



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., June 27, 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: June 13, 2022 and June 22, 2022

Approval of Agenda

1) Legal Department: Resolution 2022-19 – Approve and ratify execution of Amendment to the Agreement for the Development of Stormwater Facilities with MR Realty IV, LLC

2) Legal Department: Ratify acceptance of easements from MR Realty IV, LLC

3) Legal Department: Approve agreement with Abonmarche Consultants, Inc. for the Cherry Creek Drainage Study

4) Engineering Department: Approve closure of Reliance Road, between Peddlers Village and U.S. 33, from June 28-30, 2022 for sewer main installation

5) Engineering Department: Approve closure of Cottage Avenue Bridge, June 30, 2022, for road sealing

6) Engineering Department: Approve partial lane restrictions on Dykstra Street, June 27-Aug. 1, 2022, for asphalt paving reconstruction and replacement of a storm structure

7) Engineering Department: Approve Change Order No. 2 for \$128,863.85, a 22.62% increase, and extend completion date to Aug. 26, 2022 for the Madison Street and College Avenue Reconstruction (JN: 2021-0016)

8) Stormwater Department: Completion Agreement Policy – Year in review



CITY OF GOSHEN STORMWATER BOARD

Regular Meeting Agenda

2:00 p.m., June 27, 2022

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

Members: Mayor Stutsman, Mike Landis and Mary Nichols

9) Stormwater Department: Approve the execution by the Mayor of the Notice of Intent for permit coverage under the Municipal Separate Storm Sewer System General Permit.

Privilege of the Floor

10) Board of Public Works and Safety Order: Building Commissioner Order for 110 S. 7th Street – B (Samuel & Gloria Ascencio, property owners)

Approval of Civil City and Utility Claims

Adjournment



BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD

MINUTES OF THE June 13, 2022 REGULAR MEETING

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Mayor Jeremy Stutsman, Mike Landis, Mary Nichols

Absent: DeWayne Riouse, Barb Swartley

CALL TO ORDER: Mayor Stutsman called the meeting to order at 2:00 p.m.

REVIEW/APPROVE MINUTES: Mayor Stutsman presented the minutes of the June 6, 2022 meeting of the Board of Works & Safety & Stormwater Board. Board member Nichols moved to approve the minutes as presented and the motion was seconded by Board member Landis. Motion passed 3-0.

REVIEW/APPROVE AGENDA: Mayor Stutsman presented the meeting agenda with the addition of item #13 *Agreement with Abonmarche Consultants, Inc.* Board member Nichols moved to approve the agenda as modified. Board member Landis seconded the motion. Motion passed 3-0.

1) Police Department: Approve the hiring of Jorden Lamar Snyder (#220) as a probationary patrol officer, effective June 21, 2022

Goshen Police Chief José Miller asked the Board approve the hiring of Jorden Lamar Snyder for the position of probationary patrol officer, effective Tuesday June 21, 2022. He said Snyder has passed all exams and has been approved by both the local and State pension boards. Snyder has already attended the Indiana Law Enforcement Academy and has recently worked as a police officer in Middlebury. Chief Miller said Jorden will be a welcome addition to the Police Department. Jorden will be sworn in June 21. Board member Landis clarified that the date of June 21 was correct due to no Board of Works meeting on June 20.

Nichols/Landis moved to approve the hiring of Jorden Lamar Snyder for the position of probationary patrol officer, effective Tuesday June 21, 2022. Motion passed 3-0.

2) Police Department: Approve the hiring of Ever Guillermo Gutierrez Franco (#221) as a probationary patrol officer, effective June 21, 2022

Goshen Police Chief José Miller asked the Board to approve the hiring of Ever Guillermo Gutierrez Franco for the position of probationary patrol officer, effective June 21, 2022. He said Franco has passed all exams and has been approved by both the local and State pension boards. Chief Miller said Franco will be a welcome addition to the Police Department. Franco will be sworn in June 21.

Nichols/Landis moved to approve the hiring of Ever Guillermo Gutierrez Franco for the position of probationary patrol officer, effective June 21, 2022. Motion passed 3-0.

3) Police Department: Accept retirement of Captain Jeremy Welker, effective June 19, 2022



Goshen Police Chief José Miller asked the Board approve the retirement of Captain Jeremy Welker from the Police Department, effective Tuesday June 19, 2022.

He said on June 6, Captain Welker provided a letter stating his intent to retire from the Police Department. In his letter, Captain Welker wrote: "This was my dream job and I only wanted to be employed as a Goshen City Police Officer. I am glad that the City of Goshen allowed that dream to come true and allowed me to live my dream for the last 20+ years. I have thoroughly enjoyed my time as an employee, in spite of the ups and downs that face police officers. Thank you for the opportunity to rise through the ranks and be a Captain for 2nd Shift. I have tried to share my knowledge with the younger officers in hopes that it helps them be the best they can be."

Chief Miller said Welker feels it is the time to start the next chapter in his life and to retire from law enforcement. Captain Welker was hired full-time with the police department on March 8, 2002. He was served the department and community in numerous supervisory positions, including department trainer of various subject matter, and operator on the SWAT Team. Chief Miller said Captain Welker has a great deal of knowledge and experience that will be difficult to replace. Chief Miller thanked Captain Welker for the sacrifices he has made and for his dedication to this profession the past 20 years and wished him the best in his retirement. Mayor Stutsman thanked Captain Welker for his dedication for the past two decades.

Nichols/Landis moved to approve the retirement of Captain Jeremy Welker from the Police Department, effective Tuesday June 19, 2022. Motion passed 3-0.

4) Police Department: Accept resignation of Sgt. Andrew Keim, effective June 7, 2022

Goshen Police Chief José Miller asked the Board to approve the resignation of Sergeant Andrew Keim from the Police Department, effective June 7, 2022.

Chief Miller said that on May 24, Sergeant Keim asked to meet with him and Assistant Chief Turner and stated that he has been offered a job in the private sector closer to his residence with daytime hours. He said that he discussed the option with his family and had decided to accept the position.

In his letter of resignation, **Sergeant Keim** wrote, "My five years at the Goshen Police Department have meant a great deal to me and have allowed me to grow and learn to be a professional in dealing with stressful and difficult situations. I am so grateful for these past five years at the Goshen Police Department. I will look back on the interactions I've had, the differences I've made within a community, and the impact in people's lives as a stepping stone for further growth in a new venture. I appreciate your support and understanding."

Chief Miller said that in his five years, Sergeant Keim has served the department in various positions, including as a detective and SWAT Team operator. He said Sergeant Keim has served this department and community with honor and will truly be missed. He thanked Sergeant Keim for his service and wished him the best in his future plans.

Nichols/Landis moved to approve the resignation of Sergeant Andrew Keim from the Police Department, effective June 7, 2022. Motion passed 3-0.

5) St. John the Evangelist Catholic Church request: Permission to close sections of Monroe Street and South Third Street, 10:30 a.m. to 1 p.m., on June 19, 2022 for a procession

Jonathan Evangelista Rios, Pastoral Associate at St. John the Evangelista Catholic Church, asked the Board for permission to block Monroe Street and a section of South Third Street along the church's school building for a procession in celebration of Corpus Christi on June 19, 2022, from 10:30 a.m. until 1 p.m.



Nichols/Landis moved to allow St. John the Evangelist Catholic Church to close Monroe Street and a section of South Third Street along the church's school building for a procession in celebration of Corpus Christi on June 19, 2022, from 10:30 a.m. until 1 p.m. Motion passed 3-0.

6) Legal Department: Request to extend the completion date of a cemetery planning services report by Grever & Ward, Inc.

Brandy Henderson, a paralegal in the City Legal Department, asked the Board to approve an extension of time for Grever & Ward, Inc. to complete a site visit from July 1, 2022 to August 1, 2022 as part of its cemetery planning services study. Henderson said on April 11, the Board approved and authorized an agreement between the City and Grever & Ward, Inc. to provide cemetery planning services, to Oakridge, West Goshen and Violet Cemeteries. In the agreement, a deadline to complete a site visit by Grever & Ward was set for July 1, 2022. Due to unforeseen circumstances with scheduling, this deadline is not obtainable and the parties have agreed to extend that deadline to Aug. 1, 2022. All other terms of the agreement are unaffected.

Nichols/Landis moved to approve an extension of time for Grever & Ward, Inc. to complete a site visit from July 1, 2022 to August 1, 2022 as part of its cemetery planning services study. Motion passed 3-0.

7) Legal Department: Approve agreement to provide \$2,750 to the South Bend | Elkhart Regional Partnership to help with regional economic development strategies

Brandy Henderson, a paralegal in the City Legal Department, asked the Board to approve an agreement to provide \$2,750 to the South Bend | Elkhart Regional Partnership to help with regional economic development strategies and to authorize Mayor Stutsman to sign the agreement.

Henderson said the City has various community service organizations that provide services or programs to its residents in a manner more efficient than what the City can provide. These organizations were subject to an application process requiring specific documentation regarding their organization including a detailed description of how these funds will be used. Henderson said the South Bend | Elkhart Regional Partnership is one such community service organization that has applied for these funds. It has requested \$2,750 to help with regional economic development strategies. She said the partnership has provided all the required information and an agreement is now being brought before the Board for consideration and approval.

Nichols/Landis moved to approve an agreement to provide \$2,750 to the South Bend | Elkhart Regional Partnership to help with regional economic development strategies and to authorize Mayor Stutsman to sign the agreement. Motion passed 3-0.

8) Legal Department: Approve agreement with Borntreger, Inc. for City Hall gutter relining

Carla Newcomer, a paralegal with the City Legal Department, asked the Board to approve and execute an agreement with Borntreger, Inc., for the Gutter relining at City Hall with a DuroLast Membrane. Borntreger, Inc. will be paid \$24,014.00 for the services. In its scope of work proposal, Borntreger has agreed to: Remove and dispose of existing termination bar and flashing (existing membrane to remain); install .050 white Duro-Tuff single-ply in existing gutter from bottom of clay tile coping to top outer edge of gutter; install termination bar below clay tile coping; install counter flash below clay tile coping (above termination bar); install 4" 24-gauge Kynar metal fascia at top outer edge of gutter; and clean the premises of all roofing scraps and debris created by this project.



Nichols/Landis moved to approve and execute an agreement with Borntager, Inc., for the Gutter relining at City Hall with a Duro Last Membrane. Motion passed 3-0.

9) Legal Department: Approve NASPO ValuePoint participating addendum with Cellco Partnership (Verizon Wireless) and approve purchase of four cellular services for \$125 a month

Carla Newcomer, a paralegal with the City Legal Department, asked the Board to approve NASPO ValuePoint participating addendum with Cellco Partnership (Verizon Wireless) and approve purchase of four cellular services for \$125 a month. The City is seeking to purchase SCADA equipment and monthly cellular services through Cellco Partnership d/b/a Verizon Wireless through a State Quantity Purchase Agreement with NASPO Value Point. The City needs four cell (4) services for SCADA Equipment and requests permission to enter into an agreement with NASPO Value Point for the SCADA Equipment and Verizon Cellular Service and for approval for the Mayor to execute the agreement.

Nichols/Landis moved to approve NASPO ValuePoint participating addendum with Cellco Partnership (Verizon Wireless) and approve purchase of four cellular services for \$125 a month and authorize the Mayor to execute the agreement. Motion passed 3-0.

10) Legal Department: Approve agreement with LaCroix Traffic Engineering, PLLC, to perform a 10th Street Apartments Traffic Impact Study for \$6,750

Brandy Henderson, a paralegal with the City Legal Department, asked the Board to approve and execute an agreement with LaCroix Traffic Engineering, PLLC, to perform a 10th Street Apartments Traffic Impact Study at a cost of \$6,750. In its scope of work proposal, LaCroix Traffic Engineering, PLLC, which is based in Grand Rapids, Michigan, has agreed to collect data on traffic around the Plymouth Avenue/10th Street intersection, complete traffic analyses for the existing and future conditions for the area, develop a base traffic model for the study area intersections to define how well they are currently operating; determine the impacts of the proposed development; analyze the findings; make recommendations; and prepare a report for the City.

Nichols/Landis moved to approve and execute an agreement with LaCroix Traffic Engineering, PLLC, to perform a 10th Street Apartments Traffic Impact Study at a cost of \$6,750. Motion passed 3-0.

11) Water Department: Request to close Chicago Avenue, between Wilkinson and Denver streets, for sewer main repair work June 14-16, 2022

Kent Holdren, Superintendent of the City Water Department, asked the Board to approve the closure of Chicago Avenue to thru traffic, between Wilkinson and Denver streets, on Tuesday June 14, 2022, starting at 8 a.m., and reopening for traffic on Thursday morning, June 16, 2022.

Holdren said the Water and Sewer Department will be repairing a sewer main on Chicago Avenue and the work will require excavation of the road, with a trench that will be approximately 8 feet in depth. For the safety of the work crews and the public, the City is requesting permission for the street closure. City staff will notify Goshen Schools, EMS and ensure that the garbage is moved to the appropriate location for pick up.

Nichols/Landis moved to approve the closure of Chicago Avenue to thru traffic, between Wilkinson and Denver streets, on June 14, 2022, starting at 8 a.m., and reopening for traffic on June 16, 2022. Motion passed 3-0.



12) Engineering Department: Approve revised Change Order No. 1 for the Wilden Tree Clearing project (JN: 2013-0035)

Josh Corwin, City Civil Traffic Engineer asked the Board approve the balancing Revised Change Order No. 1, decreasing the contract by \$80,290.00, for a final contract amount of \$199,600 for the Wilden Tree Clearing project. According to the Engineering Department, due to the missed line item #9 "work completed prior to 1/31/22 (5 days)" at \$200.00 a day for a total of -\$1000.00, the department is resubmitting this balancing change order for the above project. This Change Order replaces the Change Order No. 1 approved at the May 16 Board of Works meeting. Also, the engineering department found a reduction in the planned number of trees to be removed along Wilden Avenue due to trees that were removed before the project started. Revised Change Order No. 1 decreases the current contract price by \$80,290.00, making the final contract amount \$199,600.00, a 28.69% decrease over the original contract of \$279,890.00. Landis clarified if the amount was increasing or decreasing.

Nichols/Landis moved to approve the balancing Revised Change Order No. 1, decreasing the contract by \$80,290.00, for a final contract amount of \$199,600 for the Wilden Tree Clearing project. Motion passed 3-0.

13) Agreement with Abonmarche Consultants, Inc.

Bodie Stegelmann, City Attorney presented the agreement. At the May 23, 2022 meeting, the board approved an agreement with Abonmarche Consultants, Inc. for Topographic and Boundary Surveying Services for the Hess Riverdale Addition and Merit Learning Center. Abonmarche will be paid a lump sum amount of \$14,800.00 for a topographic and boundary survey. Abonmarche requested revisions to the written agreement related to liability issues and, after discussion, the written agreement provided with the memorandum is being presented for approval. The scope of work and payment will not change. **Board Member Mike Landis** asked if the liability issue was due to issuing stemming from work done or for the safety of the workers. **City Attorney Bodie Stegelmann** stated it was for the safety of the workers.

Nichols/Landis moved to approve and execute the agreement with Abonmarche Consultants Inc. for Topographic and Boundary Surveying Services for the Hess Riverdale Addition and Merit Learning Center.

Privilege of the Floor (opportunity for public comment for matters not on the agenda):

Mayor Stutsman opened Privilege of the Floor at 2:18 p.m. There were no public comments, so the Mayor closed the public comment period at 2:18 p.m.

As all matters before the Board of Public Works & Safety were concluded, Mayor Stutsman/Landis moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 3-0.

Mayor Stutsman adjourned the meeting at 2:19 p.m.

EXHIBIT #1: Agreement with Abonmarche Consultants, Inc. for the Hess Riverdale Addition and Merit Learning Center



APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

ATTEST

Erin Fowler, Clerk-Treasurer's Office



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE June 22, 2022 SPECIAL MEETING**

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Members Mike Landis, Mary Nichols, DeWayne Riouse and Barb Swartley,

Absent: Mayor Jeremy Stutsman

CALL TO ORDER: Board Member Mike Landis called the meeting to order at 2:00 p.m.

REVIEW/APPROVE AGENDA: Board member and Acting Chair Mike Landis presented the agenda for the special meeting. Landis moved to approve the agenda. Board Member Mary Nichols seconded the motion. Passed 4-0

1) Redevelopment Department: Amended Development Agreement with Last Dance, LLC

City Redevelopment Director Becky Hutsell asked the board to approve the amended agreement.

Hutsell stated an agreement with Last Dance, LCC was executed in June 2021 for the East College Avenue Industrial Development. At that time, the project was originally developed, it was anticipated that the overall project cost would be approximately \$15 million.

Hutsell said City staff and the developer’s team have worked over the past year to fully design the project and bids were solicited in April 2022. Bids were opened on May 9, 2022 and were substantially higher than anticipated. She said the volatility of the supply chain and increased fuel costs have played a significant role in the higher pricing.

Overall, the project costs are broken down as follows:

	<u>BID</u>	<u>5% Contingency</u>
Contract 1 – College/CR 31/Kercher Water Main Loop	\$5,354,383	\$267,719
Contract 2 – Earthwork/Drainage	\$11,779,850	\$588,992
Contract 3 – Subdivision Utilities and Roadway Loop	\$7,270,000	\$363,500
Aggregate Bid (approx.)	\$250,000	
Contract 4 - College Ave (updated estimates from May 9th)	\$1,000,000	
CR 33 Reclamation (Interlocal Agreement for detour route)	\$154,000	
BIDS TOTAL	\$25,808,233	
 <i>CONTINGENCY TOTAL</i>		 \$1,220,211
 TIF Funding Commitment	 (\$5,350,000)	
Interlocal with Elkhart County for Drainage	(\$300,000)	
 Remaining Balance	 \$21,378,444	



Hutsell said the City Redevelopment Department is asking the Board to approve and execute the Amended Development Agreement that includes the following changes to the original Agreement:

1. Maximum bond amount increased to \$21,378,444. Bond to be issued by the City and Purchased by the Developer or an associated entity.
2. 100% TIF Pledge from the College Avenue TIF extended from 20 years to 25 years to maximize payment for the developer.
3. City to complete College Avenue Reconstruction portion of the project as an LPA project. Developer is committing to fund the City's 20% contribution up to \$1,000,000.
4. Developer's commitment to annex four additional parcels of real estate adjacent to previously annexed properties.

Hutsell indicated that as previously noted, bond repayment is only satisfied if the development generates sufficient TIF revenues. The initial agreement included a commitment to construct six buildings. There are, however, 10 development lots on the north side of College Avenue with the additional development potential on the southern parcel. If revenues fall short, it will be the developer's responsibility to repay the bond and they are essentially assuming all risk. If project costs are less than the bond total, remaining funds held by a bond trustee will be returned to the Developer. All remaining terms of the previous agreement remain the same. Provided all approvals are granted, the bond closing is tentatively scheduled for June 23, 2022 and Contracts 1, 2 and 3 will be permitted to proceed.

Board Member Barb Swartley asked, due to the fact that she was not on the board at the time of the original agreement, what benefit the agreement gives to the City of Goshen. **Becky Hutsell** explained that allowing this development to continue would help Goshen expand and provide land opportunities for housing developments. The site would also allow the expansion of the City's water and sewer system under the railroad and this area will be the site of the City's largest lift station. She also said he site would also hold 50 acres of retention ponds that would have a controlled release system, supporting and helping local waterways and reducing the risks of flooding.

Board Member Landis moved to approve the agreement with Last Dance LLC, to increase the bond amount to \$21,378,444.00, extend the TIF pledge repayment from 20 to 25 years, the Developer to commit to fund the City's 20% contribution up to \$1,000,000, and the developer to annex four additional parcels of real estate. **Board Member Nichols** seconded the motion. Passed 4-0.

As all matter before the Board of Public Works & Safety were concluded, **Board Member Landis** moved to adjourn the meeting. Passed 4-0

Landis adjourned the meeting at 2:07 p.m.



APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

ATTEST

Emily Bush-Pearson, Clerk-Treasurer's Office



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
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June 27, 2022

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Resolution 2022-19 – Approve and Ratify Execution of Amendment to the Agreement for the Development of Stormwater Facilities with MR Realty IV, LLC

The City and MR Realty IV, LLC entered into an Agreement for the Development of Stormwater Facilities on January 9, 2020. This Agreement concerned the stormwater facilities to be constructed on MR Realty IV, LLC's real estate by the City, the use of the real estate during the construction project, and the maintenance of the facilities. While the project was in design stage, additional modifications were necessary. These modifications are set forth in the Amendment to the Agreement for the Development of Stormwater Facilities. Resolution 2022-19 approves the terms and conditions of the Amendment to the Agreement, and ratifies the Mayor's execution of the Amendment to the Agreement on June 21, 2022.

Suggested Motion:

Move to adopt Resolution 2022-19, Approve and Ratify Execution of Amendment to the Agreement for the Development of Stormwater Facilities with MR Realty IV, LLC.

RESOLUTION 2022-19

**Approve and Ratify Execution of Amendment to the Agreement
for the Development of Stormwater Facilities
with MR Realty IV, LLC**

WHEREAS the City entered into an Agreement for the Development of Stormwater Facilities with MR Realty IV, LLC dated January 9, 2020, and recorded March 25, 2020 as instrument number 2020-06415 (the "Agreement").

WHEREAS due to modifications in the scope of work to provide improved drainage flow planned along the northern property line of the MR Realty IV, LLC real estate, it was necessary to amend the terms and conditions of the Agreement to incorporate the changes.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that the terms and conditions of the Amendment to the Agreement for the Development of Stormwater Facilities with MR Realty IV, LLC attached to and made a part of this resolution are approved.

BE IT FURTHER RESOLVED that the Board ratifies the execution of the Amendment to the Agreement for the Development of Stormwater Facilities by Mayor Jeremy P. Stutsman on behalf of the Goshen Board of Public Works and Safety and City of Goshen.

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on June 27, 2022.

Mayor

Board Member

Board Member

Board Member

Board Member

AMENDMENT TO THE AGREEMENT
FOR THE DEVELOPMENT OF STORMWATER FACILITIES

THIS AMENDMENT TO THE AGREEMENT FOR THE DEVELOPMENT OF STORMWATER FACILITIES (the "Amendment") is made and entered into this 20th day of June, 2022, by and between City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Redevelopment Commission and the Goshen Board of Public Works and Safety, hereinafter referred to as "City," and MR Realty IV, LLC, an Indiana limited liability company, hereinafter referred to as "MR Realty IV."

WHEREAS the City entered into an Agreement for the Development of Stormwater Facilities with MR Realty IV dated January 9, 2020, and recorded March 25, 2020 as instrument number 2020-06415 (the "Agreement"). All defined terms used herein not otherwise defined in this Amendment shall have their respective meaning as set forth in the Agreement.

WHEREAS this Amendment is entered into to modify the scope of work planned along the northern property line of the MR Realty IV site to provide improved drainage flow to the retention pond network and such changes have been incorporated into the project plans and specifications.

NOW THEREFORE, in consideration of the terms, covenants and conditions to be kept and performed by the City in the Agreement and the terms, covenants and conditions added by this Amendment, the parties agree to modify Agreement as follows:

1. The existing berm of the north side of MR Realty IV's property line shall be removed within the existing stormwater drainage easement for The Crossing subdivision and be replaced with a swale to direct all stormwater entering the site to an existing retention basin to the east. An additional swale (the "Swale") will be constructed immediately south of the Access Road to direct stormwater from the MR Realty IV site to the new retention pond to be constructed at the northeast corner of the site as part of the City's stormwater project. The location of Swale will be as generally depicted on **Exhibit A**, and the construction of the Swale shall be in a workmanlike manner and in accordance with the plans and specifications attached on **Exhibit B**.
2. A new construction access drive (the "Access Road") will be constructed on MR Realty IV's property to allow for the City's maintenance of the stormwater retention ponds until such time as the City's Maintenance Obligations terminate pursuant to paragraph 1.4 of the Agreement. The location of the Access Road will be as generally depicted on **Exhibit C**, and the construction of the Access Road, including the type of material that will be used for the Access Road, will be upon terms mutually acceptable to the parties. The terms of access upon the Access Road will be subject to an access easement and upon terms acceptable to MR Realty IV, including, but not limited to (a) customary indemnification obligations of the City for the benefit of MR Realty IV

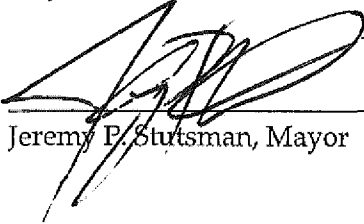
related to the City's maintenance of the stormwater detention ponds; (b) repair obligations of the City for the benefit of MR Realty IV related to any damages caused by the City or its employees, agents, or contractors; and (c) customary insurance obligations by the City for the benefit of MR Realty IV.

3. A chain link fence, at the City's sole cost and expense, will be installed at the northern boundary of MR Realty IV's land to delineate the property boundary from the residential development to the north (the "Northern Boundary Fence"). The location of the Northern Boundary Fence will be as generally depicted on **Exhibit A**. The City further agrees that the Northern Boundary Fence will be of similar style character, kind, and quality as to the Fence that will be installed around the perimeter of the northeast portion of MR Realty IV's property unless otherwise agreed to between the parties. MR Realty IV agrees to permit residential lot owners within The Crossing subdivision to connect to the Northern Boundary Fence at their sole cost and expense in the future if desired, provided, however, the residential lot owners within The Crossing shall remain responsible for any damage caused to the Northern Boundary Fence and/or MR Realty IV's property. Said residential lot owners agree to promptly pay for or otherwise repair any damage or loss to the Northern Boundary Fence and/or MR Realty IV's property which result from or arise out of them connecting to the Northern Boundary Fence. All of the repair obligations shall be completed in a workmanlike and sightful manner, and the residential lot owners shall proceed as promptly as possible, and with commercial due diligence, in undertaking and completing its repair obligations as required herein. If any residential lot owner fails to pay for or otherwise repair any damage or loss to the Northern Boundary Fence and/or MR Realty IV's property as provided herein, MR Realty IV may, upon a ten (10) day written notice to said residential lot owner and the City of said failure and provided that such failure is not cured within ten (10) days after written notice is given to the residential lot owner and the City, cause such repairs to be made and the cost and expenses thereof shall be paid by the City immediately upon receipt of an invoice evidencing such costs and expenses.
4. The City agrees that the Swale and Access Road will become part of the City's Maintenance Obligations until the Transition of Maintenance occurs, and that the City's repair obligations, insurance obligations, and indemnification obligations as set forth in Section 1.4 of the Agreement will also be applicable to the Swale and Access Road during the City's Maintenance Obligations.
5. All terms of the Agreement remain in full force and effect except as specifically modified by this Amendment. The parties further agree that to the extent any terms of this Amendment or the Agreement conflict, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the City and MR Realty IV have set their hands to this Amendment as of the date set forth above.

