

AGENDA
Montgomery County Board of Commissioners Meeting
January 23, 2023
8:00 am
1580 Constitution Row - Room E109
Crawfordsville, IN 47933

Call to Order: Board President John E. Frey

Pledge of Allegiance and Prayer

Consent Agenda

Approval of Claims: January 9, 2023 to January 23, 2023

Payroll 1/6: \$390,481.19

Accounts Payable: \$

Minutes: January 9, 2023

Copier Lease: VAF - Title IV-D Office

New Business

2023 Youth Service Bureau Contract

2023 Edge Information Technology Contract

Approve Engagement Letter Attorney Justin Froedge

IEDC Agreement for CSX Rail Spur to Tempur Sealy

Employee of the Year Award Announcement

Other Business

Adjournment

Agenda subject to change

Montgomery County acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretive services, alternative audio/visual devices, and amanuenses) for participation in or access to County sponsored public programs, services, and/or meetings, the County requests that individuals makes requests for these services forty-eight (48) hours ahead of the scheduled program, service, and/or meeting. To make arrangements, contact ADA/Title VI Coordinator Lori Dossett @ 765-361-2623.

Agenda Memo

Wednesday, January 18, 2023 1:50 PM

AGENDA MEMO

Montgomery County Board of Commissioners Meeting

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8:00 am

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Crawfordsville, IN 47933

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Minutes: January 9, 2023

Copier Lease: Van Ausdall & Farrar - Title IV-D Office - **Total \$726.52 per quarter**

60 month lease Ricoh IMC4500, Brother HL-L6400, Brother MFC-L6900DWX for use in the Title IV-D Child Support Office.

New Business

2023 Youth Service Bureau Contract

The Contract is an agreement between the Montgomery County Youth Service Bureau, Montgomery County Circuit Court, and the Board of Commissioners, whereby the YSB agrees to provide youth services for the Court and Montgomery County agrees to pay for the availability.

2023 Edge Information Technology Contract - \$205,200 per year/\$17,100 monthly installments - 190 hpm

Edge IT provides network and desktop support for the County. They act as the County's IT Facilitator.

Attorney engagement letter with Justin Froedge

Attorney engagement letter with Justin Froedge. Mr. Froedge will represent the County regarding an INDOT eminent domain case for a project on 234. Mr. Taylor has a conflict of interest related to this case.

IEDC Agreement for CSX Rail Spur to Tempur Sealy

The Indiana Economic Development Corporation has awarded the County a reimbursement grant of \$450,000 to help pay for the construction of a rail spur from the CSX rail line to the Tempur Sealy facility. The agreement outlines the process for the County to receive reimbursement. The rail spur is being constructed and there is an estimated four days of work to complete the project.

Employee of the Year Award Announcement

Other Business

Adjournment

AP Claims

Wednesday, January 18, 2023 1:40 PM

Payroll Claims

Wednesday, January 18, 2023

1:40 PM

Minutes: January 9, 2023

Wednesday, January 18, 2023 1:39 PM

MINUTES
MONTGOMERY COUNTY COMMISSIONER MEETING
MONDAY, JANUARY 9, 2023

The Montgomery County Commissioners met in regular session on Monday, January 9, 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; Vice President James D. Fulwider; and Commissioner Dan Guard.

Also present: County Attorney Dan Taylor; County Administrator Tom Klein; Auditor Mindy Byers; Building Administrator Marc Bonwell; Sheriff Ryan Needham; Highway Director Jake Lough; Assessor Sherri Bentley; Health Administrator Adrienne Northcutt; Interim EMA Director Jessica Burget; 911 Director Sherri Henry; Chief Probation Officer Andria Giegler; and Commissioners Executive Assistant Lori Dossett.

PLEDGE & PRAYER

Board President Commissioner John Frey led the pledge of allegiance and Jim Fulwider led the prayer.

CONSENT AGENDA

Approval of Claims: December 27, 2022 to January 9, 2023

Payroll 12/30: Payroll 12/30: \$390,481.19

Accounts Payable: \$2,317,367.81

Minutes: December 27, 2022

Notice to Proceed - Bridge 63, 66 & 175 - Highway Director Jake Lough

Request to approve Notice to Proceed on Bridge 63 (300S), 66 (625E) and 175 (550E). The Commissioners approved the three bridge contracts with United Consulting on October 24th. The Highway Department has received all contracts and NTP from INDOT.

Commissioner Guard moved to approve the consent agenda. Seconded by Commissioner Fulwider. Motion carried 3-0 in favor.

NEW BUSINESS

Tom's Marine Lori Shaver - Request to close roads during Ironman Events

Road closure requests for two upcoming events at Ironman. May 6th & May 7th and October 26th and October 27th.

Commissioner Guard moved to approve the request to close roads during Ironman Events on May 6th & May 7th and October 26th & 27th. Seconded by Commissioner Fulwider. Motion carried 3-0 in favor.

2023 Section Corner Perpetuation Contract - Amy Woodall

Agreement between Surveyor Tom Cummins and Contract Surveyor Amy Woodall. County's are required to maintain a section corner reference book and to annually check and reference at least 5% of all corners. The next set of section corners to be perpetuated will be in Brown Township.

Commissioner Fulwider moved to approve the 2023 Section Corner Perpetuation Contract with Amy Woodall. Seconded by Commissioner Guard. Motion carried 3-0 in favor.

Approval of Order Establishing Precincts - Clerk Karyn Douglas

Clerk Karyn Douglas explained that due to changes of the precinct lines will include all of the new annexations from the City. This change in precinct line will not affect voters.

Commissioner Guard moved to approve the Order Establishing Precincts. Seconded by Commissioner Fulwider. Motion carried 3-0 in favor.

Affidavit of Construction Fund Disbursement Request & Deposit - Pay App #2 - \$4,030,718.63

Taxable Economic Development Revenue Bonds of 2022 (IAW/CSX Project) payment request.

Commissioner Fulwider moved to approve Pay App#2. Seconded by Commissioner Guard. Motion carried 3-0 in favor.

2023 Board & Commission Appointments

Plan Commission - At the December 27 Commissioners meeting, the Commissioners made appointments to Boards and Commissions. The Commissioners discussed the appointment of Tom McClamroch to the Plan Commission to finish the term of Steve Loy. No vote was taken and then the Commissioners appointed Mr. McClamroch to the Board of Zoning Appeals for a four year term. Commissioners will need to vote on appointed Mr. McClamroch to the Plan Commission. *Commissioner Frey moved to appoint Tom McClamroch to the Plan Commission to finish the term of Steve Loy. Seconded by Commissioner Guard. Motion carried 3-0 in favor.*

Security Committee – *Commissioner Fulwider moved to appoint Judge Chadd to the Security Committee. Seconded by Commissioner Guard. Motion carried 3-0 votes in favor.*

BZA - One appointment remains on the BZA

RESOLUTIONS

Resolution 2023-1: Declaring Certain Property to be Worthless and Authorizing Disposal - 2007 Ford Expedition Coroner's office

Commissioner Fulwider moved to approve Resolution 2023-1. Seconded by Commissioner Guard. Motion carried 3-0 votes in favor.

ADJOURNMENT

There being no further business before the Board, *Commissioner Fulwider moved to adjourn. Motion passed 3-0 votes in favor. Meeting adjourned @ 8:10 am.*

Minutes prepared by Commissioners Executive Assistant Lori Dossett.

The next regular meeting will be held on Monday, January 23, 2023 @ 8:00 am @ Montgomery County Government Center-Room E-109.

MONTGOMERY COUNTY BOARD OF COMMISSIONERS:

John E. Frey, Board President

Attest:

Mindy Byers, Auditor

Copier Lease - Title IV-D

Thursday, January 19, 2023 2:44 PM



Van Ausdall & Farrar
6430 E. 75th Street
Indianapolis, IN 46250
Phone (800) 467-7474 x7244 | Fax (317) 638-1943
www.vanausdall.com

Angela Swazay
Montgomery County Child Support
100 East Main, Room 105
Crawfordsville, IN 47933

1.18.2023

Dear Angela,

Please see below the proposed equipment and financials we discussed. Pricing valid 30 days from date of proposal

Equipment Proposed

QTY	MODEL	DESCRIPTION	PURCHASE PRICE	60 MONTH FMV LEASE	60 MONTH QTR FMV
1	Ricoh IM C4500	45ppm B/W & Color, Print/Scan/Copy/Fax, 10.1" Color Panel, (4) 550 sheet paper drawers, Stapler Finisher, Power Filter	\$8,928.00	\$193.56	\$580.68
2	Brother HL-L6400	Up to 52ppm B/W, print only, 1.8" Color Touchscreen Display, (1) 520 Sheet Paper Tray, 50-sheet multi-Purpose Tray	\$1,298.00	\$ 28.82	\$ 86.46
1	Brother MFC-L6900DWX	Up to 52ppm B/W, Print/Copy/Scan/Fax, 4.85" Color Touchscreen Display, (1) 520 Sheet Paper Tray, 50-sheet multi-Purpose Tray	\$1,192.00	\$ 26.46	\$79.38
TOTALS					\$746.52/QTR

Maintenance Contract:

\$133.50 per Quarter

- **C4500:** Includes 9,000 B/W images per Quarter. Overages billed Quarterly at \$0.0065 per image
- **C4500:** Includes 1,500 Color images per Quarter. Overages billed Quarterly at \$0.05 per image
- **Brother:** \$13.35 per Quarter. Includes 1,500 B/W images per Quarter. Overages billed Quarterly at \$0.0089 per image
- Parts, labor, image drums, and consumable supplies (excluding paper and staples)

Thank you for this opportunity. If you have any questions, please contact me at 800-467-7474 x7244 or jcross@vanausdall.com

Sincerely,
Jon Cross
State/Local Gov't & K-12 Technology Solutions Manager

2023 Youth Service Bureau Contract

Wednesday, January 18, 2023 1:40 PM

AGREEMENT TO PROVIDE SERVICES BY THE
MONTGOMERY COUNTY YOUTH SERVICE BUREAU, INC.
FOR MONTGOMERY COUNTY CIRCUIT COURT AND
MONTGOMERY COUNTY COMMISSIONERS

This contract is to witness an agreement entered into this __1__ day of January____, 2023_, by and between the Montgomery County Youth Service Bureau, Inc. (YSB), the Montgomery County Circuit Court (Court), and the Board of Commissioners of Montgomery County, Indiana (Commissioners), whereby the YSB agrees to provide youth services for the Court and Montgomery County agrees to pay for the availability of such services and the delivery of such services all on the terms and conditions hereinafter set out:

1. YSB shall accept referrals of youth from the Court, whether through the Court's Probation Office or from the Court directly, or from the Montgomery Superior Court One or Montgomery Superior Court Two, or from a law enforcement officer or department (when in the exercise of discretion the officer or department may refer to the YSB instead of Probation or the Prosecutor's Office).

