



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., April 18, 2022

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

To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes: April 11, 2022

Approval of Agenda

- 1) Police Department:** Hiring and swearing on of Officer Eduardo Osoria (#216)
- 2) Police Department:** Hiring and swearing on of Officer Huntley Davis (#217)
- 3) Police Department:** Hiring and swearing on of Officer Tanner Warlick (#218)
- 4) Police Department:** Hiring and swearing on of Officer Max Harmon (#219)
- 5) AWARD BIDS:** Award bids for surplus equipment sales
- 6) Alley closure:** Goshen Theater request for partial closure of two alleys for repair work
- 7) Parking lot use:** Interra Credit Union request to use city parking lot "Shred-It Days" event
- 8) Parking space closure:** Eyedart Creative Studio request for First Friday food trucks
- 9) Legal Department:** Agreement with Abonmarche Consultants, Inc. for the City of Goshen's Strategic Growth Plan
- 10) Legal Department:** Agreement with Vander Wey & Sons for repair of the City Hall vault
- 11) Water & Sewer Office:** Approval of unpaid final accounts (Kelly Saenz)



12) Engineering Department: Approve change order, extending the completion date to June 1, 2022, for the 16th Street reconstruction (JN: 2020-0038)

13) Engineering Department: Accept letter of credit for \$588,180 as performance surety for completion of public infrastructure within Westoria Subdivision Phase B

14) Engineering Department: Approve and ratify the execution of the INDOT-LPA agreement for the design phase (PE) of the College Avenue Phase II project (JN: 2021-0017)

15) Engineering Department: Approve change order for Madison Street & College Avenue Reconstruction (JN: 2021-0016)

16): Engineering Department: Approve a materials variance allowing a non-hard surface material for the new recycling drop-off site on Indiana Avenue (JN: 2021-0035)

17) Engineering Department: Agreement with Genesis Products Plant 10 for connection to the City storm sewer (JN 2022-2004)

CITY OF GOSHEN STORMWATER BOARD

Regular Meeting Agenda, 2:00 p.m., April 18, 2022

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana
Members: Mayor Stutsman, Mike Landis and Mary Nichols

18) Stormwater Department: Request to approve letter of support to Greater Elkhart County Stormwater Partnership Board for proposed stormwater utility rate study

Privilege of the Floor

19) CONTINUED HEARING: Board of Public Works and Safety Order: 214 E. Clinton St. (Ron Davidhizar)

Approval of Civil City and Utility Claims

Adjournment



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety

Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: April 18th, 2022

From: Jose' Miller, Chief of Police

Reference: The hiring of Eduardo Osoria.

I am requesting that the Board of Public Works and Safety **approve the hiring of Eduardo Osoria for the position of probationary patrol officer.** Eduardo has passed all exams and has been approved by both the local and State pension boards. Eduardo will be a welcomed addition to the Goshen Police Department. I would like his hiring to be **effective today, April 18th, 2022.**

Eduardo will be present for the Board of Works Meeting.

A handwritten signature in black ink, appearing to be "J. Miller".

Jose' Miller #116

Chief of Police

Goshen City Police Department
111 E. Jefferson Street
Goshen, IN. 46528

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety

Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: April 18th, 2022

From: Jose' Miller, Chief of Police

Reference: The hiring of Huntley Davis

I am requesting that the Board of Public Works and Safety **approve the hiring of Huntley Davis for the position of probationary patrol officer.** Huntley has passed all exams and has been approved by both the local and State pension boards. Huntley will be a welcomed addition to the Goshen Police Department. I would like his hiring to be **effective today, April 18th, 2022.**

Huntley will be present for the Board of Works Meeting.

A handwritten signature in black ink, appearing to be "J. Miller".

Jose' Miller #116

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Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety

Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: April 18th, 2022

From: Jose' Miller, Chief of Police

Reference: The hiring of Tanner Warlick

I am requesting that the Board of Public Works and Safety **approve the hiring of Tanner Warlick for the position of probationary patrol officer.** Tanner has passed all exams and has been approved by both the local and State pension boards. Tanner will be a welcomed addition to the Goshen Police Department. I would like his hiring to be **effective today, April 18th, 2022.**

Tanner will be present for the Board of Works Meeting.

A handwritten signature in black ink, appearing to be "J. Miller".

Jose' Miller #116

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Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety

Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: April 18th, 2022

From: Jose' Miller, Chief of Police

Reference: The hiring of Max Harmon

I am requesting that the Board of Public Works and Safety **approve the hiring of Max Harmon for the position of probationary patrol officer.** Max has passed all exams and has been approved by both the local and State pension boards. Max will be a welcomed addition to the Goshen Police Department. I would like his hiring to be **effective today, April 18th, 2022.**

Max will be present for the Board of Works Meeting.

Jose' Miller #116

Chief of Police

Goshen City Police Department
111 E. Jefferson Street
Goshen, IN. 46528

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



**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

To: Board of Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: April 18, 2022
Subject: Request to award bids received for City of Goshen Surplus Vehicles and Equipment

On March 21, 2022, the Board of Works & Safety passed and adopted Resolution 2022-09, *Declaring Surplus and Authorizing the Disposal of Personal Property*. Resolution 2022-09 declared the property, primarily motor vehicles, as surplus and authorized its disposal in accordance with the provisions of Indiana Code § 5-22-22-5 by selling the property by sealed bids, with advertising.

Having been declared as surplus property, City staff initiated the sealed bid process for the following 31 motor vehicles and pieces of equipment: 2008 Ford Ranger; 2007 Chevy Impala; 2011 Chevy Impala; 2007 Chevy Impala; 2012 Chevy Impala; 2011 Chevy Impala; 2004 Dodge Stratus; 2010 Chevy Impala; 2003 Crown Victoria; 2015 Harley Davidson; 2007 Chevy Impala; 2009 Chevy Impala; 2010 Chevy Impala; 2007 Chevy Impala; 2009 Chevy Impala; 2002 Ford Explorer; 2007 Ford F250 with 2007 Boss V Plow 8'2"; 2002 Ford Excursion; 1992 Medtec Ambulance; 2005 Ford Escape; 2010 Ford Escape; 2010 Ford Escape; 2008 Ford Ranger; 2001 Ford F550; 11' landscape-style dump bed with engine driven hydraulic pump; 1996 Club Golf Cart; 2005 Spaulding Patcher; 1999 GMC T7500; 2012 Monroe Salt Spreader; 2004 Textron Golf Cart; and Simplicity Tractor.

Sealed bids for the surplus property were accepted at the Goshen Clerk-Treasurer's Office, 202 South Fifth Street, Goshen, IN 46528, until 1:45 p.m. (local time) on April 11, 2022. At 2:16 p.m. on April 11, 2022, the bids were unsealed during a meeting of the Board of Works & Safety and read aloud by Mayor Jeremy Stutsman. **There were a total of 685 bids by 152 bidders.**

Attached to this memorandum is a list of the 31 Lots and the high bidders for each lot. The Clerk-Treasurer's Office has been notifying the highest bidders to confirm that they plan to pay for their vehicles and equipment. If the listed highest bidder is unwilling or unable to complete the sale, the designated lot will go to the next highest bidder.

If the Board of approves the suggested motion, the Clerk-Treasurer's Office will officially notify the highest bidders on Tuesday, April 19, 2022, so that the winners can pay for and retrieve their vehicles and equipment, starting later this week.

Suggested motion:

Award to the highest qualified bidders the 31 Lots of Surplus Vehicles and Equipment made available to the public via sealed in March-April 2022 and, on behalf of the City of Goshen, authorize the Clerk-Treasurer to sign the bills of sale for the vehicles and equipment and transfer the titles to the new owners.

PURSUANT TO BOARD OF WORKS & SAFETY RESOLUTION 2022-09, *DECLARING SURPLUS AND AUTHORIZING THE DISPOSAL OF PERSONAL PROPERTY*, THE FOLLOWING WERE THE HIGHEST BIDDERS FOR THE MARCH-APRIL 2022 SEALED BID SALE OF SURPLUS VEHICLES & EQUIPMENT BY THE CITY OF GOSHEN:

<u>Bidder</u>	<u>Lot#</u>	<u>Bid Amount</u>
Troy Eichelberger	1	3,800.00
Rafael Vargas	2	2,100.00
Dale B. Colville	3	2,317.80
Raines Auto Sales	4	2,000.00
Rafael Vargas	5	3,000.00
Brandon Smith	6	3,300.00
Amy Strycker	7	2,500.00
Dale B. Colville	8	2,081.80
Raines Auto Sales	9	1,350.00
Thomas Whitaker	10	10,151.00
Raines Auto Sales	11	1,500.00
James Hill	12	2,512.00
Michiana Lawn Equipment	13	2,150.00
Brandon Smith	14	1,750.00
Dale B. Colville	15	2,388.80
RD Brown	16	6,501.01
Danny Meyer	17	10,001.00
Justin Hartgrove	18	10,333.00
Antonio Rameriz	19	6,643.00
Judy Weaver	20	4,492.00
Sheldon Koehn	21	5,252.00
Michael Partin	22	4,801.00
Randy Paredes	23	2,495.00
Chris Dennig	24	4,500.00
Kris Green	25	674.00
David Willig	26	510.00
Bristol, Town of	27	450.00
Sam Bretchneider	28	7,615.00
Antonio Rameriz	29	321.00
John Coleman	30	1,219.74
Kelly Cupp	31	310.00



**City Clerk-Treasurer
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April 18, 2022

To: Board of Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Subject: Alley closure request from the Goshen Theater

The Clerk-Treasurer's Office received a request from the Goshen Theater, 216 South Main Street, for the temporary closure of two alleys adjacent to the theater in June. More specifically, Jerry Peters, the Technical Director of the theater has asked for the temporarily closure of the alleys to the east and south of the theater during the week of June 6-10, 2022. Attached is an email with Peters' request and a map of the theater and alleys.

Peters explained that a contractor will be restoring the high brick work on the theater's fly tower (east wall) and along the top of the south wall. The closure would be daytime only (7 a.m-4 p.m.) and (for the east alley) only for the portion of alley from the north wall of its building to the south wall of its building (i.e. not the section that joins the parking lot between Electric Brew and Janus.) The alley to the south of the theater will be used to store the construction equipment during the construction time frame. As long as the work is not physically happening in the south alley, that alley could be open to pedestrian traffic. The theater would close the south alley to pedestrian traffic if work is occurring. NIPSCO has already been contacted to secure the power lines for the duration of the work.

City staff response:

Street Commissioner David Gibbs: "Other than trash pick-up, which I believe is Monday, I do not have an issue."

City Engineer Josh Corwin: "We don't have any significant concerns about this (request) ... I will notify Borden of the temp closure of the alley so they can adjust their pick-up that week accordingly."

Note: City staff will be available to provide further comment or to answer questions as needed.

Suggested motion: Move to approve the closure of two alleys adjacent to the Goshen Theater, June 6-10, during daytime hours (7 a.m. to 4 p.m.) as requested and with any conditions requested by City staff.

Aguirre, Richard

From: Jerry Peters <jerry@goshentheater.org>
Sent: Thursday, March 10, 2022 11:48 AM
To: Aguirre, Richard; mayor
Cc: ED GT; Julia Gautsche
Subject: alley closure

Richard, et al.

We (Goshen Theater) are requesting to temporarily close the alleys to the east and south of our building during the week of June 6 - 10. (see attached map)

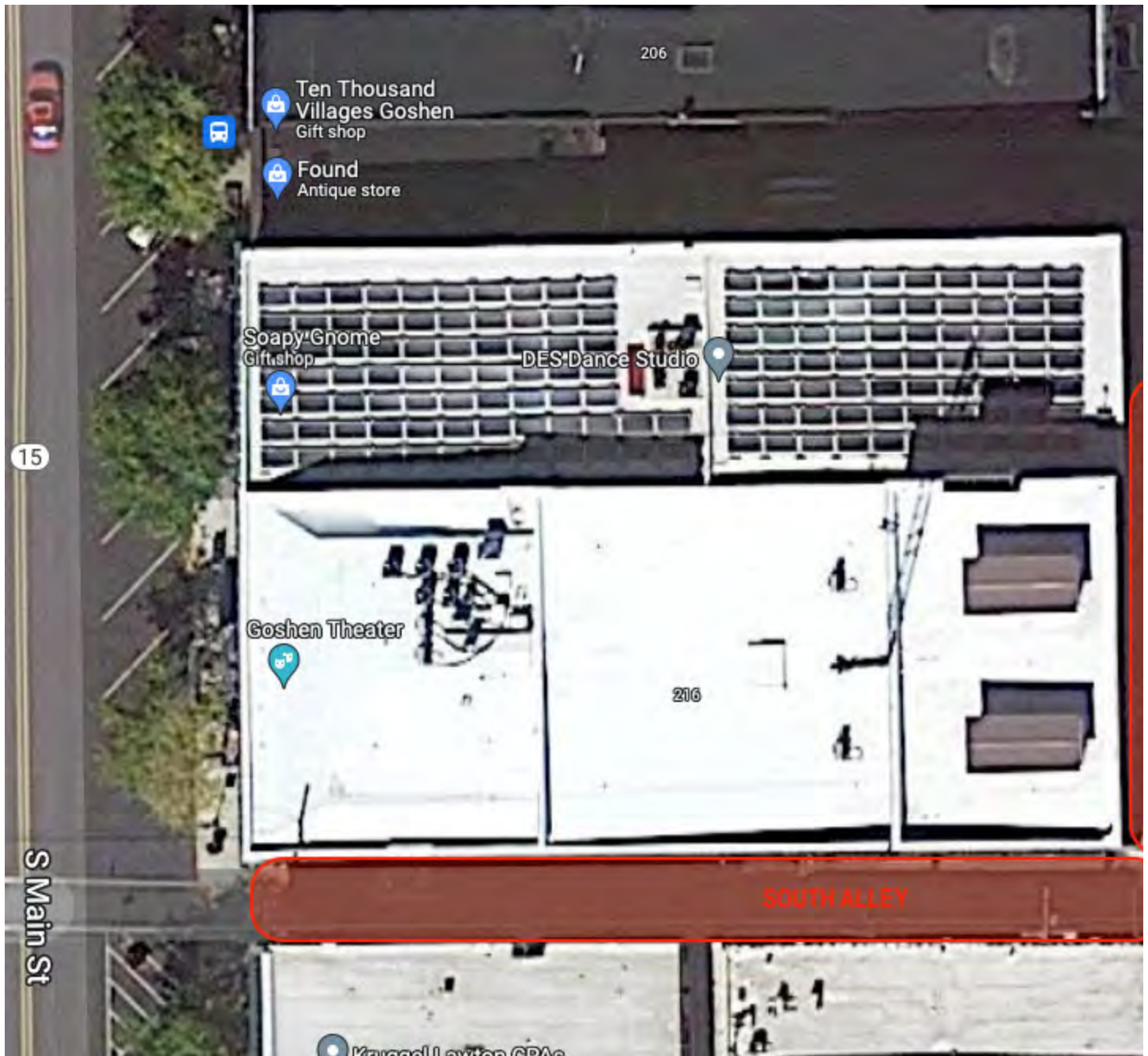
We will have a contractor working on restoring the high brick work on the theater's fly tower (east wall) and along the top of the south wall.

The closure would be daytime only (~7am - 4pm) and (for the east alley) only for the portion of alley from the north wall of our building to the south wall of our building (ie. not the section that joins the parking lot between Electric Brew and Janus.) We will use the alley to the south of the theater to store the construction equipment during the construction time frame. As long as the work is not physically happening in the south alley, that alley could be open to pedestrian traffic. We would close the south alley to pedestrian traffic if work is occurring.

NIPSCO has already been contacted to secure the power lines for the duration of the work.

Thanks for your attention to this. Let me know if/when I should attend a meeting.

Jerry Peters
Technical Director
Goshen Theater, Inc.
574.370.6211



CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



April 4, 2022

City of Goshen – Board of Works
202 S. 5th St.
Goshen, IN 46528

Dear board members:

Name: Interra Credit Union
Address: PO Box 727 (300 W. Lincoln Ave.)
Goshen, IN 46527
Contact(s): Megan Simpson, Community/Comm. Specialist - 534.2506, ext. 7344

The credit union respectfully requests the following use of the Powerhouse parking lot:

Purpose: “Shred-It Days” staging
Date(s): Friday – May 20, 2022
7:30 am to 4:30 pm
Event is 9 am to 11:00 am and 1:00 – 3:00 pm*
Saturday – May 22, 2022
7:30 am to 12:00 noon
Event is 9:00-11:00 am*

*Because of the popularity, the times may be adjusted – yet to be finalized.

In addition, we request the use of four barricades from the Street Department.

A popular event for Interra members is the annual “Shred-It Days.”

- To encourage ID theft prevention and recycling, Interra brings in Mountain High Shredding with their mobile truck/shredder.
- Because it is a popular event, several cars are often in line to drop off their shredding materials.
- Interra staff members are present and involved – unloading, weighing, etc.
- Interra pays for the first 50 pounds, with a nominal fee charged thereafter.
- There will be directional signage to ensure orderly entrance into and exit from the parking lot.
- As an example of the popularity, the total in 2021 was almost 20,000 pounds.

Thank you for your consideration,

Megan Simpson
Community & Communications Specialist



324 S Main St. Goshen, IN 46528
adrienne@gmail.com
(574) 238-5572

Board of Works Request
April 13, 2022

Summer events are beginning to launch and there will be several food trucks in attendance at the May 6th First Fridays. We are requesting a spot for them to park to help with the flow of the event.

