

Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: March 26, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 12

INITIATED BY: Matt Light

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets

SERVICES AGREEMENT

This Services Agreement (hereinafter referred to as “Agreement”), entered into by and between the **City of Noblesville, Indiana, a municipal corporation** (hereinafter referred to as “City”) and **Hunden Strategic Partners, Inc.** (hereinafter referred to as “Contractor”), and its successors and assigns, is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.1 The “Agreement”, as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include this Services Agreement and the **Exhibit A** attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.3 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.4 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City’s representatives having drafted all or any portion of this Agreement.
- 1.5 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

SECTION II. DUTIES OF CONTRACTOR

- 2.1 Contractor shall provide services as specified in **Exhibit A**, attached hereto and incorporated into this Agreement.

SECTION III. TERM

- 3.1 The term of this Agreement shall begin upon execution and terminate December 31, 2024, (“Termination Date”) unless terminated earlier in accordance with this Agreement.

SECTION IV. COMPENSATION

- 4.1 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in **Exhibit A**.

Compensation shall not exceed Forty-Nine Thousand Dollars and Zero Cents (\$49,000.00).

- 4.2 Funding for a multi-year agreement is not guaranteed. All of the City's obligations under this Agreement shall be subject to annual appropriation and shall not constitute a general obligation or indebtedness of the City.

SECTION V. GENERAL PROVISIONS

- 5.1 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the City. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.2 Subcontracting.
Approval required. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.3 Intentionally Omitted.
- 5.4 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period copies thereof, if requested, shall be furnished at no cost to City.
- 5.5 Ownership.
- 5.5.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.
- 5.5.2 All Works made or created by Contractor, either solely or jointly with City, in the course of Contractor's performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of City.

At City's request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of City, Contractor shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. City shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.6 Insurance.

Minimum Insurance Requirements. Prior to commencing Work, the Contractor shall purchase and maintain from insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the City, which afford the coverages set forth below. Insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater, and shall include coverage for Contractor's indemnification obligations contained in this Agreement. Certificates of Insurance acceptable to the City shall be given to the City prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City; provided however that such policies may be cancelled with only ten (10) days' prior notice for non-payment of premium. The required coverages and limits which Contractor is required to obtain are as follows:

A. Commercial General Liability

Limits of Liability:	\$2,000,000 General Aggregate
	\$2,000,000 Products & Completed Ops.
	\$1,000,000 Bodily Injury / Prop. Damage
	\$1,000,000 Personal / Advertising Injury
	\$1,000,000 Each Occurrence

B. Auto Liability

Limits of Liability:	\$500,000 Per Accident
Coverage Details	All owned, non-owned, & hired vehicles

C. Workers Compensation and Employer's Liability

As required by Indiana law.

shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.9 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its board, agents and employees of any of them (“Indemnitees”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees and court costs and other expenses, arising out of or resulting from any negligent acts, errors, or omissions of the Work. The Contractor’s indemnification under this Section shall survive both final payment and the termination of this Agreement.

5.10 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor:
Hunden Partners
Attn: Rob Hunden, CEO
213 W. Institute Place, Suite 707
Chicago, IL 60610

To City:
City of Noblesville
Attn: Matt Light, Deputy Mayor
16 S. 10th Street
Noblesville, IN 46060

Courtesy Copy:
Rob Hunden
15185 Hawthorne Lane
Lakeside, MI 49116

Courtesy Copy:
City Attorney
16 S. 10th Street
Noblesville, IN 46060

5.11 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.

5.12 Non-discrimination. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5.13 Conflict of Interest.

5.13.1 Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.13.2 For purposes of compliance with IC 36-1-21, Contractor certifies and warrants to City that Contractor, or a person who wholly or partially owns Contractor, is not a relative, as that term is defined by IC 36-1-21-3, of an elected official of Noblesville, Indiana.

5.14 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party's reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.16 Applicable Laws; Forum.

5.16.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.

5.16.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the City of Noblesville, County of Hamilton. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- 5.17 Waiver. City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies.
- 5.18 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.19 Attorneys' Fees. Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.20 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City or the Contractor.
- 5.21 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.
- 5.22 Debarment and Suspension
- 5.22.1 Contractor 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 or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.
- 5.22.2 Contractor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.
- 5.22.3 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certifications were erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program.

Any such event shall be cause for termination of this Agreement as provided herein.

5.22.4 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.23 Compliance With E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program (“Program”). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

5.23.1 Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractor subsequently learns is an unauthorized alien. If Contractor violates this Section 5.23, City shall require Contractor to remedy the violation not later than thirty (30) days after City notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, City shall terminate the contract for breach of contract. If City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.

5.23.2 If Contractor employs or contracts with an unauthorized alien but City determines that terminating the contract would be detrimental to the public interest or public property, City may allow the contract to remain in effect until City procures a new contractor.

5.23.3 Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 5.23, Contractor may terminate its contract with the subcontractor for such violation.

5.23.4 Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Contractors enrollment in the Program, unless the Program no longer exists, shall be filed with City prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

Hunden Strategic Partners, Inc.

By: 

Date: 3/5/2024

Printed: Rob Hunden

Title: President / CEO

City of Noblesville

By: 

Date: 03/20/2024

Printed: Chris Jensen

Title: Mayor

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): Hunden Partners

By (Written Signature): 

(Printed Name): Rob Hunden

(Title): President / CEO

Important - Notary Signature and Seal Required in the Space Below

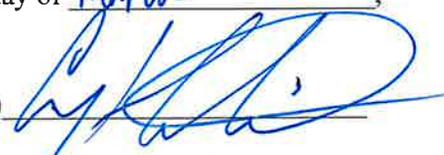
STATE OF Illinois

SS:

COUNTY OF Cook



Subscribed and sworn to before me this 5th day of March, 2024.

My commission expires: July 19th, 2026 (Signed) 

a. Residing in Cook County, State of Illinois

EXHIBIT A



Project Scorecard Continued Consulting Support Services

To: City of Noblesville
Matt Light, Deputy Mayor
16 South 10th Street
Noblesville, IN 46060
Sent via email to milight@noblesville.in.us

From: Rob Hunden, CEO
Hunden Partners
213 W Institute Place, Suite 707
Chicago, IL 60610
rob@hunden.com

Date: February 5, 2024

Scope of Work

The City of Noblesville (Client) is engaging Hunden Partners (Hunden) to perform continued consulting support services related to the economic impact analysis for Project Scorecard, a partnership between the City and Pacers Sports & Entertainment to build an arena (Project or Arena). Services may include updates to the original report findings and deliverable, updates to financial and impact models and scenarios, virtual meetings, travel to attend in-person meetings with the Client, and related.

The Client may engage Hunden for any other economic or tourism development advisory work by mutual consent under this agreement.

Compensation

Hunden will perform the services outlined above on a time-and-effort hourly basis, plus any travel or research expenses reimbursed at cost, up to **\$49,000**. If fees and expenses approach the \$49,000 amount, Hunden will notify the City and request an amendment.

Hunden will bill the Client according to the following hourly rates:

- Rob Hunden, President & CEO: \$495
- Steve Haemmerle, Executive Vice President: \$425
- Senior Project Manager: \$395
- Project Manager: \$375
- Analytics Manager: \$365

▪ Research Director:	\$350
▪ Senior Analyst:	\$335
▪ Quality Assurance/Reviewer:	\$300
▪ Analyst:	\$265
▪ Administration:	\$150

Contractual Conditions

The following conditions apply to this engagement with you.

SCOPE LIMITATIONS. Hunden's services do not include the following: any assistance with a bond marketing strategy; any assistance with the preparation or distribution of any official statement; or any advice on the municipal bond market. Hunden does not provide advice with respect to municipal financial products or the issuance of municipal securities, including services with respect to the structure, timing, terms and other similar matters concerning such financial products or issues.

Hunden is not a municipal advisor and Hunden is not subject to the fiduciary duty set forth in section 15B(c)(1) of the Registration and Regulation of Brokers and Dealers Act (15 U.S.C. 78o-4(c)(1)) with respect to the municipal financing product or issuance of municipal securities. The Client is advised that any actual issuance of debt must be done under the advice of its bond counsel and financial advisors. Your financial advisor should provide any advice concerning the specific structure, timing, expected interest cost, and risk associated with any government loan or bond issue. Potential advisors should not rely on representations made in this report with respect to the issuance of municipal debt.

The findings and recommendations of Hunden's research will reflect an analysis of primary and secondary sources of information. Estimates and analyses presented in our work product will be based on data that are subject to variation. Hunden will use sources that it deems reliable, but will not guarantee their accuracy. Recommendations will be made from information provided by the analyses, internal databases, and from information provided by external sources.

