



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE JANUARY 23, 2023 REGULAR MEETING**

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

Present: Mayor Jeremy Stutsman, Mike Landis, Mary Nichols and Barb Swartley

Absent: None

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

REVIEW/APPROVE MINUTES: Mayor Stutsman presented the minutes of the Jan. 9, 2022 Regular Meeting. Board member Mary Nichols moved to approve the minutes as presented and the motion was seconded by Board member Barb Swartley. Motion passed 4-0.

REVIEW/APPROVE AGENDA: Mayor Stutsman presented the meeting agenda with the addition of item #17. *Legal Department: Approve and authorize Mayor to execute a revised agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of \$21,924.00.* Board member Nichols moved to approve the agenda as suggested. Board member Swartley seconded the motion. Motion passed 4-0.

1) Police Department: Approve the hiring of Daniil V. Shendel #223 as a probationary patrol officer, retroactive to Monday Jan. 16, 2023

City Police Chief José Miller asked the Board to approve the hiring of Daniil V. Shendel for the position of probationary patrol officer. He said Shendel has passed all exams and has been approved by both the local and State pension boards. Chief Miller said he was thrilled to have Shendel as a new police officer serving the community, and asked that the hiring to be retroactive to Jan. 16, 2023.

Nichols/Swartley moved to approve the hiring of Daniil V. Shendel for the position of probationary patrol officer, retroactive to Jan. 16, 2023. Motion passed 4-0.

After the Board approved the promotion, Mayor Stutsman swore Officer Shendel into office.

2) Police Department: Approve the hiring of Matthew T. Whelchel #224 as probationary patrol officer, retroactive to Monday Jan. 16, 2023

City Police Chief José Miller asked the Board to approve the hiring of Matthew T. Whelchel for the position of probationary patrol officer. He said Whelchel has passed all exams and has been approved by both the local and State pension boards. Chief Miller said he was thrilled to have Whelchel as a new police officer serving the community, and asked that the hiring to be retroactive to Jan. 16, 2023.

Nichols/Swartley moved to approve the hiring of Matthew T. Whelchel for the position of probationary patrol officer, retroactive to Jan. 16, 2023. Motion passed 4-0.

After the Board approved the promotion, Mayor Stutsman swore Officer Whelchel into office.



3) Legal Department for Fire Department: Conditional offer of employment to Jared A Smith

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to extend a conditional offer of employment to Jared A. Smith as a probationary firefighter and approve the Conditional Offer of Employment Agreement included in the Board's agenda packet and authorize the Mayor to execute the agreement.

Marks said Smith possesses Firefighter I/II certification. Once employed, she said Smith will be required to successfully complete a Basic EMT training program and obtain Basic EMT certification, 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.

In a memorandum to the Board, **Marks** wrote that the agreement sets forth the conditions that Smith must meet prior to beginning employment with the Fire Department as a probationary firefighter, which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. She indicated that the Fire Department will ask the Board to confirm the offer of employment when a position becomes available.

Nichols/Swartley moved to extend a conditional offer of employment to Jared A. Smith as a probationary firefighter and approve the Conditional Offer of Employment Agreement included in the Board's agenda packet and authorize the Mayor to execute the agreement. Motion passed 4-0.

4) Dale Klassen request: Release of sewer usage fees during house rehabilitation of 417 Gra-Roy Drive

Dale Klassen of Goshen asked the Board to release him from all sewer usage fees at 417 Gra Roy Drive during the time he is renovating the property and until a water meter is installed. The current monthly charges are \$94.92.

In a written request, **Klassen** indicated that he recently purchased this property and is in the process of renovating it and has a City building permit. **Klassen** indicated the property has had water service through a well and has never been connected to City water service. The previous owner never installed a meter to monitor water usage even though the City sewer line was connected about 1978.

Klassen wrote that the property has no functioning water supply lines because they were in poor condition and he removed them all. The well pump is also not working. **Klassen** wrote that during the course of his work, all new water lines will be installed as well as provisions to connect a water meter. He hoped that all fees would be waived until a water meter was installed. Since this property will be inspected upon completion by the Building Department, he wrote that there should be no problem determining when water usage begins.

Mayor Stutsman asked if City staff had any response to the request.

Kelly Saenz, City Water & Sewer Utilities Business Office Manager, said that she had prepared a staff report that was included in the Board's agenda packet. She summarized the department's position.

Saenz said 417 Gra-Roy Drive has been connected to the City's sewer system since 1976 and has never been connected to the City's water system. She said the previous owner never installed a water tap, nor connected to the City's water system, nor did he connect a water meter to measure the sewer system usage. She said the account has been billed at a flat sewer rate since the beginning.

Saenz said without a water meter, the City has no way of measuring how much water or sewer system service is being used, which is why the home has flat rate billing. And without a meter, **Saenz** said the City would have no way of determining if water or the sewer system is being used in the home during its renovations.

So, **Saenz** said the Water & Sewer Utilities Department does not support **Klassen's** request to release sewer usage fees because of the direct impact of the home being connected to the sewer system.



Board member Swartley said that Klassen's written request indicated there is no operable well on the property and no pipes. She asked Saenz how there could be sewer system usage if there is no water at the home.