1. What parking spaces do you want to close/use?
8 spots directly in front of 234 S Main St. from the corner and to the north.
2. Why do you want to close them? What activities will take place?
This will be parking for food trucks for First Fridays.
3. When do you want to start the closure, and when will the closure end?
The closure would be from 4 -10 p.m.
4. Are there any affected businesses, and are they supportive of your request to close the parking spaces? The Board will want to know that others affected have been informed and support your request.
This closure is during hours that most of the businesses in the surrounding areas are closed. I did contact the Chamber of Commerce to let them know about the request.
5. Do you require any barricades from the Street Department to accomplish the closure for your event?
No barricades needed, just the no parking signs.



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 18, 2022

To: Board of Public Works and Safety
From: Brandy L. Henderson
Subject: Agreement for services with Abonmarche regarding the City of Goshen’s Strategic Growth Plan.

Attached is an agreement with Abonmarche Consultants, Inc. for services regarding the City of Goshen’s Strategic Growth Plan. The cost for these services will include three phases of the project as follows:

Phase 1: Engagement and Assessment.....	Lump Sum of \$50,000.
Phase 2: Market Analysis.....	Lump Sum of \$29,000.
Phase 3: Development Strategy	Lump Sum of \$20,000.
Total	\$99,000.

Suggested Motion:

Move to approve, and authorize Mayor Stutsman to execute, the agreement with Abonmarche Consultants, Inc. for services with Abonmarche regarding the City of Goshen’s Strategic Growth Plan with a total cost of \$99,000.

AGREEMENT

City of Goshen Strategic Growth Plan

THIS AGREEMENT is entered into on _____, 2022, by and between **Abonmarche Consultants, Inc.** (“Contractor” or “Abonmarche”), whose mailing address is 1009 South 9th Street, Goshen, IN 46526, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

In consideration of the terms, conditions and mutual covenants contained in this agreement, the parties agree as follows:

Section 1. Scope of Services.

Abonmarche shall provide the City the following scope of work for the City of Goshen Strategic Growth Plan, which services are more particularly described in Abonmarche’s March 30, 2022 proposal attached as Exhibit A.

In the event of any conflict between the terms of this agreement and the terms contained in the proposal attached as Exhibit A, the terms set forth in this agreement shall prevail.

The Scope of Services included under this agreement include three primary phases with each phases’ primary objectives:

1. Phase 1: Engagement and Assessment
2. Phase 2: Market Analysis
3. Phase 3: Development Strategy

Section 2. Effective Date; Term.

1. The agreement shall become effective on the day of execution and approval by both parties.
2. Abonmarche acknowledges that time is of the essence and that the timely performance of its services is an important element of this agreement. Abonmarche shall perform all services as expeditiously as is consistent with professional skill and care in the orderly progress of the services. A preliminary timeline is included with the March 30, 2022 proposal (Exhibit A).

Section 3. Compensation.

- (A) City agrees to compensate Abonmarche for work performed under this agreement the total lump sum amount for each phase as follows:

Phase 1: Engagement and Assessment.....	Lump Sum of \$50,000
Phase 2: Market Analysis.....	Lump Sum of \$29,000
Phase 3: Development Strategy	Lump Sum of \$20,000

Section 4. Payment.

1. City shall pay Abonmarche services satisfactorily completed under this agreement as services progress based on the amounts set forth in Section 3.
2. Payment for services rendered shall be upon City's receipt of a detailed invoice from Abonmarche. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Mark Brinson
202 S. 5th Street
Goshen, IN 46528

3. Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
4. Abonmarche is required to have a current W9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. Ownership of Documents.

City acknowledges Contractor's documents, plans, drawings, specifications, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this agreement shall become the property of City upon completion of the services and payment in full of all monies due to Contractor.

Section 6. Independent Contractor.

1. Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
2. Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors.
3. Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 7. Non-Discrimination.

Contractor agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Contractor or any subcontractors, or any other person acting on behalf of Contractor or a subcontractor, shall not discriminate against any employee or applicant for employment to

be employed in the performance of this agreement, with respect to the 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.

Section 8. Employment Eligibility Verification.

1. Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code 22-5-1.7-3.
2. Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
3. Contractor shall require their subcontractors, who perform work under this contract, to certify to the 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.
4. 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 City of a breach.

Section 9. Contracting with Relatives.

Pursuant to Indiana Code § 36-1-21, if the Contractor is wholly or partially owned by a relative of a City of Goshen elected official, the Contractor certifies that the Contractor has notified both the elected official and the City's Legal Department prior to entering into this agreement that an elected official of the City of Goshen is a relative of an owner of the Contractor.

Section 10. Indemnification.

Contractor shall indemnify and hold harmless the City of Goshen and City's officers and employees from and against liability, damages or injuries to the extent caused by the negligent act or omission of the Contractor, its officers and employees and others for whom Contractor is legally liable in the performance of services under this agreement. Such indemnity shall be limited by the amount of insurance coverage required under this agreement.

Section 11. Insurance.

1. Prior to commencing work, the Contractor shall furnish 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 City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
2. Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.

3. Contractor shall at least include the following types of insurance with the following minimum limits of liability:
 - (1) Workers Compensation and Employer's Liability - Statutory Limits
 - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$2,000,000 each occurrence and aggregate
 - (5) Excess/Umbrella Liability - \$8,000,000 each occurrence and aggregate

Section 12. Force Majeure.

1. 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.
2. If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. 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.

Section 13. Default.

1. If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
2. It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days 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 otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
3. 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 contract.
 - (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 contract.
- (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 services described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

Section 14. Termination.

1. The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.
2. City may terminate this agreement, in whole or in part, in the event of default by Contractor.
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 agreement.

Section 15. Notice.

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.

City: City of Goshen, Indiana
Attention: Goshen Legal Department
204 East Jefferson St., Suite 2
Goshen, IN 46528

Contractor: Abonmarche Consultants, Inc.
1009 South 9th Street
Goshen, IN 46526

and

Abonmarche Consultants, Inc.
Attention: Crystal Welsh, AICP
Senior Urban Planner
315 West Jefferson Boulevard
South Bend, IN 46601

Section 16. Subcontracting or Assignment.

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

Section 17. Amendments.

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.

Section 18. Waiver of Rights.

No right conferred on either party under this agreement shall be deemed waived and no breach of this agreement excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

Section 19. Applicable Laws.

1. Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
2. Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

Section 20. Miscellaneous.

1. 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 or legally binding requirement shall govern.

2. 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.
3. In the event legal action is brought to enforce or interpret the terms and conditions of these agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 21. Severability.

In the event that any provision of the 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.

Section 22. Binding Effect.

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

Section 23. Entire Agreement.

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

Section 24. Authority to Execute.

The undersigned affirm that all steps have been taken to authorize execution of this agreement, and upon the undersigned's execution, bind their respective organizations to the terms of the agreement.

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

City of Goshen, Indiana
Goshen Board of Public Works and Safety

Abonmarche Consultants, Inc.

Jeremy P. Stutsman, Mayor

Bradley E. Mosness, PE, Vice President

Date: _____

Date: _____

March 30, 2022

Mark Brinson, Deputy Mayor
City of Goshen
202 S 5th Street
Goshen, IN 46528

RE: City of Goshen Strategic Growth Plan Scope of Work

Abonmarche Consultants and Ball State University Indiana Communities Institute (ICI) are pleased to provide the following scope of work for the City of Goshen Strategic Growth Plan. Even though the City of Goshen will contract separately with each of the consultant team partners, the team believes the combined scope best explains the process and illustrates the collaborate nature of the project. After initial consultation with the Mayor and Goshen Staff, the Abonmarche/ICI team understands the City's objectives for this plan, which are:

1. To assess Goshen's current situation and potential opportunities related to growth and development through a review of existing conditions and a series of community engagement activities designed to determine general attitudes and perceptions about growth and development, but also, as needed, more targeted feedback to help guide specific strategies;
2. To provide technical analysis that will quantify the land area required to support the continued growth and development of the city; identify priority areas for future growth and the land uses that are the best fit for these areas; and
3. To recommend policies informed by the engagement activities and analysis which will promote the physical development of the community in a coordinated and consistent manner that improves the quality-of-life of Goshen residents.

We look forward to working with you and your team. Please call or email me at 574-314-1027 or cwelsh@abonmarche.com if you have any questions or to set up the meeting.

Sincerely,
Abonmarche Consultants, Inc.



Crystal Welsh, AICP
Senior Urban Planner

SCOPE OF WORK

The process will involve three primary phases as outlined below. The City of Goshen staff will be critical collaborators for this project to provide expertise in each of their fields in addition to practical experience with the development process in the city.

Before the official phases commence, Abonmarche/ICI will conduct a session with City staff to review and finalize initial planning goals and objectives, the work plan and schedule, and the Steering Committee participants and expectations.

The Steering Committee will be established by the Mayor to help review, finalize, and execute the engagement strategies, but also to provide guidance and feedback throughout the process. The mayor will appoint the Steering Committee. Possible participants would represent the following organizations, boards, or community groups or have the following areas of expertise. Real Estate, Developer, Schools, Construction, Chamber of Commerce, Local Businesses, Non-Profits, Board of Works, Plan Commission, City Council, and Goshen City Staff.

A short kick-off meeting with the Steering Committee will officially launch the project.

Phase 1: Engagement and Assessment

Two related, but discrete endeavors will occur simultaneously during this phase: engagement and assessment. ICI will lead community engagement efforts with involvement from Abonmarche, the Steering Committee, and City Staff. Abonmarche will lead the assessment process with support, as needed, from ICI, the Steering Committee, and City Staff.

Phase 1: Engagement

A diverse and inclusive planning process will result in a more widely accepted and authentically Goshen-centered plan. Various touchpoints with the community will be deployed throughout the entirety of the planning process to help inform, consult, involve, and/or collaborate with residents. A deliberate and concentrated effort in this early phase will especially help facilitate understanding, gather perspectives, and build trust for future work. A final engagement plan is pending Steering Committee input, but, generally, it will involve the following engagement activities done with consideration made for both English and Spanish speaking stakeholders.

- A. *Community Input Sessions*: A minimum of three community meetings, each no more than two hours, will be used to share information, spark discussion, and seek *general* input about where Goshen is now and where it could go next within the context of growth and development. A draft process agenda is:
 - Framing the Discussion (i.e.: Do we want our community to grow? How do we want our community to grow? Etc.)
 - Visioning Exercise (within the context of growth and development)
 - Data Presentation
 - Fast Feedback (a facilitated effort to gather insights from participants about overall community issues and opportunities related to growth and development)



- B. *Web-Based Survey*: To continue and to build on efforts initiated during the Community Input Sessions, a survey will be developed and deployed to gather overarching community insights about current and potential growth and development in Goshen. This survey will lack the information sharing aspect of the Community Input Sessions, but it will provide a lower barrier means of engagement to ensure that a larger audience is reached. It is also a platform to ask additional or more detailed questions to support assessment efforts, as deemed necessary. As such, two slightly different surveys may be utilized based on the audience. The Steering Committee can help finalize the survey and assist with distribution. The survey will be hosted on the project website, distributed via email to all Community Input Session participants and members of any other list provided by the City, and pushed out on the City's social media presence. In addition, survey distribution or feedback on certain questions within the survey could be done through creative outreach at events like the popular First Fridays (and others).
- C. *Focus Groups*: Additional and more detailed insights will be gathered through a series of approximately five to seven focus groups with key stakeholder groups. Each focus group will include both an opportunity to share information with participants and also gather insights from them. Suggested groups would include: young professionals, Latino residents, line workers from local factories; builders/developers; local businesses; creative community; and others to be suggested. The Steering Committee would also serve as a focus group. Questions asked at the focus group will be consistent, although additional feedback may be sought to better support assessment efforts. Timing may also vary based on the focus group and its purpose.

The results of the meetings and survey will be curated, coded, and analyzed with the intent of providing the Steering Committee and the City an understanding of general priorities from the residents. It will lay the groundwork for future, more specific engagement (as needed), general communications strategies, and policy development and deployment. Additional engagement with potentially impacted stakeholders may be deployed later in the process pending need. Another public meeting will also be held once a draft plan is completed to keep residents abreast of progress (see below).

Efforts to communicate as a means to inform the public will be undertaken throughout the project. Messaging may evolve based on timing, insights uncovered, and phase needs, and may also include the following:

- *Press Releases, Notices, and Newsletter Articles*: We will work with City staff to develop press releases, newsletter articles, and other means of public notice at different points in the planning process. These items will be disseminated on various platforms, including the City's official website, local newspapers, Good of Goshen, and local media outlets. Regular updates on these platforms is advisable throughout the process of preparing the Plan.



- Interactive Project Website: This process could include an interactive project website that is linked to the City's official website. We are committed to utilizing the internet to maximize the participation and communication between stakeholders for the duration of the planning process. This website can be used to post project schedules and meeting dates; display graphics, maps, and draft documents; address frequently asked questions; or host a community discussion forum. The website will be the centralized hub for information related to the planning and design processes.
- Social Networking: If desired, we can integrate the project, by providing content, to be used on the City's existing social media accounts. For those residents that use the internet to stay informed, these tools are essential in keeping them connected with local planning activities. Social networking tools can help increase awareness of the assignment and assist in increasing participation at outreach events, including traditional face-to-face meetings.

Phase 1: Assessment

Abonmarche will lead the assessment of existing conditions to gain an understanding of opportunities and constraints for expanded growth of the city. This analysis can take place concurrent to the engagement activities described above (depending on the firm's schedule). The assessment will include the following tasks:

Task A: Review existing plans, studies, and programs. This review will include the:

- Comprehensive Plan
- Bicycle & Pedestrian Master Plan
- Thoroughfare Plan
- Climate Action Plan
- Flood Resilience Plan
- Parks Master Plan
- Transportation Improvement Plan
- Utility Master Plan
- Capital Investment Plans
- Incentives currently utilized
- Existing grant programs
- Economic and Redevelopment Areas and Plans
- Zoning Ordinance
- Downtown Plan
- Maple City Greenways Master Plan
- Downtown Goshen Boutique Hotel Demand and Feasibility Study
- Wellfield Study
- GLISA Report
- Existing development approval process and timeline



Task B: Review of the following infrastructure conditions utilizing existing information on locations, capacity, expansion plans, etc. and discussions with City Staff. Field survey, data collection, and flow monitoring are not anticipated and are not included in this task.

- Water System (lines and well fields)
- Sanitary Sewer System (lines and treatment plant)
- Storm Sewer System
- Roads
- Pedestrian paths and trails
- Fire Stations and Coverage
- Police Coverage

Task C: Utilize existing maps, data, and discussions with City Staff to identify environmental conditions that may constrain development including:

- Regulatory Floodplains
- Wetlands
- Soil Types
- Identified Brownfields

Task D: Review existing zoning and land use patterns and trends by utilizing existing data and discussions with City Staff including:

- Document and evaluate existing landuse
- Current zoning
- Development patterns
- Building permit data and trends
- Known pipeline projects (both public and private)

Phase 2: Market Analysis

A market demand and economic opportunities analysis will be conducted to assess existing and future market conditions for residential, commercial, and industrial development. ICI and Abonmarche will both provide components of the Market Analysis, according to their particular strengths. The market analysis shall include, at a minimum, the following:

- Trends in population growth and demographics.
- An analysis of current supply and past absorption trends for various development types.
- Assessment of demand for office space, retail, housing and industrial markets in Goshen, Elkhart County and the Region
- Assessment of known in progress or planning supply of office space, retail, housing and industrial markets in Goshen, Elkhart County and the Region
- Five- and ten-year forecasts of demand for a mix of land uses.
- Acreage, infrastructure and public resources needed for growing or desired development types.



Phase 3: Development Strategy

Informed by the results of the activities described above, a Development Strategy will be produced. The strategy will include a conceptual land use plan and recommendations for attracting and preparing for desired commercial, residential, and industrial development. The development strategy will include:

- A scoring matrix to prioritize development opportunities including but not limited to:
 - availability of existing or planned utilities
 - soil conditions
 - annexation contiguity and willingness of property owner for annexation
 - community need
 - current or planned infrastructure capacity
 - available land
 - other factors identified during the process
- A land use map that includes growth area and visually illustrates the desired future land uses and corporate boundaries for the City.
- Identify areas that should be targeted for public open space preservation or park development.
- Recommendations for appropriate public investments
- Recommendations for innovative incentives to support desired development including
 - Financial assistance
 - Access to public infrastructure including stormwater management
 - Expedited development approval process
 - Promotion of existing and planned place making investments by the City to improve absorption of residential developments and the ability for businesses to retain and attract employees
- Implementation steps for the strategy, including priorities, sequencing, and budgets.

At least one public meeting to review the draft plan will be conducted as part of the planning process. A suggested process agenda would include:

1. A summary of the results of the engagement process
2. Key economic analysis findings
3. Summary of key elements of current plans
4. Presentation of draft plan, etc.