2. YSB will provide to the youth referred such services as are specifically requested by the Court, Probation Department or the law enforcement officer or department and such other services or programs as in the discretion of the YSB staff are deemed necessary or appropriate for the person, given his or her particular circumstances.

3. Such service shall be given and such programs shall be provided at no charge or expense to the youth who is referred or to his or her family. With the noted exception of Teen Court and the Teen Court User fee, this may be waived based on recommendation of the court or family request.

4. The service or program for which a youth is referred may necessarily require services to an adult, adults, or others in addition to the youth, but for the benefit of the youth and to address the needs of the youth. These services and programs likewise, are to be offered without charge to any person whose involvement is necessary given the circumstances of the youth and the fact of his or her referral.

5. For the provision of certain services and programs the county will pay the YSB an annual amount through the budget of the Court. These services and programs include:

- Teen Court – juvenile offender deferral program including oversight of community service or other disposition assigned by the teen jury.
- Inspire – a group mentoring program for adjudicated female adolescents or at risk female adolescents
- Youth As Resources
- Child Advocacy – Court Appointed Special Advocate (CASA)
- Juvenile Mentoring Program
- Montgomery County Alternative School

6. For the services and programs described in paragraph five, and those other services and programs contemplated by paragraphs two and four, Montgomery County, through a Court, is paying the YSB \$63,000.00 for the calendar year 2023, and will pay an annual amount thereafter as determined by the Youth Service Bureau, the Court and Montgomery County.

The annual amount may be paid monthly, bi-monthly, or quarterly as the YSB may determine in filing a claim with Montgomery County through the Circuit Court.

Of the amount paid in any given year, a portion shall be designated by the Court and YSB sufficient to meet the requirements for local match for the receipt of state funds from the Indiana Supreme Court's Office of CASA/GALA in support of the CASA program. In the case of calendar year 2023, that amount is at least \$7,000.00.

Use of the balance of funds after the CASA designation may be divided between the programs and services listed in paragraph five (including an additional amount for CASA) as needed by the YSB to meet their program funding requirements.

7. The Court and YSB will annually review the programs and services available and offered through the YSB. The parties may add or delete programs as the needs of youth or the availability of other funding sources may require. No additions or deletions to the list in paragraph 5 will become effective until they are reduced to writing, signed and affixed to this contract as an addendum.

8. YSB shall keep records of time spent by staff, number of youth served, frequency of program and service offerings, money spent and other records which may be required by the State of Indiana or any of its agencies or subdivisions and render periodic reports and accountings. YSB shall assist Montgomery County in obtaining any reimbursement money or matching funds which may be available through the State, Federal, private, other sources for assistance with the various programs and services YSB offers.

9. The amount paid pursuant to paragraph six of this contract may vary from year to year depending on the services and programs to be rendered pursuant to this contract and Montgomery County's budget constraints. If the amount of money decreases, then the services and programs may be curtailed or deleted by the parties after consultation and exercising their discretion.

10. YSB renders what services and programs as are contemplated under this contract as an independent agent. Under no circumstances and in no situation or interpretation is the YSB an agent of, a subdivision, branch, or employee of the Court or of Montgomery County. The YSB has the sole responsibility of determining the content of the programs and services, when, where, and how they will be performed and delivered, and of supervising and being responsible for the youth referred to the YSB. YSB shall save and hold harmless the Court and Montgomery County from any claim or demand that may be made by or on behalf of any youth referred to the YSB.

11. Either party may terminate this contract without cause upon 60 days written notice to the other party delivered to such party's business address. Either party may terminate this contract with cause, effective immediately, upon written notice give the other party and delivered to such party's business address. Upon termination the YSB shall be paid pro-rata, by month, for the months or the calendar year which the YSB provided services under this contract.

Montgomery County Youth Service Bureau

By: 

President

Attest: 

Secretary

Montgomery Circuit Court

By: 

Judge

Board of Commissioners of Montgomery County, Indiana

By: _____
President

Attest: _____
Auditor of Montgomery County

2023 Edge IT Contract

Thursday, January 19, 2023 8:51 AM

Printout

Thursday, January 19, 2023

2:45 PM



Information Technology Services Contract

This Information Technology Services Contract ("Contract"), is hereby entered into as of the date last written below, by and between the Montgomery County, Indiana ("Client") and Edge Information Technology Solutions, Inc. ("Contractor"), for and in consideration of the mutual promises as follows:

1. SERVICES AND EQUIPMENT

- (a) Contractor shall provide the information technology services for the Client as identified on the Specification of Services attached hereto and incorporated herein as Exhibit "A" which services shall hereinafter be referred to as "In-Scope Services". The Specification of Services Schedule may not be modified absent written consent by both parties. Client agrees to submit all requests for services to Contractor using Contractor or client's ticketing system. Any services provided to Client by Contractor which are not identified on Exhibit "A" will be considered "Out-of-Scope Services".
- (b) Contractor shall provide In-Scope Services only to the equipment, hardware, software and/or devices of Client's which have been identified on the Schedule of Covered Equipment attached hereto and incorporated herein as Exhibit "B" ("Covered Equipment"). Additions may be made to the Schedule of Covered Equipment provided such additions are approved in writing by both parties.

Any equipment, hardware, software or device which is not identified on the Schedule of Covered Equipment shall not be covered under the terms of this Agreement and shall hereinafter be referred to as "Non-Covered Equipment". Contractor shall have no duty to provide services of any kind to any Non-Covered Equipment of Client. The parties specifically acknowledge and agree that Contractor does not support off-site and/or cloud services. Furthermore, Client agrees that Contractor shall have no liability for any loss or damage arising, directly or indirectly, from Client's use of any Non-Covered Equipment.

- (c) Client shall ensure that all Covered Equipment is covered under a current and active original (non-3rd party) vendor support contract and that any software program implemented or used by Client be genuine, currently licensed and vendor-supported. Unless specifically identified as an In-Scope Service, Contractor shall have no duty to update any of Client's equipment, and Client shall be solely responsible for ensuring all equipment is properly updated and maintained. Contractor shall obtain Client's authorization before incurring any charge from a third-party vendor in order to resolve any issues on behalf of Client. In the event any such charges are incurred, these charges shall be passed on to the Client. Contractor will provide evidence of any such charge to Client upon written request. Contractor shall not be liable for any loss or damage arising, directly or indirectly, from the acts or omissions of any third-party vendor or service provider.
- (d) Contractor reserves the right to refuse to install hardware and/or software that is not recommended by Contractor.
- (e) The Contract does not obligate Client to purchase computer equipment, hardware devices, cabling, licenses, software and/or any other items from Contractor. Replacement parts are not included as a part of this Contract.

Contractor may charge Client shipping and/or freight charges associated with the ordering of any equipment, hardware, software or device on behalf of Client.

CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY SERVICES, WHETHER IN-SCOPE SERVICES OR OUT OF SCOPE SERVICES, PROVIDED BY IT AND AS TO ANY EQUIPMENT, HARDWARE, SOFTWARE OR DEVICE OF CLIENT OR WHICH IS RECOMMENDED BY OR PURCHASED ON BEHALF OF CLIENT BY CONTRACTOR OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY CONTRACTOR ARE HEREBY EXCLUDED AND DISCLAIMED. CONTRACTOR FURTHER MAKES NO WARRANTIES OR PROMISES AS TO THE FUNCTIONALITY, SECURITY, OR INTEGRITY OF ANY EQUIPMENT, HARDWARE, SOFTWARE OR DEVICE.

- (f) Client agrees to provide Contractor with administrator and/or root level access to all systems and equipment which Contractor is to be providing services according to this Contract. Furthermore, Client agrees that any existing IT staff employed by Client and/or IT contractors retained by Client shall collaborate, cooperate and communicate with Contractor and provide appropriate logical and physical access to Contractor of equipment and software in order for Contractor to perform functions as outlined in this Contract. These services will be performed remotely and on-site, as needed. Secure remote access for Contractor's use will be required for the entire duration of this Contract. Contractor shall have no liability for any actions of any prior, existing or acting IT staff employed by Client or any prior, existing or acting IT contractor retained by Client.
- (g) Contractor is an independent contractor with responsibility to provide its services at such times and in such manners as it shall deem prudent and convenient. All services shall be performed remotely and on-site, as needed.
- (h) Contractor shall conduct its services under this Contract in compliance with all applicable laws, statutes, governmental rules and regulations, and ordinances, including all intellectual property laws.
- (i) Client agrees to provide Contractor with contact information in writing for the individual who shall serve as Client's contact with regard to any service to be provided ("Point of Contact"). Thereafter, Contractor agrees to attempt to contact the Point of Contact first in relation to any action to be taken according to the terms of this Contract. Client agrees to provide Contractor with written notice of any change to such Point of Contact.

2. TERM

- (a) This Contract shall be in full force and effect for one year, beginning on January 1, 2023. The Contract will automatically renew in one-year terms unless either party provides written notice to the other of intent to terminate the Contract at least ninety (90) days prior to the end of the current term.
- (b) The parties agree that Contractor may, in its sole discretion, increase the Contract Payment annually provided such increase does not exceed ten percent (10%) from the prior year Contract Payment. Contractor will provide Client with notice of any increase to the Contract Payment prior to its effective date.
- (c) Termination of this Contract shall not prejudice any other remedy that either party may have either at law, in equity, or under this Contract.