City of Goshen, Indiana

By:



Jeremy P. Stutsman, Mayor


By:



Becky Hutsell,
Redevelopment Director

MR Realty IV, LLC

By:



Richard D. Finnigan, Trustee of the
Richard D. Finnigan Revocable Trust
Agreement, Dated August 27, 2008,
as amended
Member

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

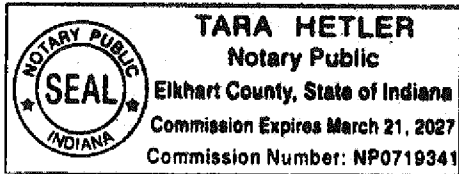
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument this 21 day of JUNE, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

march 21, 2027

Tara Hetler
Notary Public
Printed: Tara Hetler
Resident of Elkhart County, Indiana



STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

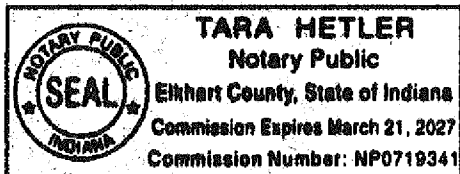
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Becky Hutsell, Redevelopment Director for the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument this 21 day of JUNE, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

march 21, 2027

Tara Hetler
Notary Public
Printed: Tara Hetler
Resident of Elkhart County, Indiana

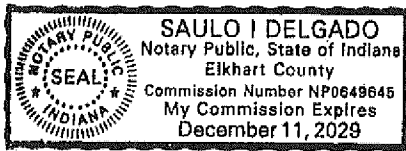


STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended, a member of MR Realty IV, LLC, and acknowledged the execution of the foregoing instrument this 20th day of June, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Saulo I. Delgado
Saulo I. Delgado, Notary Public
Resident of Elkhart County, Indiana



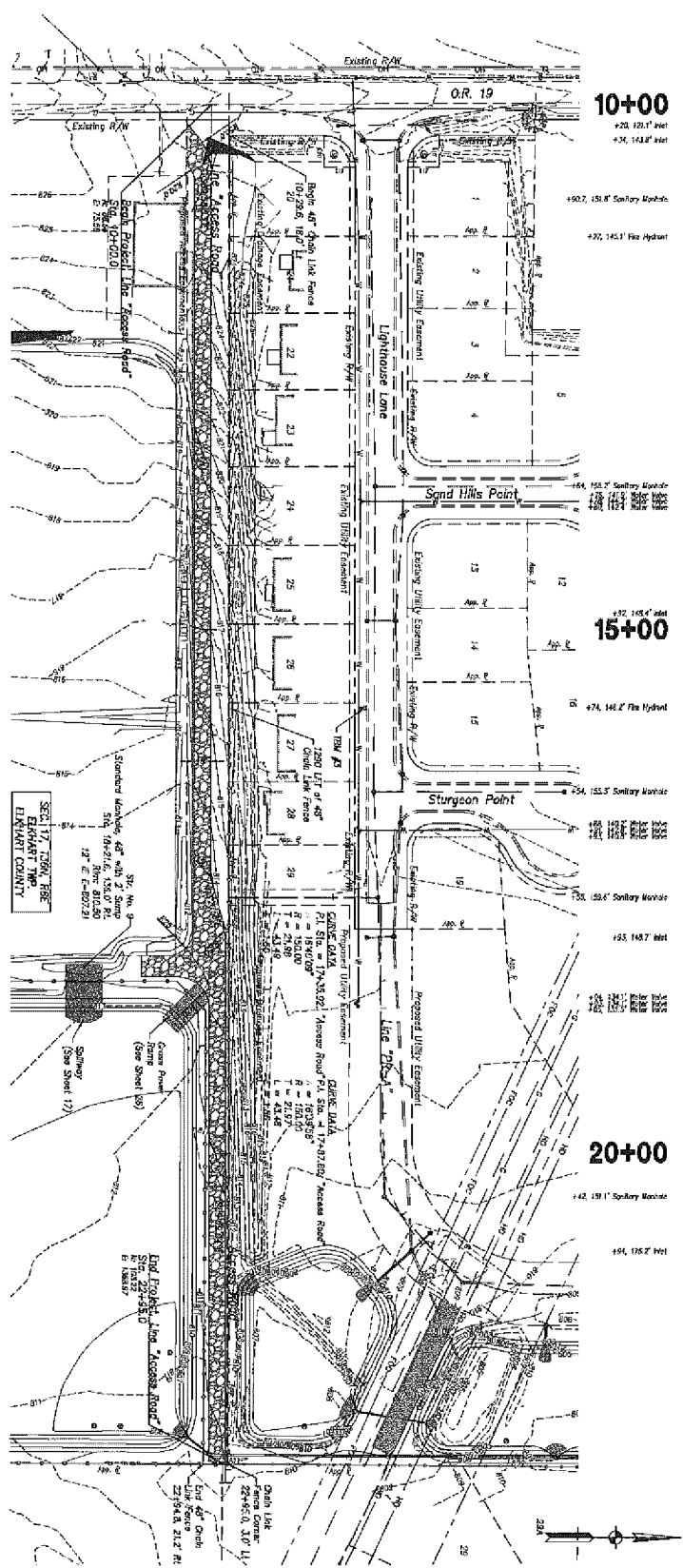
Prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Dept.,
204 East Jefferson Street, Suite 2, Goshen, Indiana 46528.

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).

EXHIBIT A

Location of the Swale and Northern Boundary Fence

See attached



NOTES
 1. All topography derived from LIDAR ACCESS ROAD.
 unless otherwise noted.

LEGEND
 (C) Computer Aided Millage 8"

GRAPHIC SCALE
 1" = 40' 0"

REVISIONS

NO.	DATE	DESCRIPTION
1	11-16-2021	ISSUED FOR PERMITS
2	11-16-2021	ISSUED FOR PERMITS
3	11-16-2021	ISSUED FOR PERMITS
4	11-16-2021	ISSUED FOR PERMITS
5	11-16-2021	ISSUED FOR PERMITS
6	11-16-2021	ISSUED FOR PERMITS
7	11-16-2021	ISSUED FOR PERMITS
8	11-16-2021	ISSUED FOR PERMITS
9	11-16-2021	ISSUED FOR PERMITS
10	11-16-2021	ISSUED FOR PERMITS
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12	11-16-2021	ISSUED FOR PERMITS
13	11-16-2021	ISSUED FOR PERMITS
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48	11-16-2021	ISSUED FOR PERMITS
49	11-16-2021	ISSUED FOR PERMITS
50	11-16-2021	ISSUED FOR PERMITS

PROJECT
 WEST GOSHEN - CROSSING SUBDIVISION DRAINAGE IMPROVEMENT
 CITY PROJECT NO. 2020-0033

CONTRACTOR
 ABONMARCHÉ

EXHIBIT B
Construction Details of the Swale

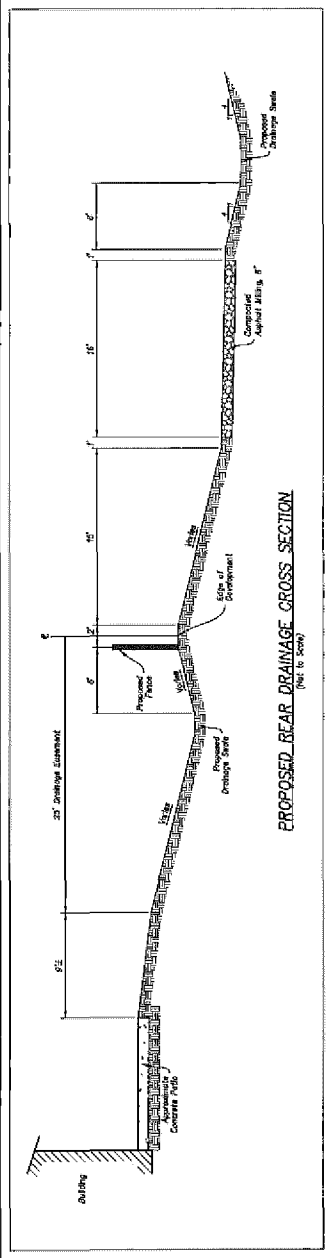
See attached

BASIN DETAILS

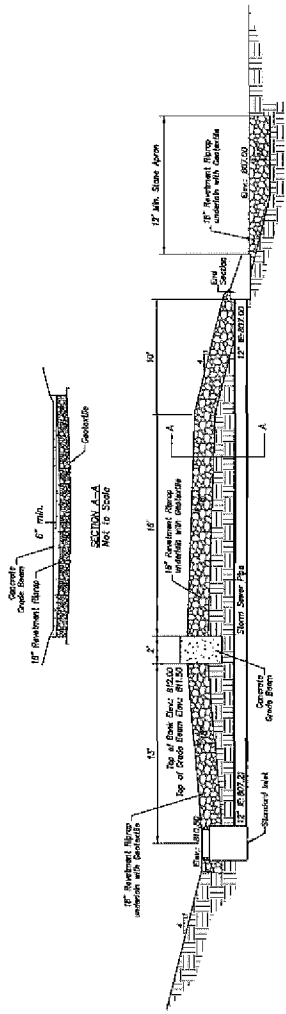
DATE:	11-18-2021
DESIGNER:	W. G. GOSHE
CHECKER:	W. G. GOSHE
PROJECT NO.:	2020-0033
PROJECT NAME:	WEST GOSHEN - CROSSING SUBDIVISION
DATE:	11-18-2021
SCALE:	AS SHOWN



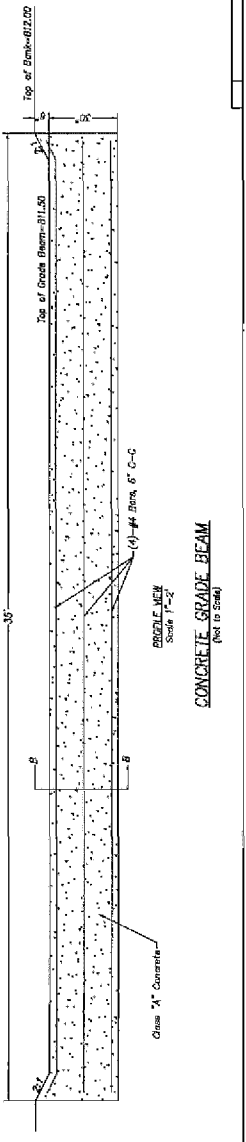
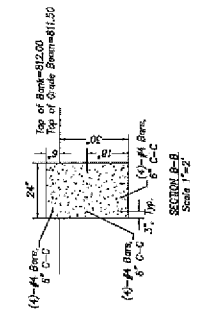
DRAWN BY: *[Signature]*
 DATE: 11-18-2021
 SCALE: AS SHOWN
 SHEET NO. 20-1912
 TOTAL SHEETS 20-1912
 PROJECT NO. 2020-0033



PROPOSED REAR DRAINAGE CROSS SECTION
(Not to Scale)



BASIN #1 SPILLWAY PROFILE
(Not to Scale)

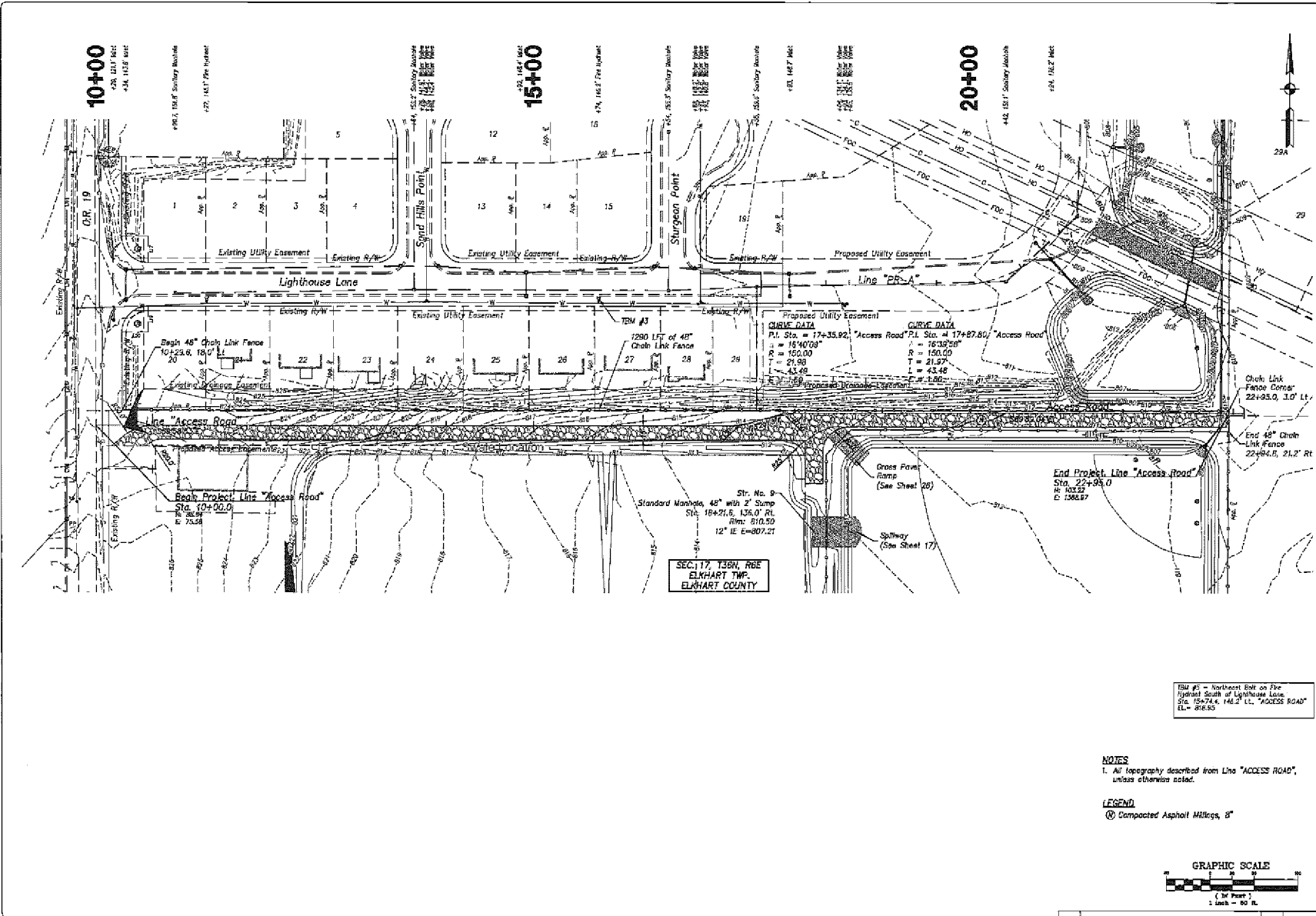


CONCRETE GRADE BEAM
(Not to Scale)

EXHIBIT C
Location of the Access Road

See attached

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 ENGINEERING
 10000 N. Meridian St., Suite 100
 Elkhart, IN 46516
 317.251.1000
 www.abonmarche.com

WEST GOSHEN -
 CROSSING SUBDIVISION
 DRAINAGE IMPROVEMENT
 CITY PROJECT NO. 2020-0033

PROJECT:
 PLAN
 ACCESS ROAD

SHEET NO. 11-18-2021

DATE	11-18-2021
BY	...
CHECKED BY	...
IN CHARGE	...



DATE: 11-18-2021
 SCALE: 1"=40'
 PROJECT NO.: 20-1912
 SHEET NO.: 5 of 11

NOTES
 1. All topography described from Line "ACCESS ROAD", unless otherwise noted.

LEGEND
 (Symbol) Compacted Asphalt Millings, 8"





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

June 27, 2022

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Ratify Acceptance of Easements from MR Realty IV, LLC

It is recommended that the Board ratify the Mayor's acceptance on June 17, 2022 of the three attached easements from MR Realty IV, LLC, an Indiana limited liability company. These easements are for Goshen City storm water utility and drainage, ingress and egress, and temporary construction purposes, all which are needed for The Crossing Subdivision Drainage Project that is generally located south of Plymouth Avenue and east of County Road 19. It was necessary to record the easements prior to today's meeting so the City's contractor could begin work at the site.

Suggested Motion:

Move to ratify the Mayor's acceptance on June 17, 2022 of the three easements from MR Realty IV, LLC, an Indiana limited liability company.