Project Deliverables

The purpose of the City of Goshen Growth Plan is to provide local officials, residents, and developers with a tool to drive development in an orderly manner that is consistent with community goals and values. To that end, the proposed deliverables for the project include:

- Engagement Plan developed by the team and Steering Committee
- Facilitation of a minimum of three Public Engagement sessions
- Facilitation of a minimum of six Focus Groups
- Public Survey results and analysis
- Raw/collected data from engagement and assessment tasks
- Qualitative report of outreach including a summary of efforts and an evaluation of data collected during the process
- Plan Review Report that will summarize existing plans and how they impact or describe future growth
- Demographics and Current Conditions Report outlining
 - Demographic, Housing and Economic indicator analysis based on available Census data and projections, ESRI Business Analyst Tool and other local sources such as building permits.
 - Current Sewer, Water, Stormwater Capacity as provided by City of Goshen Engineering Department
 - Current Transportation Network (roads, sidewalks, trails, alleys) as shown by City of Goshen GIS layers.
 - Identification and mapping of known public and private developments either in approval or planning phases
- Market Analysis Report including global trends in population and demographic to be provided by ICI for review and analysis by Abonmarche and Steering Committee for local recommendations.
- Project Evaluation Matrix that will include important local criteria as determined by the public outreach and survey results.
- GIS layers for all maps created during the process
- Interactive ESRI Experience Builder tool for use by public during and after the project

Materials, Information and Support from the City of Goshen

- Share existing GIS layers
- Provide information on existing infrastructure including condition, capacity, plans for expansion, etc.
- Participate in interviews and discussions about current conditions, potential issues, and potential projects
- Copies of relevant plans and studies
- Participation in the Steering Committee
- Support and participation in outreach efforts including networking and press releases
- Participate in development of survey/focus group session questions
- Provide local context on development of focus groups and sessions and participation
- Identify any local issues or concerns to be addressed or avoided
- Participation in developing Project Evaluation Matrix
- Assistance from City/Steering Committee to secure meeting location, refreshments, interpreters, etc.



Scope of Work Proposed Timeline
Meeting with City staff to finalize Scope of Work: February 25, 2022
Contract with City: April 2022
Steering Committee kick-off meeting: April 2022

A preliminary project timeline is attached.

Fee for Services

Abonmarche shall receive as payment for the work performed under this contract the total lump sum amount for each task listed below.

Phase 1	Engagement and Assessment	\$ 50,000
Phase 2	Market Analysis	\$ 29,000
Phase 3	Development Strategy	\$ 20,000
<hr/>		
Total	\$ 99,000





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 15, 2022

To: Board of Public Works and Safety
From: Carla Newcomer
Subject: Agreement repair of the vault at City Hall

Attached for the Board's approval and execution is an agreement with Vander Wey and Sons Masons for the repair of the vault at City Hall. Vander Wey and Sons will be paid \$42,720.00 for labor and materials and all work will be completed on or before September 1, 2022.

Suggested Motion:

Approve and execute the agreement with Vander Wey and Sons Masons, for the repair of the vault at City Hall.

AGREEMENT

CITY HALL VAULT REPAIR

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Vander Wey & Sons Masons** (“Contractor”), whose mailing address is 1709 Mayfield Drive, Goshen Indiana, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

In consideration of the terms, conditions and mutual covenants contained in this agreement, the parties agree as follows:

Section 1. Contractor Duties

Contractor shall provide City the following work which shall include the provision of all labor, supplies, materials, tools, equipment, supervision, insurance and all other items necessary to labor and materials to repair and fill in the vault at City Hall (hereinafter referred to as “Duties”). Contractor’s Duties under this agreement include:

- (A) Remove existing steps and stoop
- (B) Block in opening and fill cavity
- (C) Install concrete base to reset steps and stoop
- (D) Replace deteriorated steps
- (E) Install limestone panels and coping in window openings to match existing limestone.
- (F) Reset handrails.

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall complete all Duties by September 1, 2022.

Section 3. Compensation

City agrees to compensate Contractor as follows for performing all Duties:

Removal and reset steps and stoop, install concrete base, fill in cavity, replace deteriorated steps and stoop, install limestone panels and coping in window openings to match existing and reset handrails	Lump Sum of \$21,750.00
Materials.....	Lump Sum of \$17,480.00
Equipment.....	Lump Sum of \$ 3,490.00
Total not to exceed	\$42,720.00

Section 4. Payment

- (A) Payment shall be upon City’s receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Goshen Engineering Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

- (B) Payment will be made within forty-five (45) days following City’s receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (C) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer’s Office before City will issue payment.

Section 5. Licensing/Certification Standards

Contractor certifies that Contractor possesses and agrees to maintain any and all licenses, certifications, or accreditations as required for the work performed by Contractor pursuant to this agreement.

Section 6. Independent Contractor

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor’s employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker’s compensation or any other insurance on Contractor and/or Contractor’s employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor’s and any subcontractor’s compliance with workers’ compensation statutory requirements.
- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 7. Non-Discrimination

Contractor agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Contractor or any subcontractors, or any other person acting on behalf of Contractor or a subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of this agreement, with respect to the 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.

Section 8. Employment Eligibility Verification

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.
- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this contract, to certify to the 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.
- (D) 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 City of a breach.

Section 9. Contracting with Relatives

Pursuant to Indiana Code § 36-1-21, if the Contractor is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the Contractor certifies that Contractor has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

Section 10. No Investment Activities in Iran

In accordance with Indiana Code § 5-22-16.5, Contractor certifies that Contractor does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

Section 11. Indemnification

Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against 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 Contractor's agents, officers and employees during the performance of work under this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Contractor is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required under this agreement.

Section 12. Force Majeure

- (A) 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.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. 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.

Section 13. Default

- (A) If Contractor fails to perform the work or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days 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 otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred.
- (C) 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 contract.
 - (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 contract.

- (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 described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

Section 14. Termination

- (A) The agreement 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 completed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) 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 agreement.

Section 15. Notice

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.

City: City of Goshen, Indiana
Attention: Goshen Legal Department
204 East Jefferson St., Suite 2
Goshen, IN 46528

Contractor: Vander Wey & Sons Masons
1709 Mayfield Drive
Goshen, IN 46526

Section 16. Subcontracting or Assignment

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

Section 17. Amendments

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.

Section 18. Waiver of Rights

No right conferred on either party under this agreement shall be deemed waived and no breach of this agreement excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

Section 19. Applicable Laws

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the work. Failure to do so may be deemed a material breach of agreement.

Section 20. 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 or legally binding requirement 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 prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 21. Severability

In the event that any provision of the 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.

Section 22. Binding Effect

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

Section 23. Entire Agreement

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

Section 24. Authority to Bind Contractor

The undersigned affirm that all steps have been taken to authorize execution of this agreement, and upon the undersigned's execution, bind their respective organizations to the terms of the agreement.

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

City of Goshen, Indiana
Goshen Board of Public Works and Safety

VanderWey & Sons Masons

Jeremy P. Stutsman, Mayor

Printed: _____

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

DeWayne Riouse, Member

Barb Swartley, Member

Date Signed: _____

PROPOSAL NO. 10936

FROM: Vander Wey & Sons Masons

1709 Mayfield DR.

Goshen, IN 46526

TERMS: Due upon completion

TO: CITY OF GOSHEN C/O JEFF HALSEY

204 E. JEFFERSON ST.

GOSHEN, IN 46528

PRICES GOOD FOR 30 DAYS

RE: City Hall Front Entrance

DESCRIPTION	UNIT PRICE	EXTENDED PRICE
Labor to remove existing steps and stoop, block in openings fill in Cavity, install concrete base to reset steps and stoop, replacing Any deteriorated steps, install limestone panels and coping in Window openings to match existing, and reset handrails.		\$ 21,750.00
Materials		17,480.00
Equipment		3,490.00
Total		\$ 42,720.00

RESPECTFULLY SUBMITTED

George R. Vander Wey

SIGNATURE OF ACCEPTANCE

*****REQUEST*****

DATE: Monday, April 18, 2022

TO: GOSHEN BOARD OF WORKS

**FROM: GOSHEN WATER & SEWER
KELLY SAENZ**

RE: UNPAID FINAL ACCOUNTS

The original amount of unpaid final Water/Sewer accounts for this period was **\$3,413.90**
Collection letters were sent out and payments of **\$1,006.33** had been collected.

The uncollected amount equals **\$2,407.57**

Therefore I am requesting to move our uncollected finalized accounts from active to Collection,
Sewer Liens and Write offs.

These are accounts for the most part were finalized thru **Thursday, January 6, 2022**

WATER: \$1,510.70
SEWER: \$896.87

TOTALS

REPORT TOTAL		\$3,413.90
BPS TOTAL	\$1,510.70	\$1,903.20
COUNTY TOTAL	\$896.87	\$1,006.33
W-WRITE OFF	\$0.00	
S-WRITE OFF	\$0.00	
PAYMENT TOTAL	\$1,006.33	\$0.00
AGREEMENT TOTAL	\$0.00	



**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Engineering Department

RE: **16TH STREET RECONSTRUCTION – REVISED COMPLETION DATE
(JN: 2020-0038)**

DATE: April 11, 2022

Niblock Excavating, Inc. has provided the City a letter with a revised completion date of June 1, 2022, see attached. The original substantial completion date of October 15, 2021, will be extended due to delays from existing utility relocations during the project (NIPSCO) and the poor weather conditions during the fall not allowing the proper application of an interior epoxy coating to storm structures.

The City of Goshen Engineering Department determined for the best finished product, the epoxy coating should be delayed until spring 2022 when weather conditions would be within the manufacturer's suggested tolerances. The project is currently shut down for the winter and will become active again this spring.

Requested motion: Move to approve Change Order No. 1 to extend the completion date to June 1, 2022.

**CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528**

OWNER: City of Goshen
PROJECT NAME: 16th Street Reconstruction
PROJECT NUMBER: 2020-0038
CONTRACTOR: Niblock Excavating, Inc.

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

The original contract substantial completion date of October 15, 2021 will be extended due to delays from existing utility relocations during the project (NIPSCO) and the poor weather conditions during the fall not allowing the proper application of an interior epoxy coating to storm structures. Niblock Excavating, Inc. has provided the City a letter with a revised completion date of June 1, 2022

Subtotal - \$0.00

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract		\$1,407,723.50
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers	0 to <u>0</u>	\$0.00
3. Amount of Contract, not including this supplement		\$1,407,723.50
4. Addition/ Reduction to Contract due to this supplement		\$0.00
5. Amount of Contract, including this supplemental		\$1,407,723.50
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)		\$0.00
7. Total percent of change in the original contract price Includes Change Order No.	1 to <u>1</u>	0.00%
(Line 6 divided by Line 1)		

III. CONTRACT SUPPLEMENT CONDITIONS

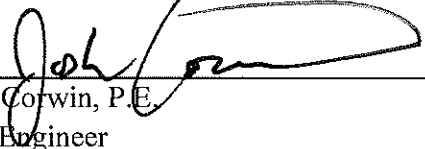
1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby extended/~~reduced~~ by 229 calendar days, making the final completion date June 1, 2022.

2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as _____, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.

3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.

4. The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnish to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by twenty (20) percent.

RECOMMENDED FOR ACCEPTANCE



Josh Corwin, P.E.
City Engineer

ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

Member

Member

ACCEPTED: CONTRACTOR

Niblock Excavating, Inc.

BY: _____
Signature of authorized representative of Contractor

NIBLOCK EXCAVATING, INC.
PO BOX 211
BRISTOL, INDIANA 46507
PHONE 574-848-4437
FAX 574-848-4575

Mr. Jason Hoffman
204 East Jefferson Street, Suite 1
Goshen, In 46528

December 17, 2021

RE: 16th St. Epoxy Coating

Mr. Hoffman,

As you are aware at the time of completion of the storm sewer on the 16th St. project, the weather was not ideal for the application of the epoxy coating in the structures as called out in the plans. It was discussed and agreed upon by the city of Goshen, Niblock Excavating, and the sub-contractor applying the coating Culy Contracting that it would be better to do the application between the months of May and June 2022.

Niblock Excavating and our sub-contractor realize that time is of the essence for the City of Goshen to complete this work. I hereby submit this letter confirming Niblock Excavating commitment to completing the work by June 1, 2022.

Respectfully submitted,

Niblock Excavating



Marcus King
Project Manager



**Engineering Department
CITY OF GOSHEN**

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MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **LETTER OF CREDIT AS PERFORMANCE SURETY –
WESTORIA SUBDIVISION PHASE 8**

DATE: APRIL 18, 2022

Windshire Corp has provided a Letter of Credit as performance surety for the completion of public water main, sanitary sewer, storm sewer, roadway, and street lighting within the Westoria Subdivision Phase 8 expansion.

The amount of \$588,180.00 of credit extended to the City represents estimated total costs for construction of the public infrastructure.

The Letter of Credit expires on March 28, 2023.

Requested Motion: Move to accept the attached Letter of Credit in the amount of \$588,180.00 as performance surety for the completion of public infrastructure within Westoria Subdivision Phase 8.

**APPROVED:
BOARD OF PUBLIC WORKS & SAFETY
CITY OF GOSHEN, INDIANA**

Jeremy Stutsman, Mayor

Barb Swartley, Member

Mary Nichols, Member

DeWayne Riouse, Member

Michael Landis, Member



Commercial Banking
202 E Center St
PO Box 1387
Warsaw IN 46581

RECEIVED

MAR 28 2022

**CITY OF GOSHEN
ENGINEERING DEPT**

IRREVOCABLE LETTER OF CREDIT

March 28, 2022

Beneficiary:
City of Goshen
Attn: Andrew Lund
204 E Jefferson St, Ste 1
Goshen, IN 46528

To Whom it may concern,

Lake City Bank hereby issues our Irrevocable Letter of Credit Number 6146821-33 in favor of the City of Goshen, 204 E Jefferson St, Ste 1, Goshen, IN 46528, for the account of Windshire Corp, 2523 Messick Drive S, Goshen, IN 46526 for a sum not to exceed \$588,180.00 (Five Hundred Eighty-Eight Thousand One Hundred Eighty and no/100 U.S. Dollars). These funds are available upon presentation of the original letter of credit and a sight draft accompanied by a statement signed by an authorized representative of the City of Goshen certifying that Windshire Corp has failed to construct the sanitary sewer, water mains, storm sewers and/or asphalt streets as per the approved plans and specifications for Westoria Phase VIII.

Drafts must be marked "Drawn under Lake City Bank, Standby Letter of Credit 6146821-33 dated March 28, 2022." Partial drawings are allowed up to an aggregate amount of \$588,180.00 (Five Hundred Eighty-Eight Thousand One Hundred Eighty and no/100 U.S. Dollars).

We hereby agree that drafts drawn in compliance with the terms of this letter of credit will be duly honored upon presentation and delivery of the documentation specified if negotiated and presented on or before March 28, 2023.

This Letter of Credit is subject to the International Standby Practices (1998) of the International Chamber of Commerce Publication No. 590 ("ISP98") or such later revisions of the ISP as may be hereafter adopted. As to matters not governed by ISP98, this letter of credit shall be governed by, and construed in accordance with the Laws of the State of Indiana, without regard to principles of conflict laws.

Sincerely,

Ben A Rice, Vice President



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MEMORANDUM

TO: Board of Public Works & Safety

FROM: Engineering

RE: **INDOT-LPA AGREEMENT
COLLEGE AVENUE PHASE II
JN: 2021-0017**

DATE: 4/8/2022

In March, the Goshen Redevelopment Commission approved an agreement with Structurepoint for the design phase (PE) of the College Avenue Phase II LPA project. In order to meet the deadline to appropriate funds before the end of the fiscal year, INDOT asked that we expedite execution of the subsequent INDOT-LPA Agreement. This is a standard agreement for LPA projects that outlines the relationship, roles, and responsibilities of INDOT and the City of Goshen (LPA) for this phase of the project. As the only pre-approved representative for the City of Goshen, Mayor Stutsman signed the agreement to allow INDOT to appropriate their portion of the project funds (80%). It is now requested that the Board approve and ratify the execution of the INDOT-LPA Agreement for the design phase (PE) of the College Avenue Phase II project.

Requested Motion: Approve and ratify the execution of the INDOT-LPA agreement for the design phase (PE) of the College Avenue Phase II project.

**APPROVED:
BOARD OF PUBLIC WORKS & SAFETY
CITY OF GOSHEN, INDIANA**

Jeremy Stutsman, Mayor

Barb Swartley, Member

Mary Nichols, Member

DeWayne Riouse, Member

Michael Landis, Member

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY

PROJECT COORDINATION CONTRACT
CONTRACT #000000000000000000062074

Des. No.: 2100021

LPA DUNS/UEI #SN1FLHNTQJZ3

CFDA No.: 20.205

This Contract is entered into by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and the CITY OF GOSHEN, a local public agency in the State of Indiana (hereinafter referred to as the "LPA"), and collectively referred to as the "PARTIES" is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N758 - LPA
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N750
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

INDOT Fort Wayne District
5333 Hatfield Road
Fort Wayne, Indiana 46808

- C. Notices to the LPA shall be sent to:

City of Goshen
202 South Fifth Street
Suite 1
Goshen, IN 46528

RECITALS

WHEREAS, the LPA has submitted an application to receive federal funds for the project described in **Attachment A** (the "Project"), which is attached herein and made an integral part of this Contract; and

WHEREAS, INDOT has approved of the LPA's application for federal funding, and the PARTIES desire to enter into this Contract to establish the responsibilities for the Project; and

WHEREAS, the LPA shall be responsible for its share of the Project cost as stated in this Contract; and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all federal requirements and fiscally manage the Project; and

WHEREAS, the PARTIES have determined the Project is in the best interests of the citizens of the State of Indiana; and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations; and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

I PROJECT DESCRIPTION.

1.1. The Parties are entering into this Contract to complete the Project described as follows:

Des. No. **2100021**
Program: **Group II - STBG**
Type of Project: **Auxiliary Lanes, Two-way Left Turn Lanes**
General Scope/Location: **College Ave.: from 9th to US33 in the City of Goshen**

II LPA RESPONSIBILITIES.