Saenz responded, "We would have no way of knowing that."

Board member Swartley asked **Klassen** if he intended to hook the home to the City water system. **Klassen** said that he does, but added that he had purchased a \$500 well pump in case he decided to continue to use the well. Still, he said the quality of City water would be better and he wouldn't have to treat the well water. He added that the home has been in "poor condition" for a while and he hopes to move there in a few years.

Mayor Stutsman asked **Klassen** if this will be an ongoing renovation for a few years. **Klassen** said he hopes it doesn't take a few years. He said that hasn't been his track record with houses to take so long and he doesn't intend to "sell or flip" the home and that he is sacrificing his car hobby for this home purchase.

Board member Landis said most often people seek relief from sewer fees when they have had water leakage other than through the sewer system. In those cases, he said City staff members can visit and confirm that there was no release into the sewer and fee relief is granted. Landis asked how this was different than a City worker being able to visit the home and determine there was no working water system that was connected to the sewer system.

City Director of Public Works & Utilities Dustin Sailor responded that this was a different situation because the City was being asked to rely on the "honor system." He said City staff could visit once and confirm the sewer system wasn't being used, but sometime over the next two years the water system could be connected to the sewer system. In addition, Sailor said someone could use the bathroom and pour a bucket of water in the toilet to flush away the waste. "Utility just can't work on an honor system like that," he said.

Mayor Stutsman asked if gutters on the home were depositing water into the sewer system. **Sailor** responded that the City hasn't inspected the home; staff just know the home has been connected to the sewer system. The **Mayor** asked **Klassen** if he knew the answer. **Klassen** said he offered the City an inspection at any time.

Klassen said he understood the down side of releasing fees under the honor system and said he had no doubt that the City has been burned on such agreements in the past. However, he said he had a problem with the City ordinance that established the flat rate sewer fee because it is "unstoppable." He said the flat fee can be reduced if a water meter is installed, but if a meter is ever disconnected, the higher fee takes effect.

Klassen said the ordinance also doesn't make any allowances for homes that may be vacant or are being renovated. He said the home's sole occupant died in 2021 and his estate had to continue paying the sewer fees from his death until Klassen purchased the home. Klassen said City staff told him the only way he could be relieved of the fee would be to demolish the home. He also pointed out that some City residents whose homes are connected to the City water system, still rely on wells to some degree and that this is allowed.

Board member Landis asked **Sailor** if **Klassen** would be eligible for sewer fee relief if he connected to City water and then shut off the system, which would prove he wasn't using the sewer system. **Sailor** said the City does provide an allowance for "snowbirds" who are gone for a few months. **Saenz** said they do pay a \$30 reconnection fee. Sailor said the account could be made inactive, but charges restored if there was water usage as determined by a meter.

Klassen said this issue arose when the family of the man who owned the home reported to the City that the man died and they wanted to terminate the sewer account. He said they were told there was no way to do that. So, in this case, he said the charges continued even though no water was used. Klassen said that if the Board denies his request for relief, he will install pipes and a water meter so as not to pay sewer charges for a service he isn't using.



Mayor Stutsman asked City staff what happens in cases when someone who is renovating a home, disconnects the water meter, turns it in to the City and requests a suspension in fees. **Saenz** said the City grants this after shutting off the water at the curb.

The **Mayor** asked if in those cases, a person could still use the sewer system by using the toilet and flushing away the waste by pouring in a bucket of water. **Saenz** said that could happen.

Mayor Stutsman asked **City Attorney Bodie Stegelmann** if a short-term release from sewer fees was possible as this is allowed for people connected to City water who are renovating a home. He said some of those people may have a well and continue using the sewer system and the City would never know. He said the City must treat people equally. Before Stegelmann could answer, **Board member Landis** said the City could pour a chemical down a well, contaminate it and make it inoperative. Landis said he stated this to ask how far the City wanted to go.

City Assistant Planning & Zoning Administrator Rossa Deegan said he read the staff report and followed the discussion so far and wanted to make a comment the Board might find useful. Deegan said doesn't know the scope of Klassen's home rehabilitation, but if any plumbing work is done, the City zoning ordinance will require that the home be connected to the City water system. So, Deegan said no zoning clearance will be issued for the property without that stipulation being met.

Klassen said he took out a valid building permit, which is on file for his work, and it is posted at the home. Klassen said when he applied for the permit, he indicated that he would be replacing all plumbing in the house.

Asked to share his thoughts, **Stegelmann** said that in the cases of rehabilitation with a home temporary disconnected from City water services versus one that has never been connected to City water, it all comes down to verification that no water is going down the drain. He said that is the "missing piece in both scenarios."

Mayor Stutsman said the Building Department will be conducting periodic inspections of the home and can keep an eye on the situation and check for water usage.

Landis said he would support **Klassen** being charged something less than \$95 a month. The **Mayor** agreed. **Landis** said in the worst case, perhaps this could be treated like the "snowbird" situation so the home would maintain a sewer account, but the charges would be suspended.

Mayor Stutsman said that in speaking with staff last week, this appeared to be a clