

## NOTICE TO TAXPAYERS OF ADDITIONAL APPROPRIATIONS

Notice is hereby given to the taxpayers of Town of Westville, La Porte County, Indiana, that the proper legal officers will consider the following additional appropriations in excess of the budget for the current year at their regular meeting place at 100 Setser Drive, Westville, Indiana, 6:30 o'clock p.m., on the 12<sup>th</sup> day of October, 2021.

### AMOUNT

Fund Name: 0176 ARP FUND

Major Budget Classification:

Personal Services

\$ 15,800.00

TOTAL for General Fund:

\$ 15,800.00

The additional appropriations as finally made will be referred to the Department of Local Government Finance (Department).

Dated September 29, 2021

LORI MERCER, CLERK-TREASURER  
(Fiscal Officer)

WESTVILLE TOWN COUNCIL  
OCTOBER 12, 2021  
SPECIAL MEETING  
100 SETSER DRIVE  
6:30 P.M.

AGENDA

ADDITIONAL APPROPRIATION ORD 2021-12

**WESTVILLE TOWN COUNCIL**

OCTOBER 12, 2021  
MINUTES OF MEETING

The special meeting of the Westville Town Council was held at the Town Hall, 100 Setser Drive at 6:30 p.m. Present: Michael Albert, Regina Ruddell, Deborah Kelly, Olga Pothorski, Doug Beige; Town Attorney, Lori Mercer; Clerk-Treasurer.

Absent: James Bechinske

Michael Albert called the special meeting to order at 6:30 p.m. Michael Albert read Ordinance 2021-12 in its entirety. Michael Albert explained that this Ordinance was necessary to allow for the use of the ARP funds for employee premium pay that was voted on at the September meeting. Regina Ruddell, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

Michael Albert made a motion to approve Ordinance 2021-12 on the first reading. Regina Ruddell, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

Michael Albert made a motion to suspend the rules and adopt Ordinance 2021-12. Regina Ruddell, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

Michael Albert made a motion to adjourn at 6:34 pm. Regina Ruddell, second. Motion carried.

*MA*

*LR*

I, Lori Mercer, attest that these minutes are true and accurate.

Lori Mercer

*LR*

2021-12

ADDITIONAL APPROPRIATION ORDINANCE

Whereas, it has been determined that it is now necessary to appropriate more money than was originally appropriated in the 2021 annual budget; now, therefore:

Sec. 1. Be it ordained by the Town Council of the Town of Westville, La Porte County, Indiana, for the expenses of the taxing unit the following additional sums of money are hereby appropriated out of the funds named and for the purposes specified, subject to laws governing the same:

	AMOUNT REQUESTED	AMOUNT APPROVED BY FISCAL BODY
Fund Name: 0176 ARP Fund		
Major Budget Classification:		
Personal Services	\$ 15,800.00	\$ 15,800.00
Total General Fund	<u>\$ 15,800.00</u>	<u>\$ 15,800.00</u>

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Adopted this 12<sup>th</sup> day of October, 2021.

NAY

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\_\_\_\_\_

AYE

Michael Belmont

Regina Russett

Ugell Potkowski

Deborah Kelly

ATTEST:

Laura Mercer

Secretary of Governing Body

WESTVILLE TOWN COUNCIL  
OCT 12, 2021  
REGULAR MEETING  
100 SETSER DRIVE  
7:00 P.M.

AGENDA

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

APPROVAL OF CLAIMS

UTILITIES

MCO REPORT

MCO CONTRACT

STREETS

DEPARTMENT HEAD REPORT

PARKS

POLICE

DEPARTMENT HEAD REPORT

FINANCE

MISCELLANEOUS

CITIZENS COMMENTS

ANY OTHER MATTERS WHICH PROPERLY COME BEFORE THE COUNCIL

ADJOURNMENT

# **WESTVILLE TOWN COUNCIL**

OCTOBER 12, 2021  
MINUTES OF MEETING

The regular meeting of the Westville Town Council was held at the Westville Town Complex Community Room, 100 Setser Drive at 7:00 p.m. Present: Michael Albert, Deborah Kelly, Regina Ruddell, Olga Pothorski, Lori Mercer; Clerk-Treasurer, Town Attorney, Doug Biege.

Absent: James Bechinske

Regina Ruddell reported that the Republican Party Chairman has appointed Deborah Kelly to fill the vacancy on the Town Council, which replaces Tom Fath. Deborah has been sworn in by the LaPorte County Clerk.

Regina Ruddell made a motion to appoint Deborah as the Finance Liaison and move Michael Albert from Finance to the Utility Department Liaison. Olga Pothorski, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

A motion was made by Regina Ruddell to approve minutes of the September, 2021 meeting. Olga Pothorski, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

A motion was made by Regina Ruddell to approve claims for the months of September, 2021. Michael Albert, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

## **UTILITIES**

Nathan Howell gave a brief summary of the MCO report for the month of September. It is attached.

Michael Albert briefly explained the revised MCO contract. Due to the Wastewater expansion project, it was anticipated that MCO's compensation be increased. This revised contract addresses this increase. The new amount will be \$9,583.33. Michael Albert made a motion to accept the MCO contract which will be from Oct. 1, 2021 to Dec. 31, 2021. Olga Pothorski, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

## **STREETS**

There was nothing to report in Streets.

## **PARKS**

There was nothing to report in Parks.

## **POLICE DEPARTMENT**

Marshal Hynek reported monthly stats.

*Handwritten initials:* The, M, OO

## **FINANCE**

There was nothing to report in Finance.

## **MISCELLANEOUS**

### **CITIZENS COMMENTS**

Nicole Zeman from the WVFD Ladies Auxiliary was in attendance to ask the council for permission to hold their annual tree lighting at Prairie Meadow Park. They will begin setting up on Nov. 21 and lighting the tree on Nov. 28. and taking the lights down on Dec. 28. The council approved.

The Auxiliary also asked if they could plant another tree, that wasn't as big as the one that is already at the park, to hang the lights on, as this would be a more cost-effective approach. Council suggested that they contact Mark Hale ahead of time to find a good spot for the tree and to make sure there are no water or electrical lines in the way.

Lori Mercer stated that the Clerk's Office received several calls as to why the WVFD didn't hold the pork chop dinner during the Pumpkin Fest. Nicole Zeman stated that they had less man-power this year and they are considering moving it to the Spring time to keep it separate from the Pumpkin Fest. David Funkhouser, also from the WVFD, stated that the last time they did the pork chop dinner, they made \$200.00 and it wasn't worth it. He stated that they were discussing just having pork chops instead of dinners the next time they have it.

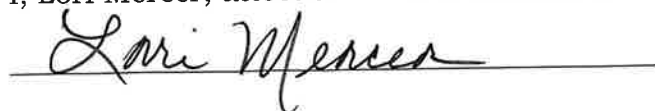
Lori Mercer asked Dave Funkhouser if they could start bringing the monthly stats to the meetings so they can be reflected in the minutes. Dave stated that he would get with Jason Zeman regarding this.

Michael Albert made a motion to appoint Deborah Kelly as the Liaison to the Volunteer Fire Department. Regina Ruddell, second. Roll Call: Ruddell, yes; Pothorski, yes; Kelly, yes; Albert, yes.

### **ANY OTHER MATTERS THAT COME BEFORE THE COUNCIL**

A motion to adjourn was made by Michael Albert at 7:15 PM. Olga Pothorski, second Motion carried.

I, Lori Mercer, attest that these minutes are true and accurate.

  
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**Town of Westville**  
**September 2021 Monthly Report of Operations**  
**Prepared By: Nathan Howell**  
**October 12, 2021**

**Water**

1. GIS –Adam has the notebook operational and has completed the verification of Water Tower Place.
2. We received a call regarding a leak on Valparaiso Street. Adam had Accu-Dig on site and Adam repaired the leak. It appears it was due to installation.
3. Adam was called to Greenway regarding poor water pressure. The owner dug up the service. While it was excavated Adam replaced the water valve.
4. We are trying to determine how to proceed with the tower demolition and the antenna on the tower.
5. Adam filled in and restored the boring site for the animal hospital.

**Wastewater**

1. The Nash Finch Lift Station still needs a flow meter installed. We have had Bowen on site to look at it and determine a price to do the work. We will also have them install a concrete slab to install a generator. We think we may have a solution for the flow meter installation. We believe we can install it on the force main entering the manhole. If we can do this, we will save thousands of dollars.
2. The Westville Estates pump station is deteriorating rapidly. We have spoken with McMahon and Superior Pumping to renovate the station. We are considering installing the used system from the old WWTP.
3. We continue to spend much time on the DOC renovation project. We will need to adjust our treatment strategies due to the construction phase. This will add to the time involved at the plant.
4. We were told by G.E. Marshal that they will not be able to repair the broken casting on the manhole on US 421 north of McDonald's. Another cover is now loose which will need to be corrected. We have discussed this with Bowen.



## Town of Westville - Operational Summary for the Wastewater Treatment Plant

### Influent

2021	Total Gallons	Flow			BOD		TSS		Ammonia		Phosphorus	
		Max. Daily	Min. Daily	Monthly Avg.	mg/l	#'s	mg/l	#'s	mg/l	#'s	mg/l	#'s
January	5,781,500	227,000	165,000	186,500	143	230	282	447	29.6	46.1	5.6	8.7
February	5,650,400	248,800	177,600	201,800	145	249	296	506	24.9	42	5.1	8.6
March	5,992,300	255,700	160,000	193,300	159	262	327	524	24.8	39.9	5.7	9.2
April	5,708,400	259,100	163,100	190,280	171	285	313	519	28.1	44.6	5.4	8.6
May	6,342,600	362,000	163,700	204,600	152	260	301	512	27.9	47.7	5.1	8.7
June	5,790,000	301,600	160,600	192,800	217	329	829	1255	31.5	50.7	7	11.3
July	5,821,800	260,000	130,700	187,800	160	256	256	271	30.8	48.3	5.3	8.3
August	6,283,700	311,800	169,300	202,700	136	239	282	511	26.9	45.3	5.5	9.3
September	5,490,000	246,900	156,100	193,200	2.6	279	321	522	31.5	50.7	5.7	9.2
October												
November												
December												

### Effluent

2021	Total Gallons	Flow			BOD		TSS		Phosphorus		Ammonia	
		Max. Daily	Min. Daily	Monthly Avg.	Monthly Avg.	% Removed	Monthly Avg.	% Removed	mg/l	% Removed	mg/l	% Removed
January	5,560,000	221,000	158,000	174,900	2.5	98.2	3.8	98.1	.2	97.2	.16	99.5
February	5,406,400	230,500	170,000	193,100	3	97.8	6.5	97.8	.2	96.1	.34	98.6
March	5,753,700	249,800	157,900	185,600	3.1	98	7.5	97.7	.3	94.6	.08	99.7
April	5,485,500	251,900	154,900	182,850	2.3	98.7	5.3	98.3	.6	88.6	.05	99.8
May	6,088,400	196,400	154,200	196,400	2.5	98.3	5.3	98.2	.6	88.7	.04	99.8
June	5,629,800	298,400	150,600	187,700	2.9	98.7	5.9	99.3	.5	92.4	.07	99.8
July	5,461,900	249,500	157,100	182,100	2.1	98.7	3.9	98.6	.4	91.8	.03	99.9
August	5,891,000	310,500	157,100	192,900	2.2	98.4	3.9	98.6	.4	93.1	.05	99.8
September	5,490,900	246,900	156,100	183,000	2.6	98.5	4.4	98.5	.4	93.2	.09	99.7
October												
November												
December												

## Town of Westville – Operational Summary for the Water Treatment Plant

Month Ending	Total Monthly Flow	Maximum Daily Flow	Minimum Daily Flow	Average Daily Flow	Chlorine Usage (lbs.)	Fluoride Usage (lbs.)
01/31/21	3,642,000	159,500	0	117,300	56.3	41
02/28/21	4,212,900	397,600	53,500	150,500	62	46
03/31/21	5,196,600	255,700	110,700	167,000	75.9	59
04/30/21	5,080,800	263,300	79,100	168,100	75.4	44
05/31/21	5,299,200	261,000	83,400	172,500	83.9	39
06/30/21	4,582,600	250,00	77,800	151,200	67.8	54
07/31/21	4,541,900	244,700	65,000	145,300	63.8	53
08/31/21	4,912,160	219,500	73,700	158,200	75.8	59
09/30/21	4,539,200	250,200	71,300	151,500	78.8	54
10/31/21						
11/30/21						
12/31/21						



September 28, 2021

Town of Westville  
100 Setser Drive  
Westville, IN 46391

Dear Board Members:

Attached is the contract for a 2021 Three-Month Operations and Maintenance of the Water & Wastewater Treatment Facilities.

We have provided this 3-month operations contract in order to evaluate the fees by the end of the year to determine if any contract changes are necessary.

We look forward to continuing to work with you on this project. If you have any questions, please feel free to contact our office.

Sincerely,  
Midwest Contract Operations, Inc.

A handwritten signature in blue ink, appearing to read "Nathan W. Howell".

Nathan W. Howell  
Regional Manager

**CONTRACT**

**Between**

**Town of Westville  
LaPorte County, Indiana**

**&**

**MIDWEST CONTRACT OPERATIONS, INC.  
Valparaiso, Indiana**

**Operations and Maintenance of the  
Water & Wastewater Treatment Facilities**

**for the**

**Town of Westville, Indiana**

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**CONTRACT**

Between the

**Town of Westville**  
LaPorte County, Indiana

&

**Midwest Contract Operations, Inc.**  
Valparaiso, Indiana

To Operation & Maintenance of the  
Water and Wastewater Treatment Facilities  
for the  
Town of Westville, Indiana

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**CONTRACT**, made this 1st day of October, 2021 by and between the Town of Westville, LaPorte County, Indiana, with principal offices located at 100 Setser Drive, Westville, Indiana, 46391, (hereafter referred to as "Owner"); and **MIDWEST CONTRACT OPERATIONS, INC.**, a Wisconsin general business corporation, formed and operating under Chapter 180, Wisconsin Statute, and registered in Indiana as a For-Profit Foreign Corporation, with its Indiana office located at 952 S. State Road 2, Valparaiso, Indiana 46385 (hereafter referred to as "MCO").

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**PREAMBLE**

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The **Owner** is the operator of a municipal wastewater treatment plant and collection system with six (6) lift station and appurtenances (hereafter "wastewater system"); and the operator of a water treatment facility consisting of two (2) wells, two (2) water towers, water mains and laterals, and all appurtenances thereto (hereafter "water system").

The **Owner** and MCO desire to enter into a three (3) month contract for MCO to act as the **Owner's** operator of the water and wastewater systems. Due to the proposed addition of the Westville Correctional Center to the Town's utility, MCO will continue to evaluate its fees and Scope of Services as the project proceeds.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the **Owner** and MCO as follows:

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## I. TERM & TERMINATION

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### A. EFFECTIVE DATE

This contract shall be effective as of October 1, 2021.

### B. DURATION OF CONTRACT & CONTRACT RENEWAL

This contract shall be effective through December 31, 2021.

### C. TERMINATION OF CONTRACT

1. Either party may terminate this Contract upon thirty (30) days' prior written notice, with or without cause.
2. The **Owner** may terminate this Contract effective forty-eight (48) hours after the **Owner** gives written or actual notice to MCO or MCO's management representative, on site, if the **Owner**, the wastewater system, or other public or private property or person suffers significant damage (defined as in excess of Fifty Thousand & no/100 Dollars (\$50,000.00) as the sole result of MCO's negligent, intentional or other breach of due performance of this Contract or tortuous conduct in carrying out this Contract.
3. In the event of termination under Subsection 1, MCO shall be obligated to continue to faithfully perform the Contract until the date the termination is effective.

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## II. SCOPE OF SERVICES

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In general, Midwest Contract Operations, Inc. (MCO) shall operate and maintain the **Owner's** water and wastewater systems; manage MCO's employees in performing operations; seek to achieve compliance with environmental and other regulatory laws applicable to the systems; and report to the **Owner** regularly on the status of such activities. MCO is not responsible for providing lift station or collection system maintenance.

The policy making and governmental functions relating to the wastewater system shall remain fully vested with and under the exclusive control of the **Owner**. **Owner's** functions shall include, but not be

limited to, making decisions regarding significant capital requirements for the systems (i.e., improvements, repairs, etc.); changes of treatment processes; enacting or recommending necessary and appropriate ordinances; approving all major contracting for services or goods; responsibility for regulations regarding environmental regulatory compliance through agencies such as the Indiana Department of Environmental Management (hereinafter referred to as "IDEM") or any other agency that may govern the functions of the water and wastewater systems (hereinafter referred to as "Agency"), funding and the like; and any other significant policy or financial decisions regarding the systems. In the event of any questions regarding possible implications or consequences of an operational decision falling under the **Owner's** policy making or governmental functions, MCO shall consult with the **Owner** with regard to actions that may be necessary under this paragraph. However, in all events, the matter shall be deemed within the oversight and policy and financial function of the **Owner** and the **Owner's** decision in the matter shall in all events be controlling.

Without limiting the generality of the foregoing, the following is a list of specific contractual services to be performed by MCO under this Contract:

1. Provide management, supervision and certified personnel necessary to oversee the operations and routine preventative maintenance of the **Owner's** water and wastewater system. MCO is not responsible for providing any form of lift station or collection system maintenance. Routine preventative maintenance is defined as any scheduled and expected maintenance that is necessary and appropriate to keep the water or wastewater system functioning up to consistent, acceptable standards over the useful life of such equipment, and consists of preventive maintenance scheduling and tracking, and spare parts inventory and control, as directed by the manufacturer. **Owner** is responsible for lift station and collection system maintenance. If additional equipment is added by the owner, the contract may be renegotiated by MCO to cover the additional costs MCO will incur to perform the additional items. The **Owner** is responsible for costs associated with preventative maintenance supplies, which includes, but is not limited to spare parts, oils, greases, and other lubricants. It is understood that **the Owner** is in the process of a proposed wastewater plant expansion. The planning, construction oversight, and other services associated with this project are not included in this Contract.
2. Prepare necessary management reports as required by **the Owner**. "Management reports" shall include periodic reports of all facility operations, and any and all necessary written and oral explanation thereto.
3. Assist in the preparation of budgets for **the Owner** as follows:
  - Assist in preparation of annual operation and maintenance budgets, submit and review with **the Owner**.
  - Assist in preparation of and submit annual capital improvement and equipment budgets for review with **the Owner**.
4. Prepare such other routine, periodic reports, which may be required from time to time by the IDEM and EPA (excluding any significant studies such as facilities planning, toxicity reduction evaluation, or the like).
5. Development of tests or operation procedures as required by present and/or future IDEM and

EPA rules and regulations or any permits, administration orders of the like which might be issued by the IDEM and EPA or as may be ordered by any court having jurisdiction over **the Owner**.

6. Review and advise **the Owner** of newly enacted IDEM and EPA programs as to how they would apply to **the Owner**.
7. Formulate, implement, manage and supervise all necessary water and wastewater systems personnel training and cross-training programs, including all safety programs for **MCO** employees. **The Owner** shall be responsible for needed equipment associated with the safety program and is responsible for the Town Employee's Safety Program.
8. Provide a certified operator to oversee and provide operational training to the Town employees.
9. Supervise and administer outside services contracted for the water and wastewater systems. **MCO** shall periodically advise **the Owner** of the course of performance of such contracts, and shall suggest improvements or future changes that would be beneficial to **the Owner**. **MCO** shall also advise **the Owner** of any known failure to fully perform such contracts. All new Contracts or amendments to current contracts shall only be effective if agreed in writing signed by **the Owner**.

Any outside contract services shall be first approved by **the Owner**.

10. The foregoing list is intended to be thorough in nature, yet the parties acknowledge there may be other aspects of operation of the water and wastewater systems that have not been anticipated herein, or may not be identified in the foregoing list yet are a part of, and consistent with, the operation of the system as conducted by **the Owner** prior to this Contract. The parties will consider the past course of performance of the original contract between them in determining whether specific services are within the meaning of the preceding sentence. The parties agree that services of this kind will be performed by **MCO** without additional fee beyond the base compensation described in the Section below. Only in the event of special circumstances involving new regulatory requirements or new services not presently being conducted will there be a need to adjust **MCO's** compensation.
11. A more detailed scope of services can be found in Exhibit 1.

The parties agree that the services to be provided by MCO and its officers, directors, employees and agents under this Contract shall not include any services relating to the investigation, detection, abatement, replacement, discharge, or removal of any toxic or hazardous contaminants or materials. As such, the **Owner** acknowledges and agrees that MCO does not have and has no obligation to have professional liability (errors and omissions) or other insurance for claims arising out of the performance of or the failure to perform professional services relating to the investigation, detection, abatement, replacement, discharge, or removal of products or materials containing asbestos or any other toxic or hazardous contaminants or materials. Should MCO be subject to any lawsuit, claim or other proceeding relating to the investigation, detection, abatement, replacement, discharge, or removal of products or materials containing asbestos or any other toxic or hazardous contaminants or materials, the Owner agrees to indemnify and hold MCO harmless from any damages, costs, or expenses, including reasonable attorneys' fees, that MCO may incur or become liable to pay as a result of the same.



MCO warrants that in providing the above scope of services it will comply with applicable requirements of the State of Indiana and the Federal Government regarding affirmative action provisions for minority hiring.

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### III. OWNER FUNCTIONS

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The **Owner** shall exercise the following functions relative to the water and wastewater systems:

1. Snow removal and grounds and building maintenance including lawn mowing.
2. All policy decisions regarding level or kind of treatment, water pollution control or other regulatory standards shall be reserved to the **Owner**.
3. All questions of capital improvements or treatment or control strategies as they may affect the relative requirement for labor or capital.
4. All contracting and subcontracting by the **Owner** or by MCO on behalf of the **Owner** must be approved by the **Owner**. Such approvals may be general or blanket in nature for purchases of supplies and the like, or services below a specified monetary amount.

Unless otherwise agreed in writing, outside services contracted for, from time to time, by the **Owner**, shall be supervised and controlled by the **Owner** and **MCO's** role shall be limited to providing periodic suggestions concerning future improvements in the nature or scope of the contracted services that might be beneficial to the **Owner**. If MCO acquires actual knowledge of a deficiency, error, or omission by the outside contractor in the performance of the contracted services, MCO agrees to bring such matters to the attention of the **Owner**, but shall not have any further management or supervisory functions with regard to the outside contractor, unless otherwise specifically agreed in writing by MCO.

5. All policy questions regarding customer relations, including but not limited to billing or service disputes and pretreatment requirements.
6. All enactment of ordinances, rules, regulations or the like relating to the wastewater and water systems and any enforcement thereof.
7. All applications, operations, requests for action, hearing, modifications or the like that may be filed with the IDEM, DNR, EPA or any other regulatory body.
8. All aspects of generating, computing, obtaining authority for, billing and collecting charges for the wastewater system, and handling any disputes arising thereof.
9. Any intergovernmental services or agreements.

10. The determination of the budget for the wastewater system, except that the budget must include and provide for the payment of compensation to MCO as herein provided.
11. The **Owner** may direct MCO to adjust specific strategies for water pollution control in response to regulatory concerns, or administrative or court order. In such events, MCO agrees to promptly follow such instructions, notwithstanding that MCO may in good faith question whether its actions in following such instructions fall within the scope of this Contract. Such disputes, if any, shall be resolved pursuant to Section V, paragraph D, below entitled "Dispute Resolution", but such matters will not be cause for MCO to delay carrying out the **Owner's** instructions. This provision acknowledges that by entering into this Contract, the **Owner** retains its obligations under its NPDES permit and other regulatory programs. MCO hereby agrees to respond to the environmental regulatory concerns of the **Owner** in a timely and responsive manner, and that disputes regarding compensation and scope of services be left for subsequent resolution under this agreement.
12. The **Owner** shall supervise and control MCO's performance of this Contract by reviewing MCO's reports and activities and monitoring performance with such frequency and methods as the **Owner** may in its discretion determine.
13. Utility locating services for the Indiana Underground Plant Protection Program (IUPPP). In the event MCO may be required to conduct this type of service, the **Owner** will not hold MCO responsible for "mismarks" of the utilities.
14. The **Owner** shall provide after hour call out and weekend coverage. Any callouts will be billed on a time and expense basis at 1 ½ times normal rates.
15. The **Owner** shall perform all lift station collection system maintenance.
16. A more detailed scope of services can be found in Exhibit 1.

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#### IV. COMPENSATION

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A. **MCO - Compensation & Related Procedure**

In consideration of the MCO scope of services described, and in consideration of all other terms and conditions of this Contract, the **Owner** shall compensate MCO as follows:

1. At all times hereunder, MCO shall be financially responsible for all direct labor costs, indirect labor costs and operational costs for MCO employees and MCO business.

2. Each month of this contract, MCO shall bill the **Owner** a monthly fee of \$9,583.33 (\$115,000.00 annually). The **Owner** shall pay monthly payments by the first of each month for which services will be rendered.

**B. Owner - Payment of Owners Employees**

The **Owner** shall continue to be solely responsible and liable for the payment of all labor costs, direct and indirect, under and within its "operating budget" or as may be approved by **Owner** in excess of its operating budget as to all **Owner** employees (other than MCO employees). Employees and other service providers of **Owner** shall not be deemed to be employees of MCO for any purpose. The parties agree that MCO is not and shall not be considered to be a joint employer of **Owner's** employees, agents and/or workers for any purpose, including, but not limited to, any liability for direct or indirect labor costs, employee benefits, Worker's Compensation coverage or unemployment insurance for such employees and service providers of **Owner**.

**C. Renegotiation of Contract**

If the MCO scope of services is required to change, such change resulting from mutual agreement of the parties, or because necessitated by acts, deeds or circumstances beyond the control of MCO, such as, and without limitation, including the following:

1. Acts of God, floods, unforeseen emergencies, or other events of force majeure making MCO's performance as contemplated herein impractical; or
2. Agreement of both parties to expand the scope of services to be provided, or
3. Changes in flows or characteristics of influent or effluent, a significant change in the number of users of the **Owner's** wastewater system or water system (defined as in excess of 10% change from the level at the effective date of this Contract), or changes in DNR, EPA or IDEM programs or directives, or other applicable rules and regulations, if such changes in flow, characteristics, number of users or regulations are unforeseen and substantially change the nature of operational responsibility in order to continue to operate the water or wastewater system in a cost effective and environmentally sound matter;

then, MCO and the **Owner** shall either:

1. Immediately renegotiate the scope of services as defined, and renegotiate MCO compensation relating to such change in circumstances; or
2. The **Owner** and/or MCO may declare this Contract terminated in its entirety upon thirty (30) days' written notice following the event precipitating the change in contractual obligations of the **Owner** and MCO, in accordance with Section 1, paragraph C.

Nothing herein shall prevent the **Owner** and MCO from mutually agreeing in writing to amend the scope of services and compensation, or any other terms herein, for any reasons they deem appropriate.

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## V. GENERAL PROVISION

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### A. Insurance and Risk Provisions

#### INDEMNIFICATION

Except as otherwise provided in this Section V, paragraph A, MCO agrees to and shall hold **Owner**, its elected and appointed officers, and employees harmless from any liability for claims or damages for personal injury or property damage to the extent caused by the negligence of MCO. **Owner** agrees to and shall hold MCO, its officers, and employees harmless from any liability for claims of damages for personal injury or property damage to the extent caused by the negligence of **Owner**.

**Owner** acknowledges that, in seeking the services of MCO under this Agreement, **Owner** is requesting MCO to undertake uninsurable environmental and other operational obligations for **Owner's** benefit. Therefore, **Owner** agrees that, with the exception of such liability as may arise out of the willful misconduct or intentional omissions of MCO, or its officers or employees, in performing services under this Agreement, **Owner** shall indemnify, defend and hold harmless MCO, its officers, and employees from and against any and all claims, losses, damages, liabilities and cost, including but not limited to costs of defense, arising under local, state, or federal laws, including but not limited to the Solid Waste Disposal Act, Clean Water Act, Comprehensive Environmental Response, Compensation and Liability Act, or Resource Conservation and Recovery Act, or directly or indirectly connected with the presence, discharge, release, disposal, or escape of hazardous substances of wastes, pollutants, or contaminants of any kind whether at **Owner's** facilities or at any other location.

**Owner** agrees to indemnify and shall hold MCO, its officers, directors, employees, and agents harmless from any claims, liability, or actions against MCO which are based upon or arise out of (i) MCO's status as agent for **Owner**; (ii) decisions made or actions undertaken by **Owner** as part of its governmental and policy making functions, (iii) water distribution system and sewer collection system failure attributable to the condition of the **Owner's** water distribution or sewer collection system; and (iv) utility location functions performed by MCO at **Owner's** request using **Owner**-supplied tools and/or data, unless the claim or actions arise from the willful misconduct of MCO, or its officers or employees.

MCO's liability to **Owner** for any loss, damage, claim, or expense of any kind or nature caused directly or indirectly by the performance or non-performance of obligations pursuant to this Agreement shall be limited to direct damages in an amount not to exceed or within the limits of the insurance coverage provided hereunder, provided however that insurance coverage exists for such damages. Where there is no insurance coverage to cover such direct damages, then damages shall be limited to amounts paid by **Owner** to MCO in the three (3) months preceding the date of the loss. In no event shall MCO be liable for any loss of revenue or profits, or for any indirect, special, incidental, consequential, or punitive damages, whether arising in contract, tort

or otherwise, even if the parties knew or should have known of the possibility of such damages.

All obligations of **Owner** under this Agreement remain subject to the governmental immunities, defenses, and other statutory limitations set forth in Chapter 65 Illinois. Stats., which shall be applied to both contractual and tort liability of **Owner** with respect to this Agreement, and nothing herein constitutes a waiver by **Owner** of the terms of that statute despite any provision herein to the contrary. These immunities shall extend to MCO while acting within the scope of this agreement.

MCO INSURANCE

MCO currently maintains and shall continue to maintain the following insurance coverage/limits during the term of this Contract, unless otherwise approved by the **Owner**:

	<u>Occurrence/Aggregate</u>
Excess Liability	6,000,000/6,000,000
Comprehensive General Liability	1,000,000/2,000,000
Automobile Liability	1,000,000/1,000,000
Worker's Compensation/Employers Liability	Statutory (For MCO employees only)

Within thirty (30) calendar days of the contract date, MCO shall furnish Owner with satisfactory proof of such insurance, and each policy will require a 30-day notice of cancellation to be given to Owner while this Agreement is in effect.

OWNER INSURANCE

**Owner** shall continue to carry and provide and pay for all fire, general casualty, automobile and motorized vehicle liability, public liability, and excess liability insurance insuring the **Owners'** facilities and **Owners'** employees and **Owners'** motor vehicles and **Owner's** equipment that MCO will be managing and or utilizing in the completion of the agreed scope as identified in this contract, or subsequent changes in that scope that would be agreed to by **Owner** and MCO as an amendment to the original contract. MCO shall be named as an additional insured under these policies during the term of the contract.

**B. Warranties & Representations of MCO**

1. MCO hereby represents to and for the benefit of the **Owner** that it has the ability to manage the **Owner's** water and wastewater systems, as provided in the scope of services set forth in Sections II thru IV, above. This representation is subject to Section V, Subsection E, and as such, MCO's representation in the first sentence hereof is limited to the conditions existing at the time this Contract was entered into and such reasonably foreseeable conditions not calling for amendment under Section V, Subsection E.
3. MCO represents and warrants that it will discharge all of its duties, functions and obligation under this contract consistent with the applicable professional standard of care and that it has the knowledge of the **Owner's** water and wastewater systems, the

**Owner** Indiana Pollution Discharge Elimination System permit requirements and the requisite expertise and staff to manage the **Owner** wastewater system in compliance with applicable environmental laws, rules, regulations and permit terms as otherwise expressly disclaimed in Subsection 3 below.

This representation is subject to any material changes of conditions that meet the terms of Section IV, above. In the event any amendment occurs, the representations and warranties of this Subsection 2, shall be deemed extended to such new MCO duties, functions and obligations, absent an express exclusion of such matters from MCO's competence by mutual agreement. Absent such exclusion, it shall be agreed that MCO has the requisite knowledge described in the first paragraph of this Subsection 2, to operate the system as called for by this Contract.

3. MCO expressly disclaims any warranties or representations, direct or indirect, and makes no guarantee that in performing management, of the **Owner** water and wastewater systems the treatment of the **Owner** effluent will be of specific quality required to comply with "discharge limits" under laws, rules, regulations and directives of the IEPA, Public Service Commission, or any other governmental or administrative body having jurisdiction from time to time over wastewater treatment system and their operations, now or hereinafter enacted, nor does MCO guarantee that the quality of **Owner's** water system water, as distributed, or the quality thereof will be of a quality or quantity required to comply with any laws, rules, regulations or orders of the IEPA, Public Service Commission, or any other governmental or administrative body having jurisdiction from time to time over water system plants and their operations, now or hereinafter enacted.
4. So long as MCO does not materially breach these provisions of this Contract describing MCO's duties hereunder, any fines levied or the costs of any other enforcement action taken against the **Owner**, including any damages and costs attributed directly or indirectly thereto, shall be the financial responsibility of the **Owner**.

C. **Confidentiality: Public Records**

In performance of the contract, MCO and its employees may come into contact with material that relates to the legal status of the **Owner** or its wastewater system, including but not limited to issues of compliance with permits or environmental laws. MCO agrees that it will keep such information confidential and not share such information with anyone other than the **Owner** and the **Owner's** Engineer, including, but not limited to, other parties contracting with MCO without **Owner's** consent. MCO further agrees to adhere to all instruction of the **Owner**, the **Owner's** Engineer and its legal counsel regarding the handling of documents or other information that may be affected by the **Owner** status as a public governmental body.

D. **Non-Solicitation and Non-Interference**

For the protection of MCO's business, **Owner** agrees to each of the following separate, independent and severable provisions:

1. During the term of this Agreement and for a period of (2) years after this Agreement is terminated by either party for whatever reason, **Owner** shall not, and shall not allow any of its employees, agents, or elected or appointed officials to, directly or indirectly, solicit, induce, or encourage any employee or agent of MCO to leave his/her employment or work with MCO to accept employment or work with Owner or with any other person, entity or municipality.
2. During the term of this Agreement and for a period of (2) years after this Agreement is terminated by either party for whatever reason, **Owner** shall not, hire or engage, whether directly or indirectly, any current or recent past employee or agent of MCO to perform services of the type and nature that MCO provides or offers to provide in the area of water and wastewater utilities management services. For purposes of this restriction a recent past employee or agent is one who has provided services in the past six (6) months as an employee or agent of MCO.

During the term of this Agreement and for a period of (2) years after this Agreement is terminated by either party for whatever reason, **Owner** shall not, directly or indirectly, individually, jointly, or on behalf of another, divert or seek to divert business, customers or employees away from MCO and/or shall not encourage, request, or advise any person or entity to withdraw, curtail, terminate, or cancel any business, prospective business, or business relationship with MCO.

**E. Dispute Resolution**

In an effort to resolve any conflicts that arise during the term of this contract, the **Owner** and MCO agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

If the dispute cannot be settled through direct discussion, or mediation, the parties may exercise such rights or remedies as either may have under the contract documents in respect of any dispute.

**F. Miscellaneous**

1. **Contract Confidential, Proprietary** – To the extent permitted by law, **Owner** agrees that the Project Approach, Scope Of Services and Compensation sections contained in this Agreement, pertaining to this project or any addendum thereto, are considered confidential and proprietary, and shall not be released or otherwise made available to any third party, prior to the execution of this Agreement, without the expressed written consent of MCO.
2. **Force Majeure** - Either party may be relieved from performance of this Contract in the event of causes beyond the party's practical control, including, among others, injunction, strike, riot, invasion, fire, freezing, flood, explosion, breakdown, act of God, or the public enemy, or the like.
3. **Construction** - The heading to the sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used

to construe any of such provisions. All questions of construction, interpretations, performance, breach or enforcement of this Contract shall be determined in accordance with the laws, both statutory and common, of the State of Indiana.

4. **Assignment** - Neither this contract, nor any right under it, is assignable, whether by operation of law or otherwise, by any party, without the prior written consent of the other parties hereto.
5. **Waiver of Breach** - The failure of any party to require performance by the other party of any provision of this Contract shall not affect the right of such party to require future performance of the provision, and any waiver by any party of any breach of any provision of or delay in the exercise of any right under this Contract shall not be construed as a waiver of any continuing or succeeding breach of such provisions, a waiver of the provision itself or a waiver of any right under this Contract.
6. **Entire Contract: Agreements** - This Contract constitutes the entire Contract and understanding between the parties relative to the subject matter hereof, and merges all prior discussions and agreements between them relating thereto. This Contract supersedes all previous agreements and understanding, if any, whether written or verbal, between the **Owner** and MCO, relating to the subject matter hereof. For purposes of this paragraph, "the subject matter hereof" means the operation or management of the **Owner's** water and wastewater systems.

This Contract may not be changed, amended, modified or released or discharged, in whole or in part, except by an instrument in writing referred to as an amendment to this agreement signed by all parties.

7. **Severability** - In any covenant, condition or provision of this Contract is held to be invalid or unenforceable by reason of any statute, rules or public policy, all other covenants, conditions or provisions of this Contract shall nevertheless remain in full force and effect as if this Contract had been executed with the invalid or unenforceable portion thereof eliminated, and no covenant, condition or provision shall be deemed dependent upon the other covenant, condition or provisions unless so expressed.
8. **Notices** - Except as otherwise specifically provided herein, any notice hereunder shall be deemed sufficiently given by one party to the other if it (1) is in writing; and (2) delivered or rendered either in person or by depositing it in the United States mail in a sealed envelope with postage and postage charges prepaid, addressed as follows:

If to Owner:                      Mr. Michael Albert, President  
Town of Westville  
100 Setser Drive  
Westville, IN 46391

If to MCO:                         Mr. Nathan W. Howell, Regional Manager  
Midwest Contract Operations, Inc.  
952 S. State Road 2  
Valparaiso, IN 46385



Any party may change its address by giving notice of such change to the others in the manner aforesaid. All such notices shall be effective when delivered in person or when mailed.

9. **Code Reference** - All references to statutes and the Indiana Administrative Code are intended to refer to such materials as amended are renumbered from time to time, and to include new provisions that refer or relate to the same subject matter.
10. Each person who signs this Agreement on behalf of a party represents and warrants that he/she is an authorized representative of the party on whose behalf he/she is signing, and that he/she has full authority to bind the party for which he/she is signing to each term and provision of this Agreement.

\* signed copy in file

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized offices, have executed this Contract as of the date first above written.

**Town of Westville  
LaPorte County, Indiana**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Date

**Midwest Contract Operations, Inc.  
Valparaiso, Indiana**

\_\_\_\_\_  
Nathan W. Howell  
Regional Manager

\_\_\_\_\_  
Witness

## **EXHIBIT 1 – SCOPE OF SERVICES**

### **Water System**

- Provide staff to serve as certified operator in responsible charge to operate the drinking water treatment facility and distribution system. Provide five (5) visits per week.
- Train and oversee the town's staff in the operation of duties of the water treatment and distribution systems.
- Complete and sign the monthly Report of Operations and submit it to IDEM. MCO will provide certified operator visits five (5) days per week or less, if approved by IDEM.
- Oversee daily testing of water seven (7) days per week. Testing will include Free Chlorine, Total Chlorine, Iron, Manganese, and pH. These will be performed on raw, water, finished water and one sample from the distribution system.
- Oversee collection of two (2) total coliform sample per month as required by the total coliform rule.
- Provide Standardized Monitoring Framework sampling.
- Make process adjustments as needed.
- Oversee routine maintenance and repairs.
- Oversee a hydrant service and flushing program.
- Provide written report of operational condition of water facility and recommendations.

### **Wastewater System**

- Provide certified operator for plant checks.
- Oversee the laboratory testing three (3) days per week for TSS, CBOD, Ammonia, Phosphorus and E. coli.
- Conduct or oversee five (5) days per week testing of pH, and Dissolved Oxygen.
- Perform operational adjustments necessary to maintain effluent limits.
- Perform or oversee maintenance and minor repairs which MCO staff are qualified to do.
- Perform adequate record keeping for the utility.
- Train and oversee Town staff in operation of the wastewater utility.
- Provide written report of operational condition of wastewater facility and recommendations.
- Provide operational services during the proposed construction and make necessary operational changes oversight during the construction process.
- Transition laboratory to testing requirement as it is changed to a Class 3 facility.
- Incorporate new equipment into O&M and operational requirements of the facility.

### **Provided by the Town**

- All testing supplies and equipment unless other testing arrangements are made.
- All operational costs, including supplies for both utilities.
- Town staff to provide lift station checks, MCO will review readings.

- Utility locates to locate sewer and water lines for Indiana 811 calls.
- Town staff will perform water and wastewater daily testing.
- Staff to be trained in basic operation and testing to perform the necessary testing and evaluation of the utilities for weekend site visits.
- All collection system maintenance.
- Sludge disposal costs.
- Access to records and alarm system for the facilities.

### **Emergency Callouts**

Emergency callouts will be performed as a joint effort between the Town staff and MCO. Both parties acknowledge that emergency services are difficult to plan for. Therefore, MCO will work with the Town to assist with emergency operations. If MCO deems it necessary to provide emergency services for reimbursement, the fees will be at 1½ times the normal operator fee of \$70.00 per hour. Any extra fees will be approved by the Town Council Liaison prior to commencing with emergency callout operations.

### **Valve Exercising Program**

Currently the Town is not performing routine valve exercising. MCO will provide a summary as to how many valves are in the system and estimate how much time will be required to do this service. MCO will provide a program to have 1/3 of the valves exercised per year. MCO is not including this labor in this proposal at this time.



**2021 FEE SCHEDULE**  
**Midwest Contract Operations, Inc.**  
**Valparaiso, Indiana**

<u>LABOR CLASSIFICATION</u>	<u>HOURLY RATE</u>
Manager #2	\$100.00
Manager #1	\$90.00
Operator #3	\$80.00
Operator #2 / Accounting	\$70.00
Operator #1 / Clerical	\$60.00
Technician / Part-Time	\$45.00

Services subcontracted will be billed to the Owner at invoice cost plus 15%. Use of special equipment such as flow meters, samplers, dippers, etc. will be charged to the project per the standard equipment rate schedule, which is available upon request. Mileage is currently billed at \$0.65 per mile.

All work completed after regular business hours will be billed at a rate of time and a half the above noted rates.

January 1, 2021