- 2.1. The LPA shall complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance, including the INDOT's LPA Guidance Document (See <https://www.in.gov/indot/2390.htm>). The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).
- 2.2. The LPA shall select the consultant in accordance with INDOT's consultant selection procedure for the consultant services to be eligible for federal funding or federal credits.

- 2.3. If the LPA contracts with a consultant, contractor, or other agent to complete work on the Project, the LPA may use either the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm>, or an agreement that has been reviewed and approved by INDOT.
- 2.4. The LPA shall provide all relevant documents including, but not limited to, all plans, specifications, and special provisions, to INDOT for its review. Upon INDOT's review, the LPA shall modify the submittal in accordance with INDOT's modifications or comments, if any. If the LPA fails to provide a submittal, untimely provides the submittal, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
- 2.5. The LPA shall complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
- 2.6. If the LPA fails to meet any of the requirements of Sections 2.1, 2.2, 2.4, or 2.5 above, INDOT will not let the construction Project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
- 2.7. The cost of the invoice of the construction, utility, and/or railroad work shall be paid by the LPA no later than thirty (30) calendar days from the date of letting.
- 2.8. The LPA shall make timely payments of costs to INDOT to avoid delays and increased costs to the Project. If the LPA fails to make timely payments of the full amount invoiced by INDOT, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of **Attachment A**, which is attached hereto and incorporated herein by reference, and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
- 2.9. The LPA shall be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the Project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
- 2.10. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this Section are deemed to be incompetent, inadequate or are otherwise insufficient, or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - 2.10.1. If project inspection will be provided by full-time LPA employees, the personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal aid shall be submitted to the District office, referenced on Page 1 of the Contract for payment.
 - 2.10.2. If project inspection will be provided by the LPA's consultant, INDOT must approve, in writing, the consultant personnel prior to their assignment to the Project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal aid shall be submitted to the District office, referenced on page 1 of this Contract for payment.

- 2.11.** The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the Project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
- 2.12.** The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
- 2.13.** If FHWA or INDOT invokes sanctions per Section 6.6.2. of this Contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
- 2.13.1.** In the event of a correctable noncompliance, the LPA shall make the corrections to the satisfaction of FHWA and INDOT in a reasonable amount of time. In the event the LPA fails to make the required corrections, Sections 2.14.2 and 2.14.3 (as applicable) shall apply.
- 2.13.2.** In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, Section 2.14.2 shall apply and adjustments shall be made as follows:
- A. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation which have been paid by INDOT to the LPA.
 - B. If no right-of-way costs have been paid by INDOT to the LPA or on the LPA's behalf, INDOT shall not pay any claim or billing for right-of-way that is subject to the FHWA citation.
 - C. The LPA is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
- 2.13.3.** If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA's noncompliance with right-of-way requirements, and construction work has commenced, the following shall apply:
- A. INDOT may elect to terminate, suspend, or continue construction work in accordance with the provisions of the construction contract.
 - B. INDOT may elect to pay its obligations under the provisions of the construction contract.
 - C. If the noncompliance can be corrected, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.
 - D. In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA shall reimburse INDOT the full amount the LPA paid for said construction work, less the amount of federal funds allowed by FHWA.

- 2.13.4.** The LPA shall reimburse INDOT the total cost of the Project not eligible for federal participation.
- 2.13.5.** If for any reason INDOT is required to repay to FHWA the sum(s) of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum(s) within forty-five (45) days after receipt of an invoice from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

III. INDOT RESPONSIBILITIES.

- 3.1.** INDOT shall have full authority and access to inspect and review all plans, specifications, and special provisions for the Project, regardless of when those plans, specifications, special provisions, or other such Project documents were created.
- 3.2.** After the LPA has submitted and INDOT has accepted all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
- 3.3.** If the LPA owes INDOT money which is more than sixty (60) days past due, INDOT will not open the construction bids for the Project.
- 3.4.** Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of **Attachment A**, and fulfillment of all other pre-letting obligations of this Contract, INDOT shall, in accordance with applicable laws and rules, including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11, conduct a scheduled letting.
- 3.5.** Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
- 3.6.** Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
- 3.7.** If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA's share of the construction cost.
- 3.8.** INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
- 3.9.** In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
- 3.10.** After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's invoice, make final payment to INDOT pursuant to **Attachment A** or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

IV. PROJECT FUNDS.

- 4.1. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment A (Project Funds).

V. TERM AND SCHEDULE.

- 5.1. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between July 1, 2027 and June 30, 2028, INDOT will make the federal funds shown in Section I.B. and/or Section I.C. of Attachment A available for the Project, provided the Project is eligible, and provided the federal funds shown in Section I.B. of Attachment A are available.
- 5.2. In the event that federal funds for the Project are not obligated during the time listed in Section 5.1, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between July 1, 2028 and June 30, 2030, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in Section I.B. and/or section I.C of Attachment A are available.
- 5.3. In the event that federal funds for the Project are not obligated during the period listed in Section 5.1 or Section 5.2, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse. If the LPA provides notice to INDOT that any purchase order can be closed for any phase of the Project, then the federal funds that had been obligated and/or allocated to the Project shall be forfeited by the LPA as of the date of the notice. If a purchase order for any phase goes inactive after nine months, the federal funds shall be forfeited by the LPA.
- 5.4. If the Program is Group I or Group II, Sections 5.1, 5.2 and 5.3 do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation.

VI. GENERAL PROVISIONS

- 6.1. Access to Records. The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- 6.2. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

- 6.3. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State. The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public accountant and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

- 6.4. **Authority to Bind LPA.** The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.
- 6.5. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.

C. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6.6. Compliance with Laws.

- 6.6.1.** The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
- 6.6.2.** The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
- 6.6.3.** The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
- 6.6.4.** The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, et seq., IC §4-2-7, et seq. and the regulations promulgated thereunder. **If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- 6.6.5.** The LPA warrants that the LPA and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- 6.6.6.** As required by IC §5-22-3-7:
- (1) The LPA and any principals of the LPA certify that:
 - A. the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4-7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC §24-4-7 is preempted by federal law; and
 - B. the LPA will not violate the terms of IC §24-4-7 for the duration of the Contract, even if IC §24-4-7 is preempted by federal law.

- (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - A. has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - B. will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

6.7. Debarment and Suspension.

1. The LPA certifies by entering into this Contract that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract 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 or substantive control over the operations of the LPA.
2. The LPA certifies that it will verify the state and federal suspension and debarment status for all contractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The LPA shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Contract.

- 6.8. Disadvantaged Business Enterprise Program.** Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

6.9. Disputes.

- 6.9.1.** Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- 6.9.2.** The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-

disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

- 6.9.3.** If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
- 6.9.4.** The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
- 6.9.5.** INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.
- 6.10. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

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

- A.** Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B.** Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C.** Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the

statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
 - E. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 - F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- 6.11. **Employment Eligibility Verification.** The LPA affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The LPA further agrees that:
- A. The LPA shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and do not employ any employees.
 - B. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.
 - C. The LPA shall require its contractors, who perform work under this Contract, to certify to the LPA that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

- 6.12. **Force Majeure.** In the event that any Party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected shall immediately or as soon as reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- 6.13. **Funding Cancellation Clause.** As required by Financial Management Circular 3.3 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

6.14. Governing Laws. This Contract shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

6.15. Indemnification. The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- A. of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- B. of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- C. of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- D. the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract. INDOT will not provide indemnification to the LPA.

6.16. Merger & Modification. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

6.17. Non-Discrimination.

6.17.1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based

on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

- 6.17.2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran).

- 6.17.3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
- A. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - B. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the

Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

- D. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- 6.18. Payment. All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.
- 6.19. Penalties, Interest and Attorney's Fees. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- 6.20. Pollution Control Requirements. If this Contract is for \$100,000 or more, the LPA:
 - A. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

- B. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
- C. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.

6.21 Prohibited Telecommunications and Video Surveillance Equipment and Services.

In accordance with federal regulations (including 2 CFR 200.216 and 2 CFR 200.471), the Contractor is prohibited from purchasing, procuring, obtaining, using, or installing any telecommunication or video surveillance equipment, services, or systems produced by:

- A. Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), OR
- B. Hytera Communication Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities),

for any purpose to fulfill its obligations under this Contract. The Contractor shall be responsible to ensure that any subcontractor is bound by and complies with the terms of this provision. Breach of this provision shall be considered a material breach of this Contract.

6.22 Severability. The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

6.23. Status of Claims. The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

6.24. General. This Contract represents the entire understanding between the PARTIES relating to the subject matter and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Contract must be in writing and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Contract nor any portions of it may be assigned, licensed or otherwise transferred by the LPA without the prior written consent of INDOT. This Contract will be binding upon the PARTIES and their permitted successors or assigns. Failure of either Party to enforce any provision of this Contract will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract. The Recitals and "Notice to PARTIES" on page 1 of the Contract are hereby made an integral part and specifically incorporated into this Contract.

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Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:
https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS/SOI_PUBLIC_CNTRCTS.GBL

In Witness Whereof, the LPA and the State have, through their duly authorized representatives, entered into this Contract. The PARTIES, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

~~CITY OF COSHEN~~

By: Jeremy Stutzman
B9E90C485C8E404...

Title: Mayor

Date: 3/30/2022 | 09:04 EDT

~~Indiana Department of Transportation~~

By: Eaton-Mekalip, Kathy - 00800
8C7308F388E24E1...

Title: Director, Local Programs

Date: 4/2/2022 | 08:44 PDT

Electronically Approved by:
Department of Administration

By: (for) Rebecca Holwerda, Commissioner

Electronically Approved by:
State Budget Agency

By: (for) Zachary Q. Jackson, Director

*Form approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on March 22, 2022.
FA 22-16*

**ATTACHMENT A
PROJECT FUNDS**

I Project Costs.

A. This contract is just for the one (1) phase checked below:

 X Preliminary Engineering or
 Right-of-Way or
 Construction;

B. If the Program is receiving federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay 80% of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, March 29, 2022, the maximum amount according to the TIP dated March 15, 2022 is \$693,160.00. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

C. Federal-aid Funds made available to the LPA by INDOT will be used to pay % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$.

D. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.

E. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.

F. If the Program is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.

G. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment A of this Contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

H. Every project must have a project end date based upon the reasonable timeframe for the project phase to be completed. If a project end date lapses, the project is no longer eligible for federal reimbursement in accordance with 2 CFR 200. See <https://www.in.gov/indot/2833.htm>.

I. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment A and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
4. Federal funds on projects which have not been billed for a twelve (12) month period are considered inactive and must be removed from the project in accordance with 2 CFR 200. To receive federal funding within the twelve (12) month period, INDOT must receive a billing within nine (9) months. See <https://www.in.gov/indot/2833.htm>.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.



**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Goshen Engineering

RE: **MADISON STREET & COLLEGE AVENUE RECONSTRUCTION
CHANGE ORDER NO. 1 (JN: 2021-0016)**

DATE: April 11, 2022

During the pre-construction meeting for the Madison Street and College Avenue Reconstruction Project, Niblock was informed that the City was extending the limits of milling and paving to include the eastern portion of the intersection of SR15 and Madison Street. Doing this will impact the existing signal loops. The contract has a lump sum line item for signal loops but did not include the above mentioned at the time of bid. Because of this, Engineering submits this request for change order to generate a line item for the signal loop replacement at SR 15 and Madison Street intersection.

The approval of Change Order No.1 is for \$3,619.00, which raises the total project cost to \$589,354.50 and is a 0.62% increase.

Requested motion: Approve Change Order No. 1 in the amount of \$3,619.00, which is a 0.62% increase to allow Niblock to complete the above work and generate a line item for the signal loop replacement.

**CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528**

OWNER: City of Goshen
PROJECT NAME: Asphalt Paving
PROJECT NUMBER: 20201-0016
CONTRACTOR: Niblock Excavating

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

During the pre-construction meeting for the Madison St. and College Ave. Reconstruction, Niblock was informed that the City was extending the limits of milling & paving to include the eastern portion of the intersection of SR 15 and Madison St. Doing this will impact the existing signal loops. The contract has a lump sum line item for signal loops but did not include the above mentioned at the time of bid.

COL.1	Replace loops and detector housing	1 LUM	@ \$3,619.00	\$3,619.00
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Subtotal - \$3,619.00

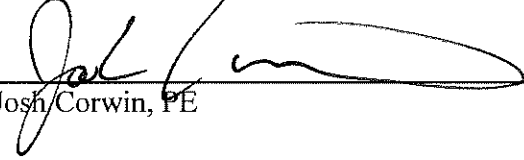
II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract		\$585,735.50
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers 0 to <u>1</u>		\$0.00
3. Amount of Contract, not including this supplement		\$585,735.50
4. Addition/ Reduction to Contract due to this supplement		\$3,619.00
5. Amount of Contract, including this supplemental		\$589,354.50
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)		\$3,619.00
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>1</u> (Line 6 divided by Line 1)		0.62%

III. CONTRACT SUPPLEMENT CONDITIONS

- The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby **extended/reduced** by 0 **calendar days**, making the final completion date August 5, 2021.
- Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as NA, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.
- This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.
- The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnished to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by (0.62) percent.

RECOMMENDED FOR ACCEPTANCE



Josh Corwin, PE

ACCEPTED: Board of Works and Safety
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

Member

Member

ACCEPTED: CONTRACTOR

Niblock Excavating

BY: _____
Signature of authorized representative of Contractor

Printed



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MEMORANDUM

TO: Board of Works Public and Safety

FROM: City of Goshen Engineering Department

RE: **NORTH INDIANA AVENUE RECYCLING DROP-OFF SITE VARIANCE
(JN: 2021-0035)**

DATE: April 11, 2022

The City of Goshen Engineering Department is requesting a materials variance for the new recycling drop-off site on Indiana Ave. between Chicago Avenue and Wilden Avenue. The proposed plan has a concrete approach off of Indiana Avenue with a compacted limestone or recycled asphalt milling surface for the remaining drive lane and recycling bin location. The non-hard surface area will be maintained by the City of Goshen. See attached plan sheet.

The site meets the Design Standards and Specifications for Parking and Driveway Surfaces variance requirements as stated below:

3(a) The parking area is used for non-residential purposes and is infrequently used

The property is currently Zoned R-1 with no homes or businesses directly adjacent to the property. Wilden Ave. abuts the north side, railroad tracks abuts the south side, the cemetery abuts the east side and Indiana Ave. abuts the west side of the property. West of Indiana Ave. is the Wastewater Treatment Plant Zoned M-2.

An earthen mound will be constructed along the east side and plantings along the west side to provide a wind break and obscure the bins from view. The concrete approach has been extended beyond the right of way and slopes towards the proposed retention basin to minimize issues along Indiana Ave. including tracking of materials onto Indiana Ave.

Requested motion: Move to approve a materials variance allowing a non-hard surface material (limestone or recycled asphalt millings) for the lane and recycling bin location.