TEMPORARY EASEMENT

MR Realty IV, LLC, an Indiana limited liability company (“Grantor”), grants and conveys to City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (“City”), whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for One Dollar (\$1) and other good and valuable consideration, pursuant to an Agreement for the Development of Stormwater Facilities dated the 9th day of January, 2020, and recorded March 25, 2020 as instrument number 2020-06415 (“Agreement”), as amended by that certain Amendment to the Agreement for the Development of Stormwater Facilities (the “Amendment”), a temporary easement to enter upon and have possession of real estate situated in Elkhart County, State of Indiana, more particularly described in the legal description attached as Exhibit #1 and depicted upon the Easement Sketch attached as Exhibit #2. The area described and depicted is hereinafter referred to as “Temporary Easement”. All defined terms used herein not otherwise defined in this Temporary Easement shall have their respective meaning as set forth in the Agreement and/or Amendment.

Grantor obtained title to the real estate by Warranty Deed dated November 2, 2007 and recorded November 21, 2007 in the Office of the Recorder of Elkhart County, as Instrument No. 2007-32077.

The Temporary Easement is granted to City, including its employees, agents, contractors, subcontractors and assigns, for the purpose of the construction of those certain storm sewer utility and drainage facilities authorized and pursuant to the Agreement and/or Amendment, including any appurtenances as may be required by law, on real property of Grantor.

With the exception of all soil excavated and remaining on Grantor’s real estate pursuant to paragraph 1.7 of the Agreement, City shall restore the surface of the Temporary Easement after completion of the construction to as good as or better condition than it was prior to the entry. City shall promptly pay for or otherwise rectify any damage caused by City to Grantor’s adjoining real estate.

The Temporary Easement will terminate and automatically be released to the Grantor or the Grantor’s successors in title once the Transition of Maintenance occurs pursuant to paragraph 1.4 of the Agreement and/or pursuant to paragraph 4 of the Amendment.

06/21/2022 KKJ

NO SALES DISCLOSURE NEEDED-SM

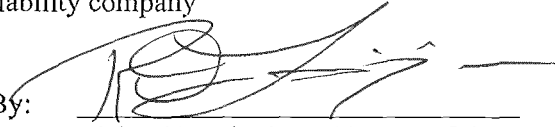
DNCR

The terms of this Temporary Easement shall run with the land and shall be binding upon and inure to the benefit of the heirs, assigns and successors in interest of the parties.

The undersigned represents and certifies that such person is a duly authorized representative of Grantor and has been fully empowered to execute this Temporary Easement on behalf of Grantor; that the Grantor has full capacity to grant the Temporary Easement described; and that all necessary action for granting this Temporary Easement has been taken.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Easement on June 20, 2022.

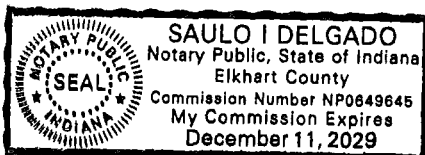
MR Realty IV, LLC, an Indiana limited liability company

By: 

Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended
Authorized Member

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 20, 2022, personally appeared Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended, a member of MR Realty IV, LLC, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the Grantor's voluntary act for the purpose stated therein.



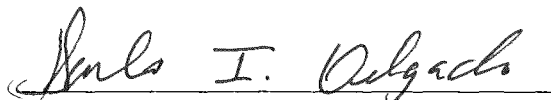

Saulo I. Delgado, Notary Public
Resident of Elkhart County, Indiana

EXHIBIT #1

LEGAL DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT/ACCESS EASEMENT
OWNER: MR REALTY IV, LLC
INSTR. #: 2007 32077 (LAST DEED OF RECORD)

A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A COUNTY MONUMENT FOUND FLUSH MARKING THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 17; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 51 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 AND THE CENTERLINE OF COUNTY ROAD NUMBER 19, A DISTANCE OF 1072.56 FEET TO THE SOUTHWEST CORNER OF THE PLAT OF THE CROSSING, A SUBDIVISION IN ELKHART TOWNSHIP, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 32, PAGE 37; THENCE SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING, A DISTANCE OF 25.00 FEET TO A POINT ON THE EAST LINE OF THE RIGHT OF WAY OF COUNTY ROAD NUMBER 19 AND THE POINT OF BEGINNING OF THIS EASEMENT DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING AND THE SOUTH LINE OF A PARCEL OF LAND CONVEYED TO THE CROSSING DEVELOPMENT LLC AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2020-02774, A DISTANCE OF 795.36 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 368.43 FEET TO A POINT ON THE NORTH LINE OF A PARCEL OF LAND CONVEYED TO JASON A. AND ROSANNE L. CLARK AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2008-06433; THENCE SOUTH 88 DEGREES 41 MINUTES 17 SECOND WEST ALONG THE NORTH LINE OF SAID CLARK PARCEL, A DISTANCE OF 158.54 FEET TO THE NORTHWEST CORNER OF SAID CLARK PARCEL; THENCE SOUTH 00 DEGREES 27 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID CLARK PARCEL, A DISTANCE OF 77.89 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 53 SECONDS WEST, A DISTANCE OF THE 636.36 FEET TO A POINT ON THE EAST LINE OF THE RIGHT OF WAY OF COUNTY ROAD NUMBER 19; THENCE NORTH 00 DEGREES 00 MINUTES 51 SECONDS EAST PARALLEL WITH AND 25.00 FEET EAST OF AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 AND THE CENTERLINE OF COUNTY ROAD NUMBER 19, A DISTANCE OF 450.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED CONTAINING 7.93 ACRES, MORE OR LESS. BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.

JOB#: 20-1912
DATE: 12-06-2021

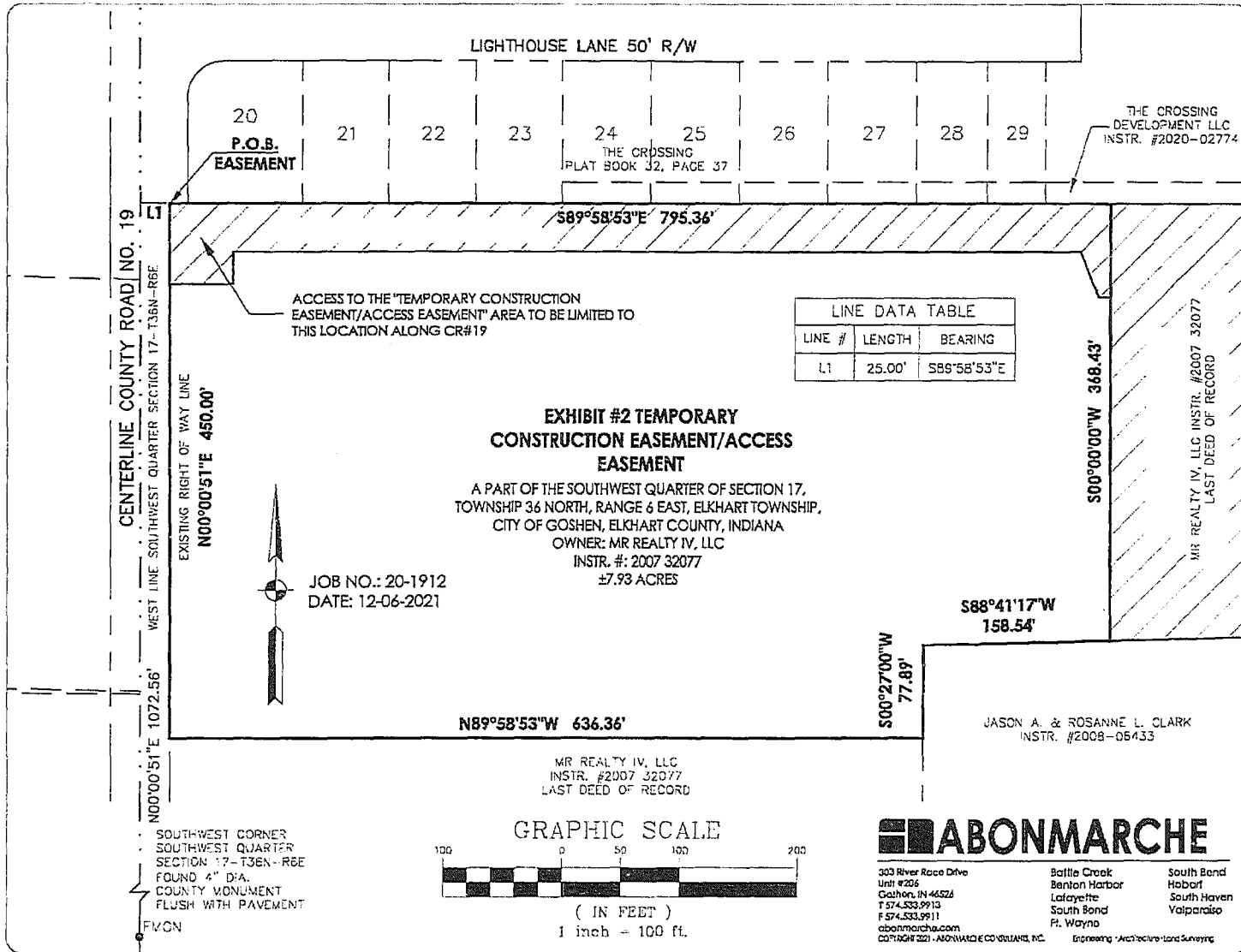


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Goshen, IN 46526
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F 574.533.9911
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COPYRIGHT 2021 - ABONMARCHE CONSULTANTS, INC.

Ballie Creek
Benton Harbor
Lafayette
South Bend
Pt. Wayne

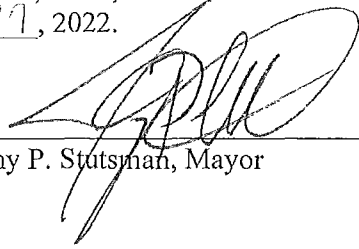
South Bend
Hobart
South Haven
Valparaiso

Engineering - Architecture - Land Surveying



ACCEPTANCE

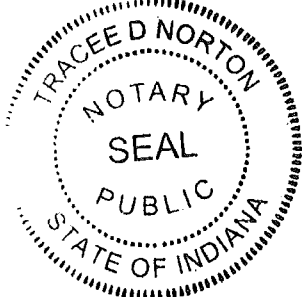
The City of Goshen, Indiana, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Temporary Easement from MR Realty IV, LLC, an Indiana limited liability company, and accepts the Temporary Easement on June 17, 2022.

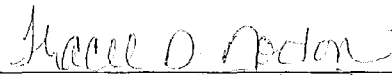


Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 17, 2022, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the person's voluntary act for the purpose stated therein.




Printed Name: Tracee D. Norton
Notary Public of Elkhart County, IN
My Commission Expires: MAY 1, 2024
Commission Number: 084970

This instrument was prepared by Bodie J. Stegelmann, 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).

TEMPORARY EASEMENT

MR Realty IV, LLC, an Indiana limited liability company (“Grantor”), grants and conveys to City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (“City”), whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for One Dollar (\$1) and other good and valuable consideration, pursuant to an Agreement for the Development of Stormwater Facilities dated the 9th day of January, 2020, and recorded March 25, 2020 as instrument number 2020-06415 (“Agreement”), as amended by that certain Amendment to the Agreement for the Development of Stormwater Facilities (the “Amendment”), a temporary easement to enter upon and have possession of real estate situated in Elkhart County, State of Indiana, more particularly described in the legal description attached as Exhibit A and depicted upon the Easement Sketch attached as Exhibit B. The area so described and depicted is hereinafter referred to as “Temporary Easement”. All defined terms used herein not otherwise defined in this Temporary Easement shall have their respective meaning as set forth in the Agreement and/or Amendment.

Grantor obtained title to the real estate by Warranty Deed dated November 2, 2007 and recorded November 21, 2007 in the Office of the Recorder of Elkhart County, as Instrument No. 2007-32077.

The Temporary Easement is granted and conveyed to City, including its employees, agents, contractors, subcontractors and assigns, for the purpose of:

- (1) Accessing and constructing a stormwater detention basin facility, including any appurtenances as may be required by law, and the installation of a fence around the perimeter of the stormwater detention basin facility, on real property of Grantor pursuant to the Agreement and/or Amendment; and
- (2) Accessing and maintaining the stormwater detention basin facility and the fence in good working order and repair pursuant to the Agreement and/or Amendment.

The Temporary Easement will terminate and automatically be released to Grantor or Grantor’s successors in title once the Transition of Maintenance occurs as specified in paragraph 1.4 of the Agreement.

06/21/2022 KKJ

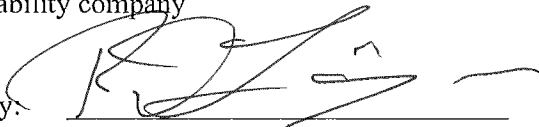
**NO SALES DISCLOSURE NEEDED-SM
DNCR**

The terms of this Temporary Easement shall run with the land and shall be binding upon and inure to the benefit of the heirs, assigns and successors in interest of the parties.

The undersigned represents and certifies that such person is a duly authorized representative of Grantor and has been fully empowered to execute this Temporary Easement on behalf of Grantor; that the Grantor has full capacity to grant the Temporary Easement described; and that all necessary action for granting this Temporary Easement has been taken.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Easement on June 20, 2022.

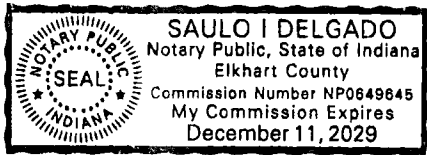
MR Realty IV, LLC, an Indiana limited liability company

By: 

Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended
Authorized Member

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 20, 2022, personally appeared Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended, a member of MR Realty IV, LLC, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the Grantor's voluntary act for the purpose stated therein.





Saulo I. Delgado, Notary Public
Resident of Elkhart County, Indiana

EXHIBIT A

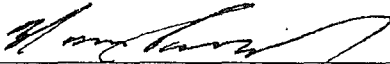
LEGAL DESCRIPTION

REVISED LEGAL DESCRIPTION (11-30-2021)
DRAINAGE EASEMENT
OWNER: MR REALTY IV, LLC
INSTR. #: 2007 32077 (LAST DEED OF RECORD)

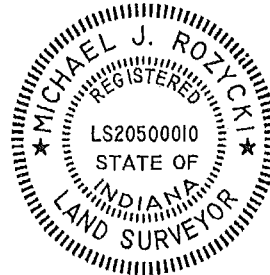
A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A COUNTY MONUMENT FOUND FLUSH MARKING THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 17; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 51 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 AND THE CENTERLINE OF COUNTY ROAD NUMBER 19, A DISTANCE OF 1072.56 FEET TO THE SOUTHWEST CORNER OF THE PLAT OF THE CROSSING, A SUBDIVISION IN ELKHART TOWNSHIP, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 32, PAGE 37; THENCE SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING AND THE SOUTH LINE OF A PARCEL OF LAND CONVEYED TO THE CROSSING DEVELOPMENT LLC AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2020-02774, A DISTANCE OF 820.36 FEET TO THE POINT OF BEGINNING OF THIS EASEMENT DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING DEVELOPMENT LLC PARCEL, A DISTANCE OF 484.45 FEET TO A POINT ON THE WEST LINE OF A PARCEL OF LAND (TRACT 3) CONVEYED TO MAXIM I. IVANOV AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2019-07117; THENCE SOUTH 00 DEGREES 27 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID TRACT 3, AND ALONG THE WEST LINES OF TRACT 2 AND TRACT 1 OF SAID IVANOV LAND, A DISTANCE OF 357.25 TO THE NORTHEAST CORNER OF A TRACT OF LAND (TRACT 2) CONVEYED TO JASON A. AND ROSANNE L. CLARK AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2008-06433; THENCE SOUTH 88 DEGREES 41 MINUTES 17 SECONDS WEST ALONG THE NORTH LINE OF SAID TRACT 2 AND ALONG THE NORTH LINE OF TRACT 1 OF SAID CLARK LAND, A DISTANCE OF 481.77 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 368.43 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED CONTAINING 175,257 S.F. OR 4.02 ACRES, MORE OR LESS, BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.



MICHAEL J. ROZYCKI, P.S.
PROFESSIONAL LAND SURVEYOR NO. 20500010
STATE OF INDIANA

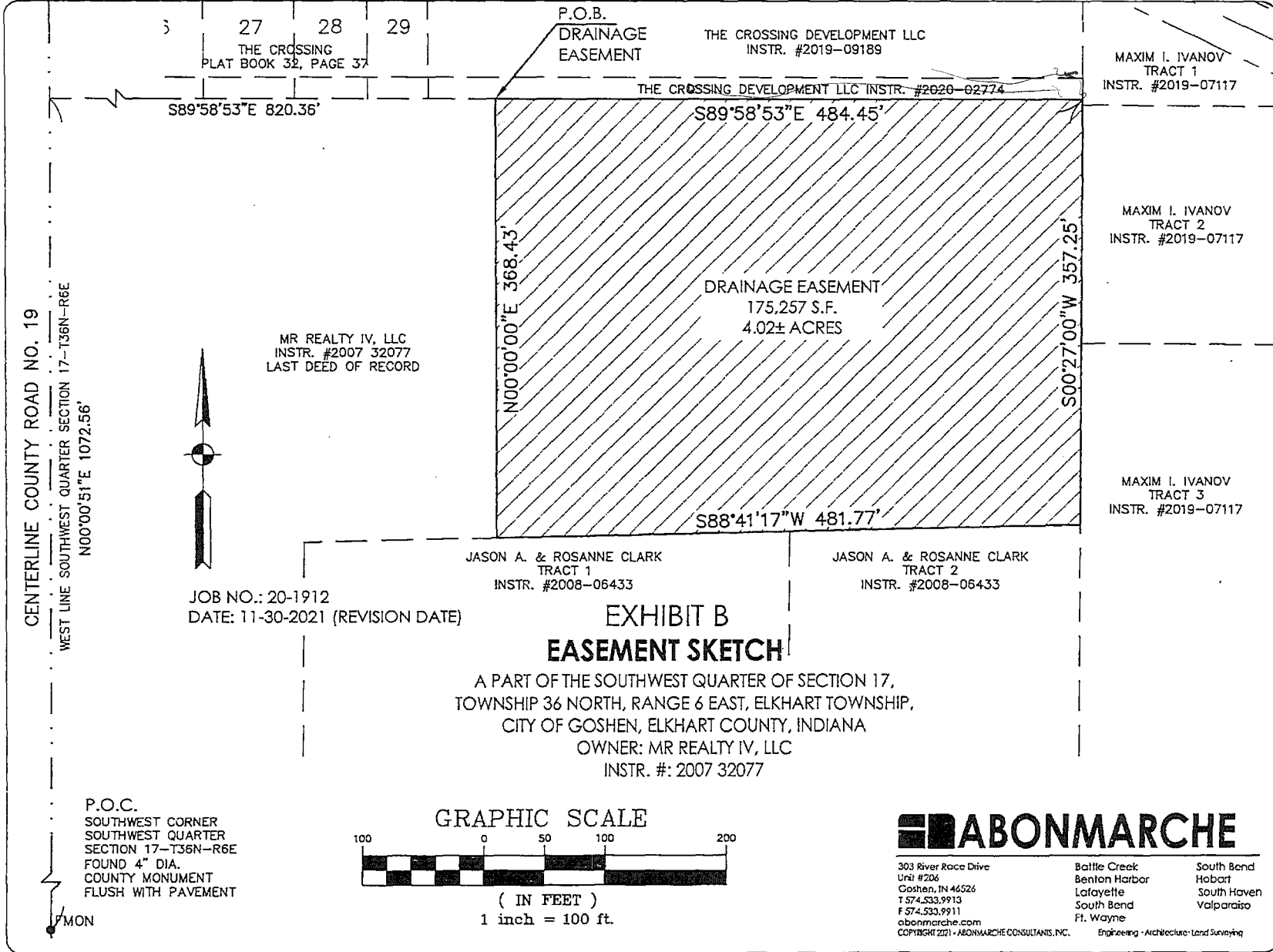


JOB#: 20-1912
DATE: 11-30-2021 (REVISION DATE)



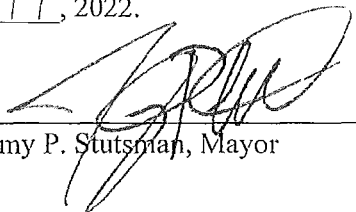
303 River Race Drive
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F 574.533.9911
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CORPORATE - ABONMARCHE CONSULTANTS, INC. Engleaving - Architecture - Land Surveying

Battle Creek	South Bend
Benton Harbor	Hobart
Lafayette	South Haven
South Bend	Valparaiso
El. Wayne	



ACCEPTANCE

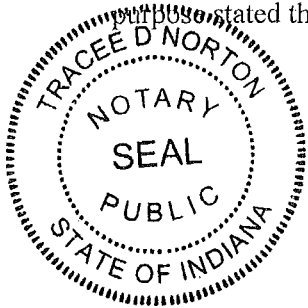
The City of Goshen, Indiana, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Temporary Easement from MR Realty IV, LLC, an Indiana limited liability company, and accepts the Temporary Easement on June 17, 2022.

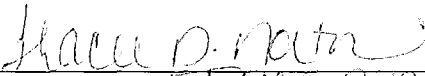


Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 17, 2022, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the person's voluntary act for the purpose stated therein.




Printed Name: TRACEE D. NORTON
Notary Public of ELKHART County, IN
My Commission Expires: MAY 1, 2024
Commission Number: 084470

This instrument was prepared by Bodie J. Stegelmann, 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).

INGRESS-EGRESS EASEMENT

MR Realty IV, LLC, an Indiana limited liability company (“Grantor”), grants and conveys to City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (“City”), whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for One Dollar (\$1) and other good and valuable consideration, pursuant to an Agreement for the Development of Stormwater Facilities dated the 9th day of January, 2020, and recorded March 25, 2020 as instrument number 2020-06415 (“Agreement”), as amended by that certain Amendment to the Agreement for the Development of Stormwater Facilities (the “Amendment”), an easement over, across, and through described real estate situated in Elkhart County, State of Indiana, more particularly described in the legal description attached as Exhibit A and depicted upon the Easement Sketch attached as Exhibit B. The area so described and depicted is hereinafter referred to as “Easement”.

Grantor obtained title to the real estate by Warranty Deed dated November 2, 2007 and recorded November 21, 2007 in the Office of the Recorder of Elkhart County, as Instrument No. 2007-32077.

The Ingress-Egress Easement is granted and conveyed to City for the ingress and egress of vehicles, equipment and materials for the purposes of accessing, installing, operating and maintaining the City’s storm sewer utility and drainage facilities located north of the northeast corner of Grantor’s real estate on adjacent real estate owned by The Crossing Development LLC (instrument numbers 2019-09189 and 2020-02774) in a commercially reasonable manner; and for the purpose of accessing, constructing and maintaining a stormwater detention basin facility and vinyl-coated chain link fence around the perimeter of the stormwater detention basin facility located at the northeast corner of Grantor’s real estate in a commercially reasonable manner.

Grantor may use, occupy, and possess the Easement in a manner that is consistent with and does not unreasonably interfere with City’s rights contained in this Ingress-Egress Easement, provided, however, a temporary obstruction shall not be considered an unreasonable interference with the rights granted in this Ingress-Egress Easement.

Except for any damage or loss to the City’s storm sewer utility and drainage facilities located north of the northeast corner of Grantor’s real estate on adjacent real estate owned by The Crossing Development LLC (instrument numbers 2019-09189 and 2020-02774) caused by the gross negligence or willful misconduct of the Grantor, the City agrees that the Grantor shall have no

06/21/2022 KKJ

NO SALES DISCLOSURE NEEDED-SM

DNCR

obligation to maintain or repair the City's storm sewer utility and drainage facilities located north of the northeast corner of Grantor's real estate on adjacent real estate owned by The Crossing Development LLC (instrument numbers 2019-09189 and 2020-02774). Furthermore, the City also agrees to promptly pay for or otherwise repair any damage or loss to the Grantor's property which result from or arise out of any access or use of the Easement by the City, its employees, agents, contractors, subcontractors, and assigns. All of the City's repair obligations shall be completed in a workmanlike and sightful manner, and the City shall proceed as promptly as possible, and with commercial due diligence, in undertaking and completing its repair obligations as required herein. If the City fails to pay for or otherwise repair any damage or loss to the Grantor's property as provided herein, the Grantor may, upon a ten (10) day written notice to the City of said failure and provided that such failure is not cured within ten (10) days after written notice is given to the City, cause such repairs to be made and the cost and expenses thereof shall be paid by the City immediately upon receipt of an invoice evidencing such costs and expenses.

The City, at its sole cost and expense, also agrees to procure and maintain comprehensive general liability insurance, in commercially reasonable amounts, insuring against any and all injuries, losses or damages of or to any person or property which result from or arise out of any access or use of the Easement by the City, its employees, agents, contractors, subcontractors and assigns. The insurance coverage procured and maintained by the City shall name Grantor as an additional insured and shall contain a waiver of subrogation by its insurer on the comprehensive general liability insurance. The parties agree that the insurance coverage herein procured and maintained by the City shall be considered the primary insurance coverage for any risk or loss which result from or arise out of any access or use of the Easement by the City, its employees, agents, contractors, subcontractors and assigns and that any other insurance coverage available to or maintained by the Grantor shall be considered secondary insurance coverage.

To the fullest extent permitted by law, the City shall defend, indemnify, and hold Grantor and its members, agents, representatives, successors and assigns harmless from and against all judgments, fines, sanctions, claims, actions, causes of actions, penalties, costs, damages (including, but not limited to, lost profits and other compensatory, direct, consequential, punitive, and exemplary damages), injuries, expenses, court costs, litigation costs (including reasonable attorneys' fees and paralegals' fees), or other liability of any kind arising out of or relating to any breach of this Ingress-Egress Easement, any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, violation, pollution or contamination actually or allegedly arises from, out of, or as a result of the exercise by the City, its employees, agents,

contractors, subcontractors, and assigns, of any rights or activities under this Ingress-Egress Easement, including, but not limited to, any act or omission of the City, its employees, agents, contractors, subcontractors and assigns, in accessing the Grantor's real estate, installing, operating and maintaining the City's storm sewer utility and drainage facilities located north of the northeast corner of Grantor's real estate on adjacent real estate owned by The Crossing Development LLC (instrument numbers 2019-09189 and 2020-02774).

The terms of this Ingress-Egress Easement shall run with the land and shall be binding upon and inure to the benefit of the heirs, assigns and successors in interest of the parties.

The undersigned represents and certifies that such person is a duly authorized representative of Grantor and has been fully empowered to execute this Ingress-Egress Easement on behalf of Grantor; that the Grantor has full capacity to grant the Ingress-Egress Easement described; and that all necessary action for granting this Ingress-Egress Easement has been taken.

IN WITNESS WHEREOF, the undersigned has executed this Ingress-Egress Easement on June 20, 2022.

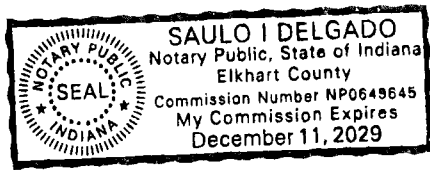
MR Realty IV, LLC, an Indiana limited liability company

By: 

Richard D. Finnigan, Trustee of the
Richard D. Finnigan Revocable Trust
Agreement, Dated August 27, 2008,
as amended
Authorized Member

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 20, 2022, personally appeared Richard D. Finnigan, Trustee of the Richard D. Finnigan Revocable Trust Agreement, Dated August 27, 2008, as amended, a member of MR Realty IV, LLC, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the person's voluntary act for the purpose stated therein.



Saulo I. Delgado

Saulo I. Delgado, Notary Public
Resident of Elkhart County, Indiana

EXHIBIT A

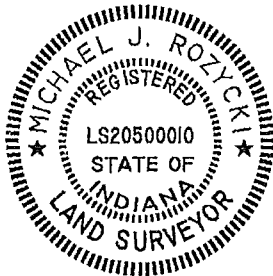
LEGAL DESCRIPTION

REVISED LEGAL DESCRIPTION (01-19-2022)
ACCESS EASEMENT
OWNER: MR REALTY IV, LLC
INSTR. #:2007 32077 (LAST DEED OF RECORD)

A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A COUNTY MONUMENT FOUND FLUSH MARKING THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 17; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 00 MINUTES 51 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 AND THE CENTERLINE OF COUNTY ROAD NUMBER 19, A DISTANCE OF 1072.56 FEET TO THE SOUTHWEST CORNER OF THE PLAT OF THE CROSSING, A SUBDIVISION IN ELKHART TOWNSHIP, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 32, PAGE 37; THENCE SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING, A DISTANCE OF 25.00 FEET TO A POINT ON THE EAST LINE OF THE RIGHT OF WAY OF COUNTY ROAD NUMBER 19, THE POINT OF BEGINNING OF THIS EASEMENT DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 58 MINUTES 53 SECONDS EAST ALONG THE SOUTH LINE OF SAID THE CROSSING AND THE SOUTH LINE OF A PARCEL OF LAND CONVEYED TO THE CROSSING DEVELOPMENT LLC AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2020-02774, A DISTANCE OF 1279.81 FEET TO THE WEST LINE OF A PARCEL OF LAND CONVEYED TO MAXIM IVANOV AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT #2019-07117; THENCE SOUTH 00 DEGREES 27 MINUTES 00 SECONDS WEST ALONG SAID IVANOV PARCEL, A DISTANCE OF 25.00 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 53 SECONDS WEST, A DISTANCE OF 435.77 FEET; THENCE SOUTH 45 DEGREES 00 MINUTES 31 SECONDS WEST, A DISTANCE OF 26.14 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 34.53 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 40.00 FEET; THENCE NORTH 22 DEGREES 02 MINUTES 04 SECONDS WEST, A DISTANCE OF 41.03 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 53 SECONDS WEST, A DISTANCE OF 716.83 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 26.98 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 53.16 FEET TO A POINT ON THE EAST LINE OF THE RIGHT OF WAY OF COUNTY ROAD NUMBER 19; THENCE NORTH 00 DEGREES 00 MINUTES 51 SECONDS EAST PARALLEL WITH AND 25.00 FEET EAST OF AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 AND THE CENTERLINE OF COUNTY ROAD NUMBER 19, A DISTANCE OF 67.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED CONTAINING 47,792 S.F. OR 1.10 ACRES, MORE OR LESS. BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.



[Handwritten Signature]

MICHAEL J. ROZYCKI, P.S.
PROFESSIONAL LAND SURVEYOR NO. 20500010
STATE OF INDIANA

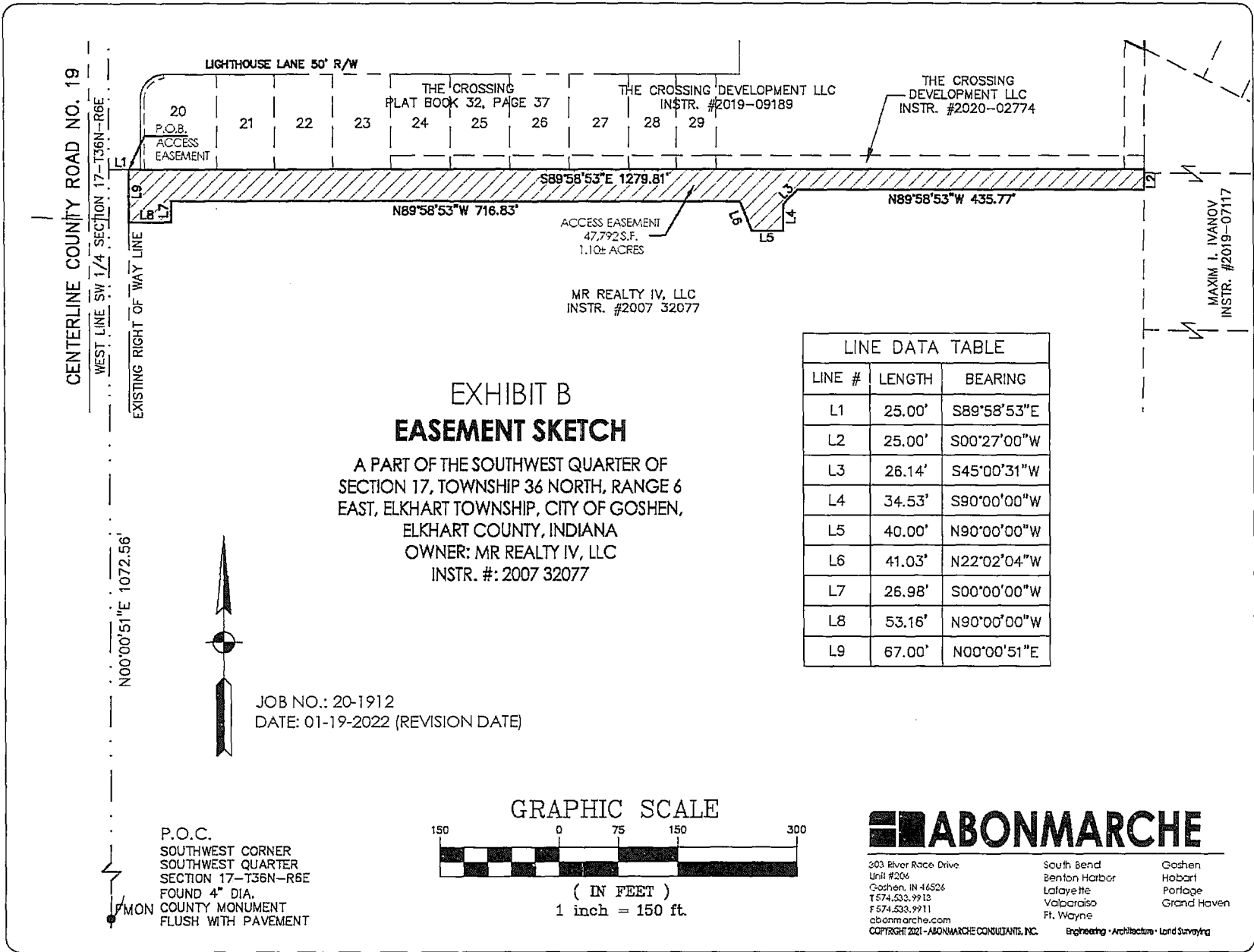


303 River Pace Drive
Unit #206
Goshen, IN 46526
T 574.533.9913
F 574.533.9911
abonmarche.com
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South Bend
Benton Harbor
Lafayette
Valparaiso
Ellettsville
Goshen
Hobart
Portage
Grand Haven

Engineering - Architecture - Land Surveying

JOB#: 20-1912
DATE: 01-19-2022 (REVISION DATE)



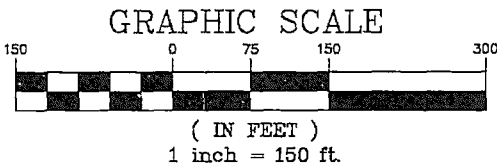
**EXHIBIT B
EASEMENT SKETCH**

A PART OF THE SOUTHWEST QUARTER OF
SECTION 17, TOWNSHIP 36 NORTH, RANGE 6
EAST, ELKHART TOWNSHIP, CITY OF GOSHEN,
ELKHART COUNTY, INDIANA
OWNER: MR REALTY IV, LLC
INSTR. #: 2007 32077

LINE DATA TABLE		
LINE #	LENGTH	BEARING
L1	25.00'	S89°58'53"E
L2	25.00'	S00°27'00"W
L3	26.14'	S45°00'31"W
L4	34.53'	S90°00'00"W
L5	40.00'	N90°00'00"W
L6	41.03'	N22°02'04"W
L7	26.98'	S00°00'00"W
L8	53.16'	N90°00'00"W
L9	67.00'	N00°00'51"E



JOB NO.: 20-1912
DATE: 01-19-2022 (REVISION DATE)



P.O.C.
SOUTHWEST CORNER
SOUTHWEST QUARTER
SECTION 17-T36N-R6E
FOUND 4" DIA.
COUNTY MONUMENT
FLUSH WITH PAVEMENT

ABONMARCHE

303 River Race Drive
Unit #206
Goshen, IN 46526
T 574.533.9913
F 574.533.9911
abonmarche.com
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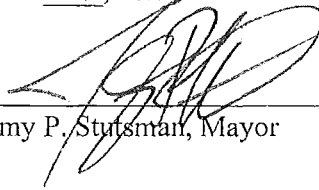
South Bend
Benton Harbor
Lafayette
Valparaiso
Ft. Wayne

Goshen
Hobart
Portage
Grand Haven

Engineering • Architecture • Land Surveying

ACCEPTANCE

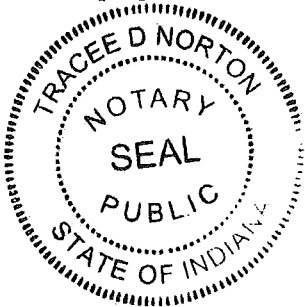
The City of Goshen, Indiana, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Ingress-Egress Easement from MR Realty IV, LLC, an Indiana limited liability company, and accepts the Ingress-Egress Easement on June 17, 2022.

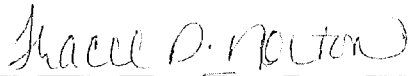


Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on June 17, 2022, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument as the person's voluntary act for the purpose stated therein.




Printed Name: Tracee D Norton
Notary Public of Elkhart County, IN
My Commission Expires: May 1, 2024
Commission Number: 084470

This instrument was prepared by Bodie J. Stegelmann, 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).



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

June 27, 2022

To: Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Agreement with Abonmarche Consultants, Inc.

Attached for the Board's approval and execution is an agreement for the Cherry Creek Drainage Study with Abonmarche Consultants, Inc.

Abonmarche will be paid a lump sum amount of \$18,800.00 for the survey, study and report for this project.

Suggested Motion:

Approve and execute the agreement with Abonmarche Consultants, Inc for the Cherry Creek Drainage Study.

AGREEMENT

Keaffaber Property (Cherry Creek) Drainage Study

THIS AGREEMENT is entered into on June _____, 2022, which is the last signature date set forth below, by and between **Abonmarche Consultants Inc.** (“Consultant”), whose mailing address is 303 River Race Drive, Unit 206, Goshen Indiana 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. Consultant Duties

Consultant shall provide City a drainage study on the Keaffaber property located between Berkey Avenue and SR 119 tentatively called ‘Cherry Creek’, as depicted on the attached work plan, which services are more particularly described in Consultant’s June 22, 2022 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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.

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Consultant acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Consultant shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Consultant proposes to complete and deliver the drainage study and report on August 12, 2022.

Section 3. Compensation

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

Field Survey and Drainage Study..... Lump Sum of \$18,800.00

Section 4. Payment

- (A) Payment shall be upon City’s receipt of a detailed invoice from Consultant. 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 Legal Department
204 East Jefferson Street, Suite 2
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) Consultant 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. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Consultant or Consultant's employees, agents or subcontractor under this agreement, shall become and remain the property of and may be used by City. Consultant may retain a copy of the Documents for its records, 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 Consultant.

Section 6. Licensing/Certification Standards

Consultant certifies that Consultant possesses and agrees to maintain any and all licenses, certifications, or accreditations as required for the services provided by Consultant pursuant to this agreement.

Section 7. Independent Consultant

- (A) Consultant shall operate as a separate entity and independent Consultant of the City of Goshen. Any employees, agents or subcontractor of Consultant shall be under the sole and exclusive direction and control of Consultant 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 Consultant and/or Consultant's employees, agents or subcontractors.
- (B) Consultant understands that City will not carry worker's compensation or any other insurance on Consultant and/or Consultant's employees or subcontractors. Prior to commencing work under this agreement, and if Consultant utilizes employees or subcontractors to perform work under this agreement, Consultant agrees to provide City a certificate(s) of insurance showing Consultant's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Consultant 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 8. Non-Discrimination

Consultant agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Consultant or any subcontractors, or any other person acting on behalf of Consultant 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 9. Employment Eligibility Verification

- (A) Consultant shall enroll in and verify the work eligibility status of all Consultant's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Consultant is not required to participate in the E-Verify program should the program cease to exist. Consultant is not required to participate in the E-Verify program if Consultant is self-employed and does not employ any employees.
- (B) Consultant shall not knowingly employ or contract with an unauthorized alien, and Consultant shall not retain an employee or continue to contract with a person that the Consultant subsequently learns is an unauthorized alien.
- (C) Consultant shall require their subcontractors, who perform work under this contract, to certify to the Consultant 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. Consultant agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Consultant fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

Section 10. Contracting with Relatives

Pursuant to Indiana Code § 36-1-21, if the Consultant 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 Consultant certifies that Consultant 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 11. No Investment Activities in Iran

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

Section 12. Indemnification

Consultant 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 Consultant or any of Consultant's agents, officers and employees during the performance of services under this agreement to the extent caused by the intentional or negligent act of Consultant. Such indemnity shall

include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Consultant is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding.

Section 13. 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 14. Default

- (A) If Consultant fails to perform the services or comply with the provisions of this agreement, then Consultant may be considered in default.
- (B) It shall be mutually agreed that if Consultant 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 Consultant 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 Consultant shall be liable to the City for any excess costs incurred
- (C) Consultant may also be considered in default by the City if any of the following occur:
 - (1) There is a substantive breach by Consultant of any obligation or duty owed under the provisions of this contract.
 - (2) Consultant is adjudged bankrupt or makes an assignment for the benefit of creditors.
 - (3) Consultant becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
 - (4) Consultant 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 Consultant or any of Consultant's property.
 - (6) Consultant is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Consultant unable to perform the services described under these Specification Documents.

- (7) The contract or any right, monies or claims are assigned by Consultant without the consent of the City.

Section 15. Termination

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Consultant shall be paid for all services performed 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 Consultant.
- (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 16. 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 Engineering Department
204 East Jefferson St., Suite 2
Goshen, IN 46528

Consultant: Abonmarche Consultants Inc.
303 River Race Drive, Unit 206
Goshen, IN 46526

Section 17. Subcontracting or Assignment

Consultant 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 Consultant to subcontract or assign any portion of the agreement shall not be construed to relieve Consultant from any responsibility to fulfill all contractual obligations.

Section 18. 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 19. 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 20. Applicable Laws

- (A) Consultant 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) Consultant 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 21. 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 22. 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 23. 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 24. Entire Agreement

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

Section 25. Authority to Bind Consultant

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

Printed: _____

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

DeWayne Riouse, Member

Barb Swartley, Member

Date Signed: _____

June 22, 2022

Mr. Jason Kauffman, CESSWI, MS4CECI
Stormwater Coordinator
City of Goshen Stormwater Department
204 East Jefferson Street
Goshen, IN 46528

RE: PROPOSAL FOR PROFESSIONAL SERVICES

Keaffaber Property (Cherry Creek) – Drainage Study
Between Berkey Avenue and SR 119

Dear Mr. Kauffman:

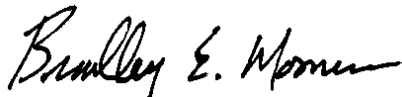
ABONMARCHE CONSULTANTS is pleased to present this proposal to provide professional services for the proposed project referenced above. We have tailored our scope of services based upon our previous meeting and the scope of work requested for this project.

This proposal includes our Work Plan, which consists of our Project Understanding and Scope of Services, Fees for Services, and Anticipated Timeline. I will be the Project Manager and primary contact for this project. I can be reached in the office at (574) 314-1024, and by email at bmosness@abonmarche.com.

We appreciate the opportunity to submit our proposal and look forward to working with you and the City of Goshen on this project. If you have any questions regarding this proposal, please do not hesitate to contact me.

Sincerely,

ABONMARCHE CONSULTANTS, INC.



Bradley E. Mosness, PE
Vice President / Goshen Office Director

WORK PLAN

PROJECT UNDERSTANDING / SCOPE OF WORK

The City of Goshen's current need is a drainage study on the Keaffaber property (subject property) located between Berkey Avenue and SR 119, and adjacent to Westoria Subdivision and the Goshen Intermediate School. The subject property is comprised of about 75 acres and consists of four (4) parcels containing open farmland and woods. The property is proposed to include a mixed-use residential development tentatively called "Cherry Creek, Goshen."

There is an existing significant drainage way running through the property that accepts runoff from the south across SR 119, farmland to the west, and overflow from the east via Westoria Subdivision and the Intermediate School. The drainage way continues north under Berkey Avenue, through the Gardens Subdivision and Colonial Farms, and ultimately into Leedy Ditch. The requested drainage study shall include the following objectives.

- Utilize published contour elevations available from the Elkhart County GIS and the State of Indiana Lidar to estimate drainage areas and create base map.
- Perform limited field survey to locate and measure pipe elevations of the existing drainage culverts under SR 119 and Berkey Avenue, drain tile west of the Berkey Avenue culvert, and the overflow spillways in Westoria and the Intermediate School.
- The existing Berkey Avenue drainage culvert shall be the controlling downstream release structure. The upstream drainage runoff will need collected and detained on the subject property, and controlled released to the Berkey Avenue culvert.
- Investigate and estimate provisions for the existing drain tile discharging west of the Berkey Avenue culvert.
- Client to provide electronic copies of the prior drainage studies performed in this area for reference only.
- Account for emergency runoff from Westoria Subdivision and the Intermediate School.
- The west property line of the Intermediate School shall function as the drainage boundary of the study. Drainage runoff shall be intercepted before crossing the property line.
- Review published soils information and also estimate winter conditions.
- Utilize groundwater information obtained from prior hand augers performed on the subject property.
- Utilize the published 100-year rainfall data for the Goshen College station provided by the National Oceanic Atmospheric Administration (NOAA), Atlas 14.
- Perform the drainage analysis and calculations using PondPack software from Bentley Software Systems to determine the required detention storage volumes, peak storage elevations, and release rates while considering the Berkey Avenue culvert capacity.
- Prepare a final written report of findings to review with the client and include a one-time revision after meeting with the client.



FEES FOR SERVICES

ABONMARCHE shall receive as payment for the work performed under this contract the total lump sum amount for each task listed below. All services below are firm for 90 days. If not completed within one year, Abonmarche reserves the right to adjust all uncompleted items for cost-of-living increase.

Task #1	Limited Field Survey.....	\$ 2,000
Task #2	Drainage Study and Report	\$ 16,800
<hr/>		
TOTAL:(Lump Sum)	\$ 18,800

ANTICIPATED TIMELINE

If a signed contract is furnished by June 30, 2022, ABONMARCHE proposes to complete and deliver the drainage study and report on August 12, 2022.

INFORMATION TO BE PROVIDED BY CITY, IF AVAILABLE

1. Existing surveys, plans, construction records
2. Existing utility maps and as-builts
3. Prior Drainage Studies





**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: Engineering Department

RE: **REQUEST FOR TEMPORARY CLOSURE OF RELIANCE ROAD
(JN: 2022-2032)**

DATE: June 22, 2022

Selge Construction has requested the closure of Reliance Road between Peddlers Village and US 33 for June 28th-30th for the installation of water main to the new Elkhart County Courthouse site. Access for local traffic will be maintained. The detour map provided by Selge is attached.

Requested Motion: Approve the closure of Reliance Road between Peddlers Village and US 33 for June 28th-30th for the installation of water main.

**City of Goshen
Board of Works & Safety**

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Mary Nichols, Board Member

Mike Landis, Board Member

DeWayne Riouse, Board Member

Barb Swartley, Board Member

- ① ROAD CLOSED AHEAD
- ② 1-TYPE III w/ A11-4 ; XMY-10
- ③ 3-TYPE III w/ A11-2
- ④ CLOSE NO LEFT TURN LANE w/ CLOSURE ; NO LEFT TURN SIGN





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MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **COTTAGE AVENUE BRIDGE CLOSURE**

DATE: June 27, 2022

Young Services, Inc., working for Elkhart County, will be sealing the Cottage Avenue bridge on Thursday, June 30, 2022, which will require full closure. They will be opening it later the same day after completion.



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MEMORANDUM

TO: Board of Works Public and Safety

FROM: Engineering

RE: **DYKSTRA ASPHALT PAVING RECONSTRUCTION
(JN: 2022-0002)**

DATE: June 27, 2022

Niblock Excavating will be performing work to remove full-depth asphalt, install new asphalt pavement and remove and replace a storm structure on Dykstra Street. They will be starting on the west side of Blackport Drive and then working their way east on Dykstra Street. The work will require partial lane restrictions along Dykstra Street, with Niblock providing traffic control. Niblock will maintain open access for the church and residents on Dykstra Street. The partial lane restrictions will occur between June 27, thru August 1, 2022.

Requested motion: Move to approve the Dykstra Street asphalt paving lane restrictions from June 27 thru August 1, 2022.

**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



**Engineering Department
CITY OF GOSHEN**

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MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Goshen Engineering

RE: **MADISON STREET & COLLEGE AVENUE RECONSTRUCTION
CHANGE ORDER NO. 2 (JN: 2021-0016)**

DATE: June 27, 2022

The Madison Street & College Avenue Reconstruction project was bid last fall and included the mill and overlay of College Avenue. Due to this past winter being exceptionally hard on the roads, College Avenue broke up badly in the area of the proposed mill and overlay. Once the pavement was examined after winter, it was determined a significantly larger portion of the road would need full-depth patching than was originally anticipated, having only 3 inches in asphalt in some areas.

Due to Norfolk Southern moving into the city and closing several crossings at the same time, Niblock was instructed by the City of Goshen to halt work on College Avenue to provide traffic relief in the corridor. This created conflicts in Niblock's schedule and mill availability and would not allow them to return until July. It was agreed upon by Niblock and the Engineering Department that it would be best to wait until after the Elkhart County 4H Fair to schedule any work. The work will be scheduled for early August.

The attached Change Order No. 2 is for an additional \$128,863.85, a 22.62% increase, and makes the total contract amount \$718,218.35.

Requested motion: Approve Change Order No. 2 in the amount of \$128,863.85, which is a 22.62% increase and extend the completion date by 21 calendar days making the final completion date August 26, 2022, to allow Niblock to complete the above work.

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

OWNER: City of Goshen
PROJECT NAME: Madison Street & College Avenue Reconstruction
PROJECT NUMBER: 2021-0016
CONTRACTOR: Niblock Excavating

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

Last winter had a profound affect on the roads. College Avenue broke up badly and it was found that some areas only had 3 inches of asphalt creating significantly larger areas in need of full depth patching.
This work will require additional maitenance of traffic for the road closure.

CO2.1	Additional Maintenance of Traffic	1 LUM	@ \$5,000.00	\$5,000.00
CO2.2	Full Depth Removal and Replacement of HMA	3951 SY	@ \$31.35	\$123,863.85

Subtotal - \$128,863.85


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 1 to <u>2</u>		\$3,619.00
3. Amount of Contract, not including this supplement		\$589,354.50
4. Addition/ Reduction to Contract due to this supplement		\$128,863.85
5. Amount of Contract, including this supplemental		\$718,218.35
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)		\$132,482.85
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>2</u> (Line 6 divided by Line 1)		22.62%

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 21 **calendar days**, making the final completion date August 26, 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 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.
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 (22.62) 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



**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: Board of Public Works and Safety

FROM: Department of Stormwater

RE: **COMPLETION AGREEMENT POLICY – YEAR IN REVIEW**

DATE: June 27, 2022

Note this item has no required action by the Board. The purpose is to report on the status of Completion Agreement related actions taken since November.

Resolution 2021-29 *A Policy for the Issuance of Certificate of Occupancy Prior to the Completion of Construction Project* passed the BOW on November 1st 2021 which replaced a similar policy with the terminology switching from “Occupancy Permit Agreement” to “Completion Agreement” (CA). This past winter marked the first application of the CA Policy to projects where some of the usual requirements for the issuance of a Certificate of Occupancy were delayed due to winter weather conditions.

The Stormwater Department acted as point to coordinate inspections and communications for involved Departments including Planning/Zoning, Engineering, and Building. Throughout the year we have been hearing builder feedback which was at first resistant to the process, but came to understand its utility.

This winter CAs were executed for 20 properties between the months of November and March. All but two CAs listed a completion deadline of June 15. The status of the 18 CAs with a passed deadline are listed in the attached table.

All properties have initiated the required work, but eight properties have not finished all the items listed within their executed CA. A surety amount was required and processed for seven of these eight properties. Reasons for CAs not being closed vary from concrete work in the right-of-way not meeting ADA standards to trees not being planted before hot weather makes survival difficult.

All outstanding requirements have been communicated to the parties included in the CAs. A deadline reminder letter was mailed to all parties on May 19 and a deadline passed letter was sent June 17 alerting parties that their CA status would be reported to BOW.

A few options have been discussed at an inter-departmental meeting for moving forward. All Completion Agreements include the ability by the City to hire or complete the work and retain the surety in an amount equal to the cost of work. As another option for CAs with outstanding tree requirements in particular, a deadline extension appeal made by the Agreement parties at BOW is being pursued. Stormwater is currently working with Legal to have a CA extension addendum prepared. We continue to discuss course of action for outstanding CAs on a case by case basis.

Site Address	Project Name & Job Number	Property Owner	Builder	Complete (Y/N)	Outstanding Requirement(s)	Surety
1933 Whispering Pines	Greencroft (2017-2035)	Greencroft Goshen, Inc.	na	Y		
1931 Whispering Pines	Greencroft (2017-2035)	Greencroft Goshen, Inc.	na	N	stabilization	
2094 Whispering Pines	Greencroft (2020-2017)	Greencroft Goshen, Inc.	na	Y		
2096 Whispering Pines	Greencroft (2020-2017)	Greencroft Goshen, Inc.	na	Y		
2093 Whispering Pines	Greencroft (2020-2017)	Greencroft Goshen, Inc.	na	Y		
2095 Whispering Pines	Greencroft (2020-2017)	Greencroft Goshen, Inc.	na	Y		
1471 Firestar Drive	Maplewood Estates (2006-2010)	Joachim and Amy Landes	Freedom Builders	N	sidewalk*	\$945
1516 Firestar Drive	Maplewood Estates (2006-2010)	Sunrise Home Builders, Inc.	Sunrise Home Builders	Y		\$23,245
1211 Camelot Drive	Northbrook (2021-2045)	Kadd Acquistions LLC (Schrock Homes)	Schrock Homes	Y		
1611 Hay Parkway	Northbrook (2021-2045)	Stephen Nault and Jacklin Beard	Schrock Homes	N	stabilization, tree	\$3,025
2005 Wakefield Rd	Pickwick Village (2017-2047)	Spring Run Partners LLC	Spring Run Partners, LLC	Y		
2007 Wakefield Rd	Pickwick Village (2017-2047)	Spring Run Partners LLC	Spring Run Partners, LLC	Y		
837 Ridgeview Dr.	Ridgewood Place (2005-2070)	Saulo and Kaitlyn Degado	Team Construction	N	stabilization, sidewalk	\$5,945
502 River Race Drive	Single home	Roland Weaver	Owner	N	tree	\$9,930
123 N. 6th St.	Single home	Habitat for Humanity	Habitat for Humanity	Y		\$1,550
217 W Wilden Avenue	Single Home	Habitat for Humanity	Habitat for Humanity	N	tree, stabilization, parking pad, sidewalk	\$11,860
1936 Lighthouse Lane	The Crossing (2006-2057)	Sharon Price	Granite Ridge	N	tree**	\$6,790
1824 Lighthouse Lane	The Crossing (2006-2057)	Brian Moore for The Crossing Development LLC	Lehman Development Inc.	N	stabilization	\$6,990

* two agreements were made at the same address because of differing responsibilities. The Agreement for landscaping is closed. The Agreement with sidewalk and a surety amount is not.

** two agreements were made at the same address because of differing responsibilities. The Agreement with the Builder is closed. The Agreement with the homeowner for the tree planting remains open.

Statuses as of 6/24/2022



**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: Stormwater Board

FROM: Stormwater Department

RE: **NOTICE OF INTENT FOR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT COVERAGE**

DATE: June 27, 2022

In December of 2021, the Indiana Department of Environmental Management (IDEM) repealed "Rule 13" authorizing the discharge of stormwater to Indiana receiving waters by Municipal Separate Storm Sewer (MS4) communities. IDEM has transitioned to a Municipal Separate Storm Sewer General Permit (MS4GP) and the Notice of Intent for permit coverage is due July 5th.

The Notice of Intent (NOI) process requires public notice which will be printed in the Goshen News sometime next week. It also requires filling and signing of the attached form identifying responsible parties, applicable agreements, and basic receiving waters information.

In years past, the City of Goshen has been an official co-permittee with our partners in the Greater Elkhart County Stormwater Partnership including Elkhart County, the City of Elkhart, and the Town of Bristol. The Partnership has decided to file separately for the MS4GP, but will retain our inter-local agreement that supports the County-wide stormwater utility fee and designates shared responsibility for several duties of our minimum control measures with the Elkhart County Soil and Water Conservation District. These partners are named in the NOI and copies of applicable documents will be included.

The Mayor is listed as the Primary MS4 Operator and thus is the required signatory for the NOI.

Requested motion: *Approve for the Mayor to execute the Notice of Intent for permit coverage under the Municipal Separate Storm Sewer System General Permit.*



**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)
NOTICE OF INTENT (NOI)**

State Form 51270 (R5 / 3-22)
Form Approved by State Board of Accounts, 2003
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

- NOTE:**
- This form must be used to apply for a general NPDES permit to obtain permit coverage under the MS4 General Permit MS4 GP - (INR040000)
 - Please type or print in ink.
 - Return this form, required addenda, and payment by mail to the IDEM Stormwater Program at the address listed below.

IDEM, Stormwater Program
100 North Senate Avenue
IGCN Rm 1255
Indianapolis, IN 46204-2251

For questions regarding this form, contact:

Phone: (317) 234-1601 or
(800) 451-6027, ext. 41601 (within Indiana)

Stormwater Program Email: Stormwat@idem.IN.gov

Web Access:
<http://www.in.gov/idem> (Search for Stormwater)

MS4 General Permit (MS4GP) may be obtained at:
<https://www.in.gov/idem/stormwater/municipal-separate-storm-sewer-systems-ms4/>

APPLICABILITY

Permit coverage under the MS4 General Permit applies to all entities that:

- (1) Are not required to obtain an individual NPDES permit under 327 IAC 15-2-9(b)
- (2) Meet the general permit rule applicability requirements under 327 IAC 15-2-3
- (3) Do not have coverage under an individual MS4 permit; and
- (4) Operate, maintain, or otherwise have responsibility for an MS4 conveyance within a designated MS4 area.

