



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. April 6, 2020

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes – March 16

Changes to Agenda

OPEN BIDS

(1) Well Cleaning and Maintenance, Q20-03-004 (Windsor)

NEW BUSINESS

(1) Access Agreement with Patriot Engineering and Environmental, Inc. (Marks)

(2) Agreement with Bill's Heating, Inc. (Windsor)

(Pre-3/4/5) Finance Dept Memo: Agreements with Not-for-Profit Organizations (Scharf)

(3) Boys & Girls Club Agreement

(4) Center for Business Excellence Agreement



- (5) Downtown Goshen, Inc. Agreement
- (6) Dedication of Public Right-of-Way, 410 N. Second Street (Marks)

PRIVILEGE OF THE FLOOR

APPROVAL OF CLAIMS

Adjournment

**BOARD OF PUBLIC WORKS AND SAFETY AND STORMWATER BOARD MEETING
HELD, MARCH 16, 2020, GOSHEN, INDIANA**

The Board of Public Works and Safety and Stormwater Board of the City of Goshen met in the Council Chambers, 111 E. Jefferson St., on March 16, 2020, at 2:00 p.m. for their weekly Board meeting. Members of the Board present or absent as follows:

PRESENT: Mayor Jeremy Stutsman, Board Member Mike Landis, Board Member Mary Nichols

ABSENT:

OTHERS:

Clerk-Treas. Admin Assistants	Police Chief	Asst. Building Commissioner
Asst. Brownfield Coordinator	Utilities Office Manager	City Planner
Central Fleet Manager	Contracts & Claims Manager	Assistant City Planner
Fire Chief	Water & Sewer Superintendent	Legal Compliance Admin
Street Commissioner	City Attorney	Communications Coordinator
Human Resources	Asst. Street Commissioner	Assistant Police Chief
Director of Public Works	Civil Traffic Engineer	Building Inspector
Wastewater Superintendent	Brownfield Coordinator	Parks Superintendent
Mayor's Admin Assistant	Assistant Fire Chief	

Minutes of the meeting of February 17 and February 24, 2020, were presented. On motion of Board Member Landis and second by Board Member Nichols, the minutes were approved as presented.

ANNOUNCEMENT

Mayor Stutsman discussed the Executive Order regarding COVID-19, regarding sick leave for testing and employee self-quarantining. Executive Order 2020-01 was signed and put into existence by Mayor Stutsman March 14, 2020.

ANNOUNCEMENT

Director of Public Works Dustin Sailor provided information from the project manager of the jail demolition that they need to extend the closure of the western most lane of Third Street between Clinton and Lincoln for an additional two weeks which brings them through Friday, March 27, 2020

OPEN BIDS FOR LAWN MOWING

Mayor Stutsman opened the following bids for the lawn mowing service for properties in Goshen. Below are the quotes received:

COMPANY	BID 1	BID 2
Stiver Group	\$23,900.00	\$1,100.00
Yard Shark	\$17,300.00	\$430.00
Four Season	\$16,520.00	\$1,620.00

Mayor Jeremy Stutsman moved to refer the bids to the Legal Department for review and recommendation. Second by Board Member Landis and motion passed unanimously.

AGREEMENT WITH WASTE-AWAY GROUP

Legal Contracts and Claims Manager Keitha Windsor read information and memo included in the packet. The Agreement is for the secure destruction from the City Court Clerk’s office that will be shredded in compliance with Indiana law.

Board Member Landis made a motion to enter into an agreement with Waste-Away Group, LTD. Dba Integra Document Destruction to provide the secure document destruction at a rate of \$33.00 per 96 gallon shred cart for a 2 year term. Second by Board Member Nichols and motion passed unanimously.

RESOLUTION 2020-11

Legal Compliance Administrator Shannon Marks requested Board approval of Interlocal Agreement for Stormwater Education Programs with the City of Elkhart Aquatic Biology Department. Memo is included in the packet.

Dustin Sailor stated that this program has been in play for several years and the City has been asked to participate financially for a few years and now Elkhart is saying without financial support they will discontinue the programs with participating cities.

Board Member Landis moved to approve the request to approve the Interlocal Agreement. Second by Board Member Nichols and motion passed unanimously.

RESOLUTION 2020-12

Legal Compliance Administrator Shannon Marks requested Board approval to transfer real estate from Elkhart County to the City.

Mayor Stutsman asked Director of Public Works Dustin Sailor if these were properties that the City wanted and Mr. Sailor responded by saying that several of the properties in question were already being taken care of by the City and the transfer would allow for more control and the other properties were absolutely needed to install sewer lines.

Board Member Landis moved to approve the request of transfer of real estate. Second by Board Member Nichols and motion passed unanimously.

AGREEMENT WITH BAKER TILLY

Director of Public Works Dustin Sailor requested Board approval to accept agreement with Baker Tilly for the SRF loan financing. Looking at pre closing about March 17, 2020 and final closing in about 2 weeks.

Board Member Landis moved to approve the request for the mayor to sign the Baker Tilly Municipal engagement letter for their services with respect to the issuance of the revenue bond through the Indiana State Revolving Fund (SRF) for the waste water treatment plant improvements and the rock run creek sewer improvements projects for an amount of \$56,500.00. Second by Board Member Nichols and motion passed unanimously.

ANNOUNCEMENT REGARDING WATER/SEWER LATE FEES

Mayor Stutsman and Director of Public Works Dustin Sailor discussed a memo regarding the waiver of later fees and suspension of shut offs to try to help the residents in the community affected by the COVID-19 pandemic. Effective March 16, 2020 through the end of April the utilities department will not be assessing late fees on customers' utility bills.

AGREEMENT FOR WATER MAIN REPLACEMENT(PN:2019-0037)

Director of Public Works Dustin Sailor requested Board approval for the Geotechnical Professional Services Agreement East Goshen Water Main Replacement. Information included in the packet.

Board Member Landis made a motion to approve the agreement with Alt & Witzig Engineering, Inc for geotechnical services for the east Goshen water main replacement PN:2019-0037 for a contract price of \$17,065.00. Second by Board Member Nichols and motion passed unanimously.

There being no further business Mayor Stutsman moved to process claims and then to adjourn. Second by Board Member Landis and motion passed unanimously.

BOARD OF PUBLIC WORKS AND SAFETY AND STORMWATER BOARD:

MAYOR JEREMY STUTSMAN _____

BOARD MEMBER MICHAEL LANDIS _____

BOARD MEMBER MARY NICHOLS _____

ATTEST _____
CLERK-TREASURER ADAM SCHARF



**Legal Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185
www.goshenindiana.org

April 6, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Open Quotes for Well Cleaning & Maintenance Q20-03-004

Quotes are due to be opened today for Utility Department's well cleaning and maintenance.

Read page 17 – lump sum amount



CITY OF GOSHEN LEGAL DEPARTMENT

City Annex
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Goshen, Indiana 46528-3405

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www.goshenindiana.org

April 6, 2020

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Access Agreement with Patriot Engineering and Environmental, Inc.

Attached for the Board's approval and authorization for the Mayor to execute is an Access Agreement with Patriot Engineering and Environmental, Inc. Under this agreement the City is granting Patriot access to the City's public parking lot located north of 211 South Fifth Street in order to perform environmental investigative and remedial activities for the real estate at 211 South Fifth Street. Patriot will use its best efforts to avoid any disruption to the public's access and use of the parking lot while performing work, but there will be occasions in which access to all or some parts of the parking lot will be blocked. Access will be permitted until the earlier of December 31, 2025 or upon Patriot's completion of the work.

It is recommended that the Board of Public Works and Safety approve the Access Agreement with Patriot Engineering and Environmental, Inc. and authorize the Mayor to execute.

ACCESS AGREEMENT

This ACCESS AGREEMENT is entered into on April _____, 2020, by and between **Patriot Engineering and Environmental, Inc.**, an Indiana corporation (“Patriot”), and the **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana, by and through its Board of Public Works and Safety (“City”).

RECITALS

- (1) Patriot is performing environmental assessment and remediation activities of the real estate at 211 South Fifth Street, Goshen (the “Site”). The services being performed by Patriot are required by the Indiana Department of Environmental Management (IDEM) for the Site (State Cleanup Site #000000233) pursuant to an Administrative Agreed Order between IDEM and the Estate of William J. Fiedeke, Isabel Fiedeke, and Steve Fiedeke.
- (2) City owns the public parking lot located north of the Site and south of 118 East Washington Street, 120 East Washington Street, and 203 South Fifth Street, Goshen as depicted on the attached Figure 1 (the “Parking Lot”).
- (3) Patriot desires access to the Parking Lot for the purpose of investigating and remediating subsurface impacts that may be associated with the historic operation of a dry cleaner formerly located at the Site.
- (4) City is willing to grant Patriot access to the Parking Lot for the purpose of performing environmental investigative and remedial activities under the following terms and conditions.

NOW THEREFORE, City and Patriot agree as follows:

- (1) This agreement concerns Patriot’s access to and use of the City’s real estate located north of the Site and south of 118 East Washington Street, 120 East Washington Street, and 203 South Fifth Street, Goshen as depicted on the attached Figure 1, and more particularly described as follows:

LOT NUMBER NINETY-NINE (99) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE ORIGINAL PLAT OF THE TOWN, NOW CITY, OF GOSHEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 1, PAGE 16; LESS AND EXCEPTING THE NORTH TWO (2) FEET OF THAT PART OF LOT NUMBER NINETY-NINE (99).

Parcel Number 20-11-09-415-013.000-015

The above described real estate shall be referred to as the “Parking Lot”.

- (2) City grants Patriot and Patriot’s authorized agents, consultants, contractors and subcontractors the right to enter upon City’s Parking Lot for the sole purpose of performing investigative and remedial activities (the “Work”) for the Site. The Work includes the following tasks:
 - (A) Collecting groundwater samples from existing monitoring wells previously installed in the Parking Lot by others.

