



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., Nov. 21, 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: Nov. 14, 2022

Approval of Agenda

- 1) Fire Department:** Approve the promotion of Megan J. Berry to the rank of Private First Class, effective Nov. 22, 2022

- 2) Fire Department:** Approve the promotion of Hannah M. Estes to the rank of Private First Class, effective Nov. 22, 2022

- 3) Police Department:** Approve the hiring of Tyler D. Smoker as a probationary patrol officer, effective Nov. 21, 2022 (with sign-on bonus)

- 4) Police Department:** Approve the promotion of Officer Aaron Lower from probationary patrol officer to patrol officer, effective Nov. 29, 2022

- 5) Police Department:** Approve the promotion of Officer Anthony W. Reese from probationary patrol officer to patrol officer, effective Nov. 29, 2022

- 6) Police Department:** Approve the promotion of Officer Jacob Lambright from the rank of patrol officer to the rank of Detective, effective Dec. 2, 2022

- 7) Resident request:** J.L. Simmons request: Approval for replacement of a curb and driveway section at 1812 Park West Drive



8) Legal Department: Accept the Right of Entry agreement with Willie I Parsons to allow the City to re-grade Mr. Parsons' property as part of the Wilden Avenue reconstruction

9) Legal Department: Resolution 2022-28, Authorizing the purchase of new warning siren to be installed at 29th Street

10) Legal Department: Resolution 2022-29, Authorizing the purchase of outdoor warning system software upgrades

11) Legal Department: Resolution 2022-31, Agreement with Pumpkinvine Properties LLC for Transfer of 206 N. Main St. Real Property

12) Legal Department: Resolution 2022, To allow for construction of a building expansion at 2694 Hackberry Drive over the City's utility easement located at that location

13) Engineering Department: Agreement with H&G Homebuilders for the completion of the construction project at 2112 Newbury Circle

Privilege of the Floor

CITY OF GOSHEN STORMWATER BOARD

Regular Meeting Agenda

2:00 p.m., Nov. 21, 2022

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

Members: Mayor Stutsman, Mike Landis and Mary Nichols

14) Stormwater Department: Resolution 2022-01, Revision of Stormwater User Fees for the Goshen Department of Stormwater Management

Approval of Civil City and Utility Claims

Adjournment



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE NOVEMBER 14, 2022 REGULAR MEETING**

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

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

Absent: Mayor Jeremy Stutsman

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

REVIEW/APPROVE MINUTES: Acting Chair Landis presented the minutes of the Oct. 31, 2022 Regular Meeting. Board member Barb Swartley moved to approve the minutes as presented and the motion was seconded by Board member Mary Nichols. Motion passed 4-0.

REVIEW/APPROVE AGENDA: Acting Chair Landis presented the agenda. Board member Swartley moved to approve the agenda as submitted and Board member Nichols seconded the motion. Motion passed 4-0.

1) Fire Department: Conditional Offer of Employment Agreement with Kevin A Mann

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the board to extend a conditional offer of employment to Kevin A. Mann as a probationary firefighter and to approve the Conditional Offer of Employment Agreement with Mann and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement.

Marks said the agreement sets forth the conditions Mann must meet prior to beginning employment with the Fire Department, which includes being approved by the board of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Mann has a Firefighter I/II certification and Basic EMT certification; and is currently enrolled in a paramedic training program. Once employed, Mann will be required to successfully complete a paramedic training program and obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years. The Fire Department will ask the Board to confirm the offer of employment when a position becomes available in the Department.

Swartley/Nichols moved to extend a conditional offer of employment to Kevin A. Mann as a probationary firefighter and to approve the Conditional Offer of Employment Agreement with Mann and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement. Motion passed 4-0.

2) Elizabeth & Norman Yoder request: Approval for a patio encroaching on the Douglas Street right-of-way, with a response from the Director of Public Works

Elizabeth and Norman Yoder asked the Board to approve the replacement and extension of a patio between their home and garage at 802 South 7th Street into the City right-of way.

Elizabeth Yoder said the old concrete patio is badly cracked and she and her husband would like to replace and enlarge it toward the street, and it would encroach four feet, six inches into the City right-of-way, which is close to the home. The patio would be made of flagstone placed in sand and would be level with the surrounding area.



In her written request, **Elizabeth Yoder** wrote that the total area is approximately 330 square feet. The old portion is 12 feet by 11 feet, 7 inches. The addition would extend 11.5 feet toward Douglas Street from the current patio, which ends at the front of the house and be 16 feet 9 in wide. She added that a new concrete driveway was approved and installed at 416 East Douglas Street in the same block, which also makes use of the City's right-of-way.

City Director of Public Works & Utilities Dustin Sailor provided a memorandum to the Board in which he stated that the City Engineering Department opposes the request. Sailor wrote that the Yoders used a recent driveway extension as a similar allowance by the City. He wrote that the Engineering Department did not view a patio extending from the home into the right-of-way as a legitimate encroachment.

Sailor also wrote that the City's right-of-way needs to be reserved for public uses that include utility services, transit, and the appropriate space necessary to rebuild the noted infrastructure. With the recent surge of communication company activity within the public right-of-way, Sailor wrote that the area that was once adequate to provide room for essential service by a few utilities is quickly becoming a tangled mess.

Board member Landis said that a photo by the Engineering Department showed that the Yoder's home is virtually locked in by the homes to the south and east so it didn't appear there was anything that could be done without encroaching in the right-of-way.

Sailor said that from the Engineering Department's perspective, access from the road to the house would be something justifiable, but something from the home out into the right-of-way is something different and that is what's being requested. He asked, "At what point do we set a precedent by people to extend out into the right-of-way?" He added that unlike a temporary access ramp, a patio would be more of a permanent addition.

Board member Swartley asked about the width of the Douglas Street right-of-way. **Sailor** said he didn't have that information, but said it was wider in that area. But as he put in his memo, Sailor said that regardless of the size of the right-of-way, it is quickly being consumed by multiple fiber optic companies and the city is running out of right-of-way.

Landis said the City has always required that any improvements approved in the right-of-way had to be removed at the homeowner's expense if necessary. He asked if it made any difference to **Sailor** if what was being proposed in this case was flagstone pavers set in sand and not concrete. **Sailor** said that from the City's standpoint, 25 years from now trying to track whether it was an improvement that was approved or not would be difficult.

Asked by **Landis** if the raised beds that were indicated on the Yoder's diagram existed, **Elizabeth Yoder** said they did not and that she and her husband only planned to install ground-level landscaping. She added that there were no other ways to expand an outdoor area except in the direction proposed. In response to a question from Landis, she said he didn't know the width of the driveway.

Asked by **Landis** what the Engineering Department would have responded if the Yoders had sought to widen the driveway to 24 feet, **Sailor** said there would not have been a justification to allow that because it wouldn't have aligned with the garage.

Asked by **Swartley** what he was thinking, **Landis** said this was a difficult case because a photo showed that the right-of-way on the north side of Douglas Street was the middle of the sidewalk and the right-of-way on the south side was almost up to the house. He said that wasn't the Engineering Department's doing, but it didn't bode well for the Yoders. If the right-of-way on the Yoder's side of the street was the same as on the north, they could expand the patio without asking. Landis said he would be inclined to permit the request, because concrete wouldn't be used. There was further discussion about the proposal, including reducing the width of the patio and changing its location, but no alternative was offered.

Swartley said she was sympathetic because her home is also on a small lot, but she wasn't inclined to oppose the Engineering Department's recommendation.



Swartley/Nichols then moved to deny the request of the owners of 802 South 7th Street to extend their patio into the City's right-of-way. Motion passed 4-0.

3) Aguilar family request: Approval for a gravel driveway underneath a carport at 1322 East Douglas Street
Adrian Aguilar of Goshen asked the Board to allow his family to install a gravel driveway underneath a carport built at 1322 East Douglas Street.

In a written request, **Aguilar** indicated that his family is in the process of finishing its carport on 1322 E Douglas St. and are required by the City to install a hard surface for vehicles. He said the family would like a concrete surface, but that's not possible because of the cost. In the meantime, he said the family would like a gravel driveway. **Aguilar** wrote that a nearby house, at 1308 Reynolds Street, has a similar gravel driveway.

In response to a question from **Board member Landis**, **Aguilar** said the carport will be on the west side of the house, attached to the garage and at the end of the driveway. He confirmed to **Board member Swartley** that the carport has been built.

Providing a perspective of City staff, **City Assistant Planning & Zoning Administrator Rossa Deegan** said the request originated from his office and the carport has now been approved by the City Board of Zoning Appeals. More specifically, the Board granted approval to Martin Aguilar (Adrian Aguilar's father) of a developmental variance to allow a side (west) setback of 5 feet where 8 feet is required for the addition of an approximately 408 square foot carport for the subject property, which is zoned Residential R-1 District.

Deegan said the carport had already been installed, but it wasn't pre-approved. He said the family was asking the Board of Works to grant permission for gravel underneath the carport instead of the required hard surface, adding that the driveway is concrete. **Deegan** said the Planning Department didn't have an opinion on this request.

Landis asked **City Attorney Bodie Stegelmann** to confirm that when the Board approves gravel surfaces, it usually must consider imposing conditions. **Stegelmann** concurred. He said Resolution 2020-30, approved in November 2020, requires that driveways be a hard surface with exceptions relating to the "unique attributes of the real property and surrounding properties as well." Generally, he said not installing a hard surface cannot be injurious to public health or the general welfare and not affecting the aesthetics of the neighborhood in an adverse manner.

Swartley said that it appeared a gravel driveway would go the opposite way and be an improvement over a muddy surface. Asked if there were other gravel driveways in the neighborhood, **Aguilar** said there is a home on Reynolds Street with a gravel driveway.

Landis said he would be inclined to say that anything outside the carport should be concrete for the sake of the neighborhood. If the carport was ever converted into a garage, **Landis** said a building permit and concrete floor would be required. He suggested that all surfaces leading to the carport should be concrete.

Asked by **Board member Riouse** if the family wanted a gravel driveway because it was cheaper, **Aguilar** confirmed that was the case. He said eventually, the family would like a concrete surface. He said the family hasn't received a cost estimate on having a concrete surface leading to the carport.

Asked by **Swartley** the approximate cost of concrete in that small area leading to the carport, **Landis** estimated that it would cost about \$400. **Riouse** suggested that perhaps the family could get a cost estimate for that work. Asked by **Landis** if the family would agree to seek a cost estimate **Aguilar** said he would agree to do so.

Landis/Nichols moved to approve the installation of a gravel driveway underneath the carport at 1322 East Douglas Street, but that areas leading to the street outside the carport be of concrete and match the width of the carport. The motion passed 4-0.



4) Legal Department: Community Service Partnership Agreement with the Economic Development Corporation of Elkhart County

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with the Economic Development Corporation of Elkhart County to support the project outlined in its submitted application.

Toms said various community service organizations provide services or programs to residents in a manner more efficient than what the City of Goshen can provide. The City supports these organizations with funds. These organizations are subject to an application process requiring specific documentation regarding their organization including a detailed description of how these funds will be used.

Toms said the Economic Development Corporation of Elkhart County is one such community service organization that has applied for these funds. It has requested \$65,219 to help with business retention and expansion projects they are a part of. She said the Economic Development Corporation has provided all the required information and an agreement is now being brought before the Board for consideration and approval.

Toms added that this was a late submission because of unforeseen circumstances. She added that the application was put on a year-old application. In response to a question from **Board member Landis**, Toms said this is at least the applicant's second application in the approximate same amount as last year. She added that to the best of her knowledge, the applicant was doing work that benefitted the City. **City Attorney Stegelmann** concurred.

Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with the Economic Development Corporation of Elkhart County to support the project outlined in its submitted application. Motion passed 4-0.

5) Legal Department: Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Police Department at a cost of \$46,550

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department at a cost of \$46,550.

Under the agreement, the contractor will: remove the KMC controller and dispose of it per EPA guidelines; provide a Reliable Control® MPZ-44 controller; provide a Reliable Control® SS3-EPD controller; provide a discharge air sensor; provide the fan status; provide programming and graphical user interface; and provide labor/travel costs.

Asked by **Board member Landis** if the proposed work would fix longstanding temperature issues in the building, **City Director of Public Works & Utilities Dustin Sailor** said this work would replace outdated equipment and should be the third and last such replacement.

Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department at a cost of \$46,550. Motion passed 4-0.

6) Legal Department: Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for the replacement of hot and chilled water valves at the Police Department for \$38,150

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for the replacement of hot and chilled water valves at the Goshen Police Department at a cost of \$38,150.



Under the agreement, the contractor will: Provide and install (26) 3-way ½" modulating valve (any other valves larger than ¾" will be quoted); provide and install (29) 3-way ½" modulating valve (any other valves larger than ¾" will be quoted); provide piping materials to install water valves to include insulation; and provide post-installation testing. **Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for the replacement of hot and chilled water valves at the Goshen Police Department at a cost of \$38,150. Motion passed 4-0.**

7) Legal Department: Approve and authorize Mayor Stutsman to execute the Agreement for the special cleaning of Well #14 with Peerless Midwest, Inc. at a cost of \$29,960

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for the special cleaning of Well #14 for \$29,960. Toms said Peerless-Midwest, Inc. will utilize an innovative and very successful process called the Armour Method. It will require approximately six treatments over three to four weeks for \$29,960.00. Any required additional treatments will cost \$4,500 per treatment. Tom said in the past, additional treatments have not been necessary. She added that this will be the second time this annual process has been used for this well and it has been very successful.

Kent Holdren, Superintendent of City Water Treatment and Sewer Department, said this work will be on the City's Kercher wellfield and this treatment worked well for about a year. He said one well is already down in the Kercher wellfield, so it's critical to get this well cleaned and running efficiently again. He confirmed a different treatment was previously tried, but wasn't successful, so the City contracted with Peerless Midwest, Inc.

Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for the special cleaning of Well #14 at a cost of \$29,960. Motion passed 4-0.

8) Legal Department: Approve and authorize Mayor Stutsman to execute the Agreement with Peerless-Midwest, Inc. for work on the #7 pump overhaul at a cost not-to-exceed \$27,840

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for work on the #7 pump overhaul at a cost not-to-exceed \$27,840.

Under the agreement, the contractor's duties include: full replacement of bowl assembly rated 1800 GPM@ 170' TDH (includes new column, line shaft); standard motor reconditioning 100 HP motor; Shop and Machinist labor to disassemble overhaul and reassemble; and field labor: Pull/Set (3-man crew due to 10" column size).

Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for work on the #7 pump overhaul at a cost not-to-exceed \$27,840. Motion passed 4-0.

9) Legal Department: Agreement with Peerless-Midwest, Inc. for work on the #4 pump overhaul at a cost not-to-exceed \$25,830

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for work on the #4 pump overhaul at a cost not-to-exceed \$25,830.

Under the agreement, the contractor's duties include: full replacement of bowl assembly rated 1200 GPM@ 200' TDH (includes new column, line shaft); Standard motor reconditioning 75 HP motor; Shop and Machinist labor to disassemble overhaul and reassemble; and Field labor: Pull/Set.



Asked by Board member Landis if pumps #4 and #7 would be down at the same time, Kent Holdren, Superintendent of City Water Treatment and Sewer Department, said that would not be the case. He also said the price difference in the two overhauls was related to the different horsepower of the two pumps. Swartley/Nichols moved to approve and authorize Mayor Stutsman to execute the agreement with Peerless Midwest, Inc. for work on the #4 pump overhaul at a cost not-to-exceed \$25,830. Motion passed 4-0.

10) Legal Department: Resolution 2022-28 – Contract with Indiana Department of Transportation for Sweeping Services

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to move to adopt Resolution 2022-28, *Contract with the Indiana Department of Transportation for Sweeping Services*. Shannon said the Indiana Department of Transportation wants to contract with the City of Goshen for the City to sweep the 20.6 curb miles of state highways within the City limits a minimum of two times each year. The contract term is for 48 months commencing July 1, 2021 through June 30, 2025. The State will pay the City \$360/curb mile for a total of \$7,416 each year.

Asked by Board member Landis if the sweeping has been done or not, Marks said the City has been doing the work. She also said the State has been paying the City the same rate since 2013. Landis responded, "I guess when you have all the power, you get to set the terms of the agreement."

Swartley/Nichols moved to adopt Resolution 2022-28, *Contract with the Indiana Department of Transportation for Sweeping Services*. Motion passed 4-0.

11) Legal Department: Acceptance of Easement from Pilgrim Partners, LLC

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to accept the easement for the Goshen City storm sewer utility from Pilgrim Partners, LLC, and authorize the Mayor to execute the acceptance. She said the 500 square foot easement area is located on the south side of West Plymouth Avenue, east of Lighthouse Lane, and will be used for storm sewer utility purposes.

Swartley/Nichols moved to accept the easement for the Goshen City storm sewer utility from Pilgrim Partners, LLC, and authorize the Mayor to execute the acceptance. Motion passed 4-0.

12) Legal Department: Resolution 2022-29 for the transfer of 311 N. 9th Street to Habitat for Humanity of Elkhart County, Inc. and authorize Mayor Stutsman to execute documents necessary for the transfer

City Attorney Bodie Stegelmann asked the Board to approve Resolution 2022-29 for the transfer of 311 N. 9th Street to Habitat for Humanity of Elkhart County, Inc. and authorize Mayor Stutsman to execute documents necessary to accomplish the transfer.

Stegelmann said the City owns vacant real property located at 311 North 9th Street, and has no plans to utilize the real property for governmental purposes, so staff recommends the transfer of the property to Habitat for Humanity. He said the property will be used to build a home on the lot.

Greg Conrad, the president and executive director of Habitat for Humanity of Elkhart County, thanked the City for working with the organization and said work on the site should begin in a few days.

Swartley/Nichols moved to approve Resolution 2022-29 for the transfer of 311 N. 9th Street to Habitat for Humanity of Elkhart County, Inc. and authorize Mayor Stutsman to execute documents necessary to accomplish the transfer. Motion passed 4-0.



13) Legal Department: Approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's SCADA system for \$14,040

City Attorney Bodie Stegelmann asked the Board to approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's Supervisory Control and Data Acquisition (SCADA) system, in the amount of \$14,040.

Q-mation received a request from City of Goshen to help interface with communication to an old USFilter D620 controller at its facility in Goshen. The controller communication is being decoded by the FSGateway tool kit DDE custom driver. This tool kit is no longer available and is not compatible with the newer windows environment. Q-mation is proposing to upgrade the current application to OmniServer and will provide all software, and services to complete the upgrade project.

Marvin Shepherd, City Water Quality Manager, said the City upgraded its SCADA system this year, but there has been a problem with the lift stations that were not upgraded. He said this will resolve the issue.

Swartley/Nichols moved to approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's SCADA system, in the amount of \$14,040. Motion passed 4-0.

14) Community Development Block Grant Program: Approve and authorize Mayor Stutsman to sign the CDBG agreement for homeownership assistance for Program Year 2022

City Planning & Zoning Administrator Rhonda Yoder asked the Board to approve and authorize Mayor Stutsman to sign the CDBG agreement for homeownership assistance for Program Year 2022.

Yoder said homeownership assistance is a new program that will provide \$40,000 in direct financial assistance to low/moderate homebuyers purchasing single family homes in the City of Goshen.

Asked by **Board member Landis** if the entire \$40,000 would be spent this year, **Yoder** said the program year began July 1, 2022 and continues through the end of June 2023. If not all is spent, she said the funds can be rolled over into the next year until all is spent. And if successful, she said the same activity could be repeated the following year.

Swartley/Nichols moved to approve and authorize Mayor Stutsman to sign the CDBG agreement for homeownership assistance for Program Year 2022. Motion passed 4-0.

15) Water & Sewer Office: Request to approve unpaid final accounts (Kelly Saenz)

Kelly Saenz, Manager of the Goshen City Utilities Office, said that the original amount of unpaid final Water/Sewer accounts for this period, through Aug. 24, 2022, was \$8,055.88. Collection letters were sent out and payments of \$4,270.98 were collected. The uncollected amount was \$3,784.90. So, Saenz asked the Board to move the office's uncollected final accounts from active to Collection, Sewer Liens and Write offs.

Swartley/Nichols moved to move the Goshen Water and Sewer Office's uncollected finalized accounts from active to Collection, Sewer Liens and Write offs. Motion passed 4-0.

16) Engineering Department: Approve the extended closure of Wilden Avenue from east of Main St (SR 15) to and including the intersection with 5th Street through Nov. 18, 2022

City Director of Public Works & Utilities Dustin Sailor, asked the Board to approve the extended closure of Wilden Avenue from east of Main Street (SR 15) to and including the intersection with 5th Street through Nov. 18, **Sailor** said Rieth-Riley has notified the Engineering Department of its request to extend the closure of Wilden Avenue to ensure the safety of crews during final sidewalk installation, grading, and site restoration.



Sailor said the detour route will remain the same, with traffic using 61h Street, Oakridge Avenue, and Main Street. Swartley/Nichols moved to the extended closure of Wilden Avenue from east of Main Street (SR 15) to and including the intersection with 5th Street through Nov. 18, 2022. Motion passed 4-0.

17) Engineering Department: Approve \$10,181.12 contract with Yoder & Sons Fencing to remove and replace fencing in City Parking Lot #1 and authorize Mayor to sign the agreement

City Director of Public Works & Utilities Dustin Sailor, asked the Board to award the contract to Yoder and Sons Fencing in the amount of \$10,181.12, and authorize the Mayor to sign the agreement.