3. PAYMENT

- (a) As money consideration for Contractor's services, Client shall pay to Contractor the sum of \$205,200.00 ("Contract Payment") which amount will cover up to 2,280 total hours of service from Contractor ("Total Contract Hours") at a rate of \$90.00 per hour ("Contract Rate"). The Contract Payment shall be paid in monthly installments of \$17,100.00 during the term of this Contract which amount accounts for an anticipated 190 hours of services per month ("Monthly Contract Hours"). If fewer than 190 hours of service are required in a particular month, then the unused hours shall "roll over" into the next month and be available in that and later months. At the commencement of this Contract, if under an expiring Contract, Client had accumulated rollover hours, Client will receive credit for these unused rollover hours under this new Contract. Unused "rolled over" hours shall accumulate until the termination of this Agreement, at which time they shall expire without any refund to Client. The "rolled over" hours that may accrue pursuant to this Agreement shall remain separate from any other "rolled over" hours that may accrue under subsequent, separate agreements with Contractor and shall expire separately on their own. The parties agree to consult with each other at reasonable intervals to determine the number of "rolled over" hours in existence at any given time.
- (b) Hours of service in excess of the Monthly Contract Hours (including any accumulated rollover hours) shall be preapproved in writing by Client and will be billed at a rate of \$90.00 per hour.
- (c) Client may be subject to an interest charge of 15% per annum for any payments paid after the due date. In addition, a 3.5% credit card processing fee will be added to all payments paid by credit card.
- (d) Contractor reserves the right to charge fees in excess of the Contract Rate for Out-of-Scope Services provided to Client and to bill Out-of-Scope Services as separate, individual services from this Contract, provided, however, that such rates and billing terms are approved, in writing, by Client. Client agrees that its acceptance of any quote provided by Contractor shall serve of evidence of its intent to be bound by all terms stated on such quote. To the extent the terms of any quote conflict with any provision in this Contract, however, the terms of this Contract shall prevail.
- (e) The parties acknowledge that Contractor's regular hourly rate is \$140.00 per hour and that the Contract Payment represents a reduced rate of \$90.00 per hour. The parties further acknowledge that the reduced rate results in a discount of \$114,000.00 over each one-year term of this Contract ("Discount").
- (f) Contractor shall provide Client with monthly invoices which report the number of hours used by Client in the prior month. If this Contract is terminated for any reason prior to the payment in full of the Contract Payment, Client shall be responsible for payment of any hours of services provided by Contractor which have not yet been paid at the hourly rate of \$140.00 per hour.
- (g) Any service requiring immediate attention by Contractor, including but not limited to (1) requests for service identified by Client as an emergency or as a service needing immediate attention through any form of communication between Client and Contractor, and (2) requests for services to be performed within four (4) hours of initial contact from Client will be considered "Emergency Services". Emergency Services shall also include any services requested according to the terms herein which are later cancelled by Client prior to any action of Contractor. In-Scope Services which also constitute Emergency Services shall be included in the Contract Hours defined in this Contract. However, any Emergency Services provided by Contractor will be billed to Client in minimum increments of one hour.

This provision does not guarantee that Contractor will provide an immediate response to requests for services which meet the definition of Emergency Services, and Contractor reserves the right to determine the ability to provide immediate service to Client on a case-by-case basis. Contractor's best effort will be applied to resolution of Emergency Services.

- (h) These sums do not include any state sales tax because the Client is a municipality that is exempt from sales tax; the Client shall provide Contractor with a copy of its proof thereof if required.

4. EARLY TERMINATION

Client shall have the option to terminate this agreement prior to its expiration date by providing Contractor with written notice of its intention to terminate and paying the applicable early termination payment. If Client terminates the Contract in accordance with this provision, then the early termination payment to be paid by Client shall total the Discount amount of \$114,000.00 as well as any amount of the Contract Payment remaining to cover any hours of service already provided to Client by Contractor at the hourly rate of \$140.00 per hour.

5. NON-SOLICITATION AND CONFIDENTIALITY

- (a) Client acknowledges that the Contractor is involved in a highly strategic and competitive business. Client further acknowledges that Client would gain substantial benefit and that the Contractor would be deprived of such benefit if Client were to directly or indirectly hire any employee or contractor of Contractor. Accordingly, during the term of this Contract and for a period of twenty-four (24) months after the termination of this Contract, Client agrees to not, directly or indirectly, solicit, recruit, or employ any person or persons employed or contracted by Contractor without the prior written consent of Contractor.
- (b) The parties acknowledge that during the course of the Contract, either party may obtain confidential information from the other. Confidential Information does not include information that: (a) was already in the possession of any employee, owner, contractor or agent of either party prior to its receipt from the other party; (b) is or becomes available to the general public through no act or fault of either party; or (c) is rightfully disclosed to either party by a third party without restriction on its use or disclosure. Both parties agree that they will not (a) use any confidential information of the other party except to comply with the terms of this Contract; or (b) disclose or furnish to any person whatsoever any confidential information of the other party except to comply with the terms of this Contract.
- (c) The provisions of this Section shall survive the termination of this Agreement.

6. CLIENT COOPERATION

The parties acknowledge that, during the course of this Contract, Contractor will provide Client with recommended actions related to the maintenance, upkeep and security of Client's network, system, equipment, hardware, software or devices. Contractor reserves the right to immediately terminate this Contract and discontinue providing services to Client for failure to comply with any reasonable recommendation from Contractor.

Contractor further reserves the right to immediately terminate this Contract in the event any employee, owner, contractor or agent of Contractor reasonably determines that the performance of services for Client is being conducted in a hostile work environment.

7. DEFAULT

- (a) If either party fails to observe or perform any provision of this Contract, and such failure continues for five (5) days after receipt of written notice thereof from the other party, the party which fails to perform shall be in default; provided, however, if such default cannot reasonably be cured within such five-day period, the defaulting party shall not be deemed to be in default if such party shall within such period commence a cure and thereafter diligently prosecute the same to completion.
- (b) If Client fails to make timely payments or breaches any other covenant contained in this Contract, Contractor is entitled to all damages arising from such breach, including, but not limited to: fees for the work already performed; fees for work to be performed according to the terms of this Contract; attorney's fees; court costs; litigation expenses; lost profits; incidental and consequential damages; and any and all other damages arising from the breach.
- (c) If Contractor breaches the terms of this Contract, Client is entitled to direct damages arising from such breach, including attorney's fees, court costs and litigation expenses; provided however, in no case will Contractor's obligation exceed in the aggregate of one (1) year of Contract Payments. However, Contractor shall not be responsible for any other incidental or consequential damages. Client will remain responsible for any amounts due to Contractor under the Contract up to and until the effective date of termination.

8. NOT EMPLOYEES

Contractor and its employees and agents are not employees of the Client and are not entitled to wages, vacation or holiday pay, paid sick days, benefits, insurance, or any compensation other than the above contract payment. Contractor acknowledges that it is an independent contractor for tax purposes, and as such Contractor assumes sole responsibility for payment of all applicable taxes owed on payments received from the Client, and the Client shall not deduct or make any allowance for same.

9. INDEMNIFICATION

Client agrees to indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of the services performed by Contractor on behalf of or for Client or any breach of this Contract by Client, except to the extent attributable to the intentional act or omission of Contractor, its employees, agents or independent contractors. Client further agrees to indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of the maintenance or repair of Client's computer systems, including software and hardware, by any prior, current or acting internal IT staff for Client, any prior, current or acting IT contractors retained by Client or any third party.

10. TRANSITION SERVICES

Upon termination of this Contract, the parties acknowledge that Contractor may, at its sole discretion, assist Client in the transition of information technology services provided Client has complied with all terms of this Contract, including but not limited to the payment of any and all amounts owed to Contractor under this Contract or any other applicable agreement between the parties. The parties acknowledge that such transition may include the release of confidential and proprietary information of Client to a new information technology provider identified in writing by Client ("New IT Provider"), and Client authorizes the release of such information as may be necessary to transition information technology services. Contractor will not provide training to any New IT Provider or internal employees

retained or employed by Client. Client agrees that Contractor shall have no liability resulting from the disclosure of such information nor will it have any liability for the New IT Provider's use of such information. Client shall indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of Contractor's release of information according to the terms of this paragraph.

The parties agree that Contractor shall discontinue the provision of ongoing services provided to Client upon its receipt of notice of termination of the Contract. These actions may include, but shall not be limited to, terminating any licenses or rights Client has to utilize products obtained by Contractor. The date such services shall be discontinued shall be referred to as the "Effective Termination Date". Contractor shall provide Client with ten days' notice before the Effective Termination Date. Client acknowledges and agrees that it will be responsible for taking those actions necessary to secure products and/or another provider for any services it wishes to continue beyond the Effective Termination Date and agrees that Contractor will have no liability for any damages resulting from any discontinuation of service or product according to these terms.

Client agrees to pay Contractor for any transition services provided at the Early Termination hourly rate established in paragraph 4 herein.

11. LIMITATION OF LIABILITY

Contractor shall not be liable for any loss or damage incurred by Client and/or its employees, owners, officers, agents or any third party retained by Client which loss or damage, directly or indirectly, results from circumstances beyond its reasonable control including, but not limited to, power outages, faulty electrical services, building modifications, adverse environmental conditions or factors, criminal activities, or acts of God. Client further acknowledges that the services to be provided by Contractor do not include electrical or mechanical services. Contractor shall not be liable for any loss or damage incurred by Client and/or its employees, owners, officers or agents or any third party retained by Client which loss or damage, directly or indirectly, results from Client's failure to take those actions recommended to Client by Contractor related to the maintenance, upkeep and security of Client's network, system, equipment, hardware, software or devices. Contractor shall not be liable for any actions of any other prior, existing or acting employee, contractor or consultant employed or retained by Client to provide information technology services of any kind. In no event shall Contractor be held liable for any indirect, special, incidental or consequential damages arising out of this Contract, including but not limited to, loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs, and Contractor's maximum liability is set out in Section 7(c).

Neither party shall be responsible to the other for any injury, loss, damage, claims, costs or expenses arising out of or resulting from exposure to the other party's employees, owners, officers, agents or any third party retained by the party to any communicable illness, including but not limited to COVID-19.

12. FORCE MAJEURE

Neither party will be liable for failure or delay to perform obligations under this Contract, which have become practicably impossible because of circumstances beyond reasonable control of the applicable party. Such circumstances include without limitation, natural disasters or acts of God; acts of terrorism, labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable diseases; quarantines; and national or regional

emergencies. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than five (5) business days following the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Contract affected by force majeure shall be tolled for the duration of such force majeure. The parties agree, when feasible, not to cancel but to reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practical after the force majeure condition ceases to exist.

13. MISCELLANEOUS

- (a) Contractor may assign, convey or transfer its rights under this Contract only with the advance consent of the Client, which consent shall not be unreasonably withheld.
- (b) All covenants hereof shall extend to and be obligatory on the heirs, successors and assigns of the parties; Contractor may not sell or transfer any of its business associated with this Contract unless the purchaser specifically agrees to assume all of Contractor's obligations hereunder.
- (c) This Contract may be modified only by agreement of both parties, in writing.
- (d) This Contract supersedes all other oral or written agreements between the parties with regard to the Contractor's services, and this Contract contains all the covenants and agreements between the parties with regard to those services; provided however, that all provisions of the January 1st, 2021 Agreement relating to work and services not completed are incorporated and continued under this Contract, and all provisions of the January 1st, 2021 Agreement which survives its termination remain in full force and effect.
- (e) Two (2) identical originals of this Contract have been executed this day, one in the possession of each party, and each shall be considered an original and enforceable as such.
- (f) This Contract shall be governed by the laws of the State of Indiana.
- (g) Any notices to be given to either party under this Contract may be affected by personal delivery in writing, e-mail, or by first class mail, postage prepaid. Notices delivered personally or by e-mail shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing.
- (h) Client is a governmental entity and therefore subject to various laws and regulations prohibiting discrimination in employment and in the provision of its services to the public. Both parties agree to adhere to all applicable laws and regulations concerning nondiscrimination and equal opportunity in their performance of this Contract.
- (i) If any provision of this Contract or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or applications of this Contract which can be given effect without the invalid provisions or application, and to this end the provisions of this Contract are declared to be severable.
- (j) The failure by either party to enforce any provision of this Contract shall not be construed as a waiver of any right to enforce the same breach, any succeeding breach or a breach of any other provision of this Contract.
- (k) If this Contract or any provisions hereof become unenforceable as against the Client by reason of any local, state or federal law, regulation or court decision now or hereafter in force, then the Client shall have no liability in law or equity for the performance, past and future, of such invalid provision.

- (l) Each party is and shall perform this Contract as an independent contractor, and as such shall have and maintain complete control over all of its employees, agents and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.
- (m) This Contract may be executed in separate counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

The parties' signatures below indicate approval to all terms and conditions above and agreement to be bound to such terms.

EDGE INFORMATION TECHNOLOGY
SOLUTIONS, INC.

CLIENT

By: _____
Ryan Edgell, its President

By: _____
Signature

Title

Date

Date

EXHIBIT A

Specification of Services

The following services shall be considered "In-Scope Services" and covered pursuant to the terms of the Agreement unless otherwise noted.

Initial and Ongoing Assessment

Review of the inventory, assessment of the system architecture and equipment for efficiency, life expectancy, capacity, speed, and current processes, and recommendations for improving routine support criteria and reducing emergency maintenance situations. The Contractor shall submit services reports or notices on an as-needed basis.

Desktop/Laptop Application Support

Performance of basic support functions, including the installation of PCs, laptops, printers, peripherals, and software; diagnosis and correction of application problems, configuring of PCs and laptops for standard applications; identification and correction of known user hardware problems, with advanced troubleshooting as needed.

Maintenance of an updated inventory of known computer related hardware, to make available to personnel upon request; and maintenance of help desk or similar procedures.

Server and Workstation Administration Services

Management of computer systems, including underlying support for applications, databases, messaging, servers and associated hardware, software, communications, and operating systems, necessary for performance, reliability, and recoverability of the systems.

Scheduling of preventive maintenance for equipment and maintenance of records for all help desk and/or e-mail tickets for both on-site and remote support.

Configuration management, including changes, upgrades, updates, patches, etc. Management of user logins and passwords; and associated support of software products relating to servers and workstations.

Network Administration Services

Maintenance and support of network equipment, including switches, firewalls, routers, and other network devices.

Basic installation and maintenance of printers, scanners, network devices; analysis, routine configuration changes, and installation of patches and upgrades.

Monitoring of network equipment, network performance and capacity management services and troubleshooting.

Email, Security and Backup

Maintenance of email accounts using the specified domains, adding, changing, and/or deleting employee accounts as requested; maintenance of anti-malware programs on the servers and user PCs and laptops; performance of periodic basic security audits, including notification of suspected breaches of security to the designated contact.

A data backup policy, with recommendations to address backups of the servers, irreplaceable data, on-site email, and the like; procedures to restore selected systems and data if servers malfunction.

Planning

Basic engineering, planning, and design services for system enhancements and/or upgrades to existing systems; recommendations for future purchasing and technology needs, when requested or necessary. Basic installation of new equipment, software, and transfer existing data when needed.

Services are subject to change as deemed by Contractor along with prioritization and performance of services subject to availability of normal and roll-over hours at Contractor's discretion. Certain services may require a RMM and/or remote access solution purchased by the Client but fully accessible by Contractor.

EXHIBIT B

Covered Equipment

The following equipment shall be considered Covered Equipment pursuant to the terms of the Contract:

Equipment service as requested by client and approved as applicable by contractor.

Printout

Thursday, January 19, 2023

12:30 PM



Information Technology Services Contract

This Information Technology Services Contract ("Contract"), is hereby entered into as of the date last written below, by and between the Montgomery County, Indiana ("Client") and Edge Information Technology Solutions, Inc. ("Contractor"), for and in consideration of the mutual promises as follows:

1. SERVICES AND EQUIPMENT

- (a) Contractor shall provide the information technology services for the Client as identified on the Specification of Services attached hereto and incorporated herein as Exhibit "A" which services shall hereinafter be referred to as "In-Scope Services". The Specification of Services Schedule may not be modified absent written consent by both parties. Client agrees to submit all requests for services to Contractor using Contractor or client's ticketing system. Any services provided to Client by Contractor which are not identified on Exhibit "A" will be considered "Out-of-Scope Services".
- (b) Contractor shall provide In-Scope Services only to the equipment, hardware, software and/or devices of Client's which have been identified on the Schedule of Covered Equipment attached hereto and incorporated herein as Exhibit "B" ("Covered Equipment"). Additions may be made to the Schedule of Covered Equipment provided such additions are approved in writing by both parties.

Any equipment, hardware, software or device which is not identified on the Schedule of Covered Equipment shall not be covered under the terms of this Agreement and shall hereinafter be referred to as "Non-Covered Equipment". Contractor shall have no duty to provide services of any kind to any Non-Covered Equipment of Client. The parties specifically acknowledge and agree that Contractor does not support off-site and/or cloud services. Furthermore, Client agrees that Contractor shall have no liability for any loss or damage arising, directly or indirectly, from Client's use of any Non-Covered Equipment.

- (c) Client shall ensure that all Covered Equipment is covered under a current and active original (non-3rd party) vendor support contract and that any software program implemented or used by Client be genuine, currently licensed and vendor-supported. Unless specifically identified as an In-Scope Service, Contractor shall have no duty to update any of Client's equipment, and Client shall be solely responsible for ensuring all equipment is properly updated and maintained. Contractor shall obtain Client's authorization before incurring any charge from a third-party vendor in order to resolve any issues on behalf of Client. In the event any such charges are incurred, these charges shall be passed on to the Client. Contractor will provide evidence of any such charge to Client upon written request. Contractor shall not be liable for any loss or damage arising, directly or indirectly, from the acts or omissions of any third-party vendor or service provider.
- (d) Contractor reserves the right to refuse to install hardware and/or software that is not recommended by Contractor.
- (e) The Contract does not obligate Client to purchase computer equipment, hardware devices, cabling, licenses, software and/or any other items from Contractor. Replacement parts are not included as a part of this Contract.

Contractor may charge Client shipping and/or freight charges associated with the ordering of any equipment, hardware, software or device on behalf of Client.

CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY SERVICES, WHETHER IN-SCOPE SERVICES OR OUT OF SCOPE SERVICES, PROVIDED BY IT AND AS TO ANY EQUIPMENT, HARDWARE, SOFTWARE OR DEVICE OF CLIENT OR WHICH IS RECOMMENDED BY OR PURCHASED ON BEHALF OF CLIENT BY CONTRACTOR OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY CONTRACTOR ARE HEREBY EXCLUDED AND DISCLAIMED. CONTRACTOR FURTHER MAKES NO WARRANTIES OR PROMISES AS TO THE FUNCTIONALITY, SECURITY, OR INTEGRITY OF ANY EQUIPMENT, HARDWARE, SOFTWARE OR DEVICE.

- (f) Client agrees to provide Contractor with administrator and/or root level access to all systems and equipment which Contractor is to be providing services according to this Contract. Furthermore, Client agrees that any existing IT staff employed by Client and/or IT contractors retained by Client shall collaborate, cooperate and communicate with Contractor and provide appropriate logical and physical access to Contractor of equipment and software in order for Contractor to perform functions as outlined in this Contract. These services will be performed remotely and on-site, as needed. Secure remote access for Contractor's use will be required for the entire duration of this Contract. Contractor shall have no liability for any actions of any prior, existing or acting IT staff employed by Client or any prior, existing or acting IT contractor retained by Client.
- (g) Contractor is an independent contractor with responsibility to provide its services at such times and in such manners as it shall deem prudent and convenient. All services shall be performed remotely and on-site, as needed.
- (h) Contractor shall conduct its services under this Contract in compliance with all applicable laws, statutes, governmental rules and regulations, and ordinances, including all intellectual property laws.
- (i) Client agrees to provide Contractor with contact information in writing for the individual who shall serve as Client's contact with regard to any service to be provided ("Point of Contact"). Thereafter, Contractor agrees to attempt to contact the Point of Contact first in relation to any action to be taken according to the terms of this Contract. Client agrees to provide Contractor with written notice of any change to such Point of Contact.

2. TERM

- (a) This Contract shall be in full force and effect for one year, beginning on January 1, 2023. The Contract will automatically renew in one-year terms unless either party provides written notice to the other of intent to terminate the Contract at least ninety (90) days prior to the end of the current term.
- (b) The parties agree that Contractor may, in its sole discretion, increase the Contract Payment annually provided such increase does not exceed ten percent (10%) from the prior year Contract Payment. Contractor will provide Client with notice of any increase to the Contract Payment prior to its effective date.
- (c) Termination of this Contract shall not prejudice any other remedy that either party may have either at law, in equity, or under this Contract.

3. PAYMENT

- (a) As money consideration for Contractor's services, Client shall pay to Contractor the sum of \$205,200.00 ("Contract Payment") which amount will cover up to 2,280 total hours of service from Contractor ("Total Contract Hours") at a rate of \$90.00 per hour ("Contract Rate"). The Contract Payment shall be paid in monthly installments of \$17,100.00 during the term of this Contract which amount accounts for an anticipated 190 hours of services per month ("Monthly Contract Hours"). If fewer than 190 hours of service are required in a particular month, then the unused hours shall "roll over" into the next month and be available in that and later months. At the commencement of this Contract, if under an expiring Contract, Client had accumulated rollover hours, Client will receive credit for these unused rollover hours under this new Contract. Unused "rolled over" hours shall accumulate until the termination of this Agreement, at which time they shall expire without any refund to Client. The "rolled over" hours that may accrue pursuant to this Agreement shall remain separate from any other "rolled over" hours that may accrue under subsequent, separate agreements with Contractor and shall expire separately on their own. The parties agree to consult with each other at reasonable intervals to determine the number of "rolled over" hours in existence at any given time.
- (b) Hours of service in excess of the Monthly Contract Hours (including any accumulated rollover hours) shall be preapproved in writing by Client and will be billed at a rate of \$90.00 per hour.
- (c) Client may be subject to an interest charge of 15% per annum for any payments paid after the due date. In addition, a 3.5% credit card processing fee will be added to all payments paid by credit card.
- (d) Contractor reserves the right to charge fees in excess of the Contract Rate for Out-of-Scope Services provided to Client and to bill Out-of-Scope Services as separate, individual services from this Contract, provided, however, that such rates and billing terms are approved, in writing, by Client. Client agrees that its acceptance of any quote provided by Contractor shall serve of evidence of its intent to be bound by all terms stated on such quote. To the extent the terms of any quote conflict with any provision in this Contract, however, the terms of this Contract shall prevail.
- (e) The parties acknowledge that Contractor's regular hourly rate is \$140.00 per hour and that the Contract Payment represents a reduced rate of \$90.00 per hour. The parties further acknowledge that the reduced rate results in a discount of \$114,000.00 over each one-year term of this Contract ("Discount").
- (f) Contractor shall provide Client with monthly invoices which report the number of hours used by Client in the prior month. If this Contract is terminated for any reason prior to the payment in full of the Contract Payment, Client shall be responsible for payment of any hours of services provided by Contractor which have not yet been paid at the hourly rate of \$140.00 per hour.
- (g) Any service requiring immediate attention by Contractor, including but not limited to (1) requests for service identified by Client as an emergency or as a service needing immediate attention through any form of communication between Client and Contractor, and (2) requests for services to be performed within four (4) hours of initial contact from Client will be considered "Emergency Services". Emergency Services shall also include any services requested according to the terms herein which are later cancelled by Client prior to any action of Contractor. In-Scope Services which also constitute Emergency Services shall be included in the Contract Hours defined in this Contract. However, any Emergency Services provided by Contractor will be billed to Client in minimum increments of one hour.

This provision does not guarantee that Contractor will provide an immediate response to requests for services which meet the definition of Emergency Services, and Contractor reserves the right to determine the ability to provide immediate service to Client on a case-by-case basis. Contractor's best effort will be applied to resolution of Emergency Services.

- (h) These sums do not include any state sales tax because the Client is a municipality that is exempt from sales tax; the Client shall provide Contractor with a copy of its proof thereof if required.

4. EARLY TERMINATION

Client shall have the option to terminate this agreement prior to its expiration date by providing Contractor with written notice of its intention to terminate and paying the applicable early termination payment. If Client terminates the Contract in accordance with this provision, then the early termination payment to be paid by Client shall total the Discount amount of \$114,000.00 as well as any amount of the Contract Payment remaining to cover any hours of service already provided to Client by Contractor at the hourly rate of \$140.00 per hour.

5. NON-SOLICITATION AND CONFIDENTIALITY

- (a) Client acknowledges that the Contractor is involved in a highly strategic and competitive business. Client further acknowledges that Client would gain substantial benefit and that the Contractor would be deprived of such benefit if Client were to directly or indirectly hire any employee or contractor of Contractor. Accordingly, during the term of this Contract and for a period of twenty-four (24) months after the termination of this Contract, Client agrees to not, directly or indirectly, solicit, recruit, or employ any person or persons employed or contracted by Contractor without the prior written consent of Contractor.
- (b) The parties acknowledge that during the course of the Contract, either party may obtain confidential information from the other. Confidential Information does not include information that: (a) was already in the possession of any employee, owner, contractor or agent of either party prior to its receipt from the other party; (b) is or becomes available to the general public through no act or fault of either party; or (c) is rightfully disclosed to either party by a third party without restriction on its use or disclosure. Both parties agree that they will not (a) use any confidential information of the other party except to comply with the terms of this Contract; or (b) disclose or furnish to any person whatsoever any confidential information of the other party except to comply with the terms of this Contract.
- (c) The provisions of this Section shall survive the termination of this Agreement.

6. CLIENT COOPERATION

The parties acknowledge that, during the course of this Contract, Contractor will provide Client with recommended actions related to the maintenance, upkeep and security of Client's network, system, equipment, hardware, software or devices. Contractor reserves the right to immediately terminate this Contract and discontinue providing services to Client for failure to comply with any reasonable recommendation from Contractor.

Contractor further reserves the right to immediately terminate this Contract in the event any employee, owner, contractor or agent of Contractor reasonably determines that the performance of services for Client is being conducted in a hostile work environment.

7. DEFAULT

- (a) If either party fails to observe or perform any provision of this Contract, and such failure continues for five (5) days after receipt of written notice thereof from the other party, the party which fails to perform shall be in default; provided, however, if such default cannot reasonably be cured within such five-day period, the defaulting party shall not be deemed to be in default if such party shall within such period commence a cure and thereafter diligently prosecute the same to completion.
- (b) If Client fails to make timely payments or breaches any other covenant contained in this Contract, Contractor is entitled to all damages arising from such breach, including, but not limited to: fees for the work already performed; fees for work to be performed according to the terms of this Contract; attorney's fees; court costs; litigation expenses; lost profits; incidental and consequential damages; and any and all other damages arising from the breach.
- (c) If Contractor breaches the terms of this Contract, Client is entitled to direct damages arising from such breach, including attorney's fees, court costs and litigation expenses; provided however, in no case will Contractor's obligation exceed in the aggregate of one (1) year of Contract Payments. However, Contractor shall not be responsible for any other incidental or consequential damages. Client will remain responsible for any amounts due to Contractor under the Contract up to and until the effective date of termination.

8. NOT EMPLOYEES

Contractor and its employees and agents are not employees of the Client and are not entitled to wages, vacation or holiday pay, paid sick days, benefits, insurance, or any compensation other than the above contract payment. Contractor acknowledges that it is an independent contractor for tax purposes, and as such Contractor assumes sole responsibility for payment of all applicable taxes owed on payments received from the Client, and the Client shall not deduct or make any allowance for same.

9. INDEMNIFICATION

Client agrees to indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of the services performed by Contractor on behalf of or for Client or any breach of this Contract by Client, except to the extent attributable to the intentional act or omission of Contractor, its employees, agents or independent contractors. Client further agrees to indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of the maintenance or repair of Client's computer systems, including software and hardware, by any prior, current or acting internal IT staff for Client, any prior, current or acting IT contractors retained by Client or any third party.

10. TRANSITION SERVICES

Upon termination of this Contract, the parties acknowledge that Contractor may, at its sole discretion, assist Client in the transition of information technology services provided Client has complied with all terms of this Contract, including but not limited to the payment of any and all amounts owed to Contractor under this Contract or any other applicable agreement between the parties. The parties acknowledge that such transition may include the release of confidential and proprietary information of Client to a new information technology provider identified in writing by Client ("New IT Provider"), and Client authorizes the release of such information as may be necessary to transition information technology services. Contractor will not provide training to any New IT Provider or internal employees

retained or employed by Client. Client agrees that Contractor shall have no liability resulting from the disclosure of such information nor will it have any liability for the New IT Provider's use of such information. Client shall indemnify, defend and hold Contractor harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable attorneys' fees and court costs, arising directly or indirectly out of Contractor's release of information according to the terms of this paragraph.

The parties agree that Contractor shall discontinue the provision of ongoing services provided to Client upon its receipt of notice of termination of the Contract. These actions may include, but shall not be limited to, terminating any licenses or rights Client has to utilize products obtained by Contractor. The date such services shall be discontinued shall be referred to as the "Effective Termination Date". Contractor shall provide Client with ten days' notice before the Effective Termination Date. Client acknowledges and agrees that it will be responsible for taking those actions necessary to secure products and/or another provider for any services it wishes to continue beyond the Effective Termination Date and agrees that Contractor will have no liability for any damages resulting from any discontinuation of service or product according to these terms.

Client agrees to pay Contractor for any transition services provided at the Early Termination hourly rate established in paragraph 4 herein.

11. LIMITATION OF LIABILITY

Contractor shall not be liable for any loss or damage incurred by Client and/or its employees, owners, officers, agents or any third party retained by Client which loss or damage, directly or indirectly, results from circumstances beyond its reasonable control including, but not limited to, power outages, faulty electrical services, building modifications, adverse environmental conditions or factors, criminal activities, or acts of God. Client further acknowledges that the services to be provided by Contractor do not include electrical or mechanical services. Contractor shall not be liable for any loss or damage incurred by Client and/or its employees, owners, officers or agents or any third party retained by Client which loss or damage, directly or indirectly, results from Client's failure to take those actions recommended to Client by Contractor related to the maintenance, upkeep and security of Client's network, system, equipment, hardware, software or devices. Contractor shall not be liable for any actions of any other prior, existing or acting employee, contractor or consultant employed or retained by Client to provide information technology services of any kind. In no event shall Contractor be held liable for any indirect, special, incidental or consequential damages arising out of this Contract, including but not limited to, loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs, and Contractor's maximum liability is set out in Section 7(c).

Neither party shall be responsible to the other for any injury, loss, damage, claims, costs or expenses arising out of or resulting from exposure to the other party's employees, owners, officers, agents or any third party retained by the party to any communicable illness, including but not limited to COVID-19.

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emergencies. Written notice of a party's failure or delay in performance due to force majeure must be given to the other party no later than five (5) business days following the force majeure event and the actions taken to minimize the impact thereof. All delivery dates under this Contract affected by force majeure shall be tolled for the duration of such force majeure. The parties agree, when feasible, not to cancel but to reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practical after the force majeure condition ceases to exist.

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- (c) This Contract may be modified only by agreement of both parties, in writing.
- (d) This Contract supersedes all other oral or written agreements between the parties with regard to the Contractor's services, and this Contract contains all the covenants and agreements between the parties with regard to those services; provided however, that all provisions of the January 1st, 2021 Agreement relating to work and services not completed are incorporated and continued under this Contract, and all provisions of the January 1st, 2021 Agreement which survives its termination remain in full force and effect.
- (e) Two (2) identical originals of this Contract have been executed this day, one in the possession of each party, and each shall be considered an original and enforceable as such.
- (f) This Contract shall be governed by the laws of the State of Indiana.
- (g) Any notices to be given to either party under this Contract may be affected by personal delivery in writing, e-mail, or by first class mail, postage prepaid. Notices delivered personally or by e-mail shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing.
- (h) Client is a governmental entity and therefore subject to various laws and regulations prohibiting discrimination in employment and in the provision of its services to the public. Both parties agree to adhere to all applicable laws and regulations concerning nondiscrimination and equal opportunity in their performance of this Contract.
- (i) If any provision of this Contract or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or applications of this Contract which can be given effect without the invalid provisions or application, and to this end the provisions of this Contract are declared to be severable.
- (j) The failure by either party to enforce any provision of this Contract shall not be construed as a waiver of any right to enforce the same breach, any succeeding breach or a breach of any other provision of this Contract.
- (k) If this Contract or any provisions hereof become unenforceable as against the Client by reason of any local, state or federal law, regulation or court decision now or hereafter in force, then the Client shall have no liability in law or equity for the performance, past and future, of such invalid provision.

- (l) Each party is and shall perform this Contract as an independent contractor, and as such shall have and maintain complete control over all of its employees, agents and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.
- (m) This Contract may be executed in separate counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

The parties' signatures below indicate approval to all terms and conditions above and agreement to be bound to such terms.

EDGE INFORMATION TECHNOLOGY
SOLUTIONS, INC.

CLIENT

By: _____
Ryan Edgell, its President

By: _____
Signature

Title

Date

Date

EXHIBIT A

Specification of Services

The following services shall be considered "In-Scope Services" and covered pursuant to the terms of the Agreement unless otherwise noted.

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Review of the inventory, assessment of the system architecture and equipment for efficiency, life expectancy, capacity, speed, and current processes, and recommendations for improving routine support criteria and reducing emergency maintenance situations. The Contractor shall submit services reports or notices on an as-needed basis.

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EXHIBIT B

Covered Equipment

The following equipment shall be considered Covered Equipment pursuant to the terms of the Contract:

Equipment service as requested by client and approved as applicable by contractor.

Engagement Letter - Attorney Justin Froedge

Thursday, January 19, 2023 8:54 AM



Proposal

Montgomery County Board of Commissioners

MCC7500E Consoles

January 13, 2023

The design, technical, and price information furnished with this proposal is proprietary information of Motorola Solutions, Inc. (Motorola). Such information is submitted with the restriction that it is to be used only for the evaluation of the proposal, and is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the proposal, without the express written permission of Motorola Solutions, Inc.

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MOTOROLA SOLUTIONS

Motorola Solutions, Inc.
500 W Monroe Street, Suite 4400
Chicago, IL 60661-3781

Telephone: +1 847.576.5000
Fax: +1 847.538.6020

January 13, 2023

Montgomery County Board of Commissioners
110 W South Blvd
Crawfordsville, IN 47933

Subject: Console Upgrade

Dear Commissioners,

Thank you for giving Motorola Solutions the chance to provide the equipment necessary to upgrade your dispatch center. The proposed solution offers four (4) MCC 7500 dispatch positions along with all the necessary switches and routers to add to your existing solution.

Motorola Solutions' proposal is subject to the terms and conditions of the enclosed Communications System and Services Agreement, including the Maintenance, Support, and SUA Addendum and remains valid for 60-days from the date of this proposal. This proposal may be accepted by returning to Motorola Solutions a signed copy of the aforementioned agreement.

We appreciate your consideration of this proposal and look forward to your response. Please feel free to contact your Motorola Solutions Public Safety Solutions consultant, Karen Kjeldsen, at (847) 370-3076, karen.kjeldsen@motorolasolutions.com, or Janyll Stierwalt, your local Motorola Solutions Account Manager at (317) 501-1192, janyll.stierwalt@motorolasolutions.com, for support in meeting your needs.

Sincerely,

MOTOROLA SOLUTIONS, INC.

Prash Ramani
Area Sales Manager – Indiana & Kentucky
North America Government Markets

IEDC Agreement for CSX Rail Spur to Tempur Sealy

Thursday, January 19, 2023 12:29 PM

Printout

Thursday, January 19, 2023

2:46 PM

**INDIANA ECONOMIC DEVELOPMENT CORPORATION
INDUSTRIAL DEVELOPMENT GRANT FUND (IDGF)
GRANT AGREEMENT**
(REV: 07/2014)

This Agreement (the "Agreement") is between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the "IEDC") and the **MONTGOMERY COUNTY COMMISSIONERS** (the "Grantee"). The parties to this Agreement, in consideration of the mutual covenants, obligations, and stipulations set forth herein, witness and agree as follows:

1. PURPOSE OF AGREEMENT:

Pursuant to Indiana Code § 5-28-25 and in accordance with the terms and conditions contained herein, the purpose of this Agreement is for the IEDC to make a grant to the Grantee from the Industrial Development Grant Fund (the "IDGF") for **\$450,000** (the "Maximum Grant Amount"). The grant funds shall be used exclusively in accordance with the provisions of this Agreement and Indiana Code § 5-28-25, which establishes the IDGF, as well as any rules adopted thereunder, and no other purpose. Eligible expenditures include construction costs, land or other acquisition costs, professional or engineering fees for the preparation of surveys, plans, and specifications for the Infrastructure Project. No grant funds may be used to cover the administrative costs of the Infrastructure Project incurred by the Grantee.

2. TERM OF AGREEMENT:

The term of this Agreement shall commence on **February 18, 2021** and continue until **December 31, 2023**, unless sooner terminated under this Agreement. The Infrastructure Project must be fully completed by the Expiration Date. The Grantee shall have sixty (60) days from the Expiration Date to submit a final claim and all other documentation required by this Agreement. In no event shall payments be made for work done or services performed after the Expiration Date. Any other extensions or amendments shall occur pursuant to Paragraph 8C. The IEDC's obligation for payment shall not survive past the Expiration Date.

3. DESCRIPTION OF THE PROJECT:

The Grantee shall be solely responsible for the proper design and construction of the Infrastructure Project, as described at Exhibit A. The Project will be at the location(s) listed at Exhibit A (collectively, the "Project Location"). The Infrastructure Project at the Project Location is complementary to a competitive project designed to create jobs and enhance economic development. Although not expressly attached to this Agreement, the Grantee agrees to complete the Infrastructure Project in accordance with the Grantee's representations, including but not limited to any plans and specifications contained in its application submitted to the IEDC for the Project. Modification of the Infrastructure Project shall require prior written approval of the IEDC.

4. PAYMENT OF GRANT FUNDS BY THE IEDC:

The payment of this grant by the IEDC to the Grantee shall be made in accordance with the following schedule and conditions:

- A. The IEDC will reimburse the Grantee the Requested IDGF Grant Portion (as referenced in Exhibit A, Section 2) upon completion of the corresponding Milestone, subject to the conditions and limitations set forth in this Agreement and provided that the funds available under this Agreement are expressly limited to the Maximum Grant Amount, notwithstanding any other provision of this Agreement to the contrary. The IEDC may deobligate any grant funds which have not been expended and drawn down as of sixty (60) days after the Expiration Date.

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INCENTIVE I.D.: A229-1-IDGF-1169

- B. Prior to a payment disbursement, this Agreement must be fully executed, and all the evidentiary materials required by this Agreement must be submitted to and approved by the IEDC. Further, any other grant conditions specified in this Agreement must also be fulfilled to the IEDC's satisfaction.
- C. Requests for disbursement of the payment to the Grantee will be made by the IEDC, after approval of the claim and in accordance with State fiscal policies and procedures. The Grantee agrees to comply with requests for information so the IEDC can make payment requests. The Grantee will submit claims detailing expenditures eligible for reimbursement ("IDGF Claim Forms") in accordance with the Infrastructure Project Milestones. If requested by the IEDC, the Grantee shall further list expenditures by line items as specified by the IEDC. In accordance with State fiscal policies and procedures and as required by Indiana Code § 4-13-2-14.8, and notwithstanding any law, rule, or custom to the contrary, payments will be made by electronic funds transfer to the financial institution designated in writing by the Grantee, unless a specific waiver has been obtained from the Auditor of the State. The written authorization for the electronic funds transfer must designate a financial institution and an account number to which all payments are to be credited. For forms and additional information, the Grantee should see the Auditor of State's website (www.in.gov/auditor). No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement, except as permitted by Indiana Code § 4-13-2-20 or by Indiana Code § 5-28-25.
- D. In order to receive payments: (i) the conditions set forth or referenced in this Agreement must have been met by the Grantee; and (ii) the Grantee shall submit IDGF Claim Forms to the IEDC, with each IDGF Claim Form substantially in compliance with Exhibit B, and satisfactory evidence that the scheduled progress has occurred towards completion of the Infrastructure Project, as set forth in the Infrastructure Project Milestones in Exhibit A. Notwithstanding any other provision of this Agreement, the Grantee expressly agrees that the monies provided herein by the IEDC are limited to the Maximum Grant Amount. The IEDC may deobligate any grant funds which have not been expended and drawn down as of sixty (60) days after the Expiration Date. In no event shall the IEDC be required to disburse funds under this Agreement until the IEDC has determined that the performance to date conforms to the descriptions of the Infrastructure Project, notwithstanding any other provision of this Agreement to the contrary. The IEDC will proportionately adjust any grant payment for a completed Milestone if the actual cost of the milestone was lower than the Total Cost of Each Milestone as reflected in Exhibit A, Section 2.
- E. Failure by the Grantee to produce the evidence required by the IEDC under Paragraphs 4 and 6 shall be deemed a material breach of this Agreement. In such instances, in addition to its other remedies, the IEDC may (i) withhold authorization for any payment request of the grant funds until such time as the deficiency is corrected, (ii) require the Grantee to immediately repay the IEDC any funds disbursed under this Agreement, or (iii) terminate this Agreement, pursuant to Paragraph 8A. If the IEDC is entitled to a repayment of the grant funds disbursed to the Grantee, the IEDC may further impose sanctions against the Grantee, including but not limited to the suspension of the Grantee's participation in all other State grant or incentive programs until the IEDC is repaid or all material breaches are cured to the IEDC's satisfaction.
- F. As set forth in Paragraph 9B, the IEDC may retain an amount of up to twenty percent (20%) of the Maximum Grant Amount (the "Final Distribution Amount") until a final Monitoring Review has been completed in accordance with Paragraph 9 of this Agreement. Such Monitoring Review may include the IEDC's review of a report prepared by a duly authorized representative of the IEDC summarizing the Monitoring Review, detailing how funds have been spent on the Infrastructure Project in accordance with the Infrastructure Project Milestones and evaluating the Grantee's timely progress.

- G. If the Grantee receives funds under this Agreement, failure to complete the Infrastructure Project by the Expiration Date shall be considered a material breach of this Agreement.
- H. If the IEDC determines that the Grantee has materially breached this Agreement, the Grantee shall be notified and given a thirty (30) day opportunity to cure. If, after such notice and thirty (30) day period, the IEDC determines that the default continues to exist, the Grantee shall immediately repay the IEDC any funds disbursed under this Agreement.

Until such repayment is made, the IEDC may impose other sanctions against the Grantee, including but not limited to the suspension of the Grantee's participation in all other State grant or incentive programs until the IEDC is repaid or all material breaches are cured to the IEDC's satisfaction.

5. USE OF GRANT FUNDS BY GRANTEE:

Grant funds received by the Grantee pursuant to this Agreement shall be used only to pay for approved Infrastructure Project Milestones as defined in Exhibit A and as permissible under Indiana Code § 5-28-25. The Grantee may use funds from other public sources to finance the Infrastructure Project under this Agreement, as long as the Grantee receives no more than 100% of the costs from all sources. The Grantee represents and warrants that all sources of funding for the Infrastructure Project, whether paid to Grantee or to another entity, shall not exceed 100% of the costs of the Infrastructure Projects. The Grantee agrees that any funds received by the Grantee and/or other entity in excess of 100% of the costs of the Infrastructure Project shall be remitted by the Grantee to the IEDC, up to the Maximum Grant Amount.

6. DUTIES AND RESPONSIBILITIES OF GRANTEE:

- A. Pursuant to the provisions of Indiana Code § 5-28-25 and this Agreement, the Grantee shall submit an IDGF Claim Form to the IEDC after a Milestone has been completed. The IDGF Claim Form must have sufficient detail and supporting documentation to allow for verification. The form and medium of the IDGF Claim Form must be substantially similar to Exhibit B. The Grantee agrees to supply additional information upon request of the IEDC.
- B. Upon request, the Grantee shall submit to the IEDC documentation sufficient, as determined by the IEDC's sole and unreviewable discretion, to demonstrate that the Infrastructure Project is progressing towards completion by the Expiration Date pursuant to the Infrastructure Project Milestones in Exhibit A. Should completion of the Infrastructure Project or a Milestone fall behind schedule, the Grantee shall promptly notify the IEDC and provide a written justification for the delay. The Grantee hereby agrees that providing notification of a delay in the Infrastructure Project's completion shall in no event be considered a formal request for an extension of the Expiration Date or a modification of this Agreement and that the IEDC shall have no obligation to extend the deadlines set forth in this Agreement.

7. INFRASTRUCTURE PROJECT COMMITMENT:

The Grantee must complete the Infrastructure Project in accordance with the Infrastructure Project Milestones. The Grantee represents that its application includes a plan outlining the Infrastructure Project Milestones, including the Total Cost of Each Milestone, and that representations in the application are materially true and accurate to the best knowledge of the Grantee. Should there be a material change to the Milestones, the Grantee must first obtain advance written approval of the IEDC. In no event will the IEDC make a Grant Payment other than in accordance with the Milestones.

8. TERMINATION; FUNDING CANCELLATION; EXTENSION:

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- A. This Agreement may be terminated with or without cause by the IEDC before its Expiration Date by sending the Grantee written notice, as described in Paragraph 18, at least thirty (30) days prior to the date of termination. Upon receipt of this notice from the IEDC to the Grantee, no new or additional liabilities payable from grant funds shall be incurred without the prior written approval of the IEDC. The Grantee shall continue to be responsible and liable for the proper performance of its obligations through the date of termination. In the event of a termination, the IEDC will perform an on-site Monitoring Review of all Infrastructure Project expenditures, as described in Paragraph 9 below, with respect to the Grantee's proper expenditure of all grant funds and matching funds through the date of termination.
- B. In the event that the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled, and the IEDC shall have no further obligation to make payments under this Agreement. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- C. By the Expiration Date, the Grantee may request in writing additional time beyond the sixty (60) days described in Paragraph 2 in which to submit a final claim and all final paperwork. The Grantee's request may be approved and acknowledged by a duly authorized representative of the IEDC. It is solely within the IEDC's discretion whether to grant additional time for submission of claims.

9. MONITORING REVIEW:

- A. The IEDC may periodically carry out a monitoring review of the Infrastructure Project (the "Monitoring Review"), including an evaluation of activities and/or collection of documentation, as deemed appropriate by the IEDC. The Grantee shall effectively ensure the cooperation of its employees in such monitoring and evaluation efforts and shall produce all documentation reasonably requested by the IEDC evidencing the progress made on the Infrastructure Project. The Grantee will take all actions necessary to correct or cure any issues identified by the IEDC during its monitoring and evaluation.
- B. If the IEDC elects to conduct a monitoring review of the Infrastructure Project (the "Monitoring Review"), the IEDC may withhold up to the Final Distribution Amount until such Monitoring Review is completed and the results analyzed. The Monitoring Review may document any or all of the following:
 - (1.) Whether grant and matching funds allocated for the Infrastructure Project were expended for activities consistent with the terms of this Agreement, the Infrastructure Project Milestones, and the Grantee's application;
 - (2.) A complete, detailed analysis of actual grant and matching funds expended to date on the Infrastructure Project, and conformity or nonconformity with the permitted amounts for any line item of the Infrastructure Project Milestones.
 - (3.) Upon the request of the IEDC, the Grantee shall be required to submit the following: (i) copies of agreements between the Grantee and all consultants and/or professional services providers to be paid with grant funds, and (ii) copies of agreements between the Grantee and any entity involved in the Infrastructure Project;
 - (4.) A detailed listing of all Infrastructure Project costs by Milestone line item which are accrued yet unpaid, if any, in a format that may be prescribed by the IEDC;

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- (5.) A written evaluation of the Grantee's timely progress in Infrastructure Project management, financial management and control systems, procurement systems and methods; and
- (6.) A written evaluation as to the Grantee's compliance with its procurement policies, procedures, and regulations, including a requirement that the Grantee submit a certified statement that it has abided by all applicable procurement policies, procedures, and regulations related to the Infrastructure Project.

The parties acknowledge that the Monitoring Review is only for the benefit of the IEDC and that the IEDC may elect, in whole or in part, to disburse funds before the Monitoring Review has been completed.

- C. If grant funds are disbursed and this Agreement is terminated by either party prior to the Expiration Date, the IEDC may elect to conduct an on-site Monitoring Review of the Infrastructure Project and the Project, as described in Paragraph 9B above.
- D. The Grantee's failure to meet the requirements of the Monitoring Review, including but not limited to failure to respond to IEDC requests for information, records and/or on-site access, shall be a material breach of this Agreement.

10. ACCESS TO RECORDS:

The Grantee agrees that the IEDC may elect to engage in monitoring practices independently of, or in conjunction with other appropriate State agencies or departments at all reasonable times during the term of this Agreement and for three (3) years following the date of final payment under this Agreement, or until a State or federal audit has been completed and all audit exceptions cleared, whichever is earlier. Upon reasonable notice, the Grantee shall make available to the IEDC, its agents, or other appropriate State agencies or officials all books or records in its possession or control which pertain to this Agreement and the Project. If any site visit is made on the premises of the Grantee or under this Agreement, the Grantee shall provide and shall require all reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the Grantee.

11. SUBSTANTIAL PERFORMANCE:

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

12. STATUTORY AUTHORITY OF GRANTEE:

As a condition of receiving a grant from the IDGF fund, the Grantee expressly represents and warrants to the IEDC that it is an "eligible entity", that the Infrastructure Project is an "industrial development program", and that the Grantee is statutorily eligible to receive monies from the IEDC for the Infrastructure Project under Indiana Code § 5-28-25. The Grantee expressly agrees to promptly repay all monies received under this Agreement should a legal determination of the Grantee's ineligibility be made.

13. COMPLIANCE WITH LAWS:

- A. The Grantee agrees to comply with all applicable federal, State, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. At the request of either party, the enactment of any relevant State or federal statute or the promulgation of regulations thereunder after execution of this Agreement will be reviewed by the IEDC and the Grantee to determine whether the provisions of this Agreement require formal modification.

- B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana (the "State"), as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under Indiana Code § 4-2-6-12, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4, and under any other applicable laws.
- C. The Grantee certifies, by entering into this Agreement, that neither it nor any of its principals is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory, or judicially required payments to the IEDC or the State. Further, the Grantee agrees that any payments in arrears and currently due to the IEDC or the State may be withheld from payments due to the Grantee until the Grantee is current in its payments and has submitted proof of such payment to the IEDC.
- D. The Grantee warrants that it has no pending, current, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the IEDC of any such actions, should they arise. During the term of such actions, the Grantee agrees that the IEDC may delay, withhold, or deny payment of claims for grant funds otherwise available under this Agreement or any other tax credits or incentives issued pursuant to this Agreement or any other agreement with the State or any of its agencies or departments.
- E. If a legitimate dispute exists as to the Grantee's liability or guilt in any action initiated by the IEDC, the State, or its agencies, and the IEDC decides to delay, withhold, or deny funding or credits to the Grantee, the Grantee may request that funding be continued. The Grantee must submit, in writing, a request for review to the Indiana Department of Administration (the "IDOA") following the procedures for disputes outlined herein. A determination by the IDOA shall be binding on the parties.
- F. The Grantee warrants that the Grantee and its contractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, and regulations. Failure to do so is a material breach of this Agreement and is grounds for delay, withholding, or denial of payment of claims for grant funds under this Agreement.
- G. The Grantee hereby affirms that it is properly registered and in good standing with the Indiana Secretary of State (the "SOS"). The Grantee also has, if required, registered with the Indiana Department of Workforce Development (the "DWD") and has no outstanding workforce issues with the DWD. The Grantee further affirms that if required, it has properly registered with the IDOR and has no outstanding issues with the Indiana Department of Revenue (the "IDOR"). The Grantee also affirms that there are no outstanding enforcement actions against it by agencies of the State. The below named signatory hereby warrants that he/she is authorized to make such affirmations to the IEDC.
- H. The Grantee agrees that the IEDC may confirm, at any time, that no liabilities exist to the IEDC or to the State. If any such liabilities are discovered, the Grantee agrees that the IEDC or the State may bar the Grantee from contracting with the IEDC or the State in the future, cancel existing contracts, withhold payments to offset such obligations, and/or withhold further payments or purchases until the Grantee becomes current in its

payments on its liability to the IEDC or to the State, and has submitted proof of such payment to the IEDC or to the State.