**APPROVED:
BOARD OF PUBLIC WORKS & SAFETY
CITY OF GOSHEN, INDIANA**

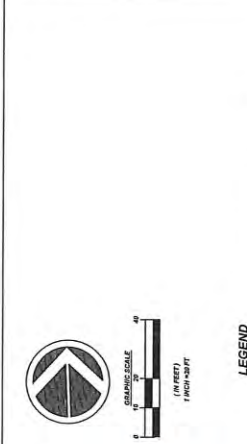
Jeremy Stutsman, Mayor

Barb Swartley, Member

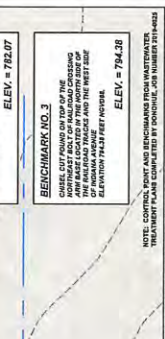
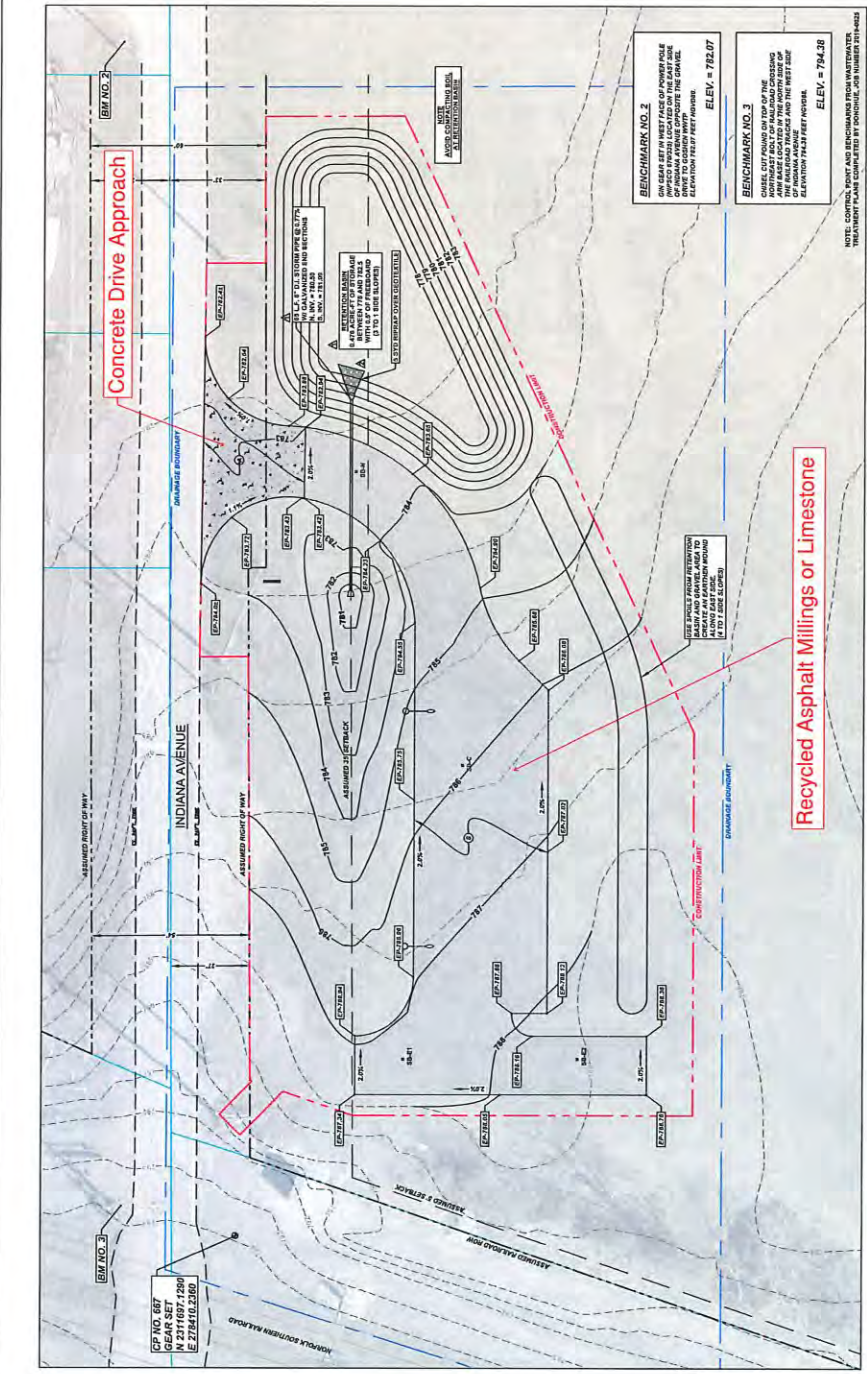
Mary Nichols, Member

DeWayne Riouse, Member

Michael Landis, Member



- LEGEND**
- 1" CONCRETE DRIVE APPROACH, CLASS A, UNREINFORCED, OVER 4" No. 10 CHROMIUM-CLAD REBAR (COMPACTED) STEEL REINFORCEMENT, CONCRETE FILL
 - 2" CHAIN-LINK FENCE WITH WIRE SLATES
 - 3" WOOD POST AND RAIL FENCE WITH CORNER HEADS ON 4" X 4" POSTS AND 2" X 4" RAILS, STEAK WITH TACKLE
 - 4" TOPSOIL, 6" SANDY LOAM, 12" SANDY CLAY LOAM, 18" SANDY CLAY LOAM, 24" SANDY CLAY LOAM, 30" SANDY CLAY LOAM, 36" SANDY CLAY LOAM, 42" SANDY CLAY LOAM, 48" SANDY CLAY LOAM, 54" SANDY CLAY LOAM, 60" SANDY CLAY LOAM, 66" SANDY CLAY LOAM, 72" SANDY CLAY LOAM, 78" SANDY CLAY LOAM, 84" SANDY CLAY LOAM, 90" SANDY CLAY LOAM, 96" SANDY CLAY LOAM, 102" SANDY CLAY LOAM, 108" SANDY CLAY LOAM, 114" SANDY CLAY LOAM, 120" SANDY CLAY LOAM, 126" SANDY CLAY LOAM, 132" SANDY CLAY LOAM, 138" SANDY CLAY LOAM, 144" SANDY CLAY LOAM, 150" SANDY CLAY LOAM, 156" SANDY CLAY LOAM, 162" SANDY CLAY LOAM, 168" SANDY CLAY LOAM, 174" SANDY CLAY LOAM, 180" SANDY CLAY LOAM, 186" SANDY CLAY LOAM, 192" SANDY CLAY LOAM, 198" SANDY CLAY LOAM, 204" SANDY CLAY LOAM, 210" SANDY CLAY LOAM, 216" SANDY CLAY LOAM, 222" SANDY CLAY LOAM, 228" SANDY CLAY LOAM, 234" SANDY CLAY LOAM, 240" SANDY CLAY LOAM, 246" SANDY CLAY LOAM, 252" SANDY CLAY LOAM, 258" SANDY CLAY LOAM, 264" SANDY CLAY LOAM, 270" SANDY CLAY LOAM, 276" SANDY CLAY LOAM, 282" SANDY CLAY LOAM, 288" SANDY CLAY LOAM, 294" SANDY CLAY LOAM, 300" SANDY CLAY LOAM
- SOILS INFORMATION**
- NOTE: SOIL BORINGS COMPLETED AND EVALUATED BY CITY STAFF ON 12.18.2021



BEZELWOOD BASIN CALCULATIONS

Category	Area (Sq. Ft.)	Depth (ft.)	Volume (Cu. Yds.)	Volume (Cu. Ft.)	Conversion Volume (Cu. Ft.)
77B	2,776.80	1.00	1.00	2,776.80	6
77C	4,362.00	1.00	1.00	4,362.00	7,584.00
77D	2,776.80	1.00	1.00	2,776.80	7,584.00
77E	2,776.80	1.00	1.00	2,776.80	7,584.00
77F	2,776.80	1.00	1.00	2,776.80	7,584.00
77G	2,776.80	1.00	1.00	2,776.80	7,584.00
77H	2,776.80	1.00	1.00	2,776.80	7,584.00
77I	2,776.80	1.00	1.00	2,776.80	7,584.00
77J	2,776.80	1.00	1.00	2,776.80	7,584.00
77K	2,776.80	1.00	1.00	2,776.80	7,584.00
77L	2,776.80	1.00	1.00	2,776.80	7,584.00
77M	2,776.80	1.00	1.00	2,776.80	7,584.00
77N	2,776.80	1.00	1.00	2,776.80	7,584.00
77O	2,776.80	1.00	1.00	2,776.80	7,584.00
77P	2,776.80	1.00	1.00	2,776.80	7,584.00
77Q	2,776.80	1.00	1.00	2,776.80	7,584.00
77R	2,776.80	1.00	1.00	2,776.80	7,584.00
77S	2,776.80	1.00	1.00	2,776.80	7,584.00
77T	2,776.80	1.00	1.00	2,776.80	7,584.00
77U	2,776.80	1.00	1.00	2,776.80	7,584.00
77V	2,776.80	1.00	1.00	2,776.80	7,584.00
77W	2,776.80	1.00	1.00	2,776.80	7,584.00
77X	2,776.80	1.00	1.00	2,776.80	7,584.00
77Y	2,776.80	1.00	1.00	2,776.80	7,584.00
77Z	2,776.80	1.00	1.00	2,776.80	7,584.00

PROPOSED RETENTION BASIN STORAGE CALCULATION

PROPOSED STORAGE FROM ELEVATION 774 TO 774.5 = 4.64 ACRES FT. OF FREEBOARD
 (BASED ON CUMULATIVE CU. FT. = 43,066 CU. FT. PER ACRE-FT.)

REQUIRED STORAGE CALCULATION

Permeable Area = 1.065A
 C = 0.188 ± 0.18 ± 0.05
 Non-Permeable Area = 0.292A
 C = 0.382 ± 0.08 ± 0.04

Composite C = (1.001254) ± 0.45

RECYCLING DROP-OFF SITE

CONCRETE DRIVE APPROACH

RECYCLE BIN & BOLLARD LAYOUT

GRADING PLAN

BEZELWOOD BASIN CALCULATIONS

PROPOSED RETENTION BASIN STORAGE CALCULATION

REQUIRED STORAGE CALCULATION



**Engineering Department
CITY OF GOSHEN**

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engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **GENESIS PRODUCTS – PLANT 10
STORM SEWER CONNECTION AGREEMENT**

DATE: April 18, 2022

As part of the ongoing development by Genesis Products at 1853 Eisenhower Drive South, the developer is responsible for managing stormwater generated onsite. Given site's location within the City's wellhead protection area, the typical method of onsite retention and infiltration is not allowed. Therefore, the developer has proposed connection to the City owned storm sewer on Kercher Road with a controlled release rate of 0.22 cfs. The Engineering Department has reviewed this proposal and finds it to be acceptable with the understanding that any future development of the site will need to be evaluated with the impact to the storm sewer kept in mind.

Requested motion: Move to authorize the Mayor to sign the agreement allowing connection to the City storm sewer.

**AGREEMENT ALLOWING
CONNECTION TO STORM SEWER**

THIS AGREEMENT is entered into this _____, 2022, by and between the **City of Goshen, Indiana** by and through the **Goshen Board of Public Works and Safety and Stormwater Board**, hereinafter referred to as "City," and **510 Apple, LLC** hereinafter collectively referred to as "Owner."

RECITALS

WHEREAS Genesis Products owns a tract of undeveloped real property generally located between Eisenhower Drive South and Kercher Road, Goshen, Indiana (Parcel Nos. 20-11-23-352-009.000-015, 20-11-23-352-012.000-015, 20-11-22-477-010.000-015), 20-11-22-477-005.000-015 (pt of), hereinafter referred to as the "Subject Real Property." (See Deeds attached and marked as Exhibit A).

WHEREAS City standards require stormwater to be contained and infiltrated on any given commercial development; however, the location of the Subject Real Property within the City's wellhead protection boundary does not allow for infiltration as indicated in the City's Stormwater Drainage Policy, (see attached Exhibit B).

WHEREAS the Owner of the Subject Real Property is requesting to have a controlled release of stormwater from a proposed stormwater detention basin on the Subject Real Property to the existing storm sewer system along Kercher Road, which is maintained by the City of Goshen.

WHEREAS the Owner proposes a controlled release of stormwater at a peak flow rate of .22 cubic feet per second ("cfs").

WHEREAS the City is inclined to allow for the proposed controlled release of stormwater runoff into the existing storm sewer system along Kercher Road as long as City can accommodate such connection without undue operational costs or negatively impacting the existing storm sewer system.

NOW THEREFORE, in consideration of the foregoing and of the promises and commitments herein contained, the parties hereby agree as follows:

1. SUBJECT REAL ESTATE

The Owner warrants that it is the owner of the Subject Real Property, which is more particularly described as follows:

20-11-23-352-009.000-015

Part of the Southwest Quarter of Section 23, Township 36 North, Range 6 East, situate in Elkhart Township, Elkhart County, City of Goshen, State of Indiana, described as follows:

Commencing at an iron stake marking the Southeast corner of the intersection of Messick Drive and Eisenhower Drive South, said stake being the Northwest corner of land conveyed to L & P Enterprises, LLC in DR 99-33674; thence South 89 degrees 6 minutes 48 seconds East along the South line of said Eisenhower Drive South a distance of 428.28 feet to an iron stake at the Northeast corner of said L & P land; thence continuing South 89 degrees 6 minutes 48 seconds East along the South line of said Eisenhower Drive South a distance of 419.18 feet to an iron stake marking the place of beginning of this description; thence continuing South 89 degrees 6 minutes 46 seconds East along the South line of said Eisenhower Drive South a distance of 424.33 feet to an iron stake; thence South 0 degrees 24 minutes West a distance of 477.92 feet to an iron stake on the North line of land conveyed to Manco, LLC in DR 2002-39800; thence South 89 degrees 57 minutes 38 seconds West along the North line of said Manco land and said line extended a distance of 424.32 feet to an iron stake; thence North 0 degrees 24 minutes East a distance of 484.73 feet to the place of beginning of this description. Containing 4.689 acres, more or less.

20-11-23-352-012.000-015

Lot Numbered 2 as the said Lot is known and designated on the recorded Plat of Southside Park, in Elkhart Township, Elkhart County, Indiana; said Plat being recorded in Plat Book 30, page 30 in the Office of the Recorder of Elkhart County, Indiana.

20-11-22-477-010.000-015

Lot Numbered 1 as the said Lot is known and designated on the recorded Plat of Southside Park, in Elkhart Township, Elkhart County, Indiana; said Plat being recorded in Plat Book 30, page 30 in the Office of the Recorder of Elkhart County, Indiana

20-11-22-477-005.000-015(pt of)

A part of the Southeast Quarter of Section 22, Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana, described as follows:

Commencing at a Harrison monument at the Southeast corner of the Southeast Quarter of said Section 22; thence North 89 degrees 08 minutes 49 seconds West along the South line of said Southeast Quarter, 165.00 feet to the Southeast corner of Tract II Beadle Huffman, LLC's property described in Document Number 201512867; thence North 00 degrees 25 minutes 47 seconds East, along the East line of said Tract II, 25.00 feet to a Shock capped rebar, being the Northeast corner of the City of Goshen's property described in Document Number 201714939 and the Point of Beginning; thence North 89 degrees 08 minutes 49 seconds West, along the North line of said City Property, 330.08 feet to a McCrea capped rebar; thence North 00 degrees 28 minutes 23 seconds East, 329.50 feet to a McCrea capped rebar; thence North 35 degrees 55 minutes 37 seconds East, 38.96 feet to a McCrea capped rebar; thence North 53 degrees 54 minutes 19 seconds West, 27.80 feet to a McCrea capped rebar; thence North 00 degrees 28 minutes 23 seconds East, 80.77 feet; thence South 89 degrees 09 minutes 25 seconds East 270.00 feet; thence North 00 degrees 28 minutes 23 seconds East 60.00 feet to the North line of said Tract II; thence South 89 degrees 09 minutes 25 seconds East 59.30 feet to a Shock capped rebar at the Northeast corner of said Tract II; thence South 00 degrees 25 minutes 47 seconds West, along the East line of said Tract II, 518.26 feet to the point of beginning.

A map of the Subject Real Property is attached to this Agreement as Exhibit C.

2. TERM OF AGREEMENT

The term of this agreement shall be effective upon the date of execution and approval by both parties and continue until December 31, 2026. This agreement may continue on a year-to-year basis thereafter under the same terms and conditions, unless otherwise terminated with a ninety-day written notification from either party.

3. CONNECTION TO CITY'S STORM SEWER SYSTEM

a. Owner must provide stormwater storage volume on the Subject Real Property as required by the City of Goshen Engineering requirements and stormwater drainage policy (attached as referenced above). Maintaining adequate stormwater storage volume on the Subject Real Property is a condition of this Agreement and will be required for any possible annexation of the Subject Real Property.

b. City will allow for alternate surface water drainage from the Subject Real Property by permitting Owner to connect to and discharge a permitted amount of stormwater to City's existing drainage system, namely the existing storm sewer system along the south side of Kercher Road, that is adjacent to the Subject Real Property. As a result of the site location within the City's wellhead protection boundary, a release will be permitted to allow the basin to fully drain within the 36-hour period per the drainage policy. This low-flow release shall not exceed 1.0 cfs at any time, unless the onsite stormwater storage is inundated due to rainfall amounts greater than the 3 inches in the previous 36-hour period required per the City's stormwater policy. Stormwater in excess of the volume required to be stored per the City's stormwater policy will be permitted to discharge by way of a 15-inch pipe and riser overflow control structure.

c. Owner shall maintain all stormwater facilities and all release structures pursuant to approvals granted by the City to ensure all requirements of this agreement and the City of Goshen of stormwater policy are met, including the full release of all stormwater runoff within 36 hours of any rainfall event.

d. The plans and specifications developed by or on behalf of the Owner to connect and discharge to City's storm sewer system must be approved in writing by City's Engineering Department prior to connecting and discharging to the storm sewer system.

e. Owner shall maintain the private storm sewer line and connection to City's storm sewer system at Owner's expense.

f. Owner or occupants of the Subject Real Property shall not discharge any liquid or substance other than clear and clean stormwater into the City's storm sewer system. In the event that Owner or Owner's occupant does discharge any liquid or substance other than clear and clean stormwater into the City's storm sewer system, then

Owner shall be responsible for any damages caused to the City's storm sewer system and any clean-up required.

g. Owner shall not modify the Owner's drainage system in any material way other than as provided for by this agreement, or by written approval by the City Engineering Department.

h. This agreement does not preclude the owner from obtaining a right-of-way cut permit from the City of Goshen Engineering Department prior to commencing any work within the public right-of-way.

4. TERMINATION OF CONNECTION

a. City may terminate this agreement if any of the following events occur:

- i. State or federal statutes, rules or regulations are changed or interpreted to require City to treat stormwater that enters the storm sewer system.
- ii. Owner or an occupant of the Subject Real Property discharges any liquid or substance other than clear and clean stormwater into the City's storm sewer system.
- iii. City's existing storm sewer system is for any reason unable to handle the stormwater generated from the Subject Real Property.
- iv. City changes or replaces its existing drainage system in a way that makes it impractical for City to continue to accept the stormwater generated from the Subject Real Property.
- v. Owner modifies the Owner's drainage system in any material way.

b. If any of the events listed in paragraph a. occur and City's Department of Stormwater Management notifies Owner of the need to disconnect from the storm sewer system, Owner shall disconnect from the system within six (6) months of City's notice at Owner's expense unless a shorter period of time is required by the Indiana Department of Environmental Management or other governmental entity.

c. If Owner disconnects from City's storm sewer system for any reason, Owner shall retain its stormwater on the Subject Real Property or discharge its stormwater in a manner approved by the City of Goshen's Department of Stormwater Management and in compliance with statutes, ordinances, rules and regulations in effect at the time Owner disconnects from City's storm sewer system at Owner's expense.

d. City retains the right to immediately suspend Owner's right to connect to City's storm sewer system if in the opinion of City the suspension is necessary in order to stop an actual or threatened discharge that presents or may reasonably present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes City to violate any condition of City's National Pollutant Discharge Elimination System (NPDES) Permit.