Sailor said the vinyl fence along the north line of Parking Lot I, which is north of the Goshen City Church of the Brethren at 203 N. Fifth Street, is in poor condition. The City secured three quotes to replace the entire fence and Yoder and Sons Fencing provided the lowest responsive and responsible quote in the amount of \$10,181.12. Work on the fence replacement is to be complete by April 28, 2023.

Swartley/Nichols moved to award the contract to Yoder and Sons Fencing in the amount of \$10,181.12, and authorize the Mayor to sign the agreement. Motion passed 4-0.

18) Engineering Department: Approve balancing Change Order No. 1, decreasing the contract \$19,759.45, for a final amount of \$329,450.70 for Niblock's asphalt paving project

City Director of Public Works & Utilities Dustin Sailor asked the Board to approve the balancing Change Order No. 1, decreasing the asphalt paving contract with Niblock Excavating, Inc. \$19,759.45, for a final contract amount of \$329,450.70. The change order is a 5.66% decrease in the original contract of \$349,210.15.

Swartley/Nichols moved to approve the balancing Change Order No. 1 decreasing the contract \$19,759.45, for a final contract amount of \$329,450.70. Motion passed 4-0.

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

Acting Chair Landis opened Privilege of the Floor at 2:49 p.m. There were no public comments.

However, Landis asked **City Director of Public Works & Utilities Dustin Sailor** about the different approaches to the reconstructed Plymouth Avenue Bridge. He said the approach from the west into town resembles a ramp while the approach in the opposite direction is smooth. Landis asked if this would be fixed or remain this way for 20 years.

Sailor said he didn't have an answer, but said it was a good question. Sailor added that there is nothing the City can do about this because it was a state project, but he would ask. Landis said people have noticed this difference

Acting Chair Landis closed Privilege of the Floor at 2:51 p.m.

As all matters before the Board of Public Works & Safety were concluded, **Acting Chair Landis/Board member Nichols** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 4-0.

Acting Chair Landis adjourned the meeting at 2:51 p.m.



APPROVED

Mayor Jeremy Stutsman

Mike Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

ATTEST

Richard R. Aguirre, City of Goshen Clerk-Treasurer



Danny C. Sink, Chief
FIRE DEPARTMENT, CITY OF GOSHEN
209 North Third Street • Goshen, IN 46526-3201

Phone (574) 533-7878 • Fax (574) 534-2804 • TDD (574) 534-3185
dannysink@goshencity.com • www.goshenindiana.org

November 08, 2022

To: The Board of Works and Public Safety

RE: Promote Megan J. Berry to Private First Class

From: Fire Chief Danny Sink

Megan J. Berry will complete her probationary year at GFD on November 22, 2022. Based on her performance and recommendations from her shift Battalion Chief and Training Officer; it is my pleasure to request that Megan be promoted to the rank of Private First Class for the Goshen Fire Department, effective November 22, 2022. Thank you

Thank you.



Danny C. Sink, Chief
FIRE DEPARTMENT, CITY OF GOSHEN
209 North Third Street • Goshen, IN 46526-3201

Phone (574) 533-7878 • Fax (574) 534-2804 • TDD (574) 534-3185
dannysink@goshencity.com • www.goshenindiana.org

November 08, 2022

To: The Board of Works and Public Safety

RE: Promote Hannah M. Estes to Private First Class

From: Fire Chief Danny Sink

Hannah M. Estes will complete her probationary year at GFD on November 22, 2022. Based on her performance and recommendations from her shift Battalion Chief and Training Officer; it is my pleasure to request that Hannah be promoted to the rank of Private First Class for the Goshen Fire Department, effective November 22, 2022. Thank you

Thank you.



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety

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

Date: November 21st, 2022

From: Jose' Miller, Chief of Police

Reference: The hiring of Tyler D. Smoker

I am requesting that the Board of Public Works and Safety **approve the hiring of Tyler D. Smoker for the position of probationary patrol officer.** Tyler has passed all exams and has been approved by both the local and State pension boards. Tyler is a graduate of the Indiana Law Enforcement Academy and has worked at LaGrange City Police Department for nearly five (5) years. Tyler is currently a K-9 Officer and will be bringing his partner along with him to the department. We are thrilled to have Officer Smoker and his partner joining the Goshen Police Department. I would like this hiring to be **effective today November 21st, 2022.**

Tyler will be present for the Board of Works Meeting

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

Jose' Miller #116
Chief of Police
Goshen City Police Department
111 E. Jefferson Street
Goshen, IN. 46528

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety
Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: November 21st, 2022

From: Jose' Miller, Chief of Police

Reference: Promotion of Aaron H. Lower from Probationary Patrol Officer to Patrol Officer

I am requesting the Goshen Board of Public Works and Safety **approve the promotion of Aaron H. Lower from the position of Probationary Patrol Officer to the rank of Patrol Officer effective November 29th, 2022.** On November 29th, 2022 Officer Lower will have completed his twelve (12) month probationary period. Officer Lower has proven himself time and time again that he will be an asset to the Goshen Police Department and to this community.

Lower will be present for the Board of Works Meeting.

Respectfully,

A handwritten signature in black ink, appearing to be "J. Miller", written over a white background.

Jose' Miller #116

Chief of Police

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

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety
Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: November 21st, 2022

From: Jose' Miller, Chief of Police

Reference: Promotion of Anthony W. Reese from Probationary Patrol Officer to Patrol Officer

I am requesting the Goshen Board of Public Works and Safety approve the promotion of Anthony W. Reese from the position of Probationary Patrol Officer to the rank of Patrol Officer effective November 29th, 2022. On November 29th, 2022 Officer Reese will have completed his twelve (12) month probationary period. Officer Reese has demonstrated that he will be a great police officer for the Goshen Police Department and this community.

Reese will be present for the Board of Works Meeting.

Respectfully,

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

Jose' Miller #116

Chief of Police

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

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



Jose' D. Miller

Chief of Police

111 E Jefferson St
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety
Mayor Jeremy Stutsman
Member Mary Nichols
Member Mike Landis
Member Barb Swartley
Member DeWayne Riouse

Date: November 21st, 2022

From: Jose' Miller, Chief of Police

Reference: Promotion of Jacob Lambright from Patrol Officer to Detective

I am requesting the Goshen Board of Public Works and Safety approve the promotion of Jacob Lambright from the position of Patrol Officer to the rank of Detective effective Friday December 2nd, 2022. Officer Lambright has served on the Goshen Police Department for over three (3) years. Officer Lambright has proven his dedication time and time again to this department and our community.

Lambright will be present for the Board of Works Meeting.

Respectfully,

Jose' Miller #116
Chief of Police
Goshen City Police Department
111 E. Jefferson Street
Goshen, IN. 46528

Telephone: (574) 533-8661

Hearing Impaired: (574) 533-1826

FAX: (574) 533-1826



Richard Aguirre, City Clerk-Treasurer
CITY OF GOSHEN

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

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

richardaguirre@goshencity.com • www.goshenindiana.org

To: City of Goshen Board of Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: Nov. 21, 2022
Subject: Jim Simmons request for curb/driveway at 1812 Park West Drive

The Clerk-Treasurer's received the following request from Jim Simmons of Goshen:

My request is for a variance for removal of the curb and first section of my thirty-two-foot driveway at 1812 Park West Drive and replacement with new concrete.

The replacement concrete will be done per City of Goshen specifications. Drive approach with no tree lawn and no sidewalk.

Advantage Concrete Services was scheduled to do the replacement concrete three weeks ago and will sometime in the future upon City approval.

This driveway, built in 2005 has deteriorated due to standing water, snow, ice, freezing and thawing.

Recently I have become aware of a driveway of the same thirty-two-foot, at 1702 Longwood.

Thanks in advance for your kind help in this request for a variance.

Jim Simmons

1812 Park West Drive

Goshen, In



PARK WEST DRIVE

32' W

1812

506

501

The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee the positional or thematic accuracy of the data. The cartographic digital files are not a legal representation of any of the features depicted, and the city and county disclaim any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded. The data represents an actual reproduction of data contained in the city's or county's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. City of Goshen and Elkhart County cannot be held liable for errors or omissions in the data. The recipient's use and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify the City of Goshen and Elkhart County and its employees and officers. This indemnity covers reasonable attorney fees and all court costs associated with the defense of the city and county arising out of this disclaimer.



Feet

0 5 10 20 30



1 inch = 30 feet

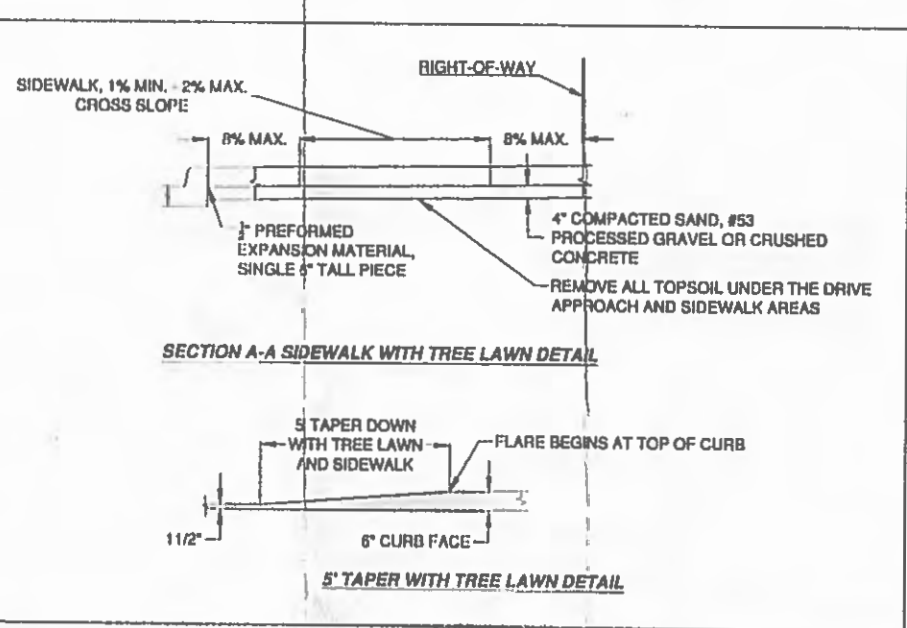
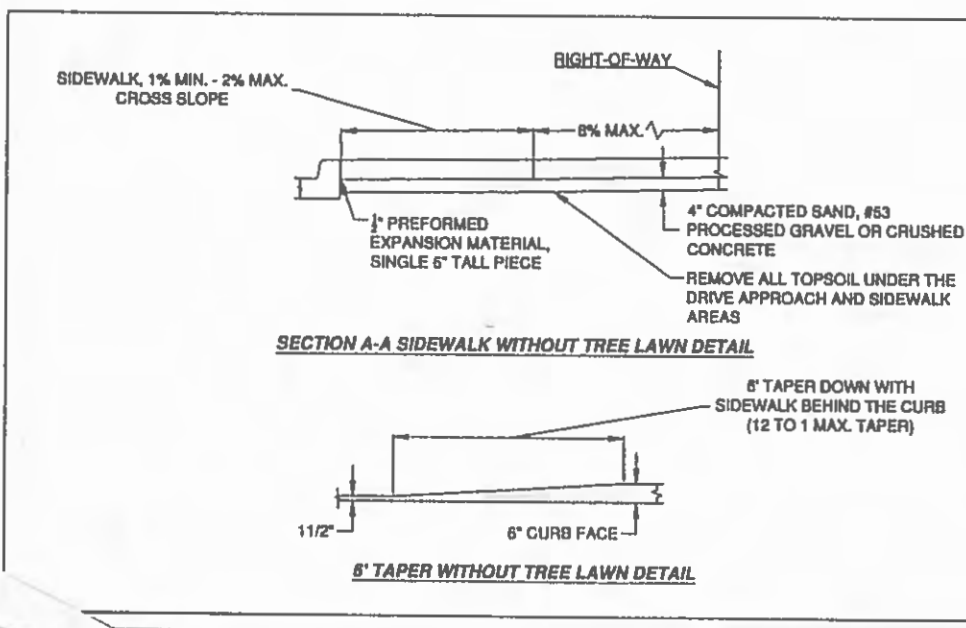
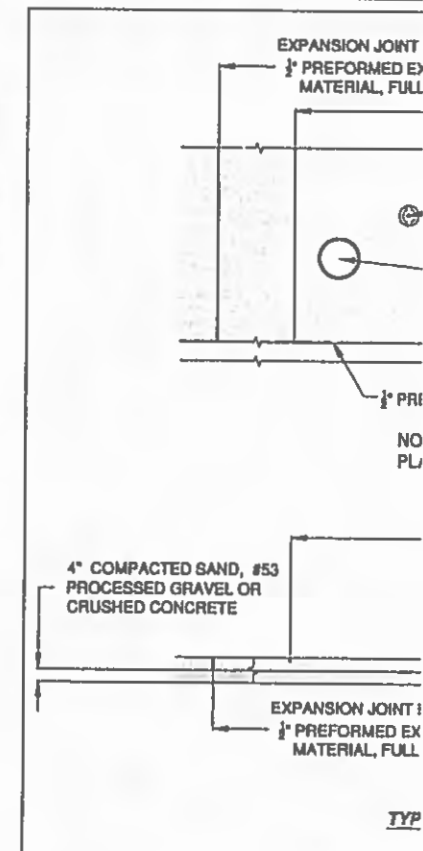
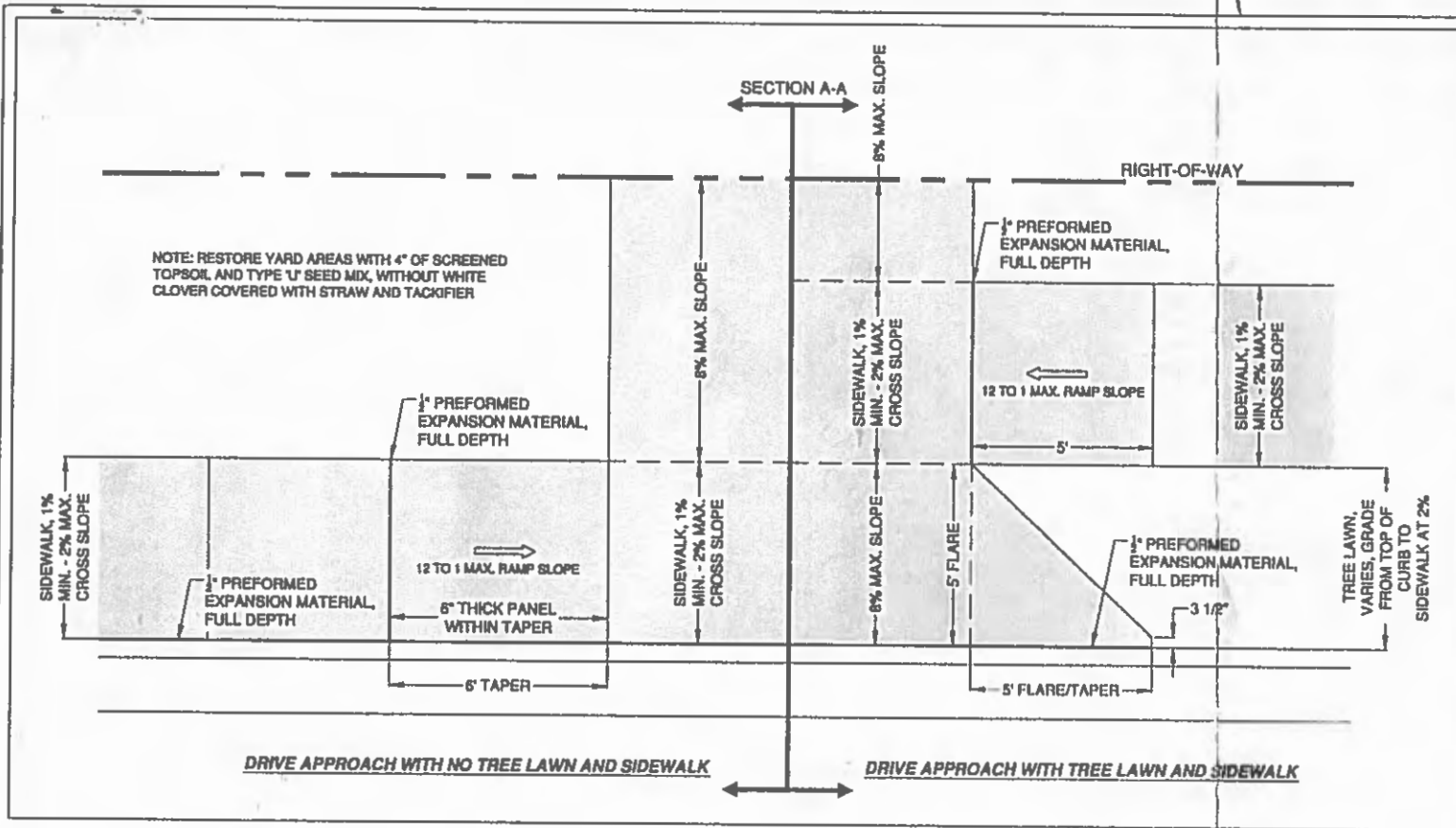
1812 Park West Drive

2021 Aerial

Printed November 14, 2022

The City of Goshen
Department of
Planning & Zoning

204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626



NOT

.

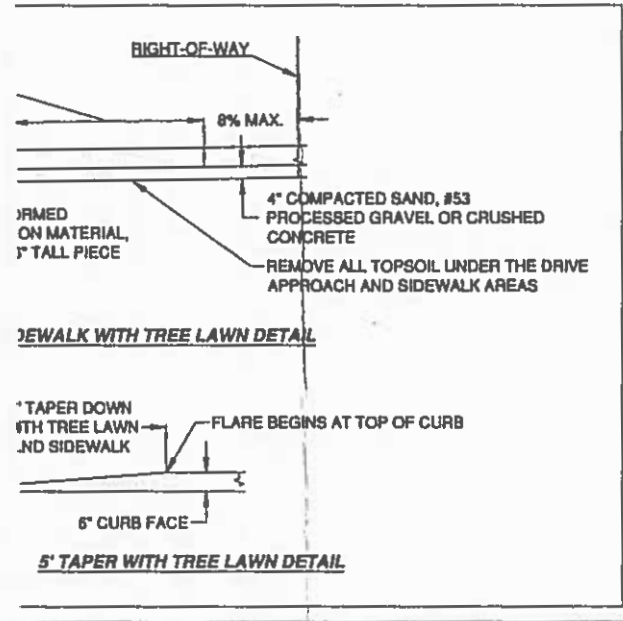
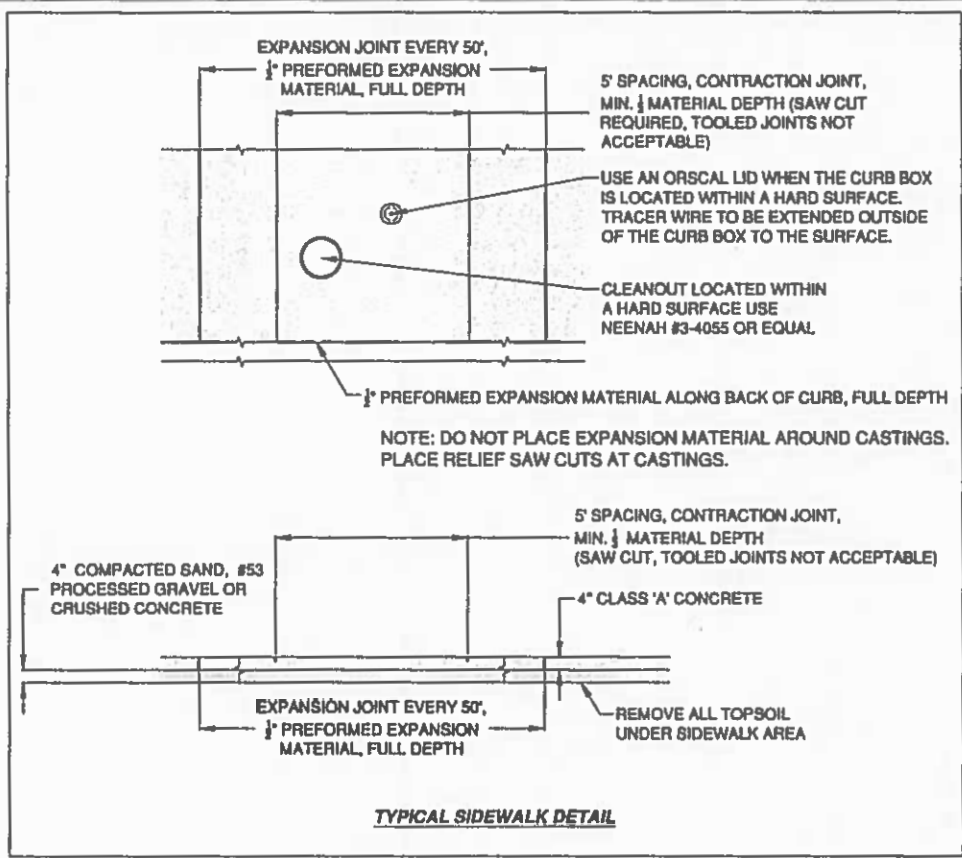
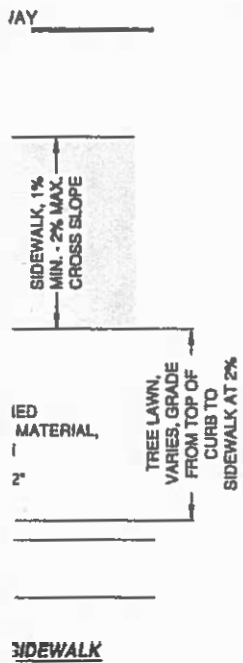
.

.

.

.

.



NOTES:

- RESIDENTIAL - 14' MIN - 24' MAX WIDTH, 6" THICK WITHIN RIGHT OF WAY.
- NO REINFORCING REQUIRED IN DRIVE APPROACH OR SIDEWALK.
- EXISTING CONCRETE CURB MAY NOT BE SAW CUT TO PROVIDE A DEPRESSED AREA. THE CURB MUST BE REMOVED AND REPLACED.
- NO REBAR BETWEEN THE EXISTING CURB AND NEW APPROACH ALLOWED.
- CASTINGS PLACED WITHIN HARD SURFACES NEED TO BE FLUSH TO A MAXIMUM OF 1/2" BELOW SURFACE. NO EXPANSION MATERIAL AROUND CASTING.
- NO #2 AGG. FROM THE TEMPORARY CONSTRUCTION ENTRANCE MAY BE VISIBLE WITHIN THE SUBBASE. REQUIRE THE TOTAL 4" OF COMPACTED SAND, PROCESS GRAVEL OR CRUSHED CONCRETE OVER THE #2 AGG.

The City Of Goshen
 Department of Public Works & Safety
 Office of Engineering
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-2201 Fax: 574-533-8626

Project Number: PROJECT-NUMBER	
Designed By: JRH	Approved By: DKS
Checked By: JRH	Date: 07/16/2018
Scale: NTS	
"X"-NUMBER	

Your reference code is **RM526V**

Application Summary

Type: Driveway Sidewalk Curb
Location: 1812 Park West Dr
Property Owner: Simmons James W & Linda S Simmons (Ea LF Est) Ten
Description: replace end of driveway and curb
Created By: publicweb

Status Information

Name	Complete	Date
Application Submittal	Yes	10/31/2022
Completeness Review	No	11/1/2022
Plan Review	No	11/8/2022
Approval	No	11/9/2022
Issuance	No	11/10/2022
Inspections Complete	No	12/22/2022
Finalize	No	12/23/2022

Fees

Type	Amount	Paid
Driveway / Approach	\$20.00	Yes

Inspections

Type	Date	Status
Driveway Pre-Installation	Unscheduled	Unscheduled
Driveway Final	Unscheduled	Unscheduled

Inspection Correction Items

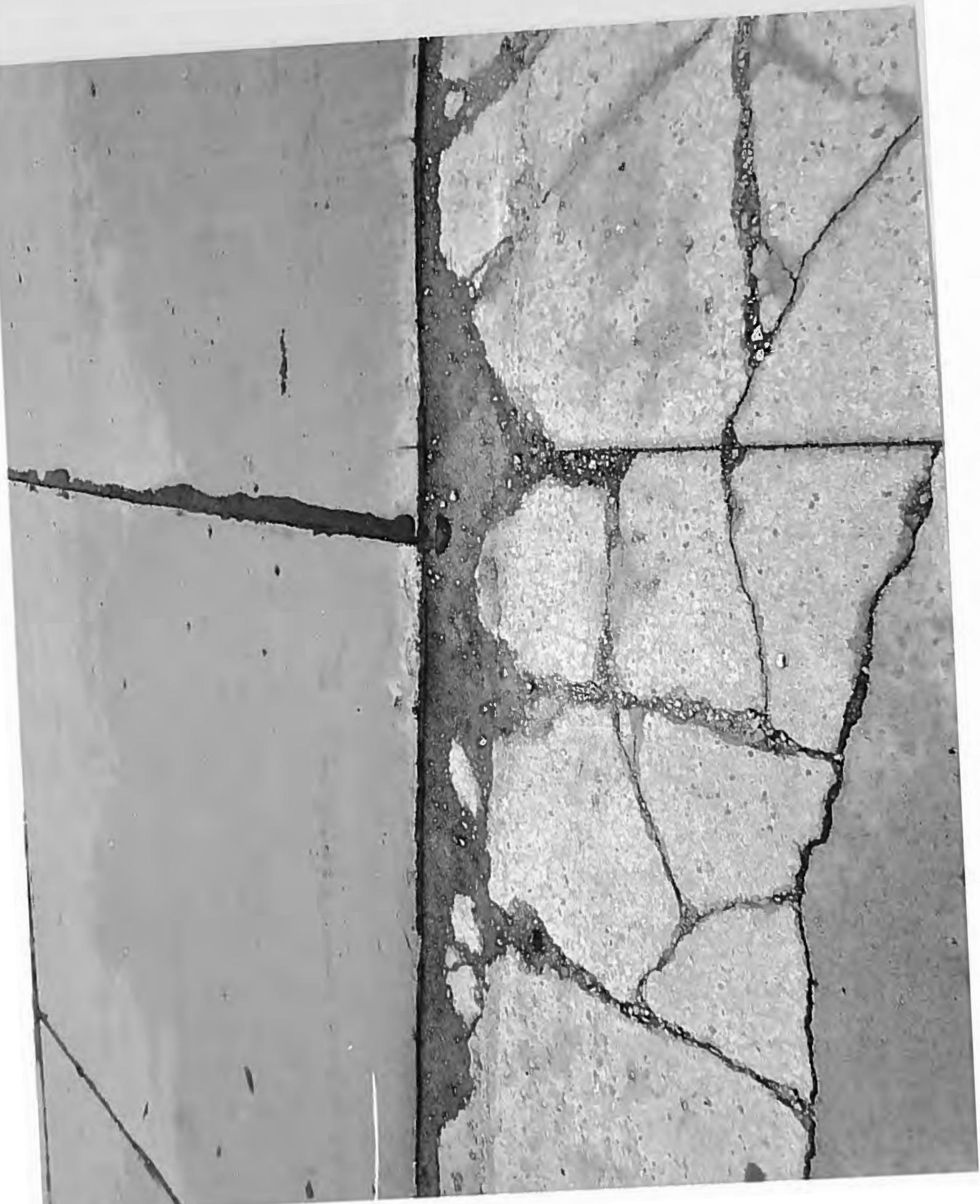
Contractors

Name	License
------	---------

Details

Name	Value
Sidewalk	No
Driveway Approach	Yes
Is Curb being Cut	No
Driveway Thickness in Right-of-Way (Inches)	6
Type of Work	Replacement
Current Bond with City	No
Start Date	11/2/2022
End Date	11/3/2022
Contractor Type	General







CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185
www.goshenindiana.org

To: Goshen Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Approval and acceptance of Right of Entry from Willie I Parsons
Date: November 21, 2022

It is recommended that the Board accept the Right of Entry Agreement with Willie I Parsons to allow the City to re-grade Mr. Parsons' property made necessary by the reconstruction of Wilden Avenue. The City will pay Mr. Parsons \$1,000.00 for entry upon his land.

Suggested Motion:

Move to approve and accept the Right of Entry Agreement with Willie I Parsons to allow the City to re-grade his real property due to the Wilden Avenue reconstruction project, and authorize Mayor Stutsman to execute the agreement.

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT is entered into on November _____, 2022, between the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana, by its Board of Public Works and Safety, hereinafter referred to as "City," and Willie I Parsons, hereinafter referred to as "Property Owner."

WHEREAS City is undertaking a reconstruction of Wilden Avenue, hereinafter referred to as "the Project," and it is necessary for City to grade Property Owner's yard adjacent to the reconstructed sidewalk to maintain the proper slope according to Project specifications as part of the Project, and wishes to begin the work as soon as possible.

WHEREAS Property Owner is willing to grant this right of entry to allow City and its employees, agents, and contractors entry upon the described real estate for the purpose of grading Property Owner's yard adjacent to the reconstructed sidewalk and proceeding with the Project.

NOW, THEREFORE, City and Property Owner agree as follows:

1. Property Owner grants City and its employees, agents, and contractors the right to enter upon the real estate located at 809 N. 5th Street, Goshen, Indiana for the purpose of grading Property Owner's yard adjacent to the reconstructed sidewalk, approximately Ten feet (10') behind the right-of-way along the eastern property line, north of the front walk, and proceeding with the Project, and to do such ancillary acts thereon as needed for such work.

2. City shall pay the Property Owner the sum of One Thousand Dollars (\$1,000.00) within Forty-Five (45) days of execution of this Right of Entry Agreement.

3. The term of this right of entry shall terminate one (1) year from the execution of this right of entry agreement, upon completion of the work on Property Owner's real property, or upon completion of the Project, whichever occurs first.

4. City agrees to perform the work in a manner that eliminates disruption to Property Owner's day to day activities to the extent reasonably possible. City agrees to replace vegetation on the re-graded area to pre-construction conditions, and indemnify Property Owner for any loss or damage to any of Property Owner's real estate or fixtures located outside the above-described area arising out of or in connection with the work under the Project.

IN WITNESS THEREOF, the undersigned have executed this Right of Entry Agreement on the dates set forth below.

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

Property Owner

By _____
Jeremy P. Stutsman, Mayor



Willie I Parsons

Date: November _____, 2022

Date: November 14, 2022



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

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Special Purchase of New Warning Siren to be Installed at 29th Street
Date: November 21, 2021

Attached for the Board's approval is Resolution 2022-28 Authorizing the Purchase of New Warning Siren to be Installed at 29th Street. Due to proprietary issues, the compatible warning siren is only available for purchase from a single source, Federal Signal. The net purchase price will be \$30,768 which includes all parts, materials, labor, shipping and system optimization to synch with City's operating system, Commander.

Suggested Motion:

Move to pass and adopt Resolution 2022-28 Authorizing the Purchase of New Warning Siren to be Installed at 29th Street.

RESOLUTION 2022-28

Authorizing the Purchase of a New Warning Siren to be Installed at 29th Street

WHEREAS, in 2010, the City of Goshen installed the outdoor warning siren system purchased from Federal Signal and activated and monitored from the City of Goshen's Commander software;

WHEREAS, the City of Goshen has identified a gap in its outdoor warning siren coverage and an additional siren installation is needed in East Goshen, more specifically at the intersection of E. Lincoln Avenue and 29th Street;

WHEREAS, the City of Goshen learned that Federal Signal's equipment is proprietary and will not function properly and/or activate appropriately with another supplier's software, nor will another supplier's equipment function properly and/or activate appropriately with Federal Signal's software;

WHEREAS, because it is vital to the City of Goshen's residence that the outdoor warning siren system fully cover the City of Goshen and be fully functional to activate appropriately, the need to purchase the new siren from Federal Signal is necessary;

WHEREAS, the City of Goshen, through its purchasing agent may make a special purchase under Indiana Code § 5-22-10 without soliciting bids or proposals if it determines in writing the basis for the special purchase and the selection of a particular contractor;

WHEREAS, Indiana Code § 5-22-10-13 allows the City of Goshen to make a special purchase when, subject to Indiana Code § 5-22-10-14 and 15, there is only one source for the supply and the purchasing agent determines in writing that there is only one source for the supply.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that:

(1) The City of Goshen, through its Board of Public Works and Safety, on behalf of the City of Goshen Engineering Department, is authorized to make a special purchase pursuant to Indiana Code § 5-22-10-13 as there is only one source for the purchase of an outdoor warning siren that is compatible with the current warning equipment and system used by the City of Goshen.

(2) The special purchase of an outdoor warning siren to be installed at the location of E. Lincoln Avenue and 29th Street shall be made from Federal Signal in the amount of Thirty Thousand, Seven Hundred Sixty-Eight Dollars (\$30,768). A copy of the quote is attached to this resolution.

(3) The contract records for the special purchase authorized by this resolution shall be maintained by the Goshen Board of Public Works and Safety in a separate file in the Clerk-Treasurer's Office for a minimum of five (5) years in accordance with Indiana Code § 5-22-10-3.

PASSED by the Goshen Board of Public Works and Safety on November 21, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

Quote Number FWS102522GOS
 Contact Name Dustin Sailor
 Account Name Goshen, City of
 Bill To 111 E Jefferson Street
 Suite 4
 Goshen, IN 46526
 Date 10/25/2022
 Quote Expires 11/25/2022

Email dustinsailor@goshencity.com
 Phone (574) 534-2201

Product	Description	Quantity	Weight	Total Weight	Unit Price	Total Price
2001-130	Rotating Electro-mechanical Siren, 130dB(C) +/- 1 dB	1.00	485	485	\$10,143.00	\$10,143.00
2001TRBP	Transformer rectifier; 240 VAC (Nominal) to 48 VDC / 120 VAC Power Converter.	1.00	180	180	\$3,050.00	\$3,050.00
DCFCTBDU	DC Siren Control, UHF band 403-470 MHz, two-way Kenwood 5000 series radio; includes standard sensor package (current, rotator, and intrusion); 120 VAC, NEMA4X aluminum, DC 48V battery charger, two 48 VDC contactors and NEMA3R aluminum battery cabinet (requires (4) deep cycle marine batteries, sold separately). Note: radio does not have a faceplate.	1.00	237	237	\$9,198.00	\$9,198.00
OMNI-15	3dB Gain omni antenna, 450-460 MHz, UHF; 35' coax and LMR cable included.	1.00	25	25	\$457.00	\$457.00
AMB-P	Antenna pole mounting bracket	1.00	20	20	\$154.00	\$154.00
TK-IO-CUSTINS-ACDC	Turnkey Installation Includes: *New 50' class 2, wood pole *Framing of pole (siren head, transformer rectifier, control and battery box) *All conduits, disconnect and meter base (if required by customer) *Install antenna with proper grounding *Supply and install FVP batteries *All necessary materials and labor as outlined in Product manual Note: Buyer is responsible for having a local electrician and/or utility company provide the electrical connection to the siren. Any permits, fees, inspections or modifications required for the power connection are not included in the installation quote.	1.00	0	0	\$4,989.00	\$4,989.00
TK-IO-CUSTINS-STARTUP	Startup and commissioning after power is connected.	1.00	0	0	\$877.00	\$877.00
TK-S-CPSYSOP	System Optimization of existing Control Point with Federal Commander	1.00	0	0	\$365.00	\$365.00
TK-SD-SYSDESIGN	Project Management, Propagation Studies and Pre-Construction Surveying, plus shipping & freight.	1.00	0	0	\$1,535.00	\$1,535.00

Grand Total

\$30,768.00



Accepted By

Agreement

Signing this quote as "Accepted By" comprises an order for the aforementioned products and services and agreement to the terms and conditions of sale outlined.

Accepted By: _____ Date: _____

Title: _____

Proposed By

Manufacturer's Representative: Wendy Justice
 Address: Capitol Electronics
 2680 E Main Street, S-1300
 Plainfield, IN 46168
 Phone: (317) 220-2318
 Fax: (317) 839-2662
 Email: wjustice@capitolelectronics.com

Assumptions and Notes

EMAIL OR FAX ORDERS TO CAPITOL ELECTRONICS FOR PROCESSING:

sales@capitolelectronics.com

F: 317-839-2662

1. Purchase order must be made out to: **Federal Signal Corporation, 2645 Federal Signal Drive, University Park, IL 60484;** Payment remittance address is: Federal Signal Corporation, PO Box 200217, Dallas, TX 75320-0217.

2. Prices are firm for 30-days from the date of quotation unless shown otherwise. Upon acceptance, prices are firm for 6 months. This quotation is expressly subject to acceptance by Buyer of all Terms stated in the attached Terms document, and any exception to or modification of such Terms shall not be binding on Seller unless expressly accepted in writing by an authorized agent or Officer of Seller. Any order submitted to Seller on the basis set forth above, in whole or in part, shall constitute an acceptance by Buyer of the Terms. Any such order shall be subject to acceptance by Seller in its discretion. If the total price for

the items set forth above exceeds \$50,000 then this quotation IS ONLY VALID if countersigned below by a Regional Manager of the Safety & Security Systems Group, Federal Signal Corporation. Installation is not included unless specifically quoted as a line item above. Adverse Site Conditions, including rock, caving soil conditions, contaminated soil, poor site access availability, and other circumstances which result in more than 2 hours to install a pole, will result in a \$425.00 per hour fee, plus equipment. Trenching is additional. Power Clause, bringing power to the equipment is the responsibility of the purchaser. Permit Clause, any special permits, licenses or fees will be additional. See attached Terms sheet.

3. Upon receipt of your order and acceptance by Federal Signal Corporation, the equipment herein will be supplied at the quoted prices above. Delivery schedule cannot be established until radio information is supplied, if applicable.

4. Delivery, Terms and Services:

- a. Delivery: 6-8 weeks, plus installation
- b. Freight Terms: FOB University Park, IL (Factory)
- c. Terms: Equipment: Net 30 Days upon shipment
- d. Services: Net 30 Days upon completion, billed monthly

TERMS AND CONDITIONS OF SALE (Goods and Services) - *Effective 1-18-2021*

1. DEFINITIONS. In these Terms and Conditions of Sale, "Seller" means Federal Signal Corporation, including any division or subsidiary of Federal Signal Corporation; "Buyer" means the person or entity that placed the order or on whose behalf the order is placed; "Goods" means the goods identified in Seller's acknowledgement of Buyer's order; "Services" means the services identified in Seller's acknowledgment of Buyer's order; "Contract" means the written agreement (which shall include these Terms and Conditions) between Buyer and Seller for the supply of the Goods and/or provision of Services; and "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services.

2. ORDERS; CONTRACT. All orders must be in writing. Buyer understands and agrees that any order, upon Acceptance by Seller, shall be subject to these Terms and Conditions of Sale. Seller objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's order or in any other communication from Buyer to Seller, or any trade usage or course of dealing between Buyer and Seller, unless expressly agreed to in writing by Seller in Seller's acknowledgement of Buyer's order. If the details of the Goods or Services described in Seller's quotation differ from those set out in Seller's acknowledgment, the latter shall apply. Seller reserves the right to make minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

3. EFFECTIVE DATE; CANCELLATION. The Contract shall become effective only upon the date of acceptance of Buyer's order by Seller's written acknowledgement or upon Seller's commencement of performance, whichever is first ("Acceptance"). Buyer may not cancel or change an order after Acceptance by Seller without the written consent of Seller. Notwithstanding the forgoing, Seller may, in its sole discretion, agree to a written request from Buyer for cancellation of an open order under the following conditions: Buyer shall be subject to cancellation charges equal to the greater of (i) 110% of the cost of work completed and/or custom materials purchased at the time the request is delivered, or (ii) a percentage of the canceled portion of the Contract calculated as follows:

Cancellation Schedule – Material:

- 10% - if cancelled more than 2 weeks from the Effective Date;
- 20% - if cancelled more than 4 weeks from the Effective Date;
- 40% - if cancelled more than 6 weeks from the Effective Date;
- 80% - if cancelled more than 8 weeks from the Effective Date.

If services are cancelled within 1 week of the scheduled mobilization date; 110% of unrecoverable out-of-pocket costs + 50% of

scheduled services will be charged. If services are cancelled within 2 days of the scheduled mobilization date; 110% of unrecoverable out-of-pocket costs + 100% of scheduled services will be charged.

4. **PRICE AND PAYMENT TERMS.** Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date of issuance to Buyer. Prices are subject to increase by Seller based on Seller's prices in effect at the time of shipment in all instances where the specified shipment date is more than 30 days from the date of the order from Buyer. Unless otherwise specified in the Contract or Seller's applicable price list, prices are FOB Seller's point of shipment, and the terms of payment are NET 30 days from the date of invoice. Amounts not paid when due shall bear interest for each day after the due date calculated at the annual rate of 18% or the highest rate permitted by law, whichever is less. Freight, packing and handling will be charged at Seller's standard rates, which are available upon request by Buyer. If the Contract is for more than one unit of Goods, the Goods may be shipped in a single lot or in several lots at the discretion of Seller. In such event, each such shipment shall be paid separately, and Buyer shall be responsible for all transportation charges. Seller may require full or partial payment or payment guarantee in advance of shipment whenever, in its opinion, the financial condition of Buyer so warrants. Payment by credit card may be subject to a service charge.

Seller reserves the right to increase the quoted order price set forth in this order acknowledging at any time before delivery to Buyer to reflect any increase in Seller's costs to manufacture or deliver the ordered product due to any factor beyond the reasonable control of Seller. Seller shall provide Buyer with prompt electronic notice or any such price increase. Buyer shall have five days from receipt of such notice to cancel its order, absent which Buyer shall be deemed to have consented to the price increase.

5. **TITLE; RISK OF LOSS.** Title to, ownership of, and risk of loss or damage to the Goods shall pass to the Buyer, and Buyer shall be responsible for insurance of the Goods, upon delivery of the Goods to the carrier. Alternatively, if it is expressly stated in the Contract that Seller is to procure insurance for the Goods after delivery to the carrier, such insurance will be charged at the carrier's standard rates. "FOB" and any other delivery term used in the Contract shall be defined in accordance with the latest version of Incoterms. Buyer shall have sole responsibility for processing and collection of any claim of loss against the carrier.

6. **TAXES.** Prices do not include taxes. Buyer shall pay Seller, in addition to the price of the goods, any applicable excise, sales, use or other tax (however designated) imposed upon the sale, production, delivery or use of the Goods or Services ordered to the extent required or not forbidden by law to be collected by Seller from Buyer, whether or not so collected at the time of the sale, unless valid exemption certificates acceptable to the taxing authorities are furnished to Seller before the date of invoice.

7. **DELIVERY; FORCE MAJEURE.** Unless otherwise stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only and are not guaranteed. If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents, the delivery/completion period and the Contract Price shall both be adjusted as necessary. If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for shipment, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into storage at Buyer's expense. Upon placing the Goods into storage, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly. The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, disease, health epidemic or pandemic, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labor trouble, strike, lockout or injunction. Seller shall have no obligation to deliver any hardware, software, services or technology unless and until it has received any necessary licenses or authorizations or has qualified for general licenses or license exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time (including without limitation those of the United States, the European Union and the jurisdiction in which Seller is established or from which the items are supplied). If for any reason any such licenses, authorizations or approvals are denied or revoked, or if

there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller from fulfilling the

Contract, or would in the reasonable judgment of Seller otherwise expose Seller to a risk of liability under applicable laws, regulations, orders or requirements, Seller shall be relieved without liability of all obligations under the Contract. If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by installments, and each delivery shall constitute a separate Contract. Failure by Seller to deliver any one or more of the installments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

8. **INSPECTION.** Buyer shall inspect the goods immediately upon the receipt thereof. All claims for shortfalls in quantity or for incorrect delivery or for any alleged defect in Seller's performance under this Contract, capable of discovery upon reasonable inspection, must be fully set forth in writing and received by Seller within five days of Buyer's receipt of the Goods. Failure to make any such claim within said period shall constitute a waiver of such claim and an irrevocable acceptance of the Goods by Buyer.

9. **DEDUCTIONS AND RETURNS.** Buyer must contact the factory before returning any merchandise. Goods in new, unused and undamaged condition that are resalable as new products without modification or repackaging may be returned to Seller for credit only upon the Seller's prior written consent (such consent to be in the sole discretion of Seller) and upon terms specified by Seller, including prevailing restocking, freight, and handling charges. A Return Material Authorization (RMA) must be obtained before returning merchandise for credit. All returns are subject to inspection of merchandise and any defects in the units will be charged back to the Buyer at the cost of parts and labor. Credit deductions will not be honored unless covered by an RMA. Buyer assumes all risk of loss for such returned goods until actual receipt thereof by Seller. Agents of Seller are not authorized to accept returned goods or to grant allowances or adjustments with respect to Buyer's account.

10. **LIMITED WARRANTY.**

NOTICE: IF ANY GOODS, INCLUDING ANY COMPONENT PART OF ANY GOODS, OR SERVICES SOLD BY SELLER ARE ACCOMPANIED BY A SEPARATE MANUFACTURER'S WARRANTY COVERING SUCH GOODS OR SERVICES, THE TERMS OF SUCH WARRANTY, INCLUDING ALL LIMITATIONS OF SUCH WARRANTY, SHALL GOVERN THOSE GOODS OR SERVICES, AND ANY WARRANTY OF SELLER OTHERWISE APPLICABLE TO SUCH GOODS OR SERVICES SHALL NOT APPLY.

A. **Goods.** Subject to the forgoing, Seller's limited warranty for any new Goods which are the subject of any Seller's acknowledgement of Buyer's order may be found at www.fedsig.com/ssg-warranty or may be obtained by writing to Federal Signal Corporation, 2645 Federal Signal Drive, University Park, IL 60484; by email to info@federalsignal.com; or by calling 708/534-3400.

B. **Services** Seller warrants that Services provided by Seller will be performed with all reasonable skill, care and diligence and in accordance with standard industry practice. Seller will correct defects in Services provided by Seller and reported to Seller within ninety days after completion of such Services. Services corrected in accordance with this Section shall be subject to the foregoing warranty for an additional ninety days from the date of completion of correction of such Services.

11. **REMEDIES AND LIMITATIONS OF LIABILITY.** The remedies contained the preceding paragraph constitute the sole recourse against Seller for breach of any of Seller's obligations under the Contract, whether of warranty or otherwise. **IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES NOR SHALL SELLER'S LIABILITY ON ANY CLAIM FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR CONNECTED WITH THE CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS OR SERVICES EXCEED THE**

PURCHASE PRICE OF THE GOODS OR SERVICES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk

12. LIMITED INDEMNITY AGAINST INFRINGEMENT. Seller shall, at its own expense, defend any litigation resulting from sale of the Goods to the extent that such litigation alleges that the Goods or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Goods in combination with equipment or devices not made by Seller or from modification of the Goods, and further provided that Buyer notifies Seller immediately upon its obtaining notice of such impending claim and cooperates fully with Seller in preparing a defense. If Buyer provides to Seller the authority, assistance, and information Seller needs to defend or settle such claim, Seller shall pay any final award of damages in such suit and any expense Buyer incurs at Seller's written request, but Seller shall not be liable for a settlement made without its prior written consent. If the Goods are held to be infringing and the use thereof is enjoined, Seller shall, at its option, either (i) procure for the Buyer the right to use the Goods, (ii) replace the Goods with others which do not constitute infringement, or (iii) remove the infringing Goods and refund the payment(s) made therefor by Buyer. The foregoing states the Buyer's sole remedy for, and Seller's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Goods provided hereunder. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.

13. INTELLECTUAL PROPERTY RIGHTS. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or product software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for Seller in the production of any Goods or Services sold hereunder will be and remain the sole property of Seller (or its licensors, if any). Buyer agrees not to reverse engineer any Goods purchased hereunder.

14. EXPORT REGULATIONS. Buyer agrees to comply fully with all laws and regulations concerning the export of Goods from the United States, including, but not limited to Export Administration Rules ("EAR"), regulations of the Office of Foreign Asset Control ("OFAC"), International Traffic in Arms Regulations ("ITAR"), as well as Denial Order and Entry lists under EAR and Specially Designated Nationals and Blocked Persons list under OFAC regulations.

15. INSTALLATION. In those circumstances where Seller has agreed to install Goods for Buyer, the following provisions shall control:

- A. Responsibility. Installation shall be by Buyer unless otherwise specifically agreed to in writing by Seller.
- B. Receiving Product and Staging Location. Buyer is responsible to receive, store and protect all Goods intended for installation purposes, including, but not exclusively, siren equipment, poles, batteries, and installation materials. Materials received in cardboard containers must be protected from all forms of precipitation. Additionally, Buyer is to provide a staging area of an appropriate size for installation contractors to work from and to store equipment overnight.
- C. Installation Methods & Materials. Installation is based on methods and specifications intended to meet applicable safety and installation codes and regulations. Design changes required by Buyer may result in additional charges.
- D. Radio Frequency Interference. Seller is not responsible for RF transmission and reception affected by system interference beyond its control.
- E. Installation Site Approval. Buyer must provide signed documentation to Seller, such as the "WARNING SITE SURVEY FORM" or a document with the equivalent information, that Seller is authorized to commence installation at the site designated by Buyer before Seller will commence installation. Once installation has started at an approved site, Buyer

is responsible for all additional costs incurred by Seller for redeployment of resources if the work is stopped by Buyer or its agents, property owners, or as the result of any governmental authority or court order, or if it is determined that installation is not possible at the intended location, or the site is changed for any reason by the Buyer.

F. AC Power Hookup. Buyer is responsible to coordinate and pay for all costs to bring proper AC power to the electrical service disconnect installed adjacent to the controller cabinet unless these services are quoted by Seller.

G. Permits & Easements. Seller will obtain and pay for electrical and right-of-way work permits as necessary for installations. Buyer is responsible for obtaining and payment of all other required easements, permits, or other fees required for installation, unless specifically quoted. Buyer is responsible for having a local electrician and/or utility company provide the electrical connection to the siren. Any permits, fees, inspections, or modifications required for the power connection are not included in the installation quote.

H. Soil Conditions Clause. In the event of poor site conditions including, but not limited to rock, cave-ins, high water levels, or inability of soil to provide stable installation to meet specifications, Seller will direct installation contractors to attempt pole installation for a maximum of 2 hours. Buyer approval will be sought when pole installation exceeds 2 hours and abandoned if Seller cannot obtain approval in a timely manner.

I. Contaminated Sites. Seller is not responsible for cleanup and restoration of any installation sites or installer equipment where contaminated soil is encountered. Seller will not knowingly approve installation at any site containing contaminants. Buyer must inform Seller when known or suspected soil contaminants exist at any intended installation site.

J. Site Cleanup. Basic installation site cleanup includes installation debris removal, general site cleanup, and general leveling of affected soil within 30' of the pole. Additional site restoration quotes are available.

K. Waste Disposal. Buyer is responsible for providing disposal of all packing materials including shipping skids and containers.

L. Work Hours. All installation quotes are based on the ability to work outdoors during daylight hours and indoors from 7 AM to 7 PM Monday through Saturday. Work restrictions or limitations imposed by Buyer or its agents may result in additional charges being assessed to Buyer for services.

M. Project Reporting. Installation & Service Progress Reports will be provided on a regular basis, normally every week during active installation, unless pre-arranged otherwise by mutual agreement.

N. Safety Requirements & Compliance. Seller requires that all subcontractors and their employees follow applicable laws and regulations pertaining to all work performed, equipment utilized and personal protective gear common to electrical and construction site work performed in the installation of Seller equipment. Additional safety compliance requirements by Buyer may result in additional charges assessed to Buyer for the time and expenses required to comply with the additional requirements.

16. ASSIGNMENT AND SUBCONTRACTING. Seller may assign its rights and obligations by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. In the event of an assignment, Seller shall be discharged of any liability pursuant to those purchase orders which have been assigned or delegated. Customer may not assign its rights nor delegate its obligations under any or all of its purchase orders unless Seller's written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void.

17. DEFAULT, INSOLVENCY AND CANCELLATION. Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract immediately, in whole or in part, by notice in writing to Buyer, if (a) Buyer is in default of any of its

obligations under the Contract and fails, within 20 (twenty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take and diligently continue action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (ii) a receiver, administrator or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts; (iv) Buyer or its equity holders or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within 30 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such default or cancellation, including all costs of collection and a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

18. SEVERABILITY. If any term, clause or provision contained in the sales contract is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

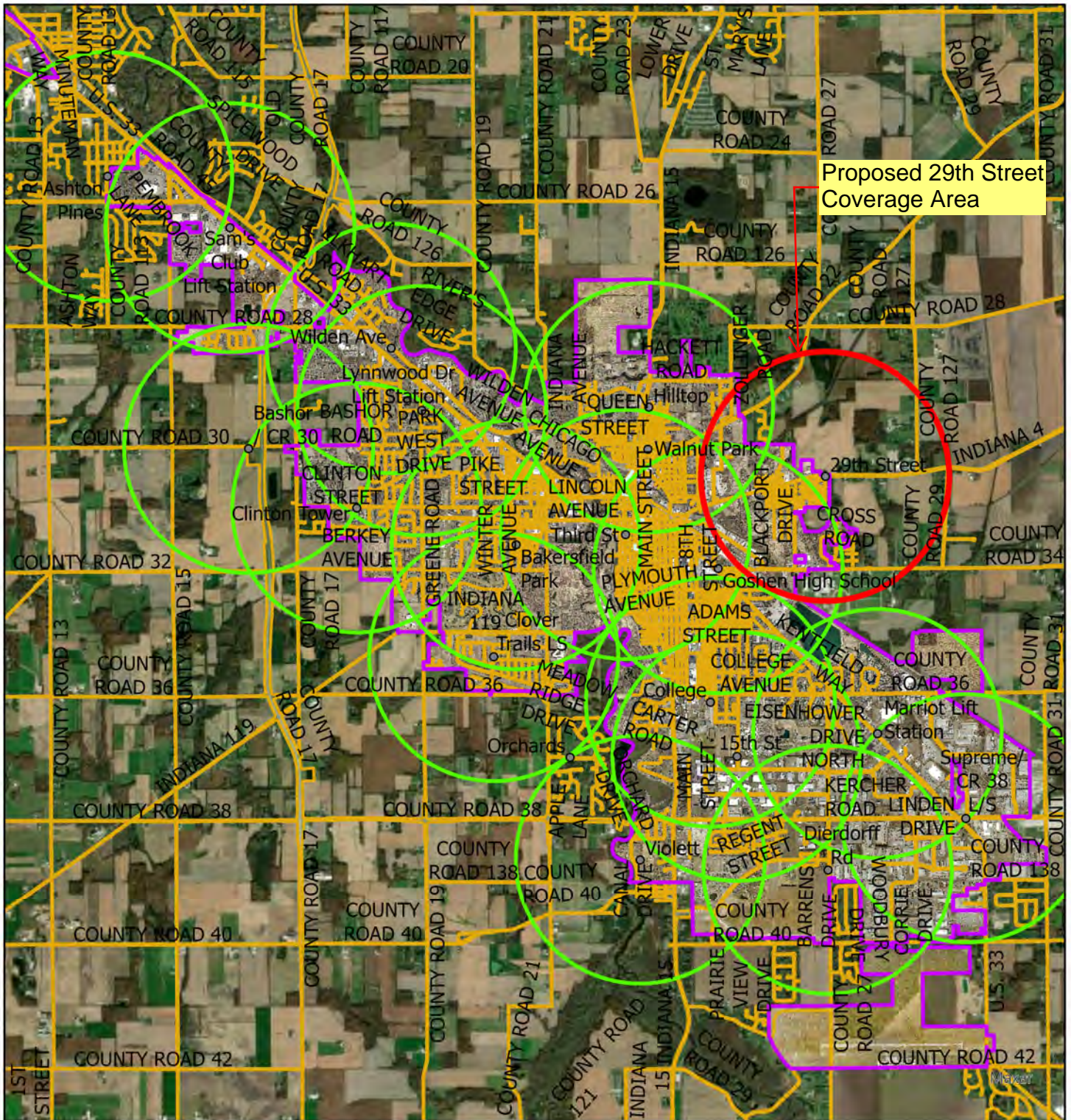
19. NO WAIVER. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing or performance, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

20. NOTICES. All notices and claims in connection with the Contract must be in writing.

21. INTEGRATION. These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions.

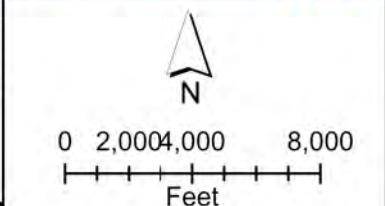
22. GOVERNING LAW AND LIMITATIONS. The formation and performance of the sales contract shall be governed by the laws of the State of Illinois. Venue for any proceeding initiated as the result of any dispute between the parties that arises under this Agreement shall be either the state or federal courts in Cook or DuPage County, Illinois. Whenever a term defined by the Uniform Commercial Code as adopted in Illinois is used in these standard terms, the definition contained in said Uniform Commercial Code is to control. Any action by the Buyer for breach of the sales contract or any covenant or warranty contained herein must be commenced within one year after the cause of action accrued.

23. U.N. CONVENTION. Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods (the "UN Convention"), the Parties agree that the UN Convention shall not apply to this Agreement.



Proposed 29th Street Coverage Area

The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee the positional or thematic accuracy of the data. The cartographic digital files are not a legal representation of any of the features depicted, and the city and county disclaim any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded. The data represents an actual reproduction of data contained in the city's or county's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. City of Goshen and Elkhart County cannot be held liable for errors or omissions in the data. The recipient's use and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify the City of Goshen and Elkhart County and its employees and officers. This indemnity covers reasonable attorney fees and all court costs associated with the defense of the city and county arising out of this disclaimer.



OUTDOOR WARNING SIREN COVERAGE MAP

GREEN - EXISTING SITES ----- RED - PROPOSED SITES

2021 AERIAL PHOTOGRAPHY

The City of Goshen
 Department of Public Works & Safety
 Office of Engineering
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-2201 Fax: 574-533-8626

October 26, 2022

Dustin Sailor, Director of Public Works
City of Goshen
111 E Jefferson Street, Suite 4
Goshen, IN 46526

Dear Mr. Sailor,

Please find below information regarding sole-source justification for Federal Signal outdoor warning sirens for The City of Goshen. Federal Signal sirens are the only sirens compatible with the existing county activation and monitoring system. Any non-Federal sirens added to the system would not be operable as is. Substantial alteration of your existing control point and investing in additional radio communication equipment would be needed if a non-standard siren is added. In addition, a non-standard siren would never be able to provide 2way monitoring status. Below is a technical explanation of the system capabilities and enhanced security features unique to the Federal Signal sirens.

Federal Signal is the **sole manufacturer of the 2001-130 Siren series with digital, electro-mechanical controllers** (model DCFCTBD) designed to operate with our **proprietary digital (FSK) protocol and the Federal Commander Digital System software** (SFCDWARE). This siren model is fully compatible with the control point previously installed by Federal Signal in Goshen, Indiana.

The existing control point that activates and monitors the sirens is the Federal Commander Digital software. This includes a *128-bit digitally encrypted communications protocol* to ensure secure communications between central control points and each siren. It is the only siren communication system which allows for complete *over-the-air programmability*, and the ability to *utilize each siren location as a simplex repeater*, thus insuring communication between central control points and all siren controllers. In addition, the communications *protocol utilizes a packet data encoding scheme with CRC-16 error checking* for additional reliability and security. This provides time encryption and date stamping of commands to reduce false activations and prevent system hacking and pirated radio control. It also provides status monitoring and alerting of mechanical faults/intrusion/communication errors.

Federal Signal's proposed DCFCTBD Controllers are the ***only models on the market*** that can communicate with the Commander digital software. The controllers include a Two-Way Radio Transceiver, are UL Listed by model number, and operate with the Federal Signal digital communication system. Additionally, Federal Signal is a ***US manufacturer certified to the ISO-9001:2000 standard***.

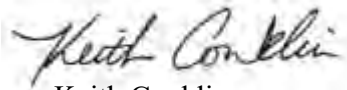
Federal Signal will provide all siren equipment with full factory installation and warranties. Our equipment is internally designed and manufactured in the United States upholding the highest

industry standards. We ensure equipment is fully compatible and operational with the existing county infrastructure.

Federal Signal Corporation, is publicly traded Public Safety Company listed on the New York Stock Exchange (FSS), has an extensive management team with an unequalled diversity of technical and operational backgrounds.

Federal Signal takes pride in offering our customers ***security, reliability, and ease of administration and maintenance***. If I can answer any additional questions, or be of service in anyway, please call me at the number below.

Sincerely,



Keith Conklin
Regional Sales Manager
708.285.2611
kconklin@fedsig.com



Wendy Justice
Federal Signal Mfg. Rep.
317.220.2318
wjustice@capitolelectronics.com



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

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Special Purchase of software updates for outdoor warning siren
Date: November 21, 2021

Attached for the Board's approval is Resolution 2022-29 Authorizing the Purchase of Outdoor Warning System Software Upgrades. Due to proprietary issues, the software upgrades to the warning system are only available for purchase from a single source, Federal Signal. The net purchase price will be \$6,022 for the software upgrade and includes a credit to forgive past annual maintenance fees the City did not pay in previous years.

Suggested Motion:

Move to pass and adopt Resolution 2022-29 Authorizing the Purchase of Outdoor Warning System Software Upgrades.

RESOLUTION 2022-29

Authorizing the Purchase of Outdoor Warning System Software Upgrades

WHEREAS, in 2010, the City of Goshen installed the outdoor warning siren system purchased from Federal Signal and activated and monitored from the City of Goshen's Commander software;

WHEREAS, during a recently conversation with Federal Signal, the City of Goshen learned that the Commander software is now outdated and software upgrades are necessary;

WHEREAS, the City of Goshen learned that Federal Signal's equipment is proprietary and will not function properly and/or activate appropriately with another supplier's software, nor will another supplier's equipment function properly and/or activate appropriately with Federal Signal's software;

WHEREAS, the City of Goshen, through its purchasing agent, may make a special purchase under Indiana Code § 5-22-10 without soliciting bids or proposals if it determines in writing the basis for the special purchase and the selection of a particular contractor;

WHEREAS, Indiana Code § 5-22-10-13 allows the City of Goshen to make a special purchase when, subject to Indiana Code § 5-22-10-14 and 15, there is only one source for the supply and the purchasing agent determines in writing that there is only one source for the supply.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that:

(1) The City of Goshen, through its Board of Public Works and Safety, on behalf of the City of Goshen Engineering Department, is authorized to make a special purchase pursuant to Indiana Code § 5-22-10-13 as there is only one source for the purchase of the software upgrades to the outdoor warning system used by the City of Goshen.

(2) The special purchase of the software upgrades for the outdoor warning siren shall be made from Federal Signal in the amount of Six Thousand, Twenty-Two Dollars (\$6,022). A copy of the quote is attached to this resolution.

(3) The contract records for the special purchase authorized by this resolution shall be maintained by the Goshen Board of Public Works and Safety in a separate file in the Clerk-Treasurer's Office for a minimum of five (5) years in accordance with Indiana Code § 5-22-10-3.

PASSED by the Goshen Board of Public Works and Safety on November 21, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

Quote Number	Q1FWS102522GOS-CMD1	Email	dustinsailor@goshencity.com
Contact Name	Dustin Sailor	Phone	(574) 534-2201 📞
Account Name	Goshen, City of		
Bill To	111 E Jefferson Street Suite 4 Goshen, IN 46526		
Date	10/25/2022		
Quote Expires	11/25/2022		

Product	Description	Quantity	Weight	Total Weight	Unit Price	Total Price
COMMANDER1-S255	CommanderOne app for mobile device: iOS/Android apps and web access, (5) seats, (1) organization, supports up to 255 RTUs; compatible Federal Commander software (SFCD255) required (sold separately); annual subscription.	1.00	0	0	\$6,000.00	\$6,000.00
SFCD-W255	Federal Commander software 1-year warranty (SFCD255). Note: Must be purchased for each year since last year purchased for current version of software and continued technical support. See product datasheet for computer minimum requirements; Windows 10 Professional Windows Server 2012-2019 R2.	5.00	0	0	\$1,323.00	\$6,615.00
ES-CREDIT	Credit applied (see notes for additional information)	1.00	0	0	(\$6,615.00)	(\$6,615.00)
FREIGHT-Z1	Shipping/Freight, Zone1, IN-OH-KY-TN-MI	1.00	0	0	\$22.50	\$22.50

Grand Total \$6,022.50

NOTES:

1) Current Federal Commander software warranty expired, 2/15/18, order #3423396. With the purchase of Commander One, current version of software provided at no additional charge.



Accepted By

Agreement

Signing this quote as "Accepted By" comprises an order for the aforementioned products and services and agreement to the terms and

conditions of sale outlined.

Accepted By: _____ Date: _____

Title: _____

Proposed By

Manufacturer's Representative: Wendy Justice
Address: Capitol Electronics
2680 E Main Street, S-1300
Plainfield, IN 46168
Phone: (317) 220-2318
Fax: (317) 839-2662
Email: wjustice@capitolelectronics.com

Assumptions and Notes

EMAIL OR FAX ORDERS TO CAPITOL ELECTRONICS FOR PROCESSING:
sales@capitolelectronics.com
F: 317-839-2662

1. Purchase order must be made out to: **Federal Signal Corporation, 2645 Federal Signal Drive, University Park, IL 60484;** Payment remittance address is: Federal Signal Corporation, PO Box 200217, Dallas, TX 75320-0217.
2. Prices are firm for 30-days from the date of quotation unless shown otherwise. Upon acceptance, prices are firm for 6 months. This quotation is expressly subject to acceptance by Buyer of all Terms stated in the attached Terms document, and any exception to or modification of such Terms shall not be binding on Seller unless expressly accepted in writing by an authorized agent or Officer of Seller. Any order submitted to Seller on the basis set forth above, in whole or in part, shall constitute an acceptance by Buyer of the Terms. Any such order shall be subject to acceptance by Seller in its discretion. If the total price for the items set forth above exceeds \$50,000 then this quotation IS ONLY VALID if countersigned below by a Regional Manager of the Safety & Security Systems Group, Federal Signal Corporation. Installation is not included unless specifically quoted as a line item above. Adverse Site Conditions, including rock, caving soil conditions, contaminated soil, poor site access availability, and other circumstances which result in more than 2 hours to install a pole, will result in a \$425.00 per hour fee, plus equipment. Trenching is additional. Power Clause, bringing power to the equipment is the responsibility of the purchaser. Permit Clause, any special permits, licenses or fees will be additional. See attached Terms sheet.
3. Upon receipt of your order and acceptance by Federal Signal Corporation, the equipment herein will be supplied at the quoted prices above. Delivery schedule cannot be established until radio information is supplied, if applicable.
4. Delivery, Terms and Services:
 - a. Delivery: 6-8 weeks, plus installation
 - b. Freight Terms: FOB University Park, IL (Factory)
 - c. Terms: Equipment: Net 30 Days upon shipment
 - d. Services: Net 30 Days upon completion, billed monthly

TERMS AND CONDITIONS OF SALE (Goods and Services) - Effective 1-18-2021

1. **DEFINITIONS.** In these Terms and Conditions of Sale, "Seller" means Federal Signal Corporation, including any division or subsidiary of Federal Signal Corporation; "Buyer" means the person or entity that placed the order or on whose behalf the order is placed; "Goods" means the goods identified in Seller's acknowledgement of Buyer's order; "Services" means the services identified in Seller's acknowledgment of Buyer's order; "Contract" means the written agreement (which shall include these Terms and Conditions) between Buyer and Seller for the supply of the Goods and/or provision of Services; and "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services.

2. **ORDERS; CONTRACT.** All orders must be in writing. Buyer understands and agrees that any order, upon Acceptance by Seller, shall be subject to these Terms and Conditions of Sale. Seller objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's order or in any other communication from Buyer to Seller, or any trade usage or course of dealing between Buyer and Seller, unless expressly agreed to in writing by Seller in Seller's acknowledgement of Buyer's order. If the details of the Goods or Services described in Seller's quotation differ from those set out in Seller's acknowledgment, the latter shall apply. Seller reserves the right to make minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

3. **EFFECTIVE DATE; CANCELLATION.** The Contract shall become effective only upon the date of acceptance of Buyer's order by Seller's written acknowledgement or upon Seller's commencement of performance, whichever is first ("Acceptance"). Buyer may not cancel or change an order after Acceptance by Seller without the written consent of Seller. Notwithstanding the forgoing, Seller may, in its sole discretion, agree to a written request from Buyer for cancellation of an open order under the following conditions: Buyer shall be subject to cancellation charges equal to the greater of (i) 110% of the cost of work completed and/or custom materials purchased at the time the request is delivered, or (ii) a percentage of the canceled portion of the Contract calculated as follows:

Cancellation Schedule – Material:

- 10% - if cancelled more than 2 weeks from the Effective Date;
- 20% - if cancelled more than 4 weeks from the Effective Date;
- 40% - if cancelled more than 6 weeks from the Effective Date;
- 80% - if cancelled more than 8 weeks from the Effective Date.

If services are cancelled within 1 week of the scheduled mobilization date; 110% of unrecoverable out-of-pocket costs + 50% of scheduled services will be charged. If services are cancelled within 2 days of the scheduled mobilization date; 110% of unrecoverable out-of-pocket costs + 100% of scheduled services will be charged.

4. **PRICE AND PAYMENT TERMS.** Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date of issuance to Buyer. Prices are subject to increase by Seller based on Seller's prices in effect at the time of shipment in all instances where the specified shipment date is more than 30 days from the date of the order from Buyer. Unless otherwise specified in the Contract or Seller's applicable price list, prices are FOB Seller's point of shipment, and the terms of payment are NET 30 days from the date of invoice. Amounts not paid when due shall bear interest for each day after the due date calculated at the annual rate of 18% or the highest rate permitted by law, whichever is less. Freight, packing and handling will be charged at Seller's standard rates, which are available upon request by Buyer. If the Contract is for more than one unit of Goods, the Goods may be shipped in a single lot or in several lots at the discretion of Seller. In such event, each such shipment shall be paid separately, and Buyer shall be responsible for all transportation charges. Seller may require full or partial payment or payment guarantee in advance of shipment whenever, in its opinion, the financial condition of Buyer so warrants. Payment by credit card may be subject to a service charge.

Seller reserves the right to increase the quoted order price set forth in this order acknowledging at any time before delivery to Buyer to reflect any increase in Seller's costs to manufacture or deliver the ordered product due to any factor beyond the reasonable control of Seller. Seller shall provide Buyer with prompt electronic notice or any such price increase. Buyer shall have

five days from receipt of such notice to cancel its order, absent which Buyer shall be deemed to have consented to the price increase.

5. **TITLE; RISK OF LOSS.** Title to, ownership of, and risk of loss or damage to the Goods shall pass to the Buyer, and Buyer shall be responsible for insurance of the Goods, upon delivery of the Goods to the carrier. Alternatively, if it is expressly stated in the Contract that Seller is to procure insurance for the Goods after delivery to the carrier, such insurance will be charged at the carrier's standard rates. "FOB" and any other delivery term used in the Contract shall be defined in accordance with the latest version of Incoterms. Buyer shall have sole responsibility for processing and collection of any claim of loss against the carrier.

6. **TAXES.** Prices do not include taxes. Buyer shall pay Seller, in addition to the price of the goods, any applicable excise, sales, use or other tax (however designated) imposed upon the sale, production, delivery or use of the Goods or Services ordered to the extent required or not forbidden by law to be collected by Seller from Buyer, whether or not so collected at the time of the sale, unless valid exemption certificates acceptable to the taxing authorities are furnished to Seller before the date of invoice.

7. **DELIVERY; FORCE MAJEURE.** Unless otherwise stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only and are not guaranteed. If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents, the delivery/completion period and the Contract Price shall both be adjusted as necessary. If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for shipment, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into storage at Buyer's expense. Upon placing the Goods into storage, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly. The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, disease, health epidemic or pandemic, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labor trouble, strike, lockout or injunction. Seller shall have no obligation to deliver any hardware, software, services or technology unless and until it has received any necessary licenses or authorizations or has qualified for general licenses or license exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time (including without limitation those of the United States, the European Union and the jurisdiction in which Seller is established or from which the items are supplied). If for any reason any such licenses, authorizations or approvals are denied or revoked, or if there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller from fulfilling the

Contract, or would in the reasonable judgment of Seller otherwise expose Seller to a risk of liability under applicable laws, regulations, orders or requirements, Seller shall be relieved without liability of all obligations under the Contract. If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by installments, and each delivery shall constitute a separate Contract. Failure by Seller to deliver any one or more of the installments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

8. **INSPECTION.** Buyer shall inspect the goods immediately upon the receipt thereof. All claims for shortfalls in quantity or for incorrect delivery or for any alleged defect in Seller's performance under this Contract, capable of discovery upon reasonable inspection, must be fully set forth in writing and received by Seller within five days of Buyer's receipt of the Goods. Failure to make any such claim within said period shall constitute a waiver of such claim and an irrevocable acceptance of the Goods by Buyer.

9. **DEDUCTIONS AND RETURNS.** Buyer must contact the factory before returning any merchandise. Goods in new, unused

and undamaged condition that are resalable as new products without modification or repackaging may be returned to Seller for credit only upon the Seller's prior written consent (such consent to be in the sole discretion of Seller) and upon terms specified by Seller, including prevailing restocking, freight, and handling charges. A Return Material Authorization (RMA) must be obtained before returning merchandise for credit. All returns are subject to inspection of merchandise and any defects in the units will be charged back to the Buyer at the cost of parts and labor. Credit deductions will not be honored unless covered by an RMA. Buyer assumes all risk of loss for such returned goods until actual receipt thereof by Seller. Agents of Seller are not authorized to accept returned goods or to grant allowances or adjustments with respect to Buyer's account.

10. LIMITED WARRANTY.

NOTICE: IF ANY GOODS, INCLUDING ANY COMPONENT PART OF ANY GOODS, OR SERVICES SOLD BY SELLER ARE ACCOMPANIED BY A SEPARATE MANUFACTURER'S WARRANTY COVERING SUCH GOODS OR SERVICES, THE TERMS OF SUCH WARRANTY, INCLUDING ALL LIMITATIONS OF SUCH WARRANTY, SHALL GOVERN THOSE GOODS OR SERVICES, AND ANY WARRANTY OF SELLER OTHERWISE APPLICABLE TO SUCH GOODS OR SERVICES SHALL NOT APPLY.

A. Goods. Subject to the forgoing, Seller's limited warranty for any new Goods which are the subject of any Seller's acknowledgement of Buyer's order may be found at www.fedsig.com/ssg-warranty or may be obtained by writing to Federal Signal Corporation, 2645 Federal Signal Drive, University Park, IL 60484; by email to info@federalsignal.com; or by calling 708/534-3400.

B. Services Seller warrants that Services provided by Seller will be performed with all reasonable skill, care and diligence and in accordance with standard industry practice. Seller will correct defects in Services provided by Seller and reported to Seller within ninety days after completion of such Services. Services corrected in accordance with this Section shall be subject to the foregoing warranty for an additional ninety days from the date of completion of correction of such Services.

11. REMEDIES AND LIMITATIONS OF LIABILITY. The remedies contained the preceding paragraph constitute the sole recourse against Seller for breach of any of Seller's obligations under the Contract, whether of warranty or otherwise. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES NOR SHALL SELLER'S LIABILITY ON ANY CLAIM FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR CONNECTED WITH THE CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS OR SERVICES EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk

12. LIMITED INDEMNITY AGAINST INFRINGEMENT. Seller shall, at its own expense, defend any litigation resulting from sale of the Goods to the extent that such litigation alleges that the Goods or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Goods in combination with equipment or devices not made by Seller or from modification of the Goods, and further provided that Buyer notifies Seller immediately upon its obtaining notice of such impending claim and cooperates fully with Seller in preparing a defense. If Buyer provides to Seller the authority, assistance, and information Seller needs to defend or settle such claim, Seller shall pay any final award of damages in such suit and any expense Buyer incurs at Seller's written request, but Seller shall not be liable for a settlement made without its prior written consent. If the Goods are held to be infringing and the use thereof is enjoined, Seller shall, at its option, either (i) procure for the Buyer the right to use the Goods, (ii) replace the Goods with others which do not constitute infringement, or (iii) remove the infringing Goods and refund the payment(s) made therefor by Buyer. The foregoing states the Buyer's sole remedy for, and Seller's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Goods provided hereunder. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST

INFRINGEMENT.

13. INTELLECTUAL PROPERTY RIGHTS. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or product software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for Seller in the production of any Goods or Services sold hereunder will be and remain the sole property of Seller (or its licensors, if any). Buyer agrees not to reverse engineer any Goods purchased hereunder.

14. EXPORT REGULATIONS. Buyer agrees to comply fully with all laws and regulations concerning the export of Goods from the United States, including, but not limited to Export Administration Rules ("EAR"), regulations of the Office of Foreign Asset Control ("OFAC"), International Traffic in Arms Regulations ("ITAR"), as well as Denial Order and Entry lists under EAR and Specially Designated Nationals and Blocked Persons list under OFAC regulations.

15. INSTALLATION. In those circumstances where Seller has agreed to install Goods for Buyer, the following provisions shall control:

- A. Responsibility. Installation shall be by Buyer unless otherwise specifically agreed to in writing by Seller.
- B. Receiving Product and Staging Location. Buyer is responsible to receive, store and protect all Goods intended for installation purposes, including, but not exclusively, siren equipment, poles, batteries, and installation materials. Materials received in cardboard containers must be protected from all forms of precipitation. Additionally, Buyer is to provide a staging area of an appropriate size for installation contractors to work from and to store equipment overnight.
- C. Installation Methods & Materials. Installation is based on methods and specifications intended to meet applicable safety and installation codes and regulations. Design changes required by Buyer may result in additional charges.
- D. Radio Frequency Interference. Seller is not responsible for RF transmission and reception affected by system interference beyond its control.
- E. Installation Site Approval. Buyer must provide signed documentation to Seller, such as the "WARNING SITE SURVEY FORM" or a document with the equivalent information, that Seller is authorized to commence installation at the site designated by Buyer before Seller will commence installation. Once installation has started at an approved site, Buyer is responsible for all additional costs incurred by Seller for redeployment of resources if the work is stopped by Buyer or its agents, property owners, or as the result of any governmental authority or court order, or if it is determined that installation is not possible at the intended location, or the site is changed for any reason by the Buyer.
- F. AC Power Hookup. Buyer is responsible to coordinate and pay for all costs to bring proper AC power to the electrical service disconnect installed adjacent to the controller cabinet unless these services are quoted by Seller.
- G. Permits & Easements. Seller will obtain and pay for electrical and right-of-way work permits as necessary for installations. Buyer is responsible for obtaining and payment of all other required easements, permits, or other fees required for installation, unless specifically quoted. Buyer is responsible for having a local electrician and/or utility company provide the electrical connection to the siren. Any permits, fees, inspections, or modifications required for the power connection are not included in the installation quote.
- H. Soil Conditions Clause. In the event of poor site conditions including, but not limited to rock, cave-ins, high water levels, or inability of soil to provide stable installation to meet specifications, Seller will direct installation contractors to attempt pole installation for a maximum of 2 hours. Buyer approval will be sought when pole installation exceeds 2 hours and abandoned if Seller cannot obtain approval in a timely manner.

I. Contaminated Sites. Seller is not responsible for cleanup and restoration of any installation sites or installer equipment where contaminated soil is encountered. Seller will not knowingly approve installation at any site containing contaminants. Buyer must inform Seller when known or suspected soil contaminants exist at any intended installation site.

J. Site Cleanup. Basic installation site cleanup includes installation debris removal, general site cleanup, and general leveling of affected soil within 30' of the pole. Additional site restoration quotes are available.

K. Waste Disposal. Buyer is responsible for providing disposal of all packing materials including shipping skids and containers.

L. Work Hours. All installation quotes are based on the ability to work outdoors during daylight hours and indoors from 7 AM to 7 PM Monday through Saturday. Work restrictions or limitations imposed by Buyer or its agents may result in additional charges being assessed to Buyer for services.

M. Project Reporting. Installation & Service Progress Reports will be provided on a regular basis, normally every week during active installation, unless pre-arranged otherwise by mutual agreement.

N. Safety Requirements & Compliance. Seller requires that all subcontractors and their employees follow applicable laws and regulations pertaining to all work performed, equipment utilized and personal protective gear common to electrical and construction site work performed in the installation of Seller equipment. Additional safety compliance requirements by Buyer may result in additional charges assessed to Buyer for the time and expenses required to comply with the additional requirements.

16. ASSIGNMENT AND SUBCONTRACTING. Seller may assign its rights and obligations by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. In the event of an assignment, Seller shall be discharged of any liability pursuant to those purchase orders which have been assigned or delegated. Customer may not assign its rights nor delegate its obligations under any or all of its purchase orders unless Seller's written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void.

17. DEFAULT, INSOLVENCY AND CANCELLATION. Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract immediately, in whole or in part, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the Contract and fails, within 20 (twenty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take and diligently continue action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (ii) a receiver, administrator or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts; (iv) Buyer or its equity holders or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within 30 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such default or cancellation, including all costs of collection and a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

18. SEVERABILITY. If any term, clause or provision contained in the sales contract is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein

contained.

19. **NO WAIVER.** No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing or performance, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

20. **NOTICES.** All notices and claims in connection with the Contract must be in writing.

21. **INTEGRATION.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions.

22. **GOVERNING LAW AND LIMITATIONS.** The formation and performance of the sales contract shall be governed by the laws of the State of Illinois. Venue for any proceeding initiated as the result of any dispute between the parties that arises under this Agreement shall be either the state or federal courts in Cook or DuPage County, Illinois. Whenever a term defined by the Uniform Commercial Code as adopted in Illinois is used in these standard terms, the definition contained in said Uniform Commercial Code is to control. Any action by the Buyer for breach of the sales contract or any covenant or warranty contained herein must be commenced within one year after the cause of action accrued.

23. **U.N. CONVENTION.** Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods (the "UN Convention"), the Parties agree that the UN Convention shall not apply to this Agreement.

October 26, 2022

Dustin Sailor, Director of Public Works
City of Goshen
111 E Jefferson Street, Suite 4
Goshen, IN 46526

Dear Mr. Sailor,

Please find below information regarding sole-source justification for Federal Signal outdoor warning sirens for The City of Goshen. Federal Signal sirens are the only sirens compatible with the existing county activation and monitoring system. Any non-Federal sirens added to the system would not be operable as is. Substantial alteration of your existing control point and investing in additional radio communication equipment would be needed if a non-standard siren is added. In addition, a non-standard siren would never be able to provide 2way monitoring status. Below is a technical explanation of the system capabilities and enhanced security features unique to the Federal Signal sirens.

Federal Signal is the **sole manufacturer of the 2001-130 Siren series with digital, electro-mechanical controllers** (model DCFCTBD) designed to operate with our **proprietary digital (FSK) protocol and the Federal Commander Digital System software** (SFCDWARE). This siren model is fully compatible with the control point previously installed by Federal Signal in Goshen, Indiana.

The existing control point that activates and monitors the sirens is the Federal Commander Digital software. This includes a *128-bit digitally encrypted communications protocol* to ensure secure communications between central control points and each siren. It is the only siren communication system which allows for complete *over-the-air programmability*, and the ability to *utilize each siren location as a simplex repeater*, thus insuring communication between central control points and all siren controllers. In addition, the communications *protocol utilizes a packet data encoding scheme with CRC-16 error checking* for additional reliability and security. This provides time encryption and date stamping of commands to reduce false activations and prevent system hacking and pirated radio control. It also provides status monitoring and alerting of mechanical faults/intrusion/communication errors.

Federal Signal's proposed DCFCTBD Controllers are the **only models on the market** that can communicate with the Commander digital software. The controllers include a Two-Way Radio Transceiver, are UL Listed by model number, and operate with the Federal Signal digital communication system. Additionally, Federal Signal is a **US manufacturer certified to the ISO-9001:2000 standard**.

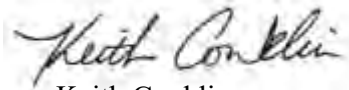
Federal Signal will provide all siren equipment with full factory installation and warranties. Our equipment is internally designed and manufactured in the United States upholding the highest

industry standards. We ensure equipment is fully compatible and operational with the existing county infrastructure.

Federal Signal Corporation, is publicly traded Public Safety Company listed on the New York Stock Exchange (FSS), has an extensive management team with an unequalled diversity of technical and operational backgrounds.

Federal Signal takes pride in offering our customers ***security, reliability, and ease of administration and maintenance***. If I can answer any additional questions, or be of service in anyway, please call me at the number below.

Sincerely,



Keith Conklin
Regional Sales Manager
708.285.2611
kconklin@fedsig.com



Wendy Justice
Federal Signal Mfg. Rep.
317.220.2318
wjustice@capitolelectronics.com



CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185
www.goshenindiana.org

To: Goshen Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Transfer of 206 N. Main Street
Date: November 14, 2022

The Pumpkinvine Properties LLC owns unimproved real property located generally north of 206 N. Main Street and seeks to transfer such real property to the City for no consideration. The City would seek to make such real property appropriate for a parking lot. It is recommended that the Board approve the transfer of the subject real property to the City pursuant to the Resolution 2022-31 provided herewith.

Suggested Motion:

Move to approve Resolution 2022-31 for the transfer of 206 N. Main Street from Pumpkinvine Properties LLC to the City and authorize Mayor Stutsman Clerk Treasurer Aguirre to execute documents necessary to accomplish such transfer.

**BOARD OF PUBLIC WORKS AND SAFETY
RESOLUTION 2022 - 31**

**Agreement with Pumpkinvine Properties LLC
for Transfer of 206 N. Main St. Real Property**

WHEREAS Pumpkinvine Properties LLC owns certain real property located just north of 206 N. Main Street, in the City of Goshen, Indiana.

WHEREAS Pumpkinvine Properties LLC seeks to transfer such real property to the City of Goshen, Indiana ("City") and the City wishes to accept transfer of such real property for use as automobile parking facilities.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Board of Public Works and Safety approves the terms and conditions of the Agreement for the Transfer of Real Estate, a copy of which is attached hereto and made a part hereof, and authorizes Mayor Stutsman and Clerk-Treasurer Aguirre to execute any documents reasonably necessary to effectuate the transfer of the subject real property to the City.

PASSED by the Goshen Board of Public Works and Safety on November 21, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

AGREEMENT FOR THE TRANSFER OF REAL ESTATE

THIS AGREEMENT is made and entered into on November, 2022, which is the last signature date set forth below, by and between **Pumpkinvine Properties LLC** ("Seller"), 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 ("Goshen").

Recitals

WHEREAS, the Seller recently purchased certain real property and improvements in the City of Goshen, Elkhart County, Indiana;

WHEREAS, Seller wishes to transfer to the City, and the City wishes to accept transfer of, certain real property in the City of Goshen, Elkhart County, Indiana;

NOW THEREFORE, in consideration of the terms, covenants, and conditions described in this agreement to be kept and performed by the respective parties, Seller agrees to transfer in fee simple absolute, and Goshen agrees to accept transfer of, the following real estate located in Elkhart Township, Elkhart County, Indiana, located north of 206 N. Main Street, Goshen, Indiana, 46528, and more particularly described as follows:

Lot Numbered One Hundred Seventeen (117) in the Original Plat of the Town, now City of Goshen in Elkhart Township; said plat being recorded in Deed Record 1, page 17, in the Office of the Recorder of Elkhart County, Indiana.

LESS AND EXCEPTING FROM PARCEL II: Beginning at the Northwest corner of Lot Numbered One Hundred Seventeen (117) of the Original Plat of the Town, now City of Goshen; running thence South 21 feet 7 inches; thence East 61 feet 1 inch; thence North 21 feet 7 inches; thence West 61 feet 1 inch to the place of beginning.

LESS AND FURTHER EXCEPTING FROM PARCEL II: Commencing at the Southwest corner of Lot Numbered One Hundred Eighteen (118) in the Original Plat of the Town, now City of Goshen; thence East 61 feet 1 inch to the true POINT OF BEGINNING; thence South 20 feet 4 inches; thence East 15 feet 4 inches; thence North 16 feet 7 inches; thence East 22 feet 1 inch; thence North to a point which is to the East of the place of beginning.

LESS AND FURTHER EXCEPTING FROM PARCEL II: Commencing at the Southwest corner of Lot Numbered One Hundred Seventeen (117) in the Original Plat of the Town, now City of Goshen in Elkhart Township, said plat being recorded in Deed Record 1, page 17 in the Office of the Recorder of Elkhart County, Indiana; thence North 44 feet and 5 inches; thence East 6 feet; thence South 44 feet and 5 inches; thence West 6 feet to the place of beginning, said in previous deed to contain 266.5 square feet, more or less.

Being Parcel Number: 20-11-09-265-008.000-015.

The above-described real estate is hereinafter referred to as the "Real Estate."

Section 1. Real Estate Transfer

The Seller shall transfer the Real Estate along with all pertinent rights, privileges and easements, and all buildings and fixtures in their present condition. Seller shall be entitled to retain any improvements to its building located at 206 N. Main Street, Goshen, Indiana, that currently extends over the Real Estate, e.g., lighting, canopies, awnings, etc. However, any future additions to such building must be approved by Goshen.

Section 2. Purchase Price

The Seller shall transfer the Real Estate to Goshen without the payment of monetary consideration.

Section 3. Appraisal

Neither party is obligated to obtain an appraisal of the Real Estate. However, Seller may obtain an appraisal, at its expense, for its own purposes.

Section 4. Environmental Assessment

A. Goshen will conduct at Goshen's sole cost an environmental assessment of the Real Estate to meet Goshen's requirement of all appropriate inquiry. In the event the initial assessment discloses that an additional assessment is warranted, Goshen may either void this agreement or pay to have the additional assessment completed. Seller is under no obligation to pay for any portion of the environmental assessment.

B. In the event the initial assessment or any additional assessment concludes that remediation is advisable to make the Real Estate suitable for commercial use, Goshen may void this agreement if Goshen so elects. Goshen must make its election to void this agreement within forty-five (45) days of receiving the assessment that concludes that remediation is advisable.

C. Goshen will select the company that conducts the environmental assessment. If the environmental assessment is not completed within one hundred twenty (120) days, Seller shall have the right to terminate the agreement.

Section 5. Taxes and Assessments

Seller shall pay the real estate taxes and assessments for 2022 due and payable in 2023. City shall pay the real estate taxes and assessments for 2023 due and payable in 2024, and thereafter.

Section 6. Title Insurance

Prior to closing, Goshen shall have the opportunity to obtain a policy of title insurance in standard ALTA owner's form insuring the title to the Real Estate to be conveyed by Seller to Goshen in an amount of One Hundred Thousand Dollars (\$100,000.00), to be free of defects except such defects that are included in the standard exceptions forming a part of such policies, and easements, public ways and restrictions of record. The cost of the title insurance shall be paid by Goshen. Any encumbrances or defects in title must be removed by Seller and Seller must convey merchantable title subject to standard title exceptions. Seller agrees to pay the cost of obtaining all other documents necessary to perfect title so that merchantable title can be conveyed.

Section 7. Mortgage

Any mortgage or other lien attached to the Real Estate shall be paid in full at the closing, or released such that the Real Estate can be conveyed free of any such mortgage or lien.

Section 8. Warranty Deed

Seller shall deliver to Goshen a warranty deed conveying merchantable title to the Real Estate free and clear of all liens and encumbrances, except conditions of record including, but not limited to zoning restrictions, taxes, easements, and assessments.

Section 9. Closing

The closing will occur within forty-five (45) days of the completion of the appraisals and the environmental assessment. If the closing has not occurred by February 1, 2023, Seller shall have the right to terminate the agreement. Goshen will pay the cost of the closing agent and costs of the closing except to the extent that such costs are specifically designated as the cost of the Seller by the terms of this agreement.

Section 10. Possession of Real Estate

- A. Possession and occupancy of the Real Estate will be delivered to Goshen at Closing, unless a later date of occupancy is agreed to in writing by Seller and Goshen.
- B. Seller shall maintain the Real Estate in its present condition as long as Seller retains possession.
- C. Seller shall assume the risk of loss until the closing at which time Goshen shall assume the risk of loss.

Section 11. Amendment

Any amendment or modification 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 12. Miscellaneous

- A. This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.
- B. In the event that legal action is brought to enforce or interpret the terms of and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.
- C. In the event that either party brings an action to enforce any right conferred by this agreement or to force the other party to fulfill any obligation imposed by this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.



CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185
www.goshenindiana.org

To: Goshen Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Resolution 2022-33, Revocable License Agreement to Encroach into Easement with Keystone RV Company
Date: November 18, 2022

Keystone RV Company operates a plant located at 2694 Hackberry Dr., Goshen, Indiana. Keystone RV Company seeks to expand the building at this location and extend over an easement the City holds for water and sewer utilities and relocate the utilities presently located on the easement to a location east of the building expansion. However, the shortage of suitable pipe and other building materials has delayed the relocation of the utilities to an unknown time. Keystone seeks authority from the City to construct its expansion over the City's easement under the condition that it construct new utility facilities east of the expanded improvements once suitable pipe and other building materials are available. It is recommended the City agree to allow Keystone to construct its building over the easement area under certain terms and conditions contained in Resolution 2020-33 and the agreement attached thereto.

Suggested Motion:

Move to approve Resolution 2022-33, to allow for construction of a building expansion at 2694 Hackberry Drive over the City's utility easement located at that location.

**BOARD OF PUBLIC WORKS AND SAFETY
RESOLUTION 2022 - 33**

**Revocable License Agreement to Encroach into Easement
With Keystone RV Company**

WHEREAS Keystone RV Company is the owner of the real property commonly known as 2694 Hackberry Dr., Goshen, Indiana (“Keystone”).

WHEREAS Keystone previously granted to the City an easement over, across, and through the property located at 2694 Hackberry Dr. for the purposes of installation, maintenance, and operation of City utility facilities (“Easement”).

WHEREAS Keystone seeks to expand the improvements located at 2694 Hackberry Dr. to extend over the Easement and relocate the utilities presently located on the Easement to a location east of the current and expanded building; however, the shortage of suitable pipe and other building materials has delayed the relocation of the utilities to an unknown time.

WHEREAS Keystone seeks authority from City to construct its expanded improvements over the Easement under certain conditions, including that it construct new utility facilities east of the expanded improvements once suitable pipe and other building materials are available.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Board of Public Works and Safety approves the terms and conditions of the Revocable License Agreement to Encroach into Easement with Keystone RV Company, a copy of which in substantially final form is attached hereto, to allow Keystone to expand the building located at 2694 over the City’s Easement under the terms and conditions of the agreement attached hereto, and any revisions to such agreement approved by the Engineering Department and the Legal Department, and authorizes Mayor Stutsman to execute such agreement.

PASSED by the Goshen Board of Public Works and Safety on November _____, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

**REVOCABLE LICENSE AGREEMENT
TO ENCROACH INTO EASEMENT**

This Revocable License Agreement to Encroach into Easement is entered into on November _____, 2022, between the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety, hereinafter referred to as “City”, and **Keystone RV Company**, hereinafter referred to as “Owner”.

Recitals

WHEREAS Owner is the owner of the real property commonly known as 2694 Hackberry Dr., Goshen, Indiana, as it obtained title to the real property by Warranty Deed dated April 6, 2004, executed and recorded in the Office of Recorder of Elkhart County, Indiana on April 7, 2004, and recorded as Instrument Number 2004-11253 (“Subject Real Property”).

WHEREAS Owner granted to the City an Easement, recorded as Instrument Number 2013-12290, over, across, and through the Subject Real Property for the purposes of installation, maintenance, and operation of City utility facilities (“Easement”).

WHEREAS Owner seeks to expand the improvements located on the Subject Real Property to extend over the Easement and relocate the utilities presently located on the Easement to a location east of the current and expanded improvements; however, the shortage of suitable pipe and other building materials has delayed the relocation of the utilities to an unknown time.

WHEREAS Owner seeks authority from City to construct its expanded improvements over the Easement under the condition that it construct new utility facilities east of the expanded improvements once suitable pipe and other building materials are available.

WHEREAS City agrees to allow Owner to construct improvements over the Easement area under the terms and conditions of this Agreement.

WHEREAS the Goshen Board of Public Works and Safety has the authority to enter into agreements with respect to the easements granted to the City of Goshen.

1. Encroachment Permitted - City grants Owner a revocable license to encroach into City's Easement located at 2694 Hackberry Dr., Goshen, Indiana to construct improvements over the Easement under the following terms and conditions:

A. The installation and maintenance of improvements that encroach into the City's Easement shall be at Owner's expense. Owner agrees to construct its improvements consistent with plans approved by the City, and maintain its improvements that encroach into City's Easement in good repair and condition, and in a way that does not affect the operation of the City's utility facilities located in the Easement.

B. Owner shall act will all due diligence to construct at its expense new utility facilities along Corrie Drive, along a path generally depicted in the drawing attached hereto, to specifications approved by the City to replace and bypass the utility facilities currently located in the Easement area. Such utility facilities shall be located within the dedicated right-of-way of Corrie Drive or, if sufficient space in the right-of-way of Corrie Drive is not available for the new utility facilities, then Keystone RV Company shall grant to the City all necessary easements, or dedicate additional land for right-of-way purposes. Notwithstanding the foregoing, the plans for the new utility facilities include a 12" water main, and the City shall pay the cost to upsize the current 8" main to 12". Once new utility facilities are constructed east of the new improvements on the subject real property, Owner shall abandon the existing utility facilities to City's specifications.

C. The Owner's encroachment into City's Easement may continue so long as the encroachment does not adversely affect the function of the City's utility facilities, or until Owner completes construction of, and the City accepts, utility facilities to bypass the utility facilities currently located in the Easement, whichever occurs first. Further, City shall release its rights under the Easement once the new utility facilities are constructed and accepted by the City.

D. The Owner's encroachment shall not in any way prejudice or preclude City's right to revoke the license to encroach into the Easement should City reasonably determine that Owner's encroachment is in any way impairing or interfering with the function of the City's utility facilities located in the Easement.

E. City may revoke the license agreement in the event Owner fails to construct and maintain its improvements in good repair and condition by providing Owner a written notice of default and an opportunity to cure. If the default is not cured on or before forty-five (45) days after notice, the City may revoke the license and terminate this agreement.

2. Right of Entry

Owner hereby grants to City a right to enter the Easement, and any improvements located thereon, over the adjoining lands of Owner for purposes of maintaining and repairing its utility facilities located on the Easement. Due to the unique circumstances of Owner's

encroachment in to the City's Easement, Owner shall arrange with City to allow for immediate access to the Easement, and improvements located thereon, for purpose of maintaining and repairing its utility facilities. Any entry into the Easement area, as well as any maintaining or repairing of utility facilities undertaken by the City, shall be undertaken so as to reasonably minimize any damage to the lands and structures of Owner and only after consultation with Owner to determine the most efficient, reasonable manner undertake such activities.

3. Indemnification

Owner shall indemnify, defend, and hold City harmless from any claim, suit, damages, or liability arising out of, or for damages to any property or injuries to any person, including all costs and other expenses, including reasonable attorneys' fees, any accident or occurrence resulting from Owner's encroachment into the Easement. Specifically, if Owner, or any of its agents, damage the City's utility facilities, the City shall not be liable for any damage or injury caused by water or sewer emitting from the City's utility facilities caused by the construction, location, and activities within improvements located in the Easement area. Owner undertakes the construction of improvements over the City's utility facilities at its own risk.

4. Modifications

5. Any modification or amendment to the terms and conditions of this agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning this agreement shall be of no force and effect.

6. Notices

7. 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.

City: City of Goshen, Indiana
Attention: Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

Owner: _____

8. Miscellaneous Provisions

A. This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

B. In the event that legal action is brought to enforce or interpret the terms of and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.

C. In the event that either party brings an action to enforce any right conferred by this agreement or to force the other party to fulfill any obligation imposed by this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

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

E. The waiver by either party of a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach.

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

G. The undersigned affirm that all steps have been taken to permit them to execute this agreement, and upon their execution of the document bind their respective organizations to the terms of the agreement.

H. This agreement constitutes the entire agreement between the parties and with respect to the Owners encroachment into the City's Easement, and it supersedes all other agreements or understanding between City and Owner with respect to such encroachment.

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

City:

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

Jeremy P. Stutsman, Mayor

Date: _____

Owner:

Keystone RV Company

By: _____

Printed: _____

Title: _____

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on November _____, 2022, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, and acknowledged the execution of the foregoing instrument.

Notary Public
Printed: _____
County of residence: _____
Commission number: _____
My commission expires: _____

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on November _____, 2022, personally appeared _____, as _____, on behalf of _____, and acknowledged the execution of the foregoing instrument.

Notary Public
Printed: _____
County of residence: _____
Commission number: _____
My commission expires: _____

This instrument was prepared by Bodie J. Stegelmann, Goshen City Attorney, # 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 533-9536.

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).



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 Works and Public Safety

FROM: Stormwater Department

RE: **AGREEMENT FOR THE COMPLETION OF THE CONSTRUCTION PROJECT 2112 NEWBURY CIRCLE**

DATE: November 21, 2022

The home at 2112 Newbury Circle has passed its final building inspection and the project is substantially complete except for exterior concrete work. This final requirement cannot be completed at this time due to weather conditions.

The Stormwater Department thus submits Agreements for the Completion of the Construction Project for approval and authorizations for the Mayor to execute.

The property owner H&G Homebuilders co: Glenn Henderson agrees to complete all concrete work by June 15, 2023. The expected cost of work is one thousand eight hundred and fifty dollars (\$1,850) and a surety check for that amount has been remitted to the Clerk-Treasurer's office.

Requested Motion: Approve and authorize the mayor to execute the Agreements with H&G Homebuilders co: Glenn Henderson for the Completion of the Construction Project at 2112 Newbury Circle.

**AGREEMENT FOR THE COMPLETION
OF THE CONSTRUCTION PROJECT**

THIS AGREEMENT is entered into on _____, 20__22__, between the City of Goshen, Indiana, by and through the Goshen Board of Public Works and Safety, hereinafter referred to as "Goshen," and

Property Owner: H&G Homebuilders co: Glenn Henderson

and, if the builder is responsible for completing the remaining work,

Builder: _____

No Builder

hereinafter referred to individually or collectively, if applicable, as "Permittee."

Permittee obtained a building permit for the construction of a building on the real estate at

Site: 2112 Newbury Circle, Goshen, Indiana, hereinafter referred to as "Site."

The construction project is substantially complete except for:

certain exterior work that cannot be completed due to weather conditions.

the installation of certain parts or equipment which are not currently available.

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

1. **WORK.** Permittee agrees to complete the following remaining item(s) of work, hereinafter referred to as "Work," as soon as conditions permit, but no later than June 15th, 20__23__, unless an earlier date is specified below:

Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately _____ square feet of disturbed area with seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized.

Plant all required landscaping at the Site according to the plan submitted to the Goshen Planning and Zoning Department. This shall include planting: _____

Install the hard surface driveway for the Site.

- Permittee agrees to install a temporary gravel driveway, and Goshen will permit the installation of the temporary gravel driveway until such time as the permanent hard surface driveway can be installed. The temporary gravel driveway shall be installed prior to occupancy of the building, but no later than _____, 20____.
- Install the hard surface parking lot for the Site.
- Permittee agrees to install a temporary gravel parking lot, and Goshen will permit the installation of the temporary gravel parking lot until such time as the permanent hard surface parking lot can be installed. The temporary gravel parking lot shall be installed prior to occupancy of the building, but no later than _____, 20____.
- Install all required parking lot striping for parking spaces at the Site.
- Install approximately 108 square feet of concrete sidewalk and/or curbing at or adjacent to the Site parallel to the following public street: Newbury Circle
- Install approximately _____ of concrete sidewalk at the Site to the building entrance.
- Install the following certain parts or equipment at the Site: _____
- Other: _____

2. **SURETY.** Permittee is required to provide Goshen a surety to guarantee the timely and proper completion of the Work if the cost of the Work is estimated by Goshen to be at least Two Thousand Dollars (\$2,000), or if the Work includes the installation of a driveway, parking lot, sidewalk, curbing or other hard surface improvement, regardless of cost.

- Permittee agrees to provide Goshen a surety in the amount of one thousand eight hundred and fifty Dollars (\$ 1,850.00) to guarantee the timely and proper completion of the Work under the terms of this agreement. The surety may be in the form of a surety bond, letter of credit, or cash bond, including a cashier's check or corporate check (which City Clerk-Treasurer will cash). The surety is to guarantee the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee's contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the surety. If the surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the surety.
- Permittee is not required to provide Goshen a surety to guarantee the timely and proper completion of the Work.

3. **CERTIFICATE OF OCCUPANCY.** Except for the Work yet to be completed as set forth in Section 1 above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement. **It is Permittee's obligation to contact the Goshen Building Department to obtain the Certificate of Occupancy prior to occupying the building.**
4. **FORCE MAJEURE.** If Permittee's performance under this agreement is prevented because of an occurrence that is beyond the control of the Permittee which could not have been avoided by exercising reasonable diligence, Permittee's time for performance will be extended. Such extension shall be for no longer than necessary given the nature of the occurrence which causes the delay. Examples of such occurrences are tornadoes, floods, or more than a typical number of days where rainfall prohibits the performance required of the Permittee.

If Permittee is delayed, Permittee shall immediately notify Goshen in writing describing the nature of the event delaying performance. Permittee shall make every effort to resume performance as soon as possible.

5. **DEFAULT.** It is mutually agreed that if Permittee fails to perform or comply with the terms of this agreement, Goshen may declare the agreement to be in default without notice to Permittee.

Upon declaration of default, Goshen may take such action as is necessary to complete Permittee's obligations although Goshen is not obligated to do so. If Surety is provided under this agreement, Goshen may use the Surety to pay for the completion of any of Permittee's obligations. Goshen may seek any other remedy available at law or equity in addition to or instead of any remedy provided for in this agreement.

Goshen shall have the right to correct any defect in the Work, and Goshen shall have the right to stabilize the Site in accordance with the Goshen City Construction Site Stormwater Runoff Control Ordinance. The Surety, if required, and/or Permittee shall pay all of Goshen's costs and expenses incurred in taking such actions including, but not limited to engineering, legal and other costs, together with any damages either direct or consequential which Goshen may sustain on account of Permittee's failure to fulfill Permittee's obligations under this agreement.

6. **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT.** Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.
7. **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 and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

- 8. **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.
- 9. **NOTICES.** All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for Goshen: City of Goshen, Indiana
 Attention: Goshen Legal Department
 204 East Jefferson Street, Suite 2
 Goshen, IN 46528

Address for Permittee:

Property Owner: H&G Homebuilders co: Glenn Henderson
 2815 Hammond Ave
 Elkhart, IN 46516

Builder: _____

No Builder

- 10. **APPLICABLE LAWS.** Permittee agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances.

In the event of a conflict between this agreement and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

This agreement shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

- 11. **ATTORNEY FEES.** In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party, including reasonable attorneys' fees.
- 12. **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.
- 13. **BINDING EFFECT.** All provisions, covenants, terms and conditions of the agreement apply to bind the parties and their legal heirs, representatives, successors and assigns.

14. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings between Goshen and Permittee.

15. **AUTHORITY TO EXECUTE.** Each person executing this agreement represents that he or she is duly authorized and has legal authority to execute and deliver this agreement on behalf of the respective party, and upon execution and delivery of this agreement, bind the respective party to the terms and conditions of the agreement.

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

Permittee:¹

Property Owner:

Signature: Glenn Henderson
Printed: Glenn Henderson
Title (if any): Owner
Date: 11/17/22

Signature: _____

Printed: _____

Title (if any): _____

Date: _____

Builder:

Signature: _____

Printed: _____

Title: _____

Date: _____

Goshen:

Jeremy P. Stutsman, Mayor

Date: _____

¹ The Property Owner is required to execute the agreement. If the Builder is responsible for completing the remaining work or if the Builder is providing the surety under the agreement (if required), the Builder is also required to execute the agreement.



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: Jason Kauffman, Stormwater Coordinator, Stormwater Department

RE: **REVISION OF STORMWATER USER FEE FOR THE GOSHEN DEPARTMENT OF STORMWATER MANAGEMENT (RESOLUTION 2022-01) (JN: 2002-0039)**

DATE: November 21, 2022

Earlier this year the Greater Elkhart County Stormwater Partnership (Partnership) composed of the City of Elkhart, City of Goshen, Elkhart County, and Town of Bristol (Partners) agreed a review of the stormwater user fee was necessary to review the current stormwater user fee and the stormwater budgets for the Partners. Baker Tilly US, LLP (Baker Tilly) was retained to perform a rate analysis to determine whether the minimum funding amount necessary for the operation and maintenance of the stormwater system is being collected since the stormwater user fee was established in 2006.

Upon completion of the rate study, Baker Tilly concluded the minimum rate should be increased from \$15 per equivalent residential unit (ERU) to \$36.10 per ERU annually. The Partnership's MS4 Advisory Board met on November 17, 2022, and agreed to recommend the user fee be increased over three phases as follows: \$22.05 per year per ERU starting with billing in calendar year 2023; \$29.10 per year per ERU starting with billing in calendar year 2026; and \$36.10 per year per ERU starting with billing in calendar year 2029.

Following today's public hearing on the proposed stormwater user fee rate increase, the Goshen Stormwater Department requests the Goshen Stormwater Board's adoption of Resolution 2022-01. Upon adoption of Resolution 2022-01 an amended ordinance will be taken to the City Council for discussion and a vote on either December 5th or 19th.

Requested Motion: Approve Resolution 2022-01 allowing for and recommending the current stormwater user fee to be revised to the proposed rate over three phases.

RESOLUTION NO. 2022-01

REVISION OF STORMWATER USER FEES FOR THE GOSHEN DEPARTMENT OF STORMWATER MANAGEMENT

WHEREAS, Indiana Code ' 36-1-3-1 *et seq.* permits any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Goshen Common Council, by Ordinance 4295 adopted May 17, 2005, established the City of Goshen Department of Stormwater¹ Management;

WHEREAS, the City of Goshen Department of Stormwater Management is a utility pursuant to the provisions of Indiana Code ' 8-1.5-5 *et seq.* and authorized to establish stormwater user fees pursuant to said statutes;

WHEREAS, all of the territory located within the corporate boundaries of the City of Goshen is subject to the jurisdiction of the City of Goshen Department of Stormwater Management and constitutes a special taxing district for the purpose of providing for the collection and disposal of stormwater of the district in a manner that protects the public health and welfare;

WHEREAS, all of the territory in the district is considered to have received a special benefit from the stormwater collection and disposal facilities of the district, education, water quality monitoring, and National Pollution Discharge Elimination System program compliance equal to or greater than the utility fees imposed on the territory under Indiana Code ' 8-1.5-5 *et seq.* in order to pay all or part of the costs of such facilities and programs;

WHEREAS, the Municipal Separate Storm Sewer System (MS4) entities comprising the Greater Elkhart County MS4 Partnership — City of Elkhart, City of Goshen, Town of Bristol, and County of Elkhart — entered into an Interlocal Agreement, recorded with the Elkhart County Recorder's Office as Instrument No. 2006-04747 ("Interlocal Agreement") effective on October 8, 2005, which established a multi-jurisdiction advisory board to establish uniform rates across all MS4 Partnership entities;

WHEREAS, the Interlocal Agreement was approved by all MS4 entities and their respective legislative and executive bodies, including approval by the City of Goshen Common Council on August 3, 2005;

WHEREAS, Indiana Code § 8-1.5-5-7 requires that every Department of Stormwater

¹ Stormwater is sometimes referred to as storm water, but for the purposes of this Ordinance, both terms will have the same meaning.

Management charge a user fee equal to the minimum amount necessary for the operation and maintenance of the stormwater system;

WHEREAS, the Greater Elkhart County MS4 Partnership retained Baker Tilly US, LLP to perform a rate analysis to determine whether the minimum amount necessary for the operation and maintenance of the stormwater system has increased since 2006 and, if so, what is the current minimum amount necessary;

WHEREAS, the Board of the City of Goshen Department of Stormwater Management has advertised a public hearing in accordance with the provisions of Indiana Code ' 5-3-1 with publication in *The Goshen News* and has conducted a public hearing on November 21, 2022, with respect to the stormwater user fees to be assessed and collected pursuant to the terms and provisions of this Resolution;

WHEREAS, the City of Goshen Department of Stormwater Management has reviewed the current costs of operating and maintaining the stormwater system along with the rate study prepared by Baker Tilly US, LLP and finds that it is necessary to amend the City's rate structure and stormwater user fees;

WHEREAS the Board of the City of Goshen Department of Stormwater Management finds and determines that the user fees to be assessed and collected pursuant to this Resolution are the minimum amount necessary to help fund the operation and maintenance of the stormwater system and stormwater programs within the City of Goshen, Indiana.

WHEREAS pursuant to Indiana Code ' 8-1.5-5-7(b), the Goshen Common Council is required to approve the stormwater user fees to be assessed and collected pursuant to the Board's Resolution.

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, AND RESOLVED by the Board of the City of Goshen Department of Stormwater Management approves the stormwater user fees to be assessed and collected, and amends Resolution No. 2006-1, as amended, to read as follows:

1. Stormwater User Fee.

A stormwater user fee shall be imposed on each and every tax parcel of real estate within the City of Goshen, Indiana which directly or indirectly contributes to the stormwater system of the City of Goshen, which charge shall be assessed against the owner, who shall be considered the user for purposes of this Resolution. This charge is deemed to be reasonable and necessary to pay for the regulation, planning, operation, maintenance, repair, replacement, and improvement of the existing and future City of Goshen stormwater system.

2. Stormwater Rates.

Until December 31, 2022, the stormwater user fees will remain at the rate of Fifteen

Dollars (\$15.00) per year per ERU. Starting January 1, 2023, the stormwater user fees will be Twenty-Two and 05/100 Dollars (\$22.05) per year per ERU. Starting January 1, 2026, the stormwater user fees will be Twenty-Nine and 10/100 Dollars (\$29.10) per year per ERU. Starting January 1, 2029, the stormwater user fees will be Thirty-Six and 10/100 Dollars (\$36.10) per year per ERU. The above stormwater rates are designed to cover the cost of rendering stormwater service to the users of the City of Goshen stormwater system and will be the basis for the assessment of the stormwater user fee. The rates above are established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, variations in the requirements for providing such services, as well as future improvements and capital needs. These rates may be evaluated and adjusted, as necessary, with regard to their sufficiency to satisfy the needs of the City of Goshen Department of Stormwater Management; otherwise, these rates will remain in effect.

3. Fee Structure and Calculation.

- a. There is assessed a stormwater user fee to each owner of residential real estate and non-residential real estate located within the City of Goshen, Indiana which contain impervious area. The fee is based upon the assigned ERU as determined below. Such user fee shall be calculated and assessed each year on a tax parcel basis.
- b. All real estate having impervious area within the corporate boundaries of the City of Goshen, Indiana will be assigned an ERU in accordance with the following provisions:
 - i. Residential Real Estate. A residential tax parcel containing three (3) or less dwelling units shall be assigned one (1) ERU. Residential tax parcels containing more than three (3) dwelling units shall be assigned an ERU based upon the parcel=s individually measured impervious area in square feet divided by three thousand six hundred (3,600) square feet. This division will be calculated and rounded to the first decimal place.
 - ii. Non-Residential Real Estate. Each tax parcel of non-residential real estate shall be assigned an ERU based upon the parcel=s individually measured impervious area in square feet divided by three thousand six hundred (3,600) square feet. This division will be calculated and rounded to the first decimal place.
 - iii. The identification of real estate tax parcels and key numbers, the classification of primary use, the determination of whether a tax parcel

contains a dwelling unit, the number of dwelling units a tax parcel contains, and the classification of the type of dwelling unit and type of real estate shall be based upon the existing data in the computerized system used by the Elkhart County Auditor to generate tax assessment information for the respective determination date used for making the stormwater user fee assessments. The calculation of the individually measured impervious area on a tax parcel shall be computed using a scale of 1:600 based upon the existing data in the Elkhart County geographic information system (GIS) database for the respective determination date used for making the stormwater user fee assessments. If for any reason the calculation of the individually measured impervious area on a tax parcel cannot be accurately computed using a scale of 1:600 based upon the existing data in the Elkhart County GIS database for the respective determination date, the calculation of the individually measured impervious area on a tax parcel shall be computed in the following order of priority:

1. using a scale of 1:600, based upon the existing data in the most recent Elkhart County GIS database prior to the respective determination date used for making the stormwater user fee assessments; or
2. based upon the existing data in the Elkhart County Auditor's system database for the respective determination date used for making the stormwater user fee assessments.

The individually measured impervious area on a tax parcel computed in accordance with the provisions above may be adjusted based upon the data from any permitted construction, additions, demolitions, and other changes on a tax parcel which occur after the date of the aerial photography utilized in the Elkhart County GIS database or based upon the actual verified conditions on the tax parcel, or both.

- iv. For each current year stormwater user fee assessment, the determination date shall be March 1st of the prior year.
- c. The assessment for any tax parcel with a calculated stormwater user fee equal to or less than Two and 25/100 Dollars (\$2.25) will be waived. There shall be no other exceptions or exemptions from the assignment of ERUs and the assessment of a stormwater user fee for a particular type or classification of real estate tax parcel within the City of Goshen, Indiana.

4. Collection of User Fees.

- a. The collection of the stormwater user fees authorized by this Resolution shall be effectuated through a charge appearing each year on the property tax statements of the affected property owner. One-half (2) of the stormwater user fee charged each year for a real estate tax parcel shall be billed on each of the spring and fall property tax statements for that parcel. The user fee shall be due and payable at the same time as the property taxes appearing on the spring and fall property tax statements are due and payable. In the event only one (1) property tax statement is billed for a real estate tax parcel, the entire annual stormwater user fee for that parcel authorized by this Resolution shall be billed on that property tax statement which shall be due and payable at the same time as the property taxes appearing on the property tax statement are due and payable.
- b. If the user fee is not paid when due, the user shall be charged and assessed a late payment penalty by the Elkhart County Treasurer in the same way and in the same manner that delinquent property taxes are charged and assessed.
- c. If the user fee and penalty is not paid when due, they shall be collected by the Elkhart County Treasurer in the same way that delinquent property taxes are collected.

5. Appeals of ERU Determination.

- a. If, in the opinion of any user, the ERU assigned to the user=s real estate tax parcel is inaccurate in light of the number of dwellings or amount of impervious area on the property, the user shall have the right to contest the ERU determination and thus the stormwater user fee assessed in accordance with the provisions contained in this section.
- b. The user shall obtain and complete a Petition to Appeal Stormwater Assessment Form which shall be filed with the City of Goshen Stormwater Department with verifiable documentation supporting the user=s claim. To be timely for any current year stormwater user fee assessment, a Petition to Appeal must be filed no later than the date on which the spring installment of the user fee shall be due and payable. The City of Goshen Stormwater Coordinator shall refer the petition to the City of Goshen Stormwater Board.
- c. The City of Goshen Stormwater Department shall investigate the user=s claim and, upon review, shall render a written determination that either the original ERU determination and assessment should be affirmed or that the user=s rate

should be adjusted and how much the adjustment should be.

- d. The determination made by the City of Goshen Stormwater Department shall be forwarded to the user by certified mail, return receipt requested. The user shall have fifteen (15) days from date of receipt to request reconsideration if dissatisfied with the decision from the City of Goshen Stormwater Department. Any additional facts concerning the dispute shall be reduced to writing and submitted, along with a copy of the original petition and supporting documents, to the City of Goshen Stormwater Coordinator. The City of Goshen Stormwater Coordinator shall refer the matter to the Board of the City of Goshen Department of Stormwater Management. The City of Goshen Stormwater Coordinator shall submit a written report of the determination in the case, along with any documents used, in denying the user's claim or in recommending an adjustment.
- e. Thereafter, the Board of the City of Goshen Department of Stormwater Management shall review all documentation and conduct an informal hearing to determine and resolve the dispute based upon the documentation submitted and any oral testimony. The Board shall issue a determination which shall be binding upon the City of Goshen Department of Stormwater Management and the user. The hearing shall be recorded and the minutes of the hearing provided upon request at a cost per page as determined by the Secretary for the Board which rate shall be amended from time to time.
- f. Any user aggrieved by the final Board determination shall have the right to judicial review of such determination in accordance with Indiana law.
- g. If a user's stormwater user fee assessment is reduced or eliminated by the Board of the City of Goshen Department of Stormwater Management or court of law, the user shall be refunded accordingly for any overpayment made from the earlier of the date the stormwater user fee assessment was paid or was due and payable.
- h. A dispute or appeal of an ERU determination for stormwater user fee assessment shall not be a valid reason for non-payment of the originally assessed stormwater user fee.

6. Stormwater Utility Fund.

All stormwater user fees and penalties collected and interest earned thereon shall be deposited in the MS4 Stormwater Utility Fund.

7. Definitions.

For purposes of this Resolution, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a. Equivalent Residential Unit (ERU). The number of units, equal to the assumed average amount of impervious area of a single-family residential parcel of real estate within the City of Goshen, Indiana, which is established at three thousand six hundred (3,600) square feet of impervious area. The unit value, which will be carried out and rounded off to one (1) decimal place, being the equivalent of one-tenth (0.1) of an ERU, is also the basis for calculating the assessment of stormwater user fees for the City of Goshen stormwater system.
- b. Impervious Area. Those areas which prevent or impede the infiltration of stormwater into the soil as it enters under natural conditions prior to development. Common impervious areas include, but are not limited to roof tops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater run-off which existed prior to development.
- c. Non-Residential Real Estate. All real estate tax parcels which are not described by the definition of residential real estate shall be defined as non-residential. Non-residential real estate will include:
 - i. Agricultural real estate;
 - ii. Commercial real estate;
 - iii. Industrial real estate;
 - iv. Institutional real estate;
 - v. Church real estate;
 - vi. School real estate;
 - vii. Federal, state, and local government real estate;
 - viii. Utility real estate; and
 - ix. Any other real estate not mentioned in this list and which is not described by the definition of residential real estate.
- d. Residential Real Estate. A separate tax parcel of real estate which is primarily used for dwelling purposes on which a building is situated which building contains one (1) or more dwelling units which dwelling units are each used or

are intended to be used primarily for living, sleeping, cooking, and eating. Residential real estate shall include all types of dwelling units including single-family homes, duplexes, triplexes, and row type homes. Residential real estate shall also include condominium dwellings, apartment dwellings, and mobile home parks.

8. Repeal of Prior Resolutions

All resolutions, or parts thereof, that are inconsistent, or conflict, with the terms of this resolution are repealed to the extent of the inconsistency or conflict.

9. Severability.

The terms and provisions of this Resolution are determined to be severable; the invalidity or unenforceability of any section, sentence, clause, term, or provision of this Resolution shall not affect the validity of any other section, sentence, clause, term, or provision of this Resolution which can be given meaning without such invalid part or parts.

10. Effective Date.

This Resolution shall be in full force and effect from and after its passage, approval and adoption according to the laws of the State of Indiana. This resolution and any ordinance based on this resolution are intended to be effective on January 1, 2023, so long as (1) it is approved by the City of Goshen Common Council and (2) a similar ordinance applying the same rate increases outlined in Section 2 above is approved by the Elkhart County Commissioners and Elkhart County Council, as well as the Town of Bristol, and the City of Elkhart.

PASSED and ADOPTED by the Board of the City of Goshen Department of Stormwater Management on November _____, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

Michael A. Landis, Member



MUNICIPAL ADVISORS

Baker Tilly Municipal Advisors, LLC
112 IronWorks Ave, Ste C
Mishawaka, IN 46544
United States of America

T: +1 (574) 935 5178
F: +1 (574) 935 5928
bakertilly.com

November 4, 2022

Greater Elkhart County Stormwater Partnership
4230 Elkhart Road
Goshen, Indiana 46526

Re: Greater Elkhart County Stormwater Partnership (Indiana) – Rate Study

Dear Board Members:

The attached schedules (listed below) present unaudited and limited information for the purpose of discussion and consideration in the preliminary planning stage of a Stormwater rate study by the appropriate officers, officials and advisors of the Utility and the use of these schedules should be restricted to this purpose.

Pages

- 2 Pro Forma Annual Revenue Requirements and Annual Operating Receipts
- 3 Schedule of Present and Proposed Rates and Charges
- 4 Greater Elkhart County (Indiana) Stormwater Partnership Utility Present and Proposed Bill Comparison with Local Communities

We would appreciate your questions or comments on this information and would provide additional information upon request.

Very truly yours,

A handwritten signature in cursive script that reads "Jeffrey P. Rowe".

Jeffrey P. Rowe, Partner

GREATER ELKHART COUNTY (INDIANA) STORMWATER PARTNERSHIP

PRO FORMA ANNUAL REVENUE REQUIREMENTS
AND ANNUAL OPERATING RECEIPTS
(Amounts rounded to the nearest \$100)

	<u>Revenue Requirements</u>
<u>Revenue Requirements:</u>	
Operation and maintenance disbursements (1)	\$2,764,600
Allowance for replacements and improvements (1)	<u>3,739,100</u>
Total Annual Revenue Requirements	6,503,700
Less miscellaneous receipts (2)	<u>(137,500)</u>
Net Annual Revenue Requirements	<u><u>\$6,366,200</u></u>
<u>Annual Receipts:</u>	
Stormwater fees current (3)	<u><u>\$2,648,300</u></u>
Additional Receipts Required	<u><u>\$3,717,900</u></u>
Approximate Average Residential Monthly Bill (Rounded)	<u><u>\$3.00</u></u>

(1) Based on information provided by Greater Elkhart County Stormwater Partnership.

(2) Based on historical amounts adjusted to remove non-recurring receipts.

(3) Based on calendar year 2021 actual receipts.