- (B) Performing geophysical survey(s) of the Parking Lot including, but not limited to, ground penetrating radar (GPR) and/or electromagnetic (EM) surveys.
 - (C) Advancing soil borings and installing monitoring and/or remediation wells.
 - (D) Performing a pilot study to evaluate a proposed remedial technology (air sparging/soil vapor extraction, or AS-SVE) that has been approved by the IDEM. The pilot study will involve injection of air into an injection well using a trailer-mounted air compressor, extraction of air from another well using a skid-mounted blower powered by a trailer-mounted generator, and measurement of induced pressure and vacuum in nearby monitoring and/or observation wells.
 - (E) Installing and operating a full-scale AS-SVE system on a portion of the Parking Lot that will include installing multiple remediation wells, trenching and subgrade piping, repaving of trench areas, placement and operation of a remediation system trailer and electrical power drop, and performing routine system operation and maintenance activities.
- (3) Patriot shall commence the Work on March 16, 2020. The exact completion date of the Work is unknown but is anticipated to be approximately mid- to late-2025. This agreement shall terminate the earlier of December 31, 2025 or upon Patriot's completion of the Work.
 - (4) Patriot will use its best efforts to avoid any disruption to the public's access to and use of the Parking Lot when performing the Work.
 - (5) City acknowledges that Patriot may need to block public access to all or some portions of the Parking Lot during the pilot study, boring/well installation, and remedial system installation to facilitate Patriot's Work.
 - (6) Patriot agrees to provide City a minimum of two (2) weeks written notice prior to Patriot beginning any Work requiring a complete blocking of public access to and use of the Parking Lot (e.g., during remedial system installation). Patriot agrees to provide City a minimum of one (1) week written notice prior to beginning all other Work in which public access to the Parking Lot or more than one (1) parking space at a time is restricted.
- (A) City acknowledges that Patriot installed pilot study wells in the Parking Lot on March 16-17, 2020 as depicted in Figure 2.
 - (B) City agrees to the temporary blockage of approximately four (4) to five (5) parking spaces for two (2) days on the south side of the Parking lot adjacent to the Site during the week of April 6-10, 2020.
 - (C) Patriot will require the complete blockage of public access to and use of the Parking Lot for remedial system installation for approximately five (5) to seven (7) working days. The remedial system installation is anticipated to occur in Summer 2020. Patriot agrees to provide City additional details on the remedial system installation once the pilot study is complete and the full-scale remedial system design is prepared, including the proposed schedule for the blockage and use of the Parking Lot. Patriot shall provide City accurate locations of the as-builts of the AS-SVE system to scale in hard copy and in electronic AutoCAD format.

- (D) Patriot plans to occupy one (1) parking space to place a remediation system trailer on the south side of the Parking Lot adjacent to the Site as depicted in Figure 3. This trailer will occupy the Parking Lot approximately two (2) to three (3) years (until 2022 or 2023).
- (7) Patriot agrees to restore the Parking Lot as close as possible to the same condition as it was prior to performing the Work. Patriot shall video and/or photograph the Parking Lot at the beginning and completion of the Work with a copy and/or copies being provided to City. Restoration shall be performed after each task of the Work performed.
- (A) During the period that the AS-SVE is active and operating, Patriot shall inspect and repair, if necessary, any pavement patches that may deteriorate.
- (B) Upon conclusion of all Work, Patriot shall remove all equipment installed, and the piping and any voids associated with such equipment shall be replaced with flowable fill. The final restoration process may include the resurfacing of the Parking Lot.
- (8) Patriot agrees that any reports or data generated as a result of the Work shall be provided to City.
- (9) Patriot agrees to indemnify, defend and hold harmless City from all liability, losses, claims, damages, demands, costs, penalties, fines and expenses arising out of or in any way connected with the activities of Patriot or Patriot's authorized agents, consultants, contractors and subcontractors in the performance of the Work.
- (10) Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.
- If to Patriot: Mr. Douglas B. Zabonick, P.E.
 Patriot Engineering & Environmental Inc.
 6150 E. 75th Street
 Indianapolis, IN 46250
- If to City: City of Goshen, Indiana
 Attention: Engineering Department
 204 East Jefferson Street, Suite 1
 Goshen, IN 46528
- (11) Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties, and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.
- (12) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

- (13) In the event that legal action is brought to enforce or interpret the terms of and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.
- (14) In the event that any provision of this agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.
- (15) All provisions, covenants, terms and conditions of this agreement apply to and bind the parties and their legal heirs, representatives, successors and assigns.
- (16) This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understanding between City and Patriot.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth below:

City:

City of Goshen, Indiana
Board of Public Works and Safety

Jeremy P. Stutsman, Mayor

Date: April _____, 2020

Patriot

Patriot Engineering and Environmental, Inc.