5. NOTICES

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the dates set forth below.

City of Goshen, Indiana
Goshen Board of Public Works and Safety

510 Apple, Inc

Jeremy P. Stutsman, Mayor

Date Signed: _____

Printed: _____

Title: _____

Date Signed: _____



**STORMWATER DEPARTMENT
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626

stormwater@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Stormwater Board

FROM: Department of Stormwater

RE: **LETTER OF SUPPORT FOR BAKER TILLY SCOPE OF WORK
PROPOSAL TO CONDUCT A STORMWATER RATE STUDY FOR THE
GREATER ELKHART COUNTY STORMWATER PARTNERSHIP**
(FILE: DEPARTMENT OF STORMWATER / PROGRAM & BUDGET)

DATE: April 15, 2022

Going before the Stormwater Board is a letter of support for the Greater Elkhart County Stormwater Partnership (hereinafter referred to as “the Partnership”) to move forward with a stormwater utility fee rate study as proposed in Baker Tilly’s scope of work proposal.

The Partnership includes the City of Elkhart, the City of Goshen, Elkhart County, and the Town of Bristol and is supported by an inter-local agreement. The Partnership Stormwater Board established the stormwater user fee in 2006 which set a County-wide rate then adopted by the individual entities (Goshen’s Stormwater Board).

The stormwater user fee has seen little change since its establishment in 2006 to meet the requirements of the Partnership’s Indiana Municipal Separate Storm Sewer System (MS4) permit. The fee was set at \$15 annually per residence and per equivalent residential unit (ERU) where an ERU is a measurement of hard surface square footage set by an average area of hard surface across residential properties.

The \$15 annual fee has never been adjusted since originally adopted, but the hard surface square footage of ERUs was adjusted in 2010 from 2,800 square feet to 3,600 square feet as stated in Ordinance 4624. This update more closely represented the average hard surface area found on residential properties throughout Elkhart County, but also resulted in a de facto lowering of the stormwater fee for non-residential properties.

The stormwater fee is collected at the County level and distributed amongst the four distinct MS4 entities based on their respective total ERUs, which are reevaluated with each new aerial image taken of Elkhart County and updated as stated in Ordinance 4712 (adopted October 23, 2012). In 2021, the City of Goshen received \$542,985.44 in revenue out of the approximately 2.6 million in funds raised from the fee across the County.

While this funding has been sufficient for maintaining a program in Goshen that meets the minimum requirements of our MS4 permit, it has left little to no funding for capital investment in drainage and infrastructure projects. In addition, the Indiana MS4 permit was updated for the first time in nearly 20 years in December of 2021. As the permit update expands some minimum requirements, current funding may prove no longer sufficient to adequately meet Goshen's regulatory requirements.

The attached study report completed by Christopher Burke Engineering in February 2021, highlights quickly in graphic form how far behind the Partnership's user fee is compared to other MS4 entities throughout the state. The Partnership's user fee is currently the third-lowest rate in the State at \$1.25 per month per ERU—a rate well below the State average of \$5.74 per month.

The purpose of the Baker Tilly rate study is to evaluate the stormwater utility fee based on the program needs of all partners and make recommendations. A fee adjustment would have to first be approved by the Greater Elkhart County Stormwater Partnership Board whose members include the Elkhart County Commissioners and the County Surveyor. The fee update would then need adopted by the individual partner entities.

Requested Motion: Approve and sign the letter of support addressed to the Greater Elkhart County Stormwater Partnership Board for the proposed professional services contract with Baker Tilly to conduct a stormwater utility rate study.



**Stormwater Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626
stormwater@goshencity.com • www.goshenindiana.org

April 18, 2022

Elkhart County Stormwater Board
117 N. Second Street
Goshen, IN 46526

Attention: Greater Elkhart County Stormwater Partnership Board

RE: LETTER OF SUPPORT—STUDY OF THE EXISTING STORMWATER RATE

Dear Stormwater Partnership Board,

The **City of Goshen Stormwater Board** wishes to express their support for, and commitment, to the proposed scope for the “Engagement Letter Agreement Related to Services” for a stormwater fee rate study conducted by Baker Tilly Municipal Advisors for the Greater Elkhart County Stormwater Partnership.

Over the past couple of years, the City of Goshen has advocated for a reevaluation of the original fee structure first set in 2006 with minor updates implemented in 2010 and 2012. Goshen’s Stormwater Board would like to see a fee that more adequately meets the current program and capital needs of Goshen’s Stormwater Department as well as anticipates needs based on the State’s December 2021 updates to the Municipal Separate Storm Sewer System (MS4) general permit coverage.

The Goshen Stormwater Board, feels a rate study of the kind proposed by Baker Tilly is a great first step to assess whether current fees provide adequate funding for programmatic and capital improvement needs.

City of Goshen Stormwater Board

Jeremy Stutsman, Mayor

Mike Landis, Member

Mary Nichols, Member



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bakertilly.com

March 22, 2022

Greater Elkhart County Stormwater Partnership
1201 S Nappanee St.
Elkhart, IN 46516

RE: Engagement Letter Agreement Related to Services

This letter agreement (the "Engagement Letter") is to confirm our understanding of the basis upon which Baker Tilly US, LLP ("Baker Tilly") and its affiliates are being engaged by the Greater Elkhart County Stormwater Partnership (the "Client") to assist the Client with advisory services.

Scope, Objectives and Approach

It is anticipated that projects undertaken in accordance with this Engagement Letter will be at the request of the Client. The scope of services, additional terms and associated fee for individual engagements will be contained in a Scope Appendix or Appendices to this Engagement Letter. Authorization to provide services will commence upon execution and return of this Engagement Letter and one or more Appendices.

Management's Responsibilities

It is understood that Baker Tilly will serve in an advisory capacity with the Client. The Client is responsible for management decisions and functions, and for designating an individual with suitable skill, knowledge or experience to oversee the services we provide. The Client is responsible for evaluating the adequacy and results of the services performed and accepting responsibility for such services. The Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

The procedures we perform in our engagement will be heavily influenced by the representations that we receive from Client personnel. Accordingly, false representations could cause material errors to go undetected. The Client, therefore, agrees that Baker Tilly will have no liability in connection with claims based upon our failure to detect material errors resulting from false representations made to us by any Client personnel and our failure to provide an acceptable level of service due to those false representations.

The ability to provide service according to timelines established and at fees indicated will rely in part on receiving timely responses from the Client. The Client will provide information and responses to deliverables within the timeframes established in a Scope Appendix unless subsequently agreed otherwise in writing.

The responsibility for auditing the records of the Client rests with the Client's separately retained auditor and the work performed by Baker Tilly shall not include an audit or review of the records or the expression of an opinion on financial data.

Ownership of Intellectual Property

Unless otherwise stated in a specific Scope Appendix, subject to Baker Tilly's rights in Baker Tilly's Knowledge (as defined below), Client shall own all intellectual property rights in the deliverables developed under the applicable Scope Appendix or Appendices ("Deliverables"). Notwithstanding the foregoing, Baker Tilly will maintain all ownership right, title and interest to all Baker Tilly's Knowledge. For purposes of this Agreement "Baker Tilly's Knowledge" means Baker Tilly's proprietary programs, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark and other intellectual property rights related thereto, that are (1) owned or developed by Baker Tilly prior to the Effective Date of this Agreement or the applicable Scope Appendix or Appendices ("Baker Tilly's Preexisting Knowledge") (2) developed or obtained by Baker Tilly after the Effective Date, that are reusable from client to client and project to project, where Client has not paid for such development; and (3) extensions, enhancements, or modifications of Baker Tilly's Preexisting Knowledge which do not include or incorporate Client's confidential information. To the extent that any Baker Tilly Knowledge is incorporated into the Deliverables, Baker Tilly grants to Client a non-exclusive, paid up, perpetual royalty-free worldwide license to use such Baker Tilly Knowledge in connection with the Deliverables, and for no other purpose without the prior written consent of Baker Tilly. Additionally, Baker Tilly may maintain copies of its work papers for a period of time and for use in a manner sufficient to satisfy any applicable legal or regulatory requirements for records retention.

The supporting documentation for this engagement, including, but not limited to work papers, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. If we are required by law, regulation or professional standards to make certain documentation available to required third parties, the Client hereby authorizes us to do so.

Timing and Fees

Specific services will commence upon execution and return of a Scope Appendix to this Engagement Letter and our professional fees will be based on the rates outlined in such Scope Appendix.

Unless otherwise stated, in addition to the fees described in a Scope Appendix the Client will pay all of Baker Tilly's reasonable out-of-pocket expenses incurred in connection with the engagement. All out of pocket costs will be passed through at cost and will be in addition to the professional fee.

Dispute Resolution

Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Engagement Letter or the applicable Scope Appendix or Appendices as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation, or termination of this Agreement or the applicable Scope Appendix or Appendices as shall be resolved as set forth in this section using the following procedure: In the unlikely event that differences concerning the services or fees provided by Baker Tilly should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree to expressly waive trial by jury in any judicial proceeding involving directly or indirectly, any matter (whether sounding in tort, contract, or otherwise) in any way arising out of, related to, or connected with this Agreement or the applicable Scope Appendix or Appendices as or the relationship of the parties established hereunder.

Because a breach of any the provisions of this Engagement Letter or the applicable Scope Appendix or Appendices as concerning confidentiality or intellectual property rights will irreparably harm the non-breaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the non-breaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

Limitation on Damages

To the extent allowed under applicable law, the aggregate liability (including attorney's fees and all other costs) of either party and its present or former partners, principals, agents or employees to the other party related to the services performed under an applicable Scope Appendix or Appendices shall not exceed the fees paid to Baker Tilly under the applicable Scope Appendix or Appendices to which the claim relates, except to the extent finally determined to have resulted from the gross negligence, willful misconduct or fraudulent behavior of the at-fault party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays or interruptions arising out of or related to this Engagement Letter or the applicable Scope Appendix or Appendices as even if the other party has been advised of the possibility of such damages.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Engagement Letter are material bargained for bases of this Engagement Letter and that they have been taken into account and reflected in determining the consideration to be given by each party under this Engagement Letter and in the decision by each party to enter into this Engagement Letter.

The terms of this section shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of you, Baker Tilly or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Engagement Letter.

You accept and acknowledge that any legal proceedings arising from or in conjunction with the services provided under this Engagement Letter must be commenced within twelve (12) months after the performance of the services for which the action is brought, without consideration as to the time of discovery of any claim.

Other Matters

E-Verify Program

Baker Tilly participates in the E-Verify program. For the purpose of this paragraph, the E-Verify program means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.401(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Baker Tilly does not employ any "unauthorized aliens" as that term is defined in 8 U.S.C. 1324a(h)(3).

Investments

Baker Tilly certifies that pursuant to Indiana Code 5-22-16.5 *et seq.* Baker Tilly is not now engaged in investment activities in Iran. Baker Tilly understands that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

Non-Discrimination

Pursuant to Indiana Code §22-9-1-10, Baker Tilly and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Engagement Letter, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, sex, disability, national origin, ancestry, or veteran status. Breach of this covenant may be regarded as a material breach of this Engagement Letter.

Baker Tilly certifies that, except for de minimis and non-systematic violations, it has not violated the terms of I.C. 24-4.7, I.C. 24-5-12, or I.C. 24-5-14 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law, and that Baker Tilly will not violate the terms of I.C. 24-4.7 for the duration of the Engagement Letter, even if I.C. 24-4.7 is preempted by federal law. Baker Tilly further certifies that any affiliate or principal of Baker Tilly and any agent acting on behalf of Baker Tilly or on behalf of any affiliate or principal of Baker Tilly, except for de minimis and non-systematic violations, has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law, and will not violate the terms of I.C. 24-4.7 for the duration of the Engagement Letter, even if I.C. 24-4.7 is preempted by federal law.

Anti-Nepotism

The Firm is aware of the provisions under IC 36-1-21 et seq. with respect to anti-nepotism in contractual relationships with governmental entities. The Firm is not aware of any relative (as defined in IC 36-1-21-3) of any elected official (as defined in IC 36-1-21-2) of the Client who is an owner or an employee of the Firm.

In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena, or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses incurred in responding to such a request.

Neither this Engagement Letter, any claim, nor any rights or licenses granted hereunder may be assigned, delegated, or subcontracted by either party without the written consent of the other party. Either party may assign and transfer this Engagement Letter to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interest or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Engagement Letter.

In the event that any provision of this Engagement Letter or statement of work contained in a Scope Appendix hereto is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Engagement Letter or statement of work did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Engagement Letter would impair Baker Tilly's independence under its rules, such provision(s) shall be of no effect.

Termination

Both the Client and Baker Tilly have the right to terminate this Engagement Letter or any work being done under an individual Scope Appendix at any time after reasonable advance written notice. On termination, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and Baker Tilly, the scope of services provided in a Scope Appendix will terminate 60 days after completion of the services in such Appendix.

Important Disclosures

Incorporated as Attachment A and part of this Engagement Letter are important disclosures. These include disclosures that apply generally and those that are applicable in the event Baker Tilly is engaged to provide municipal advisory services.

This Engagement Letter, including the attached Disclosures as updated from time to time, comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals, oral or written, and all other communications between the parties. Both parties acknowledge that work performed pursuant to the Engagement Letter will be done through Scope Appendices executed and made a part of this document.

Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Engagement Letter shall survive the expiration or termination of this Engagement Letter or any statement of work contained in a Scope Appendix hereto.

If this Engagement Letter is acceptable, please sign below and return one copy to us for our files.

Sincerely,



Jeffrey P. Rowe, Partner

Signature Section:

The terms as set forth in this Engagement Letter are agreed to on behalf of the Client by:

Name: _____

Title: _____

Date: _____

Attachment A Important Disclosures

Non-Exclusive Services

Client acknowledges and agrees that Baker Tilly, including but not limited to Baker Tilly US, LLP, Baker Tilly Municipal Advisors, LLC, Baker Tilly Capital, LLC, and Baker Tilly Investment Services, LLC, is free to render municipal advisory and other services to the Client or others and that Baker Tilly does not make its services available exclusively to the Client.

Affiliated Entities

Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

Baker Tilly Investment Services, LLC ("BTIS"), a U.S. Securities and Exchange Commission ("SEC") registered investment adviser, may provide services to the Client in connection with the investment of proceeds from an issuance of securities. In such instances, services will be provided under a separate engagement, for an additional fee. Notwithstanding the foregoing, Baker Tilly may act as solicitor for and recommend the use of BTIS, but the Client shall be under no obligation to retain BTIS or to otherwise utilize BTIS relative to Client's investments. The fees paid with respect to investment services are typically based in part on the size of the issuance proceeds and Baker Tilly may have incentive to recommend larger financings than would be in the Client's best interest. Baker Tilly will manage and mitigate this potential conflict of interest by this disclosure of the affiliated entity's relationship, a Solicitation Disclosure Statement when Client retains BTIS's services and adherence to Baker Tilly's fiduciary duty and/or fair dealing obligations to the Client.

Baker Tilly Capital, LLC ("BTC") Baker Tilly Capital, LLC ("BTC") is a limited service broker-dealer specializing in merger and acquisition, capital sourcing, project finance and corporate finance advisory services. BTC does not participate in any municipal offerings advised on by its affiliate Baker Tilly Municipal Advisors. Any services provided to Client by BTC would be done so under a separate engagement for an additional fee.

Baker Tilly Municipal Advisors ("BTMA") is registered as a "municipal advisor" pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the SEC and the Municipal Securities Rulemaking Board ("MSRB"). As such, BTMA may provide certain specific municipal advisory services to the Client. BTMA is neither a placement agent to the Client nor a broker/dealer. The offer and sale of any Bonds is made by the Client, in the sole discretion of the Client, and under its control and supervision. The Client acknowledges that BTMA does not undertake to sell or attempt to sell bonds or other debt obligations and will not take part in the sale thereof.

Baker Tilly, may provide services to the Client in connection with human resources consulting, including, but not limited to, executive recruitment, talent management and community survey services. In such instances, services will be provided under a separate scope of work for an additional fee. Certain executives of the Client may have been hired after the services of Baker Tilly were utilized and may make decisions about whether to engage other services of Baker Tilly or its subsidiaries. Notwithstanding the foregoing, Baker Tilly may recommend the use of Baker Tilly or a subsidiary, but the Client shall be under no obligation to retain Baker Tilly or a subsidiary or to otherwise utilize either relative to the Client's activities.

Conflict Disclosure Applicable to Municipal Advisory Services Provided by BTMA

Legal or Disciplinary Disclosure. BTMA is required to disclose to the SEC information regarding criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation involving BTMA. Pursuant to MSRB Rule G-42, BTMA is required to disclose any legal or disciplinary event that is material to the Client's evaluation of BTMA or the integrity of its management or advisory personnel.

There are no criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations or civil litigation involving BTMA. Copies of BTMA filings with the SEC can currently be found by accessing the SEC's EDGAR system Company Search Page which is currently available at <https://www.sec.gov/edgar/searchedgar/companysearch.html> and searching for either Baker Tilly Municipal Advisors, LLC or for our CIK number which is 0001616995. The MSRB has made available on its website (www.msrb.org) a municipal advisory client brochure that describes the protections that may be provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

Contingent Fee. The fees to be paid by the Client to BTMA are or may be based on the size of the transaction and partially contingent on the successful closing of the transaction. Although this form of compensation may be customary in the municipal securities market, it presents a conflict because BTMA may have an incentive to recommend unnecessary financings, larger financings or financings that are disadvantageous to the Client. For example, when facts or circumstances arise that could cause a financing or other transaction to be delayed or fail to close, BTMA may have an incentive to discourage a full consideration of such facts and circumstances, or to discourage consideration of alternatives that may result in the cancellation of the financing or other transaction.