(Subject to the attached letter dated November 4, 2022)

GREATER ELKHART COUNTY (INDIANA) STORMWATER PARTNERSHIP

SCHEDULE OF PRESENT AND PROPOSED RATES AND CHARGES

<u>Annual Rate per Customer Type:</u>	<u>Present</u>	<u>Proposed</u>		
		<u>Phase I</u>	<u>Phase II</u>	<u>Phase III</u>
Residential	\$15.00	(2) \$22.05	(2) \$29.10	(2) \$36.10
Non-Residential (per ERU) (1)	15.00	22.05	29.10	36.10

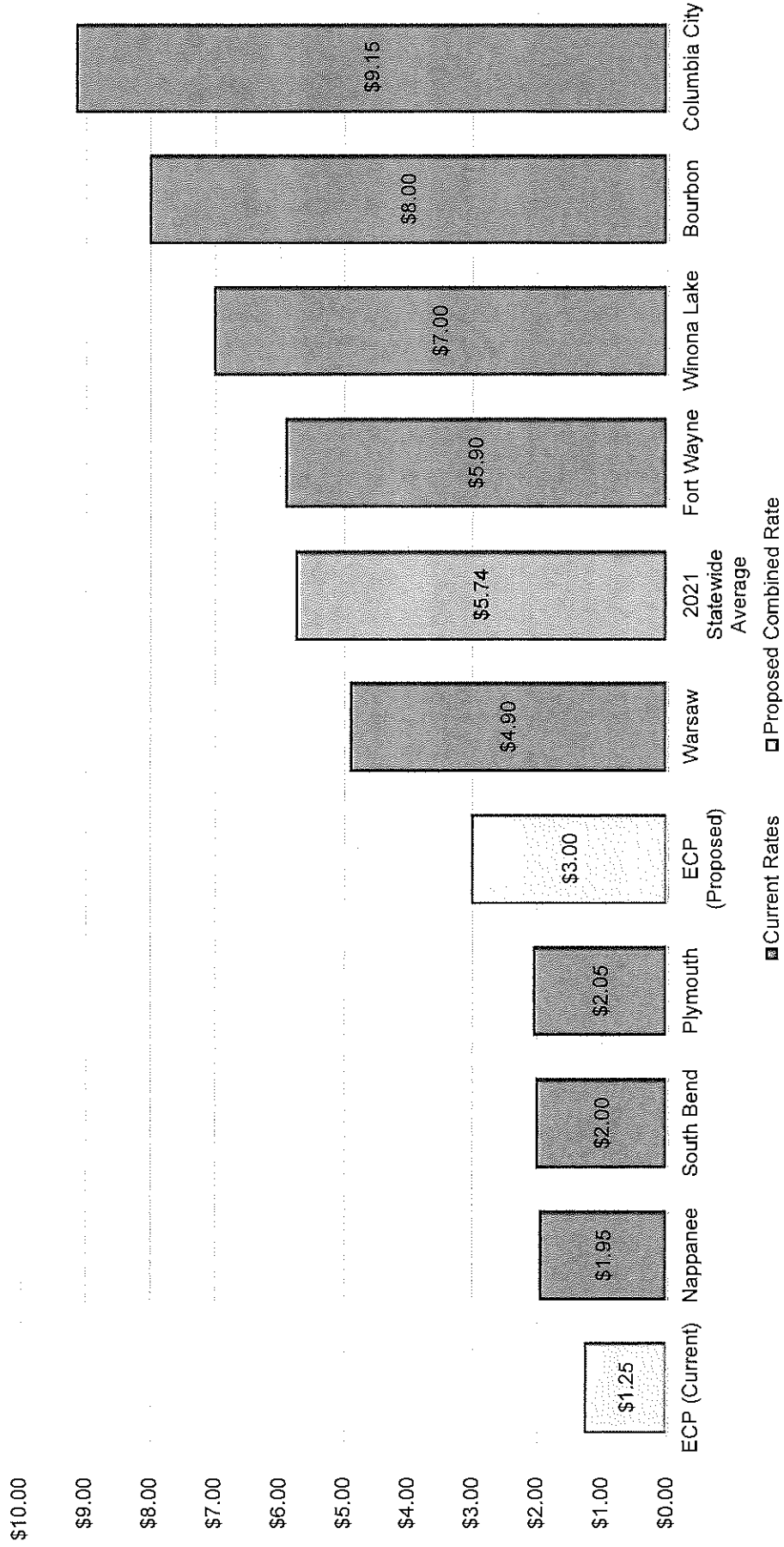
(1) 1 ERU (Equivalent Residential Unit) = 3,600 square feet

(2) Based on the rate increase proposed on page 2 split across three phases.

(Subject to the attached letter dated November 4, 2022)

GREATER ELKHART COUNTY (INDIANA) STORMWATER PARTNERSHIP

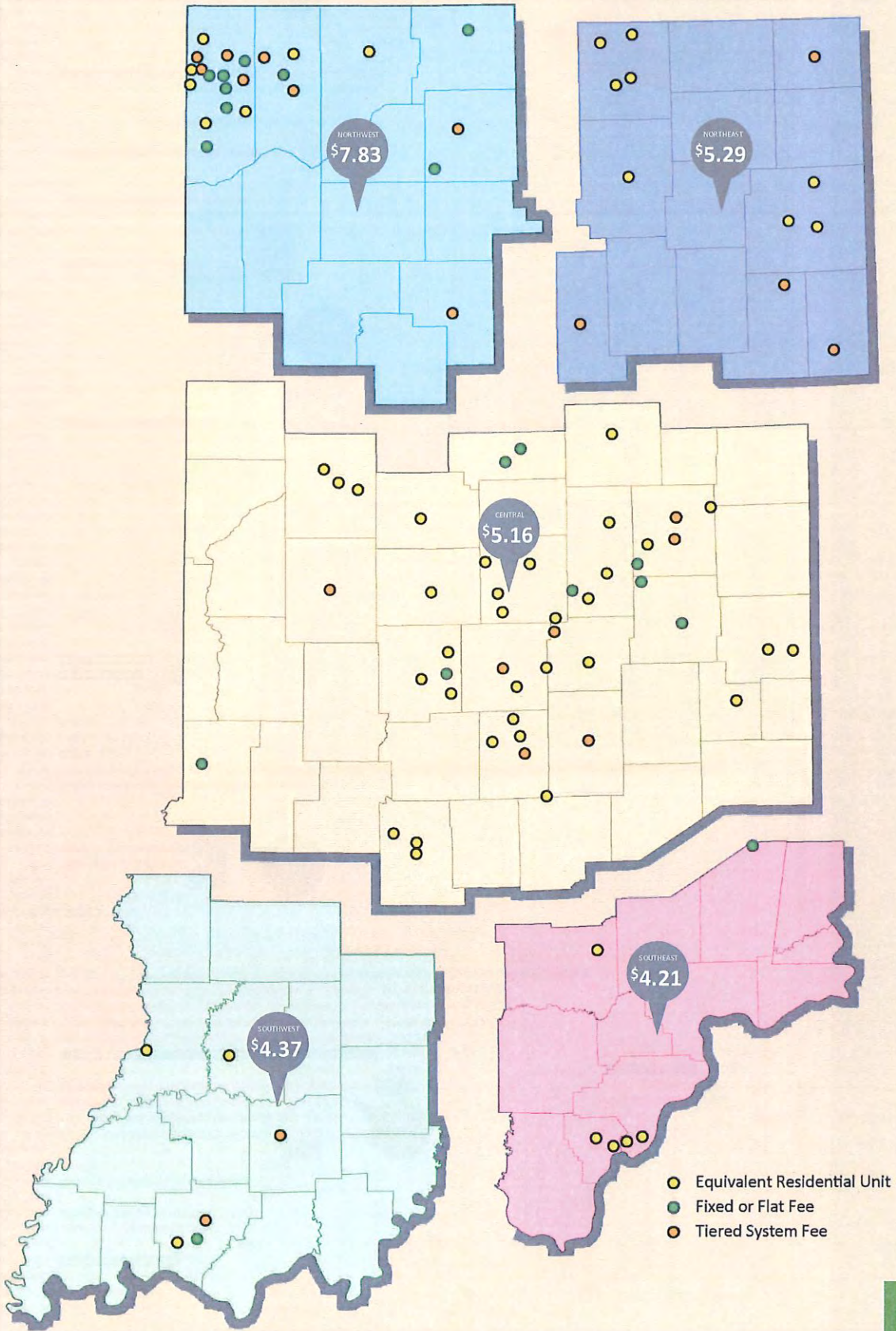
PRESENT AND PROPOSED BILL COMPARISON WITH LOCAL COMMUNITIES



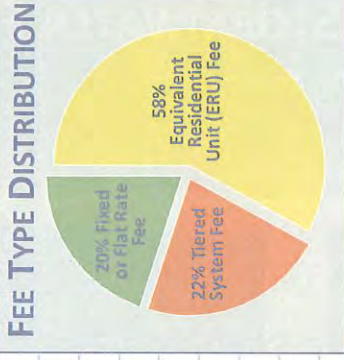
(Subject to the attached letter dated November 4, 2022)

AVERAGE MONTHLY SFR STORMWATER FEE

BY REGION



INDIANA STORMWATER UTILITIES MONTHLY SFR FEES AND FEE TYPES

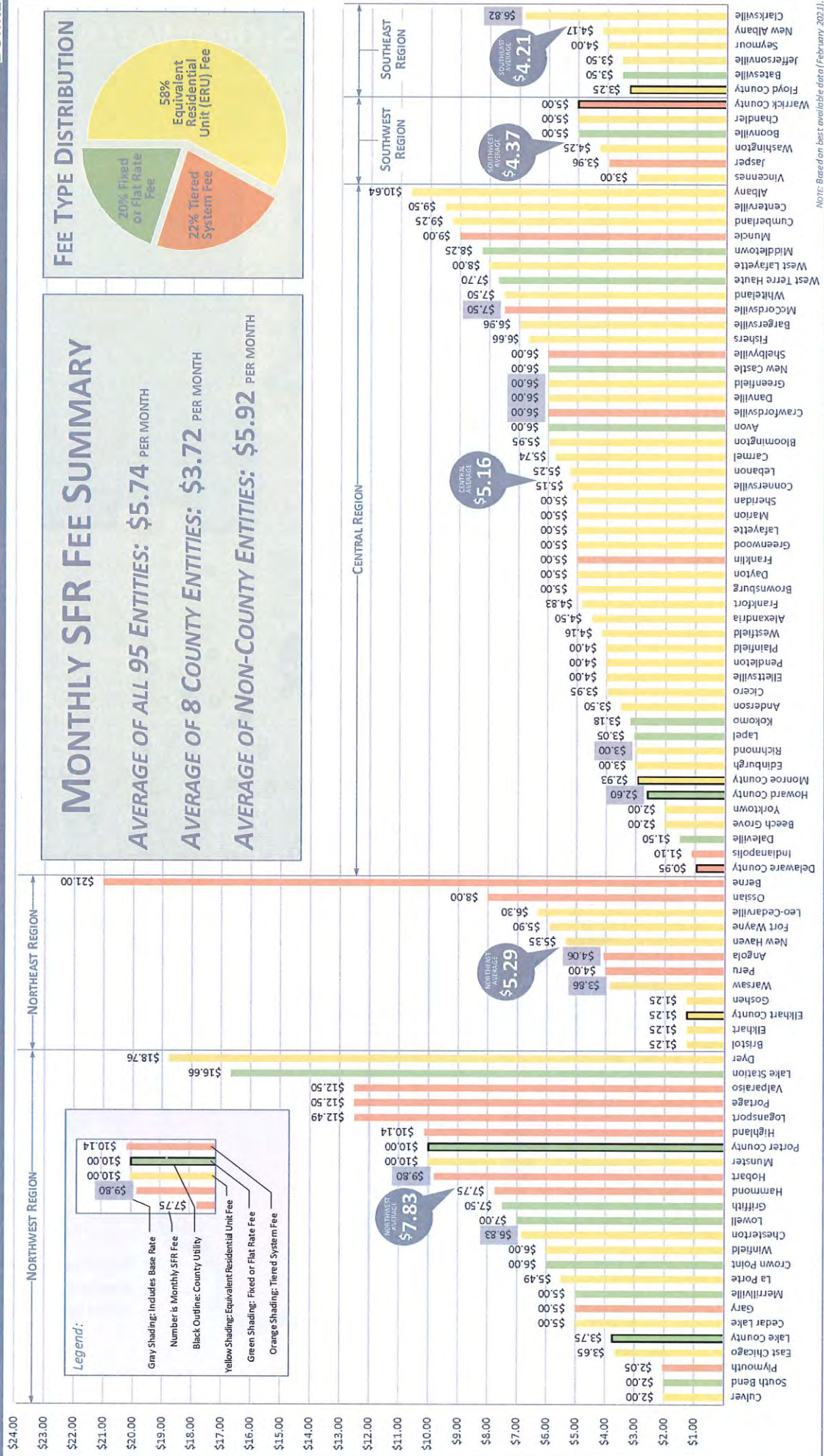


MONTHLY SFR FEE SUMMARY

AVERAGE OF ALL 95 ENTITIES: \$5.74 PER MONTH

AVERAGE OF 8 COUNTY ENTITIES: \$3.72 PER MONTH

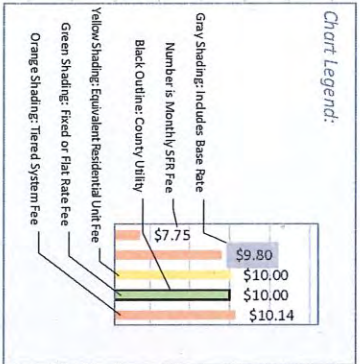
AVERAGE OF NON-COUNTY ENTITIES: \$5.92 PER MONTH



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

INDIANA STORMWATER UTILITIES

MONTHLY SFR FEES AND FEE TYPES

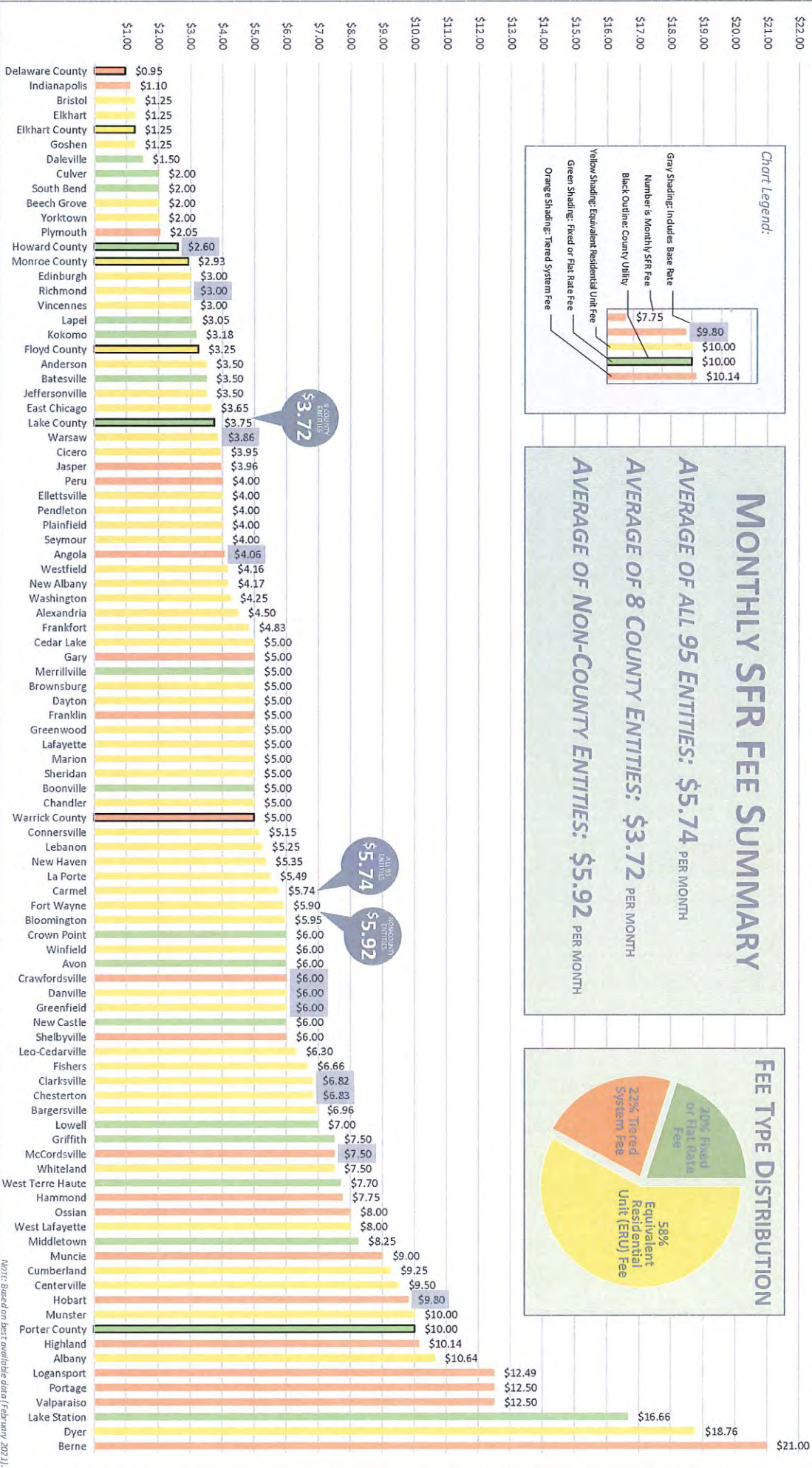
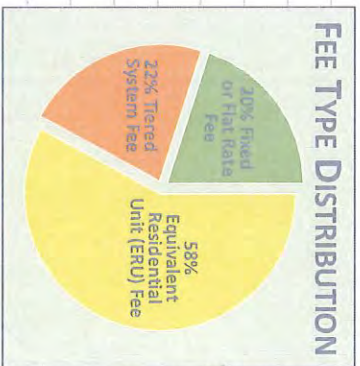


MONTHLY SFR FEE SUMMARY

AVERAGE OF ALL 95 ENTITIES: \$5.74 PER MONTH

AVERAGE OF 8 COUNTY ENTITIES: \$3.72 PER MONTH

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



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

RESOLUTION NO. 2022-01
GREATER ELKHART COUNTY STORMWATER PARTNERSHIP
ADVISORY BOARD

A RESOLUTION SUPPORTING THE AMENDMENT OF
THE STORMWATER USER FEE ORDINANCES WITH THE
CITY OF ELKHART, CITY OF GOSHEN, COUNTY OF ELKHART, AND TOWN OF BRISTOL

RECITALS

- A. The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the Clean Water Act, prohibit the discharge of any pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System ("NPDES") permit.
- B. In 1990, the United States Environmental Protection Agency ("EPA") adopted final rules that addressed stormwater issues in communities of 100,000 or more via the Phase I Stormwater NPDES Permit Regulations.
- C. In 1999, the EPA adopted final rules, via the Phase II Stormwater NPDES Permit Regulations, that addressed stormwater issues in urbanized areas of less than 100,000.
- D. In 2003, the Indiana Department of Environmental Management ("IDEM") adopted rules for the Phase II Stormwater NPDES Permit Regulations.
- E. The Municipal Separate Storm Sewer System ("MS4") entities comprising the Greater Elkhart County MS4 Partnership ("Partnership"), consisting of City of Elkhart, City of Goshen, Town of Bristol, and County of Elkhart (collectively, "Partners"), entered into an Interlocal Agreement, recorded with the Elkhart County Recorder's Office as Instrument No. 2006-04747 ("Interlocal Agreement") effective on October 8, 2005, which established a multi-jurisdiction advisory board ("Advisory Board") to, in part, establish uniform rates across all MS4 Partnership entities.
- F. In 2006, the Partnership Advisory Board proposed and the Partners agreed to and passed, by their respective boards, a stormwater user fee in the amount of \$15.00 per Equivalent Residential Unit ("ERU") with one ERU being a single residential parcel or 2,800 square feet of impervious area for non-residential parcels.

G. In 2010, the Partnership, through its Advisory Board, proposed and the Partners passed updated Ordinances to increase the ERU value for non-residential parcels to 3,600 square feet of impervious area and to revise the definition of "Residential Real Estate".

H. Indiana Code § 8-1.5-5-7 requires that every Department of Stormwater Management charge a user fee equal to the minimum amount necessary for the operation and maintenance of the stormwater system.

I. Since 2006, the State of Indiana has enhanced the requirements placed upon the Partners and has modified the NPDES permit process.

J. In 2022, the Advisory Board agreed that a review of the stormwater user fee was necessary to review the current stormwater user fee and the stormwater budgets for the Partners. Following this assessment, Baker Tilly US, LLP ("Baker Tilly") was retained to perform a rate analysis to determine whether the minimum amount necessary for the operation and maintenance of the stormwater system has increased since 2006 and, if so, what is the current minimum amount necessary.

K. Upon completion of the rate study, Baker Tilly concluded that the minimum rate should be \$36.10 per year ("Minimum Rate"), but that the Partners could select to increase the rate over a three phase approach to ultimately raise the rate to the Minimum Rate.

NOW, THEREFORE, BE IT RESOLVED by the Advisory Board of the Partnership as follows:

1. Recommendation of User Fee Amendment. Based upon the confirmed results of the Baker Tilly rate study, the Advisory Board recommends that the User Fee per ERU for each and every Partner be amended according to the following three phase schedule:

Phase 1. Starting January 1, 2023, the stormwater user fees will be \$22.05 per year per ERU.

Phase 2. Starting January 1, 2026, the stormwater user fees will be \$29.10 per year per ERU.

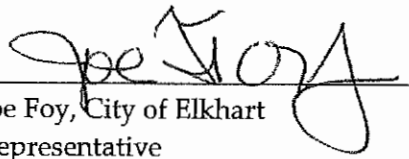
Phase 3. Starting January 1, 2029, the stormwater user fees will be \$36.10 per year per ERU.


2. Amendatory Effect. In light of the terms of the Interlocal Agreement and the desire by all Partners that rates remain uniform throughout all MS4 entities in Elkhart County, the

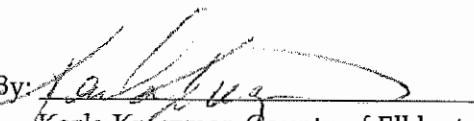
Advisory Board recommends that the three-phase user fee amendment only become effective for billing in calendar year 2023, if an Ordinance adopting the amendment is approved by each of the Partners.


RESOLVED this November 17, 2022.

GREATER ELKHART COUNTY
MS4 PARTNERSHIP, ADVISORY BOARD

By: 
Joe Foy, City of Elkhart
Representative

By: 
Jason Kauffman, City of Goshen
Representative

By: 
Karla Kreczmer, County of Elkhart
Representative

By: 
Mike Yoder, Town of Bristol
Representative