contract as is written in full herein. The Work is generally described as follows: Bridge 182 on CR 750 E over UNT Big Raccoon Creek.
2. **Contract Times.**
 - a. All time limits for milestones, if any, substantial completion, and completed and readiness for final payment as stated in the request for quotes and the Contractor's accepted quote are of the essence of this contract.
 - b. The work will be completed by November 1, 2024.
3. **Liquidated Damages.** Contractor and the Board recognize that time is of the essence of this contract and that the Board will suffer financial and other losses if the work is not completed within the time specified in Section 2 above, plus any extension thereof allowed in accordance with the notice of bid and bid documents. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceedings the actual loss suffered by the Board if the work is not completed on time. Accordingly, instead of requiring such proof, the Board and Contractor agree that as liquidated damages for delay, but not as a penalty, the Board, in the form of a Change Order, shall deduct from the monies due to Contractor \$1,000.00 for each calendar day that expires after the times specified in Section 2 above.
4. **Payment to Contractor.**
 - a. The Board shall pay Contractor for completion of the work in accordance with the Contractor's quote from current funds in the amount of \$673,615.00 and upon the fulfillment of conditions set for in Section 4(b) through (i) below.
 - b. At the completion of the work, the Montgomery County Engineer will inspect the work done and file a written report to the Board either approving or disapproving the work done. A claim for payment under this contract will not be approved by the Board until the work for which the claim is presented has been approved by the County Engineer. After the acceptance of the work by the Surveyor, the Contractor shall file with the board a verified statement that all expenses incurred for labor and material, except for any expenditures specified in the statement, have been paid in full.

- c. The parties agree that the Board will withhold final payment until the Contractor has paid all subcontractors, material suppliers, laborers, and those furnishing services, as required by Indiana Code 36-1-12-12 and 13. If there is not a sufficient sum owed to the Contractor to pay those bills, the sum owed to the Contractor will be prorated in payment of the bills among the subcontractors, material suppliers, laborers, and those furnishing services; and
- d. To receive payment from the Board, a subcontractor, material supplier, laborer, or person furnishing services must file a claim with the Board not later than 60 days after that person performed the last labor, furnished the last materials, or performed the last service. The Contractor will, prior to the commencement of construction of the project, provide notice of this requirement to all subcontractors, laborers, material suppliers, and persons furnishing services for the project;
- e. If there is no dispute among the claimants, the Board will pay the claim from any money due to the Contractor and deduct the amount of the claims from the contract price. The Board will take a receipt for each payment made;
- f. If there is a dispute among claimants, the Board will retain sufficient money to pay all claims until the dispute is settled and the correct amount is determined. However, the Board may make a final and complete settlement with the Contractor after thirty (30) days after completion and acceptance of the project if the Contractor has materially fulfilled all of its obligation under this agreement;
- g. If the Board receives a claim from a subcontractor or material supplier, the Board will withhold the amount of the claim until the claim is resolved;
- h. A claim must be signed by the County Engineer; and
- i. Final payment must be made to the Contractor by the Board within 120 days after final acceptance and completion of the agreement, except for any amount that is in dispute. For each day after 120 days that final payment is not made as required by Indiana Code 36-1-12-17, the Board will pay to the Contractor interest on the unpaid amount at a rate of 12% per year, unless for delays not directly attributable to the Board.

5. Contractor's Representations

- a. Contractor represents the following:
 - i. Contractor has examined and carefully studied the request for quotes, specifications, other documents, and any data and reference items pertinent to this Contract.
 - ii. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect costs, progress, and the performance of this work.
 - iii. Contractor has reviewed the specifications and other contract documents and believes them to be generally sufficient to

indicate and convey understanding of all terms and condition for performance and furnishing of the work.

- iv. Contractor will perform all work under the supervision of the Montgomery County Engineer and in accordance with the plans, specifications, and profiles adopted by the Board. The accompanying specifications are attached to this contract and shall be considered terms of this Contract as is written in full herein.
- v. Contractor will provide the Board before the work begins with the following documents:
 - 1. Contractor's Nepotism Policy Compliance Affidavit;
 - 2. E-Verify Affidavit;
 - 3. Indiana Iran Investment Certification; and
 - 4. Any other affidavit or form required by the Board pursuant to Board policy, Indiana Law, and/or Federal Law.

b. Contractor verifies the following:

i. Liability Insurance: The Contractor has in place and will keep in place during the terms of this agreement general liability insurance coverage with at least a \$1,000,000 limit of liability for each occurrence and at least a \$3,000,000 general aggregate limit, as required by Indiana Code 5-16-13-10;

ii. Qualification: The Contractor is qualified to perform public works projects in the State of Indiana, as provided for in Indiana Code 4-13.6-4 or 8-23-10;

iii. E-Verify Compliance: The Contractor participates in the E-Verify program and complies with Indiana Code 22-5-1.7. The Contractor's E-Verify case verification number is 851692;

iv. Cash Payments: The Contractor will not pay individuals employed by the Contractor in cash for work done by the individual on this project, as prohibited by Indiana Code 6-16-13-11;

v. Overtime Rules: The Contractor is in compliance with, and will remain in compliance with during the term of this agreement, the requirements of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209) and Indiana's wage and overtime laws as provided for in Indiana Code 22-2-2-1 through 22-2-2-8;

vi. Workers Compensation: The Contractor is in compliance with the Indiana Workers Compensation laws (Indiana Code 22-3-5-1) and has provided the Board with proof of sufficient coverage under

Indiana law prior to beginning work. The Contractor will keep this insurance in place during the term of this agreement;

vii. Unemployment Compensation: The Contractor is in compliance with Indiana's rules, regulations and requirements regarding unemployment compensation, as required by Indiana Code 22-4-1 through 39.5;

viii. Drug Testing: If the public work is for \$150,000 or more, the Contractor has in place a drug testing policy and complies with all requirements of Indiana Code 4-13-18-1 through 7;

ix. Training Program: If the Contractor employs ten or more persons, the Contractor has in place a training requirement which satisfies the requirements of Indiana Code 5-16-13-12;

x. Payroll Records: The Contractor will preserve for a period of three (3) years after the completion of the project any and all payroll and related records and make the record available for inspection by the Indiana Department of Workforce Development; and

xi. Anti-Discrimination: Neither the Contractor nor its subcontractors nor anyone acting on their behalf will, in the hiring of employees for the performance of the work under this agreement, by reason of race, religion, color, sex, national origin or ancestry discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates. Neither the Contractor nor its subcontractors nor any person acting on their behalf will in any manner discriminate against or intimidate any employee hired for the performance of work under this agreement on account of race, religion, color, sex, national origin or ancestry. The Contractor acknowledges and agrees that pursuant to Indiana Code 5-16-6 there can be deducted from the amount payable to the Contractor by the Board under this agreement a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated by the Contractor or his agents in violation of this agreement. The Contractor also acknowledges and agrees that the Board may cancel and terminate this agreement and that all money due or to become due to Contractor under the agreement may be forfeited for any second or any subsequent violation of Indiana Code 5-16-6.

xii. Doing Business with Iran: The Contractor does not do business with Iran in violation of Indiana Code 36-1-12-23

6. Contractor's Bond Requirement. Upon the execution of this Contract, Contractor shall give the Board a bond payable to the Montgomery County

Drainage Board, in the amount of \$673,615.00, and with a corporate surety licensed to do business in Indiana. This bond will be conditioned on the faithful performance of this contract and the payment of all expense and damages incurred under this Contract, including payment of all suppliers, laborers, and subcontractors. The Board may exercise its right to accept a cash bond, property bond, or a bond from a sufficiently financed private bonding company in lieu of a corporate surety bond.

7. Change Orders. If a change in the original scope of work occurs and this change increases or decreases the amount of the price, the Board will not be obligated to the Contractor unless a written change order has been presented by the Contractor to the County Engineer, signed by the Contractor, signed by the County Engineer, and approved by the Board. A change order issued under this subsection becomes an addendum to the contract. The parties may not approve a change order before the commencement of the project, unless an emergency exists and is so declared by the Board and shown in the meeting minutes of the Board. The total of all change orders cannot exceed 20% of the original price. Change orders issued as a result of circumstances that could not have been reasonably foreseen do not count toward the 20% limitation on change orders. All change orders must be directly related to the project. If a change order contains additional units of materials included in the original agreement, the cost of these units in the change order must be the same as the cost of these units in the approved quote.

8. Breach of Contract. In the event of a breach of the terms of this Contract, the non-breaching party shall be entitled terminate the Contract and recover from the breaching party any and all damages caused by the breach, including but not limited to, incidental and consequential damages, court costs, mediation costs, litigation expenses, and reasonable attorney's fees. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, or other events beyond the control of the party's control.

9. Assignment of Contract. No assignment by a party hereto of any rights under or interest in the Contract will be binding on another party thereto without the written consent of the party sought to be bound. Further, Contractor may not subcontract any part of this contract without the written consent of the Board. The Board is entitled to withhold consent to subcontracting for good cause.

10. Indemnification. To the fullest extent permitted by law, the Board and Contractor agree to indemnify and hold the other (and their respective officers, directors, partners, agents, consultants, and employees) harmless, from and against liability for all claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, arising out of or relating to the project, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by joint or concurrent negligence of the parties, they shall be borne by each party in proportion to the negligence.

- 11. Notices.** Notices required under this Contract shall be sent to
- a. The Montgomery County Board of Commissioners
 - i. 110 W South Blvd. Crawfordsville, IN 47933
 - b. Contractor:

i. 3606 N SR 59, Brazil, IN 47834

12. Successors and Assigns. The Board 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 obligation contained in this Contract.

13. Suspension and Debarment. Neither the contractor/consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract by any federal agency or by any department, agency or political subdivision of the State. The contractor/consultant agrees that if after the execution of this agreement, either it or any of its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into contracts similar to this one that it will immediately notify the County Administrator. For purposes of this agreement, the term "principal" means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control of the operations of the contractor/consultant or who has managerial or supervisory responsibilities for the services to be delivered under this agreement. In addition, the contractor/consultant represents that none of its subcontractors or subconsultants are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract by any federal agency or by any department, agency or political subdivision of the State. The contractor/consultant is solely responsible for any recoupment, penalties or costs that arise from the use of a suspended or debarred subconsultant. If any subconsultant becomes debarred or suspended, the contractor/consultant will immediately notify the County Administrator and, at the request of Montgomery County, take all steps required by the County to terminate the contractor/consultant's contractual relationship with said subconsultant for work to be performed under this contract. If the contractor/consultant breaches its obligations under this paragraph, including but not limited to, the condition and obligation of not being debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract, the County shall have the right to terminate this contract and to delay, withhold or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this contract.

14. Severability. Any provision of the Contract 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 the Board and Contractor, who agree that the Contract 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.

IN WITNESS WHEREOF, the Board and Contractor have signed this Contract.

This Contract shall become effective on September 25, 2023.

The Board:
Montgomery County
Board of Commissioners

Contractor:
Conexco Inc.

By: _____

By: Edward Hamilton

Title: _____

Title: Edward Hamilton, Vice President

Notice to Proceed - Bridge 182

Friday, September 22, 2023 9:32 AM

Notice to Proceed - *Based on awarding the bid to Conexco, Inc. Director Lough is requesting that the Commissioners approve the Notice to Proceed.*

Inspection Contract - CivilCon

Thursday, September 21, 2023 9:03 AM

605 North Shore Drive, Unit 103
Montgomeryville, Indiana 47130
Phone: 812.280.8360
Fax: 812.280.8370

CIVILCON, INC.

**Montgomery County – Bridge 182 Replacement
Consultant Services Agreement
For Construction Inspection and Administration**

This is an agreement made as of this ____ day of _____, 2023, between Civilcon, Inc. (Consultant) and the Montgomery County Commissioners, Crawfordsville, IN.

The Montgomery County Commissioners hereby retains Consultant to perform services in connection with the Work as described in Attachment A. Consultant agrees to perform the services in consideration of the compensation described in Attachment A and in accordance with the terms described in Attachment B.


This Agreement consists of this document together with Attachment A – Work Requirements, and Attachment B – Terms and Conditions. This agreement supercedes all prior written and oral understandings. This agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

In executing this Agreement, the undersigned also acknowledges their authority to bind the parties to all terms and conditions.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first written.

Consultant
Civilcon, Inc.
605 North Shore Dr.
Unit 103
Jeffersonville, Indiana 47130

Owner
Montgomery County Commissioners
~~XXXXXX~~ 1580 Constitution Row -Suite E
Crawfordsville, IN 47933

By 
Name: Darin Duncan, P.E.
Title: President / CEO

Approved By:

Jim Fulwider – Montgomery County Commissioner

John Frey – Montgomery County Commissioner

Dan Guard – Montgomery County Commissioner

Attest:

Mindy Byers – Montgomery County Auditor

**Consultant Services Agreement
Attachment A
Work Requirements**

Consultant:
Civilcon, Inc.

Project Description:
Montgomery County – Construction Inspection and Administration for the Bridge 182 Replacement project on CR 750 East

Scope of Services Included:

- Provide professional services for construction administration for utility relocation coordination and review.
- Provide professional services for construction administration for construction layout services.
- Provide professional services for construction administration and inspection for the duration of the Montgomery County – Bridge 182 Replacement. Duration of the installation phase of this project is currently set at 60 calendar days. If the installation phase exceeds this timeframe then additional time will be billed at the hourly rate schedule attached.
- Inspection elements include frequent site visits during construction operations to verify installation completed according to design plans. Examples of critical operations may include but not limited to erosion control compliance, clearing, utility relocations, foundation preparation, structure setting, site earthwork, final paving and grading, guardrail layout and installation, and final inspection.
- Contract assumes an average of 20 hours per week of required inspection/administration during the installation phase of the project, any excess hours accumulated during the duration of the project will be charged per the attached hourly rates.
- Final construction report including site visit pictures, field visit forms, and material testing results if applicable.

Scope of Services Not Included:

- Construction Surveying (as-builts)
- Earthwork density testing (to be provided by subcontractor if requested by county – billed at cost plus 10 %)
- Concrete materials testing (to be provided by subcontractor if requested by county – billed at cost plus 10%)

Project Schedule:

- | | |
|-----------------------------------|------------------|
| - Utility Relocation Coordination | 30 calendar days |
| - Bridge 182 Inspection | 60 calendar days |

TOTAL: 90 calendar days

Method of Compensation:

Total Fee shall not exceed \$45,000.00. Total Monthly Compensation will be split into the following fees;

Variable Fee

To be paid based on the following Hourly Rates

- Principal / Senior Engineer - \$250.00 per hour
- Engineer / Level 1 - \$200.00 per hour
- Engineer / Level 2 - \$150.00 per hour
- Junior Engineer / EIT - \$125.00 per hour
- Engineering Technician I - \$100.00 per hour
- Engineering Technician II - \$ 85.00 per hour
- Inspector Level 1 - \$150.00 per hour
- Inspector Level 2 - \$100.00 per hour
- Administrative Assistant - \$ 75.00 per hour

Direct Costs

To be paid based on the following schedule:

- Mileage paid for travel at current IRS approved rate
 - Any direct costs from subconsultants, contractors, and/or vendors billed at cost plus ten percent.
 - Reproduction costs for plans or reports will be considered direct costs if multiple copies are reproduced by outside vendors
-
- Variable Fee each month will be calculated hourly and will equal the sum of each employee classification's total monthly hours worked multiplied by their corresponding hourly billing rate.
 - Total fee due each month will equal the total of any Variable Fee, and/or Direct Cost.
 - Invoices to be billed monthly through standard County Claims process.

**Consultant Services Agreement
Attachment B
Terms & Conditions**

Services Consultant will perform professional services for the Project as set forth in Attachment A and in accordance with these Terms & Conditions.

Authorized Representatives The officer assigned to the Project by the Montgomery County Commissioners (Client) is the only authorized representative to make decisions or commitments on behalf of Client. The Consultant shall designate a representative with similar authority.

Project Requirements Client shall confirm the objectives, requirements, constraints, and criteria for the Project based on Client input. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Period of Service Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in Attachment A. The services of each task shall be considered complete when deliverables for the task have been presented to the Client.

Compensation In consideration of the services performed by Consultant, Client shall pay Consultant in the manner set forth in Attachment A. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project.

Payment Definitions The following definitions shall apply to methods of payment:

- Salary cost is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- Cost plus is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- Lump sum is defined as a fixed price amount for the scope of services described.
- Subcontracted services are defined as Project related services provided by other parties to Consultant.
- Reimbursable expenses are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit statements for services performed and Client shall pay the full invoice amount within thirty (30) days.

Additional Services The Consultant and Client acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that could not be foreseen. In that event, Consultant shall notify the Client of the need for additional services and Client shall pay for such additional services in the amount and manner as Client and Consultant may subsequently agree.

Independent Consultant Consultant shall serve as an independent consultant for services provided under this agreement. Consultant shall retain control over the means and methods used in performing their services and may retain subconsultants to perform certain services as determined by Consultant.

Standard of Care Services provided by Consultant will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed.

Permits and Approvals Consultant will assist Client in preparing applications and supporting documents to secure permits and approvals from agencies having jurisdiction over the Project. Consultant understands all application and review fees will be paid by the Client.

Ownership of Documents Upon Owner's payment in full for all work performed under the Contract Documents, Consultant shall grant Owner a limited license to use the work product conditioned on Owner's express understanding that its use of the work product is at Owner's sole risk and without liability or legal exposure to Consultant or anyone working by or through the Consultant.

Insurance Consultant and/or all subconsultants will maintain the following insurance and coverage limits during the period of service.

| | |
|-------------------------------------|---|
| <u>Worker's Compensation</u> | As required by applicable state statute |
| <u>Commercial General Liability</u> | \$1,000,000 per occurrence (bodily injury including death & property damage) \$1,000,000 aggregate, \$5,000,000 aircraft. |
| <u>Automobile Liability</u> | \$1,000,000 combined single limit for bodily injury and property damage |
| <u>Professional Liability</u> | \$1,000,000 each claim and in the aggregate |

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that

Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Indemnification Consultant shall indemnify Client from any reasonable damages caused solely by the negligent act, error, or omission of Consultant in the performance of services under the Project. If such damage results in part by the negligence of others, Consultant shall be liable to the extent of their negligence.

Cost Opinions Consultant shall prepare cost opinions for the Project based on experience and historical information that represent the judgment of a qualified professional.

Shop Drawing Review If included in the scope of service, Consultant shall review shop-drawing submittals from the contractor for their conformance with the design intent and performance criteria specified for the Project.

Construction Review If included in the scope of service, Consultant shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at the Project site shall not make Consultant responsible for the work performed by another party, the means, methods, techniques, sequences, or procedures selected by another party, nor the safety precautions or programs of another party.

Rejection of Work Consultant may only recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

Safety Consultant shall be responsible for the safety precautions or programs of its employees.

Information from Other Parties Consultant and Client acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project.

Construction Record Drawings If included in the scope of service, Consultant will deliver construction record drawings to Client incorporating information furnished by construction contractors. In that construction record drawings are based on information provided by others, Client will not warrant their accuracy.

Defects in Service Client shall promptly notify Consultant of any defect or suspected defect in the services performed. Consultant will take timely action to minimize the consequences of any confirmed defect. Consultant shall correct defects at their cost.

Dispute Resolution Consultant and Client agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services unless the Client issues a written notice to suspend or terminate work.

Suspension of Work Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and Client shall pay Consultant all outstanding invoices within fourteen (14) days of receiving payment from the Client. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination Consultant or Client may terminate services on the Project upon seven (7) days written notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and Client shall pay Consultant all outstanding invoices within thirty (30) days of receiving the Consultant invoice. Client may withhold an amount for services that may be in dispute provided that Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Governing Law The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Assignment Neither party shall assign its rights, interests or obligations under the Project without the express written consent of the other party.

Waiver of Rights The failure of either party to enforce the provisions of these terms and conditions shall not constitute a waiver of such provisions nor diminish the right of either party to the remedies of such provisions.

Warranty Consultant warrants that they will deliver products under the Project within the standard of care.

Severability Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, Consultant and Client will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All provisions of these terms that allocate responsibility or liability between Consultant and Client shall survive the completion or termination of services for the Project.

Final Reading: Ord 2023- Amend Cum Bridge Rate

Wednesday, September 20, 2023 2:53 PM

Montgomery County Board of Commissioners

Ordinance 2023 – 16

An Ordinance Amending Tax Rate for Cumulative Bridge Fund

Whereas, on the 27th day of March, 2023, the Montgomery County Board of Commissioners adopted Ordinance 2023-1 which re-established the Cumulative Bridge Fund (“Cum Bridge Fund”), as provided for in Indiana Code §8-16-3, and imposed a tax levy on all real and personal property in Montgomery County, under Indiana Code §6-1.1-41, to provide money for the construction, repair, maintenance, and inspection of bridges in Montgomery County; and