Hourly Fee Arrangements. Under an hourly fee form of compensation, BTMA will be paid an amount equal to the number of hours worked multiplied by an agreed upon billing rate. This form of compensation presents a potential conflict of interest if BTMA and the Client do not agree on a maximum fee under the applicable Appendix to this Engagement Letter because BTMA will not have a financial incentive to recommend alternatives that would result in fewer hours worked. In addition, hourly fees are typically payable by the Client whether or not the financing transaction closes.

Fixed Fee Arrangements. The fees to be paid by the Client to BTMA may be in a fixed amount established at the outset of the service. The amount is usually based upon an analysis by Client and BTMA of, among other things, the expected duration and complexity of the transaction and the work documented in the Scope Appendix to be performed by Baker Tilly. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, Baker Tilly may suffer a loss. Thus, Baker Tilly may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives.

BTMA manages and mitigates conflicts related to fees and/or other services provided primarily through clarity in the fee to be charged and scope of work to be undertaken and by adherence to MSRB Rules including, but not limited to, the fiduciary duty which it owes to the Client requiring BTMA to put the interests of the Client ahead of its own and BTMA's duty to deal fairly with all persons in its municipal advisory activities.

To the extent any additional material conflicts of interest have been identified specific to a scope of work the conflict will be identified in the respective Scope Appendix. Material conflicts of interest that arise after the date of a Scope Appendix will be provide to the Client in writing at that time.

**SCOPE APPENDIX to
Engagement Letter dated: March 22, 2022
Between Greater Elkhart County Stormwater Partnership and
Baker Tilly US, LLP**

RE: Municipal Stormwater – Proposed Financial Advisory Services – Analysis of Costs and Revenues

DATE: March 22, 2022

This Scope Appendix is attached by reference to the above-named engagement letter (the "Engagement Letter") between the Greater Elkhart County Stormwater Partnership (the "Client") and Baker Tilly US, LLP and relates to services to be provided by Baker Tilly Municipal Advisors, LLC.

SCOPE OF WORK

Baker Tilly Municipal Advisors, LLC ("BTMA") will perform the following services with respect to the financial studies conducted for the Stormwater Departments of the City of Elkhart, City of Goshen, Elkhart County, and the Town of Bristol and the development of user fees estimated to be adequate to provide for the necessary revenue requirements.

A. Analysis of Costs and Revenues (Rate Analysis) (Municipal Advisory and Consulting Services)

1. Analyze historical recorded financial information for a period of three (3) calendar years and for the most recent twelve (12) month period available (the "test year").
2. Detail from available records a schedule of flow of funds for the past three (3) calendar years and the test year for the purpose of determining trends, amounts of revenue, cash operation and maintenance expenses, debt service requirements and expenditures for improvements to the utility property and plant.
3. Obtain information from Utility officials, engineers and/or other available sources to suggest adjustments to test year cash operating expenses such as additional labor, power costs, chemical costs, additional taxes and other fixed, known and measurable expense changes.
4. Schedule monthly revenues of the test year in order to locate and adjust unusual and significant fluctuations in such revenue.
5. Prepare amortization schedules of presently outstanding funded debt of the Utility extending over the life of the remaining years of payment and obtain information from bond ordinances or other documents relating to such funded debt, if applicable.
6. Obtain information from the rate ordinance now in effect.
7. Assist in the development of a capital improvements program and a financial program leading to the obtaining of funds necessary to meet the capital improvement requirements through funds now available and/or future revenues of the system.
8. Provide alternative estimates of future annual revenue requirements for consideration by the Utility.
9. Suggest across-the-board increases for the Utility as may be considered necessary to meet the estimated future annual revenue requirements.
10. Provide comparative information concerning the present and possible future rate structure of the Utility in comparison with other stormwater utilities in Indiana.
11. Meet with the officials of the Utility to discuss findings and recommendations.

**SCOPE APPENDIX to
Engagement Letter dated: March 22, 2022
Between Greater Elkhart County Stormwater Partnership and
Baker Tilly US, LLP**

12. Provide financial information to the Utility's attorney for the preparation of a rate ordinance (if a rate change is necessary).
13. Provide a report summarizing the results of BTMA's studies for submission to the Utility.
14. Attend a public hearing to be conducted by the Utility in order to present accounting information relating to the proposed rates and charges (if a rate change is necessary).

Anticipated Project Schedule

Data gathering	21 days
Rate study analysis and draft report preparation	30 days
Meeting with Partnership to present draft rate study report	7 days
Modify report based on comments and issue final report	14 days
Meetings with individual partners to present final results	TBD
Provide rate information to legal counsel for preparation of rate ordinances	7 days

**SCOPE APPENDIX to
Engagement Letter dated: March 22, 2022
Between Greater Elkhart County Stormwater Partnership and
Baker Tilly US, LLP**

Compensation and Invoicing

BTMA's fees for services set forth in the Scope Appendix will be billed at BTMA's standard billing rates based upon the actual time and expenses incurred and will not exceed Fifteen Thousand Dollars (\$15,000) without further authorization from the Client.

Standard Hourly Rates by Job Classification
9/1/2021

Partners / Principals / Directors	\$320.00	to	\$525.00
Senior Managers / Managers	\$205.00	to	\$315.00
Senior Consultants / Senior Financial Analysts	\$165.00	to	\$200.00
Consultants / Financial Analysts	\$140.00	to	\$160.00
Support Personnel	\$100.00	to	\$150.00
Interns			\$110.00

- *Billing rates are subject to change periodically due to changing requirements and economic conditions. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

The above fees shall include all expenses incurred by BTMA with the exception of expenses incurred for mileage which will be billed on a separate line item. No such expenses will be incurred without the prior authorization of the Client. The fees do not include the charges of other entities such as rating agencies, bond and official statement printers, couriers, newspapers, bond insurance companies, bond counsel and local counsel, and electronic bidding services, including Parity[®]. Coordination of the printing and distribution of Official Statements or any other Offering Document are to be reimbursed by the Client based upon the time and expense for such services.

Nonattest Services

As part of this engagement, we will perform certain nonattest services. For purposes of the Engagement Letter and this Scope Appendix, nonattest services include services that the *Government Auditing Standards* refers to as nonaudit services.

We will not perform any management functions or make management decisions on your behalf with respect to any nonattest services we provide.

In connection with our performance of any nonattest services, you agree that you will:

- > Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to you.
- > Designate an employee with suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services we perform.
- > Evaluate the adequacy and results of the nonattest services we perform.

**SCOPE APPENDIX to
Engagement Letter dated: March 22, 2022
Between Greater Elkhart County Stormwater Partnership and
Baker Tilly US, LLP**

- > Accept responsibility for the results of our nonattest services.
- > Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

Conflicts of Interest

Attachment A to the Engagement Letter contains important disclosure information that is applicable to this Scope Appendix.

We are unaware of any additional conflicts of interest related to this Scope Appendix that exist at this time.

Termination

This Scope Appendix will terminate according to the terms of the Engagement Letter.

If this Scope Appendix is acceptable, please sign below and return one copy to us for our files. We look forward to working with you on this important project.

Sincerely,

Jeffrey P. Rowe

Jeffrey P. Rowe, Partner

Signature Section:

The services and terms as set forth in this Scope Appendix are agreed to on behalf of the Client by:

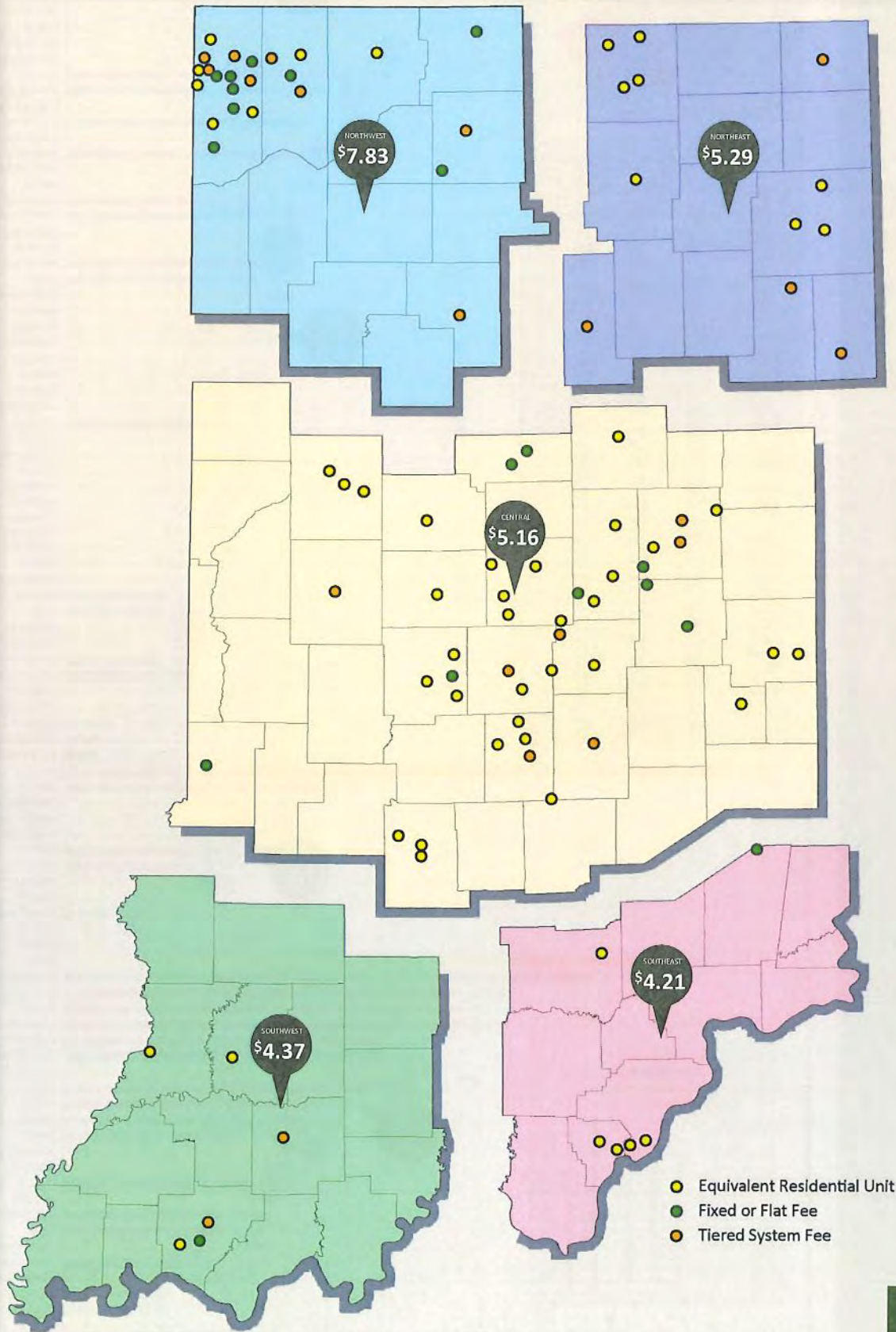
Name: _____

Title: _____

Date: _____

AVERAGE MONTHLY SFR STORMWATER FEE

BY REGION



INDIANA STORMWATER UTILITIES MONTHLY SFR FEES AND FEE TYPES

FEE TYPE DISTRIBUTION

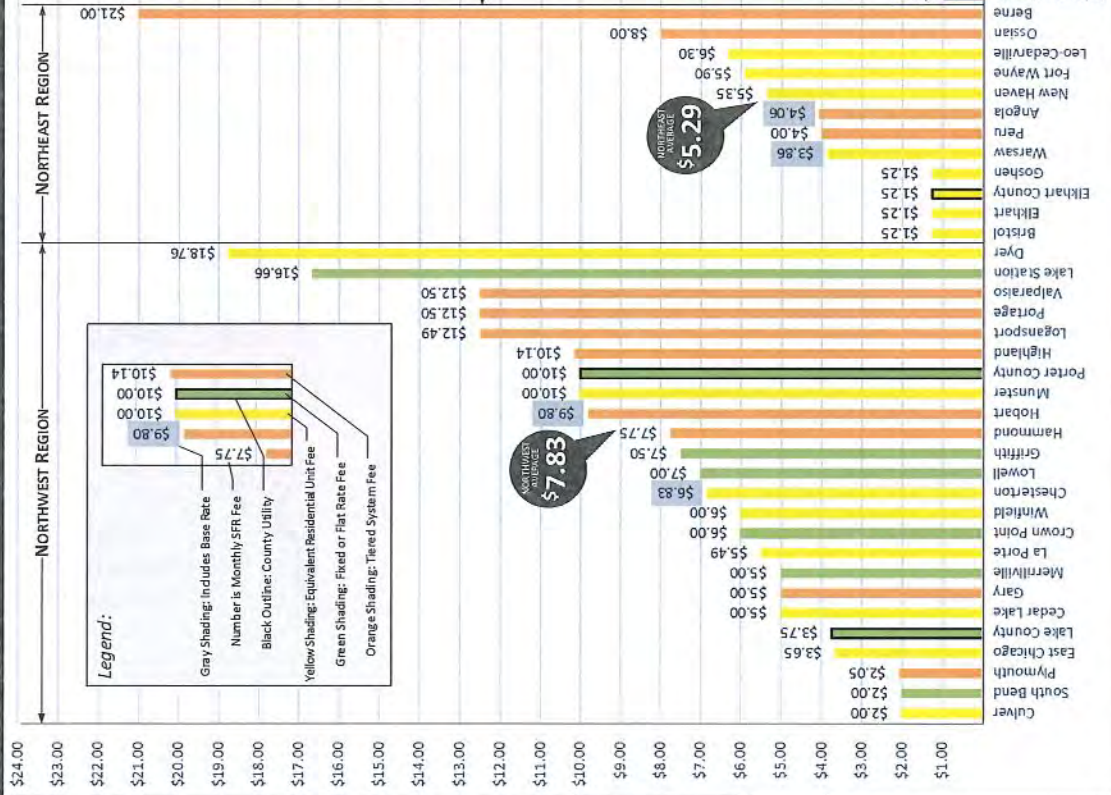


MONTHLY SFR FEE SUMMARY

AVERAGE OF ALL 95 ENTITIES: \$5.74 PER MONTH

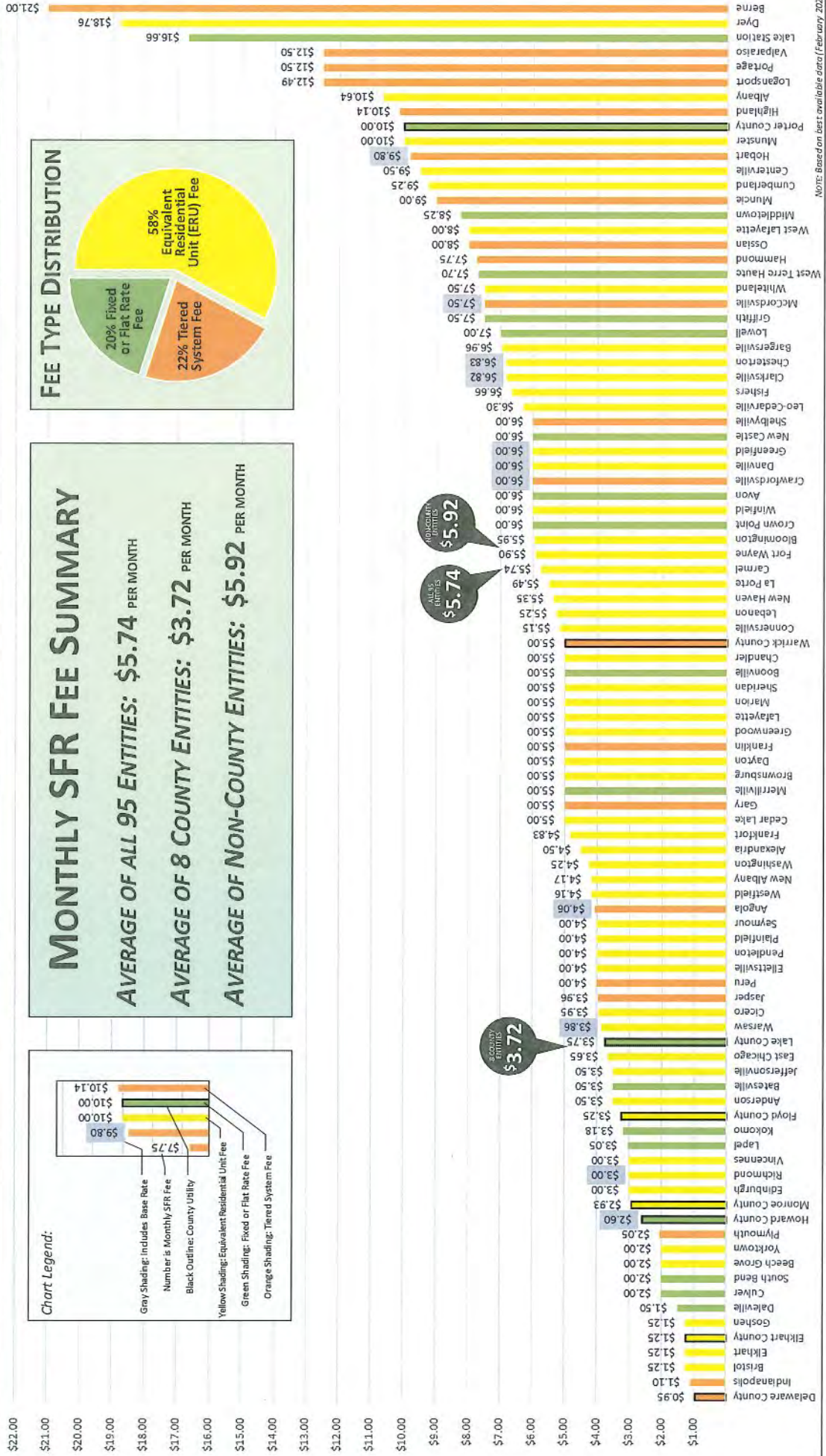
AVERAGE OF 8 COUNTY ENTITIES: \$3.72 PER MONTH

AVERAGE OF NON-COUNTY ENTITIES: \$5.92 PER MONTH



Note: Based on best available data (February 2021).