- I. Any payments that the IEDC may delay, withhold, deny, or apply under this Agreement shall not be subject to penalty or interest under Indiana Code § 5-17-5.
- J. The Grantee acknowledges that the IEDC and state contracts are subject to the Access to Public Records Act (Indiana Code § 5-14-3). Unless an APRA exception applies, final offers of public financial resources are disclosable public records.

14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT:

As required by Indiana Code § 5-22-3-7:

- A. The Grantee and any principals of the Grantee certify that:
 - (1.) The Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (a.) Indiana Code § 24-4.7 [Telephone Solicitation of Consumers];
 - (b.) Indiana Code § 24-5-12 [Telephone Solicitations]; or
 - (c.) Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
 - (2.) The Grantee will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.
- B. The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee:
 - (1.) Except for de minimis and nonsystematic violations, has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
 - (2.) Will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

15. DRUG-FREE WORKPLACE CERTIFICATION:

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Grantee will give written notice to the IEDC within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4)

the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the IEDC in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

16. NONDISCRIMINATION:

Pursuant to Indiana Code § 22-9-1-10, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee and its subgrantees shall not discriminate against any employee or applicant for employment related to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, disability, national origin, ancestry, or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal and State laws and regulations prohibiting the aforementioned discrimination in the provision of services.

17. NOTICE TO PARTIES:

- A. Whenever any notice, statement, or other communication ("Notice") is required under this Agreement, it shall be sent to the following address, unless otherwise advised in writing:
 - (1.) Notices to the IEDC shall be sent to:
INDIANA ECONOMIC DEVELOPMENT CORPORATION
Attention: General Counsel
One North Capitol, Suite 700
Indianapolis, IN 46204-2288
 - (2.) Notices to the Grantee shall be sent to the Grant Contract Administrator:.
Tom Klein
County Administrator
110 W. South Blvd.
Crawfordsville, IN 47933
Tom.klein@mongtomerycounty.in.gov
- B. Notice from the IEDC to the Grantee may be provided via electronic mail to the Grantee's electronic mail address specified at Exhibit A, or via certified, registered, or first-class U.S. mail at the option of the IEDC. Notice shall be deemed delivered upon dispatch. Any change in Grantee Contract Administrator or contact information must be provided in writing by the Grantee to the IEDC.

- C. As required by Indiana Code § 4-13-2-14.8 and detailed in Paragraph 4C, payments to the Grantee shall be made via electronic funds transfer in accordance with the instructions filed by the Grantee with the Indiana State Auditor's Office, unless an exception to such requirement is approved by the IEDC and the State. Payments shall be deemed delivered upon transmission pursuant to the written instructions of the Grantee.

18. ASSIGNMENT:

- A. This Agreement binds the Grantee's successors and assignees to all terms and conditions herein. The Grantee shall not assign, subgrant, or subcontract the whole or any part of this Agreement without prior written approval of the IEDC.
- B. The Grantee may not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, seek to avoid the observance or performance of its obligations to the IEDC under this Agreement.

19. INDEMNIFICATION:

The Grantee agrees to indemnify, defend, and hold harmless the IEDC and the State and their respective agents, officers, employees, and representatives from all claims and suits. The Grantee shall bear all costs, including court costs, attorney's fees, and other expenses caused by any act or omission of the Grantee and/or its contractors or invitees, if any. The IEDC shall not provide any indemnification to the Grantee or its employees, contractors, or invitees.

20. DEBARMENT AND SUSPENSION:

The Grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or any agency or political subdivision of the State. The term "principal" for purposes of this Agreement means the primary executive officer or board of the Grantee.

21. PENALTIES; INTEREST; ATTORNEY'S FEES:

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, including Indiana Code § 5-17-15, Indiana Code § 34-54-8, and Indiana Code § 34-13-1. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties hereto stipulate and agree that any liability of the IEDC shall be limited to only the amount of funding originating from the IEDC or the State and shall not be based on funding from federal or other sources. In the event of legal action or proceedings of any kind, including without limitation enforcement of payment terms, the recapture of grant funds, whether brought by either party, the IEDC shall be entitled to reasonable attorney's fees, court costs, and other related reasonable expenses, plus interest pursuant to Indiana Code § 34-51-4-9.

22. MISCELLANEOUS:

- A. The headings in this Agreement are intended solely for convenience or reference and will be given no effect in the construction or interpretation of this Agreement.
- B. This Agreement, including any attached Exhibits, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire Agreement of the parties with respect to the subject matter hereof. This Agreement may not be altered or amended except in writing, signed by an authorized representative of each party hereto.
- C. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) Indiana Code § 5-28-25; (2) regulations pertaining to the IEDC;

(3) this Agreement; (4) Exhibit A, attached hereto. All of the foregoing are fully incorporated herein by reference.

- D. The construction and enforcement of this Agreement will be governed by the laws of the State of Indiana, without regard to principles of choice of law. The venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court of the Southern District of Indiana. The Grantee hereby consents to the personal jurisdiction of said courts.
- E. No waiver of any default, failure to perform, condition, provision, or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision, or breach of this Agreement.
- F. If any paragraph, term, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.
- G. The parties to this Agreement, in the performance thereof, will be acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees, or subagents of any other party.
- H. The Grantee shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
- I. Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement will remain in force during the term stated in Paragraph 2. Notwithstanding anything contained herein to the contrary, provisions of this Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the expiration or termination of this Agreement will survive until their purposes are fulfilled.
- J. The IEDC may terminate this Agreement, and the Grantee shall be obligated to promptly repay any funds received under this Agreement, if any one or more of the following events occur: (i) the Grantee makes an assignment, conveyance or surrender of the Project facilities for the benefit of creditors; (ii) the Grantee applies to any court for the appointment of a trustee or receiver of any substantial part of the assets of the same or commences any proceedings relating to any of the same under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or other liquidation law of any jurisdiction; or (iii) any application is filed or proceedings are commenced as described above against the Grantee and the Grantee indicates its approval, consent or acquiescence, or an order is entered appointing a trustee or receiver or adjudication of any of the same as a bankrupt or an insolvent or approving the petition in any such proceedings and such proceedings are not dismissed within sixty (60) days after the filing or commencement of such proceedings. Should any of the foregoing events occur, the Grantee shall provide written notice to the IEDC immediately. This paragraph shall not be construed to limit the ability of the IEDC or the IDOR to collect, or limit the Grantee's obligation to repay, any grant funds disbursed under this Agreement, plus any applicable interest and penalties, should any one or more of the aforementioned events occur.

- K. This Agreement may be executed through an original or through a facsimile copy, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same Agreement.

23. REPRESENTATIONS CONCERNING APPLICATION:

The Grantee represents and warrants that all representations, statements, and all other matters contained in the application submitted by the Grantee to the IEDC are true and complete in all material respects, unless disclosed or made a part of this Agreement. It shall be considered a material breach of this Agreement if such representations, statements, and other matters were not true and complete at the time the application was made.

24. AUTHORITY TO COMMIT TO AGREEMENT:

Notwithstanding anything in this Agreement to the contrary, the signatory for the Grantee represents that he/she has been duly authorized to execute contracts on behalf of the Grantee and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Grantee when his/her signature is affixed. This Agreement is not subject to further acceptance by the Grantee once accepted by the IEDC.

25. NON-COLLUSION AND ACCEPTANCE:

The undersigned representative of the Grantee attests, subject to the penalties for perjury, (i) that he/she is the contracting party or that he/she is the duly authorized representative, agent, member, or officer of the Grantee; (ii) that he/she has not, nor has any other member, employee, representative, agent, or officer of the Grantee, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay; and (iii) that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

(remainder of page intentionally left blank)

PROJECT I.D.: 422567
INCENTIVE I.D.: A229-1-IDGF-1169

IN WITNESS WHEREOF, the Grantee and the Indiana Economic Development Corporation have, through duly authorized representatives, understood the foregoing terms of this Agreement and do by their respective signatures hereby enter into this Agreement and agree to the terms hereof.

MONTGOMERY COUNTY COMMISSIONERS

Signed Name

Printed name

Title

Date

INDIANA ECONOMIC DEVELOPMENT CORPORATION
David Rosenberg, Chief Administrative Officer
(Digital Signature Stamp Below)

STATE BUDGET AGENCY

Zachary Q. Jackson
Director

Date

PROJECT I.D.: 422567
INCENTIVE I.D.: A229-1-IDGF-1169

**INDIANA ECONOMIC DEVELOPMENT CORPORATION
INDUSTRIAL DEVELOPMENT GRANT FUND (IDGF)
GRANT AGREEMENT**

MONTGOMERY COUNTY COMMISSIONERS

EXHIBIT A

1. PROJECT DESCRIPTION:

- A. The Grantee's Infrastructure Project shall consist of the construction of a rail spur to support the transportation of raw materials to be used in Tempur Sealy's manufacturing facility.
- B. The Project will be located at 3200 Comfort Drive, Crawfordsville, IN (the "Project Location").

2. INFRASTRUCTURE PROJECT MILESTONES:

Milestone	Estimated Date of Completion	Requested IDGF Grant Portion	Matching Funds from Non-IDGF Sources	Total Cost of Each Milestone
<i>Milestone 1 – Completion of extension of rail spur from CSX line to Tempur Sealy facility</i>	<i>September 2022</i>	<i>\$450,000</i>	<i>\$900,000</i>	<i>\$1,350,000</i>
TOTAL:		\$450,000	\$900,000	\$1,350,000

*Must equal award amount for IDGF grant

**Must equal total cost of Infrastructure Project

As a condition of payment of the Requested IDGF Grant Portion, the actual costs must equal or exceed the Total Cost of the corresponding Milestone (regardless whether Grantee and/or other entities are paying the costs); if actual costs are less, then the Requested IDGF Grant Portion payment will be reduced proportionately.

Employee of the Year Announcement

Wednesday, January 18, 2023 1:41 PM

County employees were given an opportunity to nominate a County Employee to be named Employee of the Year. This is the first year for this award.