By: _____

Printed: _____

Title: _____

Date: April _____, 2020

FIGURE 1



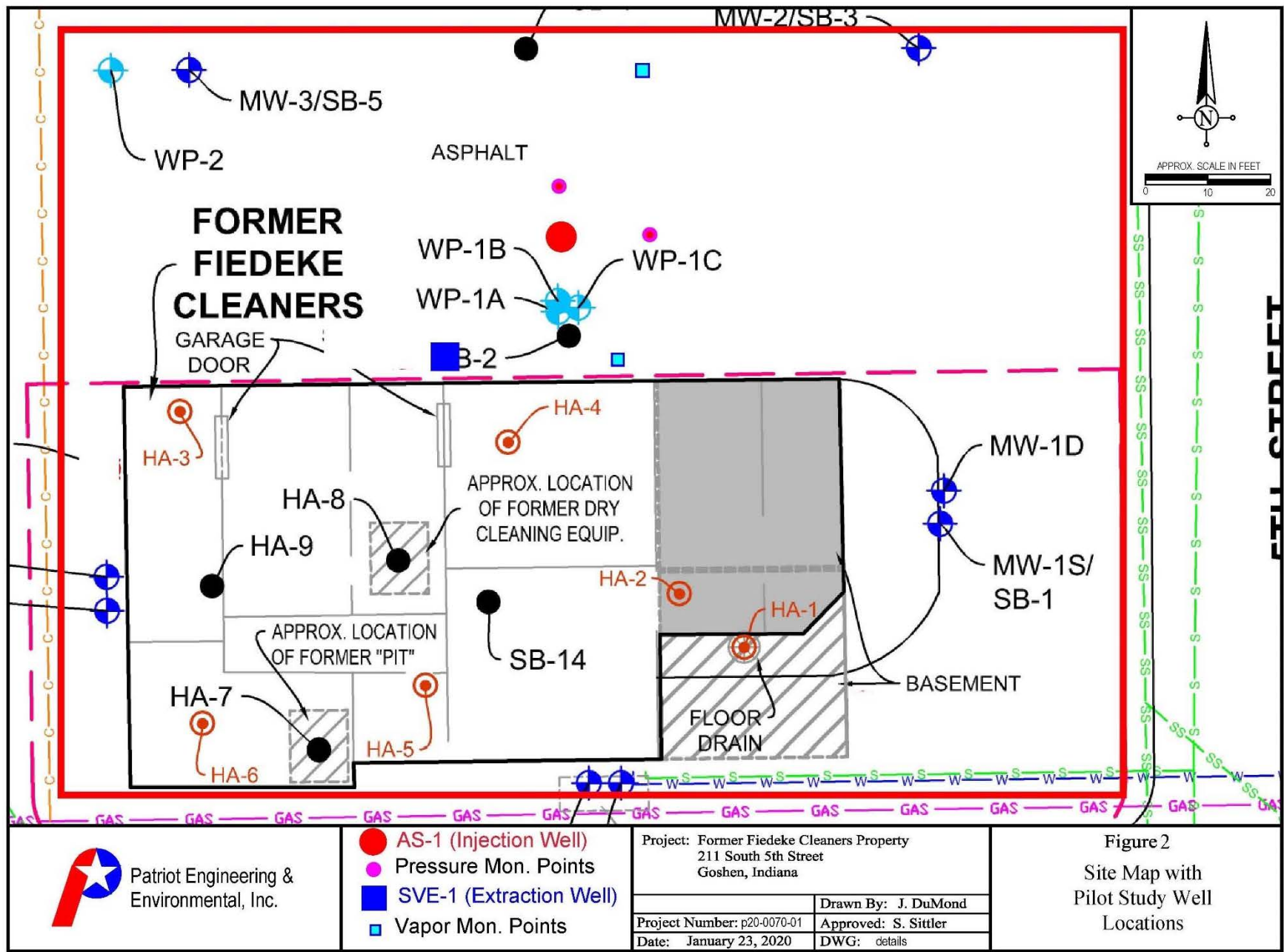


FIGURE 3





**Legal Department
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April 6, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement with Bill's Heating, Inc.

The City wishes to replace the air conditioning condensing unit, high velocity air handler and a programmable thermostat at the City Annex Conference Room at 204 East Jefferson Street.

The City wishes to contract with Bills Heating, Inc. to replace the AC equipment at a cost of \$8,073.00.

Work on the project shall be completed within 45 days from receipt of a notice to proceed from the City.

Suggested motion: Move to enter into an agreement with Bill's Heating, Inc. to supply and install replacement air conditioning equipment in the Annex Conference Room at a cost of \$8,073.00 with work to be completed within 45 days from receipt of a notice to proceed,

AGREEMENT

Replace Air Conditioner at City Annex Conference Room

THIS AGREEMENT is entered into on this ____ day of _____, 2020, between Bill's Heating, Inc., hereinafter referred to as "Contractor", and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

WHEREAS, the City desires to contract with Contractor, and Contractor agrees to supply and install an air conditioning condensing unit, a high velocity air handler and a programmable thermostat at the City Annex Conference Room at 204 East Jefferson Street, Goshen.

NOW THEREFORE, in consideration of the terms, conditions and mutual covenants contained in this Agreement, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to supply and install a three (3) ton air conditioning condensing unit, a high velocity air handler and a programmable thermostat at the City Annex, Conference Room 204 East Jefferson Street, Goshen, and complete in a workmanlike manner. The scope of work shall include:

- 1- American Standard model 4A73036B3000 three (3) ton air conditioner condensing unit (SEER 13).
- 1- Space Pak model 45ESP3642JH4MA high velocity air handler connected to the existing ducts and hot water coil.
- 1- Energy saver seven day programmable thermostat.
- Flush and reuse the existing copper refrigerant tubing.
- Electrical and condensate drain connections.
- Removal and disposal of the existing equipment.
- Start up new equipment and run test.

Contractor shall perform all work in this project during the days Monday to Friday between the hours of 7:00 am and 5:00 pm. City shall be notified in advance if Contractor intends to work on a Saturday and/or a Sunday.

Contractor shall warrant all workmanship and materials for one (1) year.

Contractor shall be responsible for the proper removal and disposal of all material, scrap and debris from the site and shall assume and pay any applicable fees and charges for such disposal. Contractor shall not abandon or dispose of any materials or debris except in accordance with all applicable local, state and federal laws.

Contractor shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the work / services for the City.

TERM OF THE AGREEMENT

This Agreement shall become effective on the date of execution and approval by both parties. Contractor acknowledges that time is of the essence and that the timely performance of its work is an important element of this Agreement. Contractor shall perform all work as expeditiously as is consistent with professional skill and care in the orderly progress of the project.

Contractor's work on the project shall be completed within forty-five (45) days from receipt of a notice to proceed from the City.

COMPENSATION

The City agrees to compensate Contractor for the services in this agreement in accordance with Contractor's quoted fee for the amount of Eight Thousand Seventy-three Dollars (\$8,073.00).

Payment(s) to Contractor for work rendered under this agreement shall be made by the City upon receipt of a detailed invoice from Contractor for work completed provided satisfactory performance of Contractor has been attained. Contractor is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Contractor. Payment is deemed to be made on the date of mailing the check.

INDEPENDENT CONTRACTOR

Contractor shall be deemed an independent contractor operating as a separate entity from the City of Goshen. The City shall not be responsible for injury, including death, to any persons or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of Contractor.

NON-DISCRIMINATION

Contractor agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Contractor agrees that Contractor or any subcontractors, or any other person acting on behalf of Contractor or their subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of a contract with respect to said employee's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of contract.

INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Contractor or any of their officers, agents, officials, and employees, during the performance of work under this Agreement with the City of Goshen. Such indemnity shall include attorney's fees and all costs and other expenses incurred by the City, and shall not be limited to insurance required under the provisions of this Agreement.

INSURANCE

Prior to commencing work, Contractor shall furnish the City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with the City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability coverage.

Contractor shall at least include the following types of insurance with the following minimum limits of liability:

Workers Compensation & Employer's Liability	Statutory Limits
General Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and \$2,000,000 Aggregate
Automobile Liability.....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and Aggregate

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

If either party is delayed by force majeure, the party affected shall provide written notification to the other party immediately. The party shall do everything possible to resume performance. The notification shall provide evidence of the force majeure event to the satisfaction of the other party. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

BREACH

It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this Agreement or fails to fulfill any warranty, and Contractor is not able to correct the breach within fifteen (15) calendar days after the City provides written notice to Contractor of such breach, the City may provide or have provided alternative provisions to correct and/or complete the projects. Contractor shall be responsible for any and all costs that are incurred and such costs may be deducted from amounts owed to Contractor expenses to correct the breach or complete the project. If such costs exceed the amounts owed to Contractor, Contractor is liable to reimburse the City for such costs.

If Contractor fails to perform the work or comply with the provisions of this Agreement, then Contractor may be considered in default.

Contractor may also be considered in default by the City if any of the following occur:

- (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this Agreement.
- (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the Agreement.
- (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.

- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the work under the Agreement.
- (7) The Agreement or any right, monies or claims are assigned by Contractor without the consent of the City.

TERMINATION

The parties may terminate this Agreement under any of the following conditions:

- (1) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- (2) The City may terminate this contract, in whole or in part, in the event of default by Contractor. In such event, the City may issue a written notice of default and provide a period of time in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ASSIGNMENT

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

MODIFICATIONS

It is mutually understood and agreed that no alteration or variation of the terms in this Agreement including the scope of work, completion of work and compensation, and that no alteration or variation of the conditions of this Agreement shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the Agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the Agreement shall be of no force and effect.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in the Agreement. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

City of Goshen
Attention: Legal Department
204 East Jefferson St.
Goshen, IN 46528

Address for notices to Contractor:

Bill's Heating, Inc.
Attention: Scott Miller
803 Linway Drive
Goshen IN 46526

APPLICABLE LAWS

Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations, or ordinances as the same shall be in full force and effect during the term of this Agreement.

MISCELLANEOUS

- A. Any provision of this Agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the Agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent requirements shall govern.
- B. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- C. In the event legal action is brought to enforce or interpret the terms and conditions of this Agreement, the non-prevailing party will pay all costs incurred by the prevailing party including reasonable attorney's fees.

EMPLOYMENT ELIGIBILITY VERIFICATION

Contractor shall enroll in and verify the work eligibility status of all their newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3.

Contractor shall not knowingly employ or contract with an unauthorized alien. Contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.

Contractor shall require their subcontractors, who perform work under this contract, to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City of a breach.

Contractor affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien.

CONTRACTING WITH RELATIVES

Pursuant to IC 36-1-21, if Contractor is wholly or partially owned by a relative of an elected official of the City of Goshen Contractor certifies that Contractor has notified in writing both the elected official of the City of Goshen and the City's legal department prior to entering into this contract that an elected official of the City of Goshen is a relative of an owner of Contractor.

SEVERABILITY

In the event that any provision of this Agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement.

BINDING EFFECT

All provisions, covenants, terms and conditions of this Agreement bind the parties and their legal heirs, representatives, successors and assigns.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings between the City and Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

City of Goshen
Board of Public Works and Safety

Bill's Heating, Inc.

Jeremy P. Stutsman, Mayor

Scott Miller, Owner

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____



City Clerk-Treasurer
CITY OF GOSHEN

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

clerktreasurer@goshencity.com • www.goshenindiana.org

Memorandum

6 April 2020

To: Office of the Mayor
Board of Public Works & Safety
Goshen Legal Department

Re: Agreements with Not-for-Profit entities

Finance Department requests that in the future, agreements with not-for-profit entities be drafted by Legal Department. Finance Department seeks clarity with regard to payment terms and timeline, specificity of deliverables, accountability in case of non-delivery, etc.

To be respectful of prior practice with respect to these agreements, as well as to the valuable and important work that the nonprofit beneficiaries of funding provide for the community, Finance Department requests only that the following amendments be made to the agreements before the Board today:

1. Boys & Girls Club: Remove "summer" from athletic programs to allow the organization flexibility in scheduling responsively to public health concerns.
2. Downtown Goshen: Remove Item #6: "No third party shall be a beneficiary of this Agreement." The payment claim associated with this agreement specifies that a portion of the funding is intended for the Façade Grant program which benefits downtown property owners.

Respectfully,

Adam C. Scharf
Clerk-Treasurer

BOYS & GIRLS CLUB AGREEMENT—2020

This Agreement is made by and between the Board of Public Works & Safety of Goshen, Indiana, and the Boys & Girls Club of Goshen. The term of this Agreement is January 1–December 31.

Recitals

Whereas, Goshen's Parks & Recreation Dept. has contracted with the Boys & Girls Club since approximately 1994 to run summer athletic programs; and

Whereas, quality youth programs are important to both City and the Boys & Girls Club; and

Whereas, the summer athletic programs are officially a program of the Parks & Recreation Dept. under management of the Boys & Girls Club; and

Whereas, program costs are greater than \$3,000 annually, with the Boys & Girls Club seeking corporate sponsorships to underwrite a portion of the costs.

Therefore, the City of Goshen and the Boys & Girls Club of Goshen agree that:

1. City will pay to the Boys & Girls Club a total of \$3,000.
2. Boys & Girls Club will administer summer athletic programs for local youth during the summer of the Agreement year.

City of Goshen

Boys & Girls Club of Goshen

Date: _____

Date: _____

Signed: _____

Signed _____

Printed: _____

Printed: _____

Title: _____

Title: _____

CENTER FOR BUSINESS EXCELLENCE AGREEMENT—2020

This Agreement is made by and between the Board of Public Works & Safety of Goshen, Indiana, and the Board of Directors of Center for Business Excellence (CBE). The term of this Agreement is January 1–December 31.

Recitals

Whereas, City does not have a Department of Economic Development; and

Whereas, economic development initiatives are important to Goshen's present and future vitality; and

Whereas, it is desirable to enter into a public/private partnership that encompasses an area wider than just the City of Goshen; and

Whereas, it is in the interests of City to enhance economic development by supporting CBE.

Therefore, the City of Goshen and Center for Business Excellence agree that:

1. City will pay from its Economic Development Income Tax Fund to CBE a total of \$10,000, provided the documentation requested below has been submitted to City.
2. CBE will provide to City a copy of its prior year's audit and annual report, and its current annual budget.
3. CBE agrees to provide economic development support for Goshen, similar to those provided to other political jurisdictions in its geographic sphere of influence during the Agreement year.