INDIANA STORMWATER UTILITIES MONTHLY SFR FEES AND FEE TYPES



NOTE: Based on best available data (February 2021).

ORDER OF THE CITY OF GOSHEN BOARD OF PUBLIC WORKS AND SAFETY

December 7, 2021

To: Ron Davidhizar
203 Middlebury Street
Goshen, IN 46528

RE: Premises at 214 E. Clinton Street, Goshen, Indiana

As a person holding a substantial property interest in the real estate at 214 E. Clinton Street, Goshen, Indiana, you were served with an Order of the City of Goshen Building Department dated November 16, 2021 by Paralegal Carla Newcomer who mailed the Order by certified mail with return receipt requested and by first-class mail on November 16, 2021.

This comes for a hearing before the City of Goshen Board of Public Works and Safety on November 6, 2021 to review the November 16, 2021 Order of the City of Goshen Building Department. The City of Goshen Building Department appears by Building Inspector Travis Eash, Ron Davihizar and Attorney, Bill Davis also appear at the hearing.

Evidence was presented and arguments heard. The Board of Public Works and Safety being duly advised in the condition of the buildings and/or premises at 214 E. Clinton Street, Goshen, Indiana now finds the real estate is unsafe within the meaning of Indiana Code § 36-7-9-4 in that one or more buildings or structures on the real estate are in an impaired structural condition that makes it unsafe to a person or property a public health hazard dangerous to person or property because of a violation of Goshen City Code Title 6, Article 3, Chapter 1 concerning building condition or maintenance, vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of Goshen City Code Title 6, Article 3, Chapter 1

In particular, the Board finds that the present condition of the buildings and/or premises are in violation of the following sections of Title 6, Article 3, Chapter 1 of the Goshen City Code

1. The structure was damaged in a fire on May 15, 2021 and the structural strength of the exterior walls of the property is insufficient (violation of Section 6.3.1.1 v).
2. The property is vacant and not secured, with multiple areas that are accessible to people and animals to enter the property (violation of Section 6.3.1.1 ff).

The Board of Public Works and Safety AFFIRMS the original Order of the City of Goshen Building Department and enters the Order as follows:

You are ordered to hire a Structural Engineer to inspect the premises to determine whether or not the dwelling is structurally sound and provide a report from the Engineer at a hearing held before the Goshen Board of Public

Works and Safety on Monday, January 24, 2022, at 2:00 p.m. (local time). In addition, the property must be secured and weather tight so that it is not accessible to the public or animals.

In the event that you fail to comply with this Order, the City of Goshen may take action to make the required corrections and will bill you for the costs of such work, including, the actual cost of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

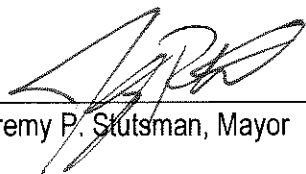
In the event that you fail to comply with this Order, the City of Goshen may pursue action in a court in Elkhart County to seek fines and costs.

You are entitled to appeal these findings of facts and this Order to the Elkhart Circuit Court or Elkhart Superior Court by filing a verified complaint within ten (10) days of the date of this action. Should you fail to file a verified complaint within the specified period of time, then your right to appeal this action would be forfeited.

Indiana Code § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the unsafe building and/or premises affected by this Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe building and/or premises, you must also supply City of Goshen Building Commissioner, Myron Grise with the full name, address and telephone number of the other person taking a substantial property interest in the unsafe building and/or premises, along with written copies of the agreement to transfer the interest or copies of the document actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Goshen, Indiana 46528, or you may contact him at (574) 534-2104. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This Order of the City of Goshen Board of Public Works and Safety is issued on December 8, 2021.

City of Goshen Board of Public Works and Safety

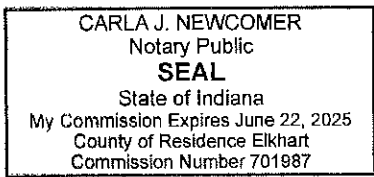


Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public, appeared the City of Goshen Board of Public Works and Safety by Jeremy P. Stutsman, Mayor, and acknowledged the execution of the foregoing Order on December 7, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



County of residence: Elkhart

Carla Newcomer

Notary Public

Printed: Carla J. Newcomer

My commission expires: June 22, 2025

This instrument was prepared by Bodie J. Stegelmann, Goshen City Attorney, Attorney No. 18180-20, 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 (Bodie J. Stegelmann).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order of the City of Goshen Board of Public Works and Safety dated November 8, 2021 for the premises at 214 E. Clinton Street, Goshen, Indiana, was served upon:

Ron Davidhizar, 203 Middlebury Street, Goshen, IN 46528, on December 8, 2021.

Sending a copy by registered or certified mail to the residence, place of business, or employment of the person to be notified, with return receipt requested.

Delivering a copy personally to the person to be notified.

Sending a copy by regular first-class mail to the last known address of the person to be notified.

Carla Newcomer

Carla Newcomer, Paralegal
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

ORDER OF THE CITY OF GOSHEN BOARD OF PUBLIC WORKS AND SAFETY

January 26, 2022

To: Ron Davidhizar
203 Middlebury Street
Goshen, IN 46528

RE: Premises at 214 E. Clinton Street, Goshen, Indiana

As a person holding a substantial property interest in the real estate at 214 E. Clinton Street, Goshen, Indiana, you were served with an Order of the City of Goshen Board of Public Works dated December 7, 2021 by Paralegal, Carla Newcomer who mailed the Order by certified mail, return receipt requested and by first-class mail on December 7, 2021.

A hearing was held before the City of Goshen Board of Public Works and Safety on January 24, 2022 to review compliance with the December 7, 2021 Order of the City of Goshen Board of Public Works and Safety. The City of Goshen Building Department appears by Myron Grise, Building Department Director. Ron Davihizar fails to appear at the hearing.

An update was presented and arguments heard regarding the compliance by Mr. Davidhizar to the December 7, 2021 Order.

The Board of Public Works and Safety being duly advised in the condition of the building at 214 E. Clinton Street, Goshen, Indiana, now finds that the present condition of the building and/or premises are unsafe because the building and/or premises are vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or ordinance; are in an impaired structural condition that makes it unsafe to a person or property; and are a fire hazard.

In particular, the Board finds that the present condition of the building and/or premises is in violation of the following sections of Title 6, Article 3, Chapter 1 of the Goshen City Code:

1. The structure was damaged in a fire on May 15, 2021 and the structural strength of the exterior walls of the property is insufficient (violation of Section 6.3.1.1 v).
2. The property is vacant and not secured, with multiple areas that are accessible to people and animals to enter the property (violation of Section 6.3.1.1 ff).

You are ordered to seal the unsafe building against intrusion by unauthorized persons, or animals. Further, the Board of Public Works and Safety orders the demolition of the improvements located at 214 E. Clinton Street, Goshen on or before March 31, 2022, unless you deliver to the Building Department a writing contesting the Board's findings, including supporting documents, on or before the 7th of February, 2022.

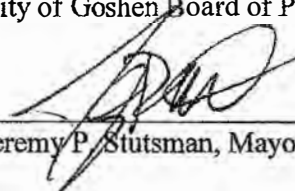
In the event that you fail to comply with this Order, the City of Goshen may take action to make the required corrections and will bill you for the costs of such work, including, the actual cost of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

You are entitled to appeal these findings of facts and this Order to the Elkhart Circuit Court or Elkhart Superior Court by filing a verified complaint within ten (10) days of the date of this notice. Should you fail to file a verified complaint within the specified period of time, then your right to appeal this action would be forfeited.

Indiana Code § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the unsafe building and/or premises affected by this Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe building and/or premises, you must also supply City of Goshen Building Director Myron Grise with the full name, address and telephone number of the other person taking a substantial property interest in the unsafe building and/or premises, along with written copies of the agreement to transfer the interest or copies of the document actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Goshen, Indiana 46528, or you may contact him at (574) 534-2104. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This Order of the City of Goshen Board of Public Works and Safety is issued on January 28, 2022.

City of Goshen Board of Public Works and Safety



Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
)
COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public, appeared the City of Goshen Board of Public Works and Safety by Jeremy P. Stutsman, Mayor and acknowledged the execution of the foregoing Order on January 28, 2022

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires June 22, 2025 Carla S. Newcomer
CARLA J. NEWCOMER
Notary Public
SEAL
State of Indiana
My Commission Expires June 22, 2025
County of Residence Elkhart
Commission Number 701987
Printed: Carla S. Newcomer
Resident of Elkhart County, Indiana

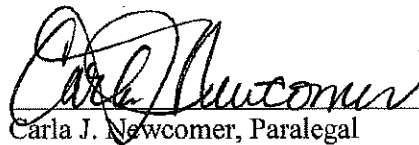
This instrument was prepared by Bodie J. Stegelmann, Goshen City Attorney, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 537-3820.

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 (Bodie J. Stegelmann).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order of the City of Goshen Board of Public Works and Safety for the premises at 214 E. Clinton Street, Goshen, Indiana, was served by sending a copy by regular first-class mail to the last known addresses of the following persons to be notified on January 28, 2022

To: Ron Davidhizar
203 Middlebury Street
Goshen, IN 46528



Carla J. Newcomer, Paralegal
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

M **Maust**
Architectural
Services, Inc.
A Division of L.E.M.

112 North Main Street
Goshen, IN 46526
Phone: (574) 537-8500
Fax: (574) 537-0808

Architects Planners Consultants Construction Management Rule 5 & Rule 13 Filing

February 16, 2022

Re: 214 E Clinton
Fire Damage

Myron Grise
Building Commissioner
City of Goshen Building Department
302 South 5th Street
Goshen, Indiana 46526

Dear Mr. Grise,

I have inspected the structure located at 214 East Clinton Street, Goshen, Indiana for the structural damage caused by a fire. The fire damage was mainly in the attic and front wall of the structure. The floor was not significantly affected by the fire. There are some interior wall studs that will need to be replaced or have new 2x4 stud placed next to them. The ceiling joist were not significantly affected by the fire. 45% of the roof rafters and collar ties were all affected by the fire and will need to be replaced or have new structure installed beside them. The roof sheathing at the peak in the front 1/3 of the structure will need to be replaced as it was charred badly. The front porch roof should be torn down and replaced as it sustained fire damage from both the top and bottom. The front wall should be reframed with new 2x4 material. In addition to the fire damage, I also inspected the basement area for damage that might have been caused from the water used to extinguish the fire. The basement was full of debris, not fire related, and I was not able to get around everything. I did observe that a section of the Michigan style basement wall appeared to have lost some of its earth support at one section. The area where the earth support appears to be washed out supports an interior floor beam. It was observed that there was a pile of dirt across the basement floor surrounding the water heater.

Repair Action:
Basement.

- Remove debris from the area.
- Remove washed out dirt
- Repair washed out bank area of michigan basement wall
 - Layup CMU at front section of washed-out area to contain Concrete flowable fill
 - Use Concrete flowable fill to establish solid base and re-establish bank
 - One bank has be reestablished provide solid support to structure above

Repair Michigan basement banks with concrete coating to stabilize all earth banks

Roof.

Place new 2x6 roof rafters @ 16" O.C. in the front 14' of roof area.
Install new collar ties 3'-0" down from the ridge
Remove and replace the top 2' of the roof sheathing for the front 14' of the roof

Front Wall.

Replace or place beside existing wall framing new 2x4's.
Re-sheath the exterior with ½ OSB

Front Porch

Remove and replace roof structure. Columns and porch beam can be reused.

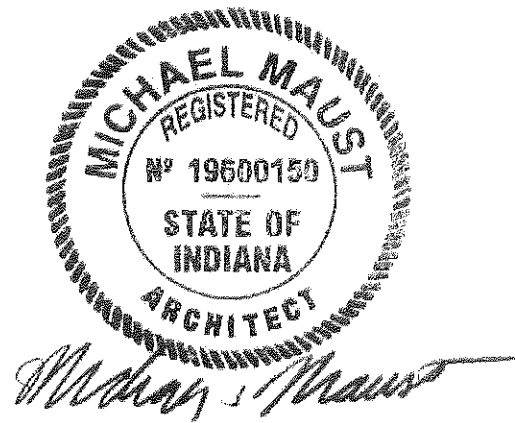
Interior Wall Framing.

Replace or place new 2s beside all wall studs with fire damage.

Please see the attached pictures. There was no lighting in the basement, and I was not able to get a good picture of the washed out area.

If you have any questions please feel free to contact me at (574) 537-8500 or the above address.

Sincerely,



Michael L. Maust, AIA
Maust Architectural Services, Inc.



Front Wall Damage



Ceiling Joist – not damaged



Rafter Damage



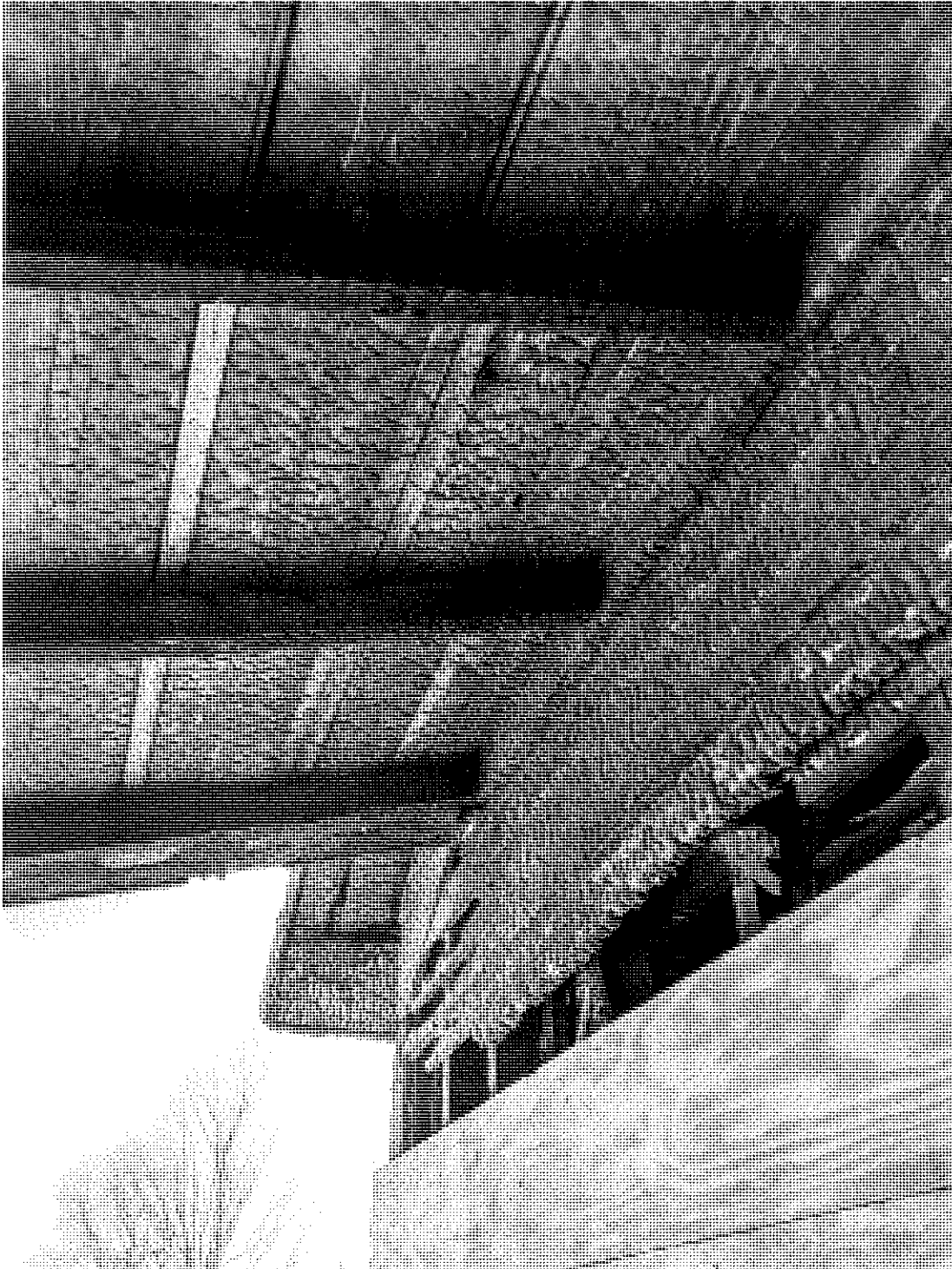
Back half more smoke damage than structural



Sheathing more smoke damage than structural



Sheathing damage at top 2'-0" front section



Porch Roof Damage