Whereas, the Ordinance also established a tax rate for 2024 for the Cumulative Bridge Fund is \$0.075 per \$100 of assessed valuation, and the maximum property tax rate for the Fund per Indiana Code §8-16-3 is \$0.075 per \$100 of assessed valuation; and

Whereas, in order to relieve the General Fund and to provide greater flexibility to the County Council for 2024 budgets, the Commissioners agree to lower the tax rate for the Cumulative Bridge Fund for 2023 from \$0.075 per \$100 of assessed valuation to \$0.055 per \$100 of assessed valuation;

It is therefore ordained that the Montgomery County Board of Commissioners that Section 2 of Ordinance 2023-1 is hereby amended to read as follows:

“Section 2. Tax Rate. The County Board of Commissioners now levies a tax on all real and personal property in Montgomery County to provide funds to the Cumulative Bridge Fund. The property tax will not exceed \$0.055 on each \$100 of assessed valuation. This tax rate will be levied beginning with taxes for 2023, due and payable in 2024.’

It is further ordained that all other provisions of Ordinance 2023-1, except for Section 2 which is amended by this ordinance, shall remain in full force and effect.

It is further ordained that this ordinance will be effective upon adoption.

Adopted this ____ day of September, 2023.

Montgomery County, Indiana
Board of Commissioners

Voting Yes:

Voting No:

John Frey, President

James D. Fulwider, Vice President

Dan Guard, Member

Attest:

Mindy Byers, Auditor

1st Read Ord 2023-17 - Creating Social Impact Partnership Program Fund

Thursday, September 21, 2023 9:31 AM

Montgomery County Board of Commissioners

Ordinance 2023-17

AN ORDINANCE CREATING THE MONTGOMERY COUNTY HEALTH DEPARTMENT SOCIAL IMPACT PARTNERSHIP PROGRAM FUND

Whereas, the Montgomery County Health Department has been awarded a grant on behalf of the Social Impact Partnership Program (SIPP) of Franciscan Health in the amount of \$10,000 to be used to implement a diaper pantry and to purchase diapers and wipes; and

Whereas, the use of funds from the grant award may be used by the Montgomery County Health Department consistent with the terms and conditions of the grant award; and

Whereas, the Montgomery County Board of Commissioners finds that a new fund, the Montgomery County Health Department Social Impact Partnership Program Fund, should be created in order to receive the funds from the Franciscan Health and to provide a mechanism for appropriation and accounting for the funds used.

Therefore, it is ordained that a new section, Section 35.____ of the Montgomery County Code, is hereby added to the County Code and that this new section shall read as follows:

“§ 35.____ Montgomery County Health Department Social Impact Partnership Program Fund

(A) *Source of Funds.* The Montgomery County Board of Commissioners hereby establishes the Montgomery County Health Department Social Impact Partnership Program. The fund shall consist of monies received from Francian Health for the SIPP Grant.

(B) *Use of Funds.* All money in the Fund will be used by Montgomery County Health Department; and Franciscan Health will provide the awarded \$10,000 grant funding and used solely to purchase diapers and wipes for the Health Department's Diaper Pantry Project in a form and manner consistent with the grant award.

(C) *Non-Reverting Fund.* This is a Non-Reverting Fund."

It is further ordained that this ordinance shall be effective upon adoption.

It is further ordained that all other provisions of the Montgomery County Code of Ordinances, which are not specifically amended by this ordinance shall remain in full force and effect.

Adopted this ____ day of October, 2023.

Montgomery County Board of
Commissioners:

John E. Frey, President

Jim Fulwider, Vice President

Dan Guard, Member

Attest:

Mindy Byers, Auditor

1st Reading Ordinance 2023-18 Creating Mace SWIF Grant Fund

Friday, September 22, 2023 8:56 AM

This ordinance creates a fund for the funds awarded by the Indiana Finance Authority Transportation and Stormwater Water Grant Fund to assist in addressing stormwater issues in the unincorporated areas of Mace. The fund is a non-reverting fund.

1st Reading Ordinance 2023-19 Creating Tempur SWIF Grant Fund

Friday, September 22, 2023 8:56 AM

This ordinance creates a fund for the funds awarded by the Indiana Finance Authority from the State Water Infrastructure Fund (SWIF) . The grant funds may only be used towards costs related to installation of water infrastructure by Indiana American Water for the Tempur Project. The fund is a non-reverting fund.