City of Goshen

Center for Business Excellence

Date: _____

Date: _____

Signed: _____

Signed: _____

Printed: _____

Printed: _____

Title: Chair, Board of Public Works

Title: VP of Business Resources

DOWNTOWN GOSHEN, INCORPORATED AGREEMENT—2020

This Agreement is made by and between the Board of Public Works & Safety of Goshen, Indiana, and the Board of Directors of Downtown Goshen, Incorporated. The term of this Agreement is January 1–December 31.

Recitals

Whereas, an appropriate role of local government is to maintain and improve its central business district; and

Whereas, Downtown Goshen, Incorporated's mission is to maintain and improve the central business district through economic development, design, promotion, and organization; and

Whereas, Downtown Goshen, Incorporated has coordinated the Façade Program, assisting downtown businesses in maintaining an attractive and welcoming store front, and

Whereas, it is consistent with the role of local government to financially assist Downtown Goshen, Incorporated to facilitate its mission.

Therefore, the City of Goshen and Downtown Goshen, Incorporated agree that:

1. Having already been authorized by City Council in the annual budget, City will pay from its Economic Development Income Tax Fund to Downtown Goshen, Incorporated the sum of \$70,000 in the Agreement year.
2. Prior to receiving City's contribution, Downtown Goshen, Incorporated will provide to City a summary of the prior year's activities, a copy of its prior year's year-end financial report and a copy of its current annual budget as approved by its Board of Directors.
3. Downtown Goshen, Incorporated will aggressively pursue its mission of economic development, design, promotion, and organization in the central business district during the Agreement year.
4. Downtown Goshen, Incorporated will coordinate the Façade Program for downtown entities.
5. This Agreement contains all contractual obligations between City and Downtown Goshen, Incorporated.
6. No third party shall be a beneficiary of this Agreement.
7. The rights and obligations created under this Agreement shall not be assigned without the written consent of the other party.
8. This Agreement shall be construed and enforced under the laws of the State of Indiana.

City of Goshen

Downtown Goshen, Incorporated

Date: _____

Date: _____

Signed: _____

Signed: _____

Printed: _____

Printed: _____

Title: Chair, Board of Public Works

Title: President, Board of Directors



CITY OF GOSHEN LEGAL DEPARTMENT

City Annex
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528-3405

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185
www.goshenindiana.org

April 6, 2020

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Dedication of Public Right-of-Way

Attached for the Board's acceptance is a Deed of Dedication from Martin Flores and Francisca Flores. This is for the dedication of public right-of-way at 410 North Second Street as depicted on the drawing included in the Deed of Dedication.

It is recommended that the Board accept the dedication of public right-of-way from Martin Flores and Francisca Flores and authorize the Mayor to execute the Acceptance.

DEED OF DEDICATION

THIS INDENTURE WITNESSETH, that **Martin Flores and Francisca Flores**, husband and wife, of Elkhart County, State of Indiana, (hereinafter referred to as Grantor), dedicates a public right-of-way to the **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana, whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for Zero Dollars (\$0) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the real estate as depicted upon the attached drawing and more particularly described as follows, to-wit:

A PART OF LOT NUMBER SEVENTEEN (17) AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF WILDENS 7TH ADDITION TO THE CITY OF GOSHEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 95, PAGE 398, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT NUMBER SEVENTEEN (17); THENCE SOUTH 89 DEGREES 48 MINUTES 04 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID LOT NUMBER SEVENTEEN (17), A DISTANCE OF 15.00 FEET; THENCE NORTH 44 DEGREES 53 MINUTES 10 SECONDS EAST, A DISTANCE OF 21.24 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT NUMBER SEVENTEEN (17); THENCE SOUTH 00 DEGREES 01 MINUTE 43 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT NUMBER SEVENTEEN (17), A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 113 SQUARE FEET OR 0.003 OF AN ACRE, MORE OR LESS, BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.

Part of Parcel No. 20-11-09-252-005.000-015

IN WITNESS WHEREOF, the undersigned has executed this Deed of Dedication on April 1, 2019 *js*

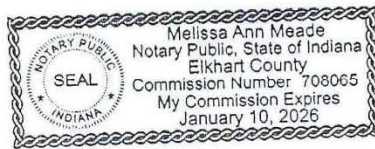
Martin Flores
Martin Flores

Francisca Flores
Francisca Flores

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

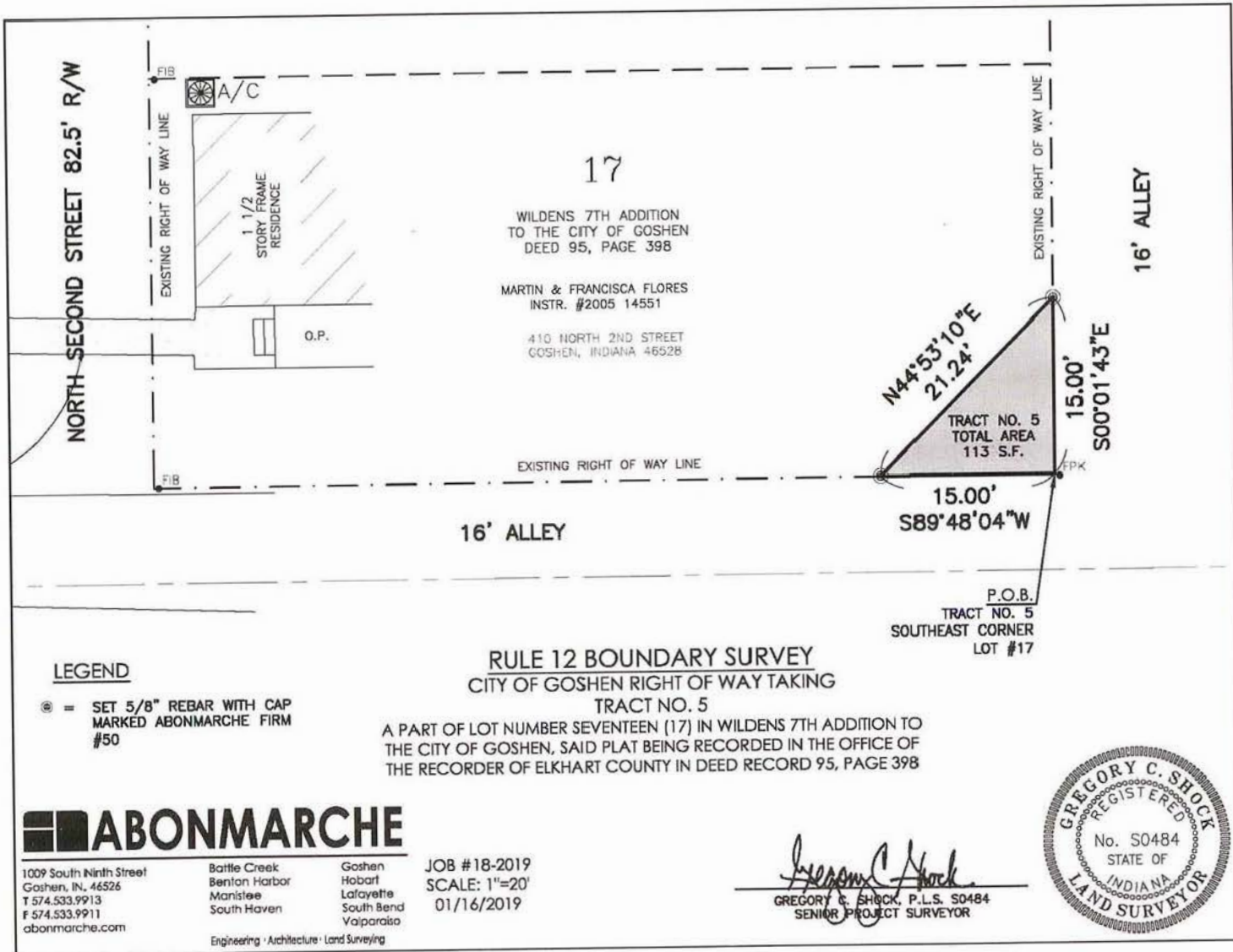
Before me, the undersigned Notary Public, on April 1, 2020, personally appeared **Martin Flores and Francisca Flores**, husband and wife, and acknowledged the execution of the foregoing instrument.

(SEAL)



Melissa Ann Meade
Notary Public
Printed: Melissa Ann Meade
County of residence: Elkhart
My commission expires: Jan. 10, 2026
Commission number: 708065

[Continued on next page]



LEGEND

⊙ = SET 5/8" REBAR WITH CAP
 MARKED ABONMARCHE FIRM
 #50

RULE 12 BOUNDARY SURVEY
 CITY OF GOSHEN RIGHT OF WAY TAKING
 TRACT NO. 5

A PART OF LOT NUMBER SEVENTEEN (17) IN WILDENS 7TH ADDITION TO THE CITY OF GOSHEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 95, PAGE 398

ABONMARCHE

1009 South Ninth Street
 Goshen, IN, 46526
 T 574.533.9913
 F 574.533.9911
 abonmarche.com

Battle Creek
 Benton Harbor
 Manistee
 South Haven

Goshen
 Hobart
 Lafayette
 South Bend
 Valparaiso

Engineering · Architecture · Land Surveying

JOB #18-2019
 SCALE: 1"=20'
 01/16/2019

Gregory C. Shock
 GREGORY C. SHOCK, P.L.S. S0484
 SENIOR PROJECT SURVEYOR



ACCEPTANCE

The City of Goshen, Indiana, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Deed of Dedication from **Martin Flores and Francisca Flores**, husband and wife, and accepts the dedication of public right-of-way on _____, 2020.

Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on _____, 2020, personally appeared Jeremy P. Stutsman the Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, and acknowledged the execution of the Acceptance.

(SEAL)

Shannon Marks, Notary Public
My commission expires May 17, 2024
Commission number: 0685467

Prepared by Larry A. Barks, Attorney No. 3568-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 537-3820.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law (Larry A. Barks).