APPLICATION TYPE (check one)

- Initial NOI
- Renewal NOI
• NPDES Number: INR04C137
- Amended NOI
• NPDES Number:

Part A: GENERAL INFORMATION FOR PRIMARY MS4 OPERATOR

(1) MS4 Name (Primary):	City of Goshen	County: Elkhart
(2) Operator Name (Individual):	First: Jeremy	Last: Stutsman
(3) Operator Title:	Mayor of Goshen	
(4) Mailing Address and Contact Information:		
Address 1: 202 S. 5th St.		
Address 2:	City: Goshen	State: Indiana Zip: 46528
Phone: 574-533-8621	Cell Phone:	Email: mayor@goshencity.com

Part B: MS4 COORDINATOR (MS4 Listed in Part A)

(1) Is the MS4 Coordinator the same person as the MS4 Operator listed in Part A?		
<input type="checkbox"/> Yes (Do not complete items 2 through 5) <input checked="" type="checkbox"/> No (Complete Items 2 through 5)		
(2) Name of MS4 or Name of Company: City of Goshen		
(3) Contact Name (Individual):	First: Jason	Last: Kauffman
(4) Contact Title:	Stormwater Coordinator	
(5) Mailing Address and Contact Information:		
Address 1: 204 E Jefferson Street, Suite 1		
Address 2:	City: Goshen	State: Indiana Zip: 46528
Phone: 574-537-3832	Cell Phone: 574-606-4064	Email: jasonkauffman@goshencity.com

PART C: OTHER CONTACTS

Application Preparer:

(Complete Items (1) and (2) below and only complete Item (3) if different than the information listed in Part A or Part B)

- (1) Contact Name (Individual): First Name: Jason Last Name: Kauffman
 (2) MS4 or Company Name: City of Goshen
 (3) Mailing Address and Contact Information:
 Address 1:
 Address 2: City: State: Zip:
 Phone: Cell Phone: Email:

Consultant:

- Not Applicable
 The MS4 has retained a consultant to assist with the program
(Complete Items (1) through (3) if different than the information listed for the Application Preparer)

- (1) Contact Name: (Individual): First Name: Last Name:
 (2) Company Name:
 (3) Mailing Address and Contact Information:
 Address 1:
 Address 2: City: State: State Abbreviation: Zip:
 Phone: Cell Phone: Email:

PART D: MS4 GENERAL INFORMATION (Primary Permittee Only (Co-permittees will provide in Appendix A))

- (1) Primary Receiving Water: Elkhart River
 (2) Coverage Area (Acres): 11,494
 (3) Population: 34,586
 (4) Funding Sources: Stormwater Utility Fee
 (5) Stormwater Fees: equivalent residential units of 3,600 square feet of impervious surface
 Not Applicable
 Yes, the fees are based on or calculated on *(provide a brief description):*

(6) Administration of the Minimum Control Measures:

Minimum Control Measure	Primary MS4 will Administer	Another MS4 (List Entity) will Administer	A Third Party (List Entity) will Administer	Legally Binding Agreement
Public Education	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Public Involvement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Illicit Discharge	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Construction	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Post-construction	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Good Housekeeping	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No

PART E: MS4 CO-PERMITTEE INFORMATION

(1) Is the MS4 listed as Primary applying for permit coverage that will include co-permittees?

Yes (List the MS4 entities below) No (Proceed to Part F)

- | | |
|-----|-----|
| (a) | (f) |
| (b) | (g) |
| (c) | (h) |
| (d) | (i) |
| (e) | (j) |

Part F: GENERAL DISCHARGE INFORMATION FOR MS4 ENTITIES

(1) **Hydrologic Unit Codes (12 Digit) associated with the MS4 area including those associated with co-permittees.**
(Attach separate sheets as necessary.)

Hydrologic Unit Code (12 Digit)	Name of MS4 or MS4s
(a) 040500011904	City of Goshen
(b) 040500011903	City of Goshen
(c) 040500011902	City of Goshen
(d) 040500011805	City of Goshen
(e)	
(f)	
(g)	
(h)	

(2) **Primary Hydrologic Unit Code selected from the list above:** 040500011904

(3) **Receiving Waters:** List all separate stormwater system outfall receiving waters. The receiving waters must represent all entities seeking coverage under this NOI. (Attach separate sheets as necessary.)

Receiving Water	Approved TMDL (Name the TMDL)	Identify if the Water is on the current 303d (List Impairments Below)
(a) Elkhart River		e. coli
(b) Rock Run Creek		e. coli
(c) Elkhart River Hydraulic Canal		e. coli
(d) Horn Ditch		
(e) Leedy Ditch		
(f) New Miller Ditch		
(g) unnamed Rock Run Creek tributary		e. coli
(h) unnamed Elkhart River tributary		e. coli
(i)		
(j)		
(k)		
(l)		
(m)		
(n)		
(o)		
(p)		

(4) Do any outfalls within the MS4 discharge to another MS4 conveyance?
(These conveyances may either be regulated or non-regulated under the MS4 General Permit.)

Yes No

If yes, provide the name of the responsible MS4 entity for the storm system and provide the name of the initial receiving water.

Outfall Discharges Directly to a MS4 (List the MS4):	Initial Receiving Water
(a) Indiana Department of Transportation	Elkhart River
(b) Elkhart County	Elkhart River
(c)	
(d)	

Part G: Public Notification

The designated entities have notified the public of their intent to submit an application to IDEM to obtain permit coverage as a MS4. The notification was achieved by one of the two options below *(select the option utilized)*:

A notification was placed on the MS4 web page or community calendar for 30 days prior to submittal of the NOI. The notification included the information required in the MS4GP as required by 6.1 (b)(2).

A notification was placed on a local newspaper of general circulation for a minimum of one (1) day. The notification included the information required in the MS4GP as required by 6.1 (b)(2).

Part H: INFORMATION TO BE SUBMITTED WITH THE NOI

In addition to the information in Parts A through G and applicable appendices a MS4 operator must provide:

- (1) Proof that a notice was posted to the MS4 web page / community calendar or in a newspaper with the greatest circulation in the affected MS4 area.
- (2) Application Fee (the MS4 Operator shall pay a fee in accordance with IC 13-18-20-12 and Section 6.4 and 6.5 of the MS4GP).
- (3) Certification that appropriate legally-binding agreements or contracts between MS4 entities have been obtained.

Part I: CERTIFICATION AND SIGNATURE

The Primary MS4 Operator listed in Part A must sign the following certification statement:

I swear or affirm under penalty of perjury as specified by IC 35-44.1-2-1 and other penalties specified in IC 13-30-10, that the statements and representations in this notification are true, accurate, and complete.

“I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Type or print Operator Name: Jeremy Stutsman

Signature of Operator: _____ Date: 6/27/2022
(mm/dd/year)

The NOI must be signed by an individual who has the appropriate signatory authority as required by 40 CFR 122.22. Wet ink signatures are required.

Appendix A: Co-permittees (Complete this form for each Co-Permittee)

(1) Name of MS4 Co-Permittee:

MS4 Operator (An individual): First: _____ Last: _____ Title: _____
 Address 1: _____
 Address 2: _____ City: _____ State: Indiana Zip: _____
 Phone: _____ Cell Phone: _____ Email: _____
 MS4 Coordinator (An individual): First: _____ Last: _____ Title: _____
 Address 1: _____
 Address 2: _____ City: _____ State: Indiana Zip: _____
 Phone: _____ Cell Phone: _____ Email: _____

(2) MS4 Information for Co-permittee:

MS4 (Co-permittee) Population: _____
 MS4 (Co-Permittee) Primary Receiving Water: _____
 Funding Sources: _____
 Does the MS4 have a Stormwater Fee: Yes No
 If Yes, provide a general description of how the fee is calculated (*i.e. impervious surface, etcetera*) _____

(3) Administration of the Minimum Control Measure:

Minimum Control Measure	Co-Permittee Listed Above will Administer	Another MS4 (List Entity) will Administer	A Third Party (List Entity) will Administer	Legally Binding Agreement
Public Education	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Public Involvement	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Illicit Discharge	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Construction	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Post-construction	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No
Good Housekeeping	<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No

(4) Co-permittee Certification:

I swear or affirm under penalty of perjury as specified by IC 35-44.1-2-1 and other penalties specified in IC 13-30-10, that the statements and representations in this notification are true, accurate, and complete.

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Type or Print MS4 Operator Name: _____

Signature of MS4 Operator (co-Permittee): _____ **Date:** _____

The NOI must be signed by an individual who has the appropriate signatory authority as required by 40 CFR 122.22. Wet ink signatures are required. (mm/dd/year)

Appendix B: Additional Program Contacts Administering Minimum Control Measures (Optional)
(Add additional Pages as needed)

MS4 Representative		Administering the Following MCMs
Name (Individual): First Name: Mattie Last Name: Lehman MS4 or Company Name: City of Goshen Address: 204 E. Jefferson Street, Suite 1 City: Goshen State: Indiana Zip: 46528 Phone: 574-537-3818 Cell Phone: Email: mattielehman@goshencity.com		<input checked="" type="checkbox"/> Public Education <input checked="" type="checkbox"/> Public Involvement <input checked="" type="checkbox"/> Illicit Discharge <input checked="" type="checkbox"/> Construction <input checked="" type="checkbox"/> Post-Construction <input checked="" type="checkbox"/> Good Housekeeping
Name (Individual): First Name: Jim Last Name: Hess MS4 or Company Name: Elkhart County Soil and Water Conservation District Address: 59358 County Road 7 City: Elkhart State: Indiana Zip: 46517 Phone: 574-523-2030 Cell Phone: Email: elkcoswcd@elkhartcounty.com		<input checked="" type="checkbox"/> Public Education <input checked="" type="checkbox"/> Public Involvement <input type="checkbox"/> Illicit Discharge <input checked="" type="checkbox"/> Construction <input type="checkbox"/> Post-Construction <input type="checkbox"/> Good Housekeeping
Name (Individual): First Name: Last Name: MS4 or Company Name: Address: City: State: Zip: Phone: Cell Phone: Email:		<input type="checkbox"/> Public Education <input type="checkbox"/> Public Involvement <input type="checkbox"/> Illicit Discharge <input type="checkbox"/> Construction <input type="checkbox"/> Post-Construction <input type="checkbox"/> Good Housekeeping
Name (Individual): First Name: Last Name: MS4 or Company Name: Address: City: State: Zip: Phone: Cell Phone: Email:		<input type="checkbox"/> Public Education <input type="checkbox"/> Public Involvement <input type="checkbox"/> Illicit Discharge <input type="checkbox"/> Construction <input type="checkbox"/> Post-Construction <input type="checkbox"/> Good Housekeeping
Name (Individual): First Name: Last Name: MS4 or Company Name: Address: City: State: Zip: Phone: Cell Phone: Email:		<input type="checkbox"/> Public Education <input type="checkbox"/> Public Involvement <input type="checkbox"/> Illicit Discharge <input type="checkbox"/> Construction <input type="checkbox"/> Post-Construction <input type="checkbox"/> Good Housekeeping
Name (Individual): First Name: Last Name: MS4 or Company Name: Address: City: State: Zip: Phone: Cell Phone: Email:		<input type="checkbox"/> Public Education <input type="checkbox"/> Public Involvement <input type="checkbox"/> Illicit Discharge <input type="checkbox"/> Construction <input type="checkbox"/> Post-Construction <input type="checkbox"/> Good Housekeeping

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

May 24, 2022

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: Samuel Ascencio
64848 McIntosh Lane
Goshen, IN 46526

Glenda Ascencio
64848 McIntosh Lane
Goshen, In 46526

RE: Premises at 110 S. 7th -B, Goshen, Indiana

You are notified as a person holding a substantial property interest in the real estate at 110 S. 7th Street -B, Goshen, Indiana, that the building at this location is in violation of the Goshen City Code as set forth in more detail below.

The Goshen Building Department inspected the subject real estate on November 10, 2021. Violations of the Neighborhood Preservation Ordinance (Minimum Housing Ordinance) were cited. The real estate was reinspected on December 16, 2021, February 16, 2022, and May 12, 2022 which showed no significant improvement to the real estate.

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 and dangerous to person or property because of a violation of Goshen City Code Title 6, Article 3, Chapter 1 concerning building condition or maintenance.

The following violations of Section 6, Article 3, Chapter 1 of the Goshen City Code were cited by the Goshen Building Department inspector and have not been satisfactorily repaired or remedied:

1. The roof and flashing on the building are not sound and have defects that admit rain. There are loose and damaged shingles. This is causing one or more of the rooms in the building to have leaks in the ceilings. (violation of Section 6.3.1.1 (c)).
2. The gutters on the side and rear of the building do not have downspouts attached. (violation of Section 6.3.1.1 (c)).

These violations make the premises at 110 7th Street -B, Goshen unsafe.

You are ordered to repair or rehabilitate the unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy or use demolish and remove a part of the unsafe building so that the buildings and structures are in compliance with Title 6, Article 3, Chapter 1 of the Goshen City Code by June 24, 2022. In particular, you are ordered to make the following corrections:

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

Page 2

1. Repair or replace the roof and flashing so that it does not admit rain into the interior of the building.
2. Attach gutters and downspouts so that the roof water is discharged in a manner that does not create a hazard on the premises or adjacent property.

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 further notified that a hearing will be held before the Goshen Board of Public Works and Safety on **Monday, June 27, 2022 at 2:00 p.m. (local time)**, or soon thereafter, for the purpose of reviewing the Order of the City of Goshen Building Commissioner. This hearing will be held at the Goshen Police & Court Building in the Court Room/Council Chambers at 111 East Jefferson Street, Goshen, Indiana.

You have the right to appear at this hearing with or without counsel, to present evidence, cross-examine opposing witnesses and present arguments. Should you fail to appear at the time set for the hearing, the hearing will be conducted in your absence. The Goshen Board of Public Works and Safety will have the right to affirm, rescind or modify this Order.

Indiana Code § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the unsafe building 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, you must also supply 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 Building Commissioner is issued on May 24, 2022

City of Goshen Building Department


Myron Grise
Building Commissioner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 110 S. 7th Street -B, Goshen, Indiana, was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on May 24, 2022:

To: Samuel Ascencio
64848 McIntosh Lane
Goshen, IN 46526

Glenda Ascencio
64848 McIntosh Lane
Goshen, IN 46526



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