The Client is entitled to receive the work product(s) prepared by Hunden pursuant to this Agreement. The Client has no right to access or deliverance of any underlying statistics, models, or any other information developed by Hunden in preparing the Report to which this Agreement pertains.

REVISIONS. Hunden will complete a maximum of two drafts of the report. The Client is expected to provide comments and edits on the draft report and those will be addressed by Hunden. Hunden's results may not always agree with the desires of the Client. Hunden will use its independent perspective and research to drive our results. Any revisions, questions, conversations, zooms or travel requested after two drafts (initial draft report, then final draft), will be billed at Hunden's hourly rates of \$495 for Rob Hunden and \$300 for the project team. Payment on the final milestone will be required and an advance of \$2,500 on the hourly work that would be required by the Client or its designees, such as lenders and others.

UPDATES. Hunden has no responsibility to update its work product(s) for events and circumstances occurring after the date presented to the Client. Delayed invoice payments will result in the delay of

deliverables for the next portion of work. If edits and comments are not received from the Client related to any prior deliverable within thirty (30) days of the delivery of the deliverable, the work product will be considered final, and the current billing will be sent and become due.

TIMING OF DELIVERABLES. The timeline for the study begins when the following have occurred: 1) receipt of first payment, 2) signing of this contract and 3) receipt of any Client materials related to the Project requested by Hunden.

VIRTUAL PRESENTATIONS. This contract is limited to up to three (3) virtual presentations of findings at the conclusion of the study. Fees for additional virtual presentations will be negotiated separately.

BILLING. Any past invoices must be paid prior to the delivery of the next Milestone Deliverable. If an invoice remains unpaid 30 days after it was emailed to the client, Hunden may without further obligation, cease the assignment and terminate the Agreement. All previous invoices will remain due. Any invoice unpaid after 30 days will accrue a 3% per month late fee. Any invoice unpaid after 90 days will result in legal action by Hunden to collect such invoice(s).

Failure by Hunden to assess late fees does not preclude Hunden from assessing late fees in the future.

TRAVEL. In the event that the Client chooses to alter, adjust or change dates/times of any Client-related trip after Hunden has booked and purchased travel arrangements, it shall be the responsibility of the Client to reimburse Hunden for any fees and fare/price differences associated with cancellation/change of travel arrangements.

USE OF DELIVERABLE. The Work Product is copyrighted and cannot be manipulated in any way beyond the format that it was provided to the Client.

TERMINATION. Notwithstanding the Billing language above, Hunden reserves the right to terminate this Agreement on fifteen (15) days written notice to Client should Client fail to satisfactorily perform its obligations under this Agreement. In the event Hunden terminates this Agreement, Client is obligated to pay Hunden for all services rendered under this Agreement prior to termination, including work through the next unbilled milestone. Nothing contained herein shall constitute a waiver of Hunden's right to bring suit for damages or to enforce specific performance of this Agreement. In the event of termination of this Agreement by the Client, Client is obligated to pay Hunden for all services rendered under this Agreement prior to termination, including work through the next unbilled milestone. Hunden further reserves the right to take any legal action necessary to enforce its rights under this Agreement. In the event Hunden is required to commence suit to collect any unpaid amounts due to it from Client, Client agrees to reimburse Hunden for its costs and attorneys' fees in bringing such suit.

It is agreed that the liability of Hunden to the Client is limited to the amount of the fees paid by client to Hunden.

Hunden limits its responsibility to the Client and any use of the study produced pursuant to this Agreement by third parties shall be at the risk of the Client and/or said third parties. By the execution of this Agreement, Client acknowledges that he/she/it has read and agrees to the terms and conditions of this Agreement and agrees to the inclusion of a standard set of General Assumptions and Limiting Conditions



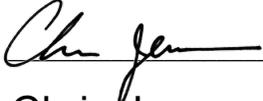
in the report. Additional conditions prompted by the discovery of extraordinary or unusual circumstances uncovered during the course of investigation may be added to the study assignment, if necessary.

DISPUTES. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, other than non-payment of amounts due hereunder, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other applicable] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

If this document meets with Client's approval, Client may accept this letter and authorize Hunden to proceed by signing below.

Authorization

Accepted By:

Signature 
Printed Name Chris Jensen
Title Mayor
Company City of Noblesville
Date: 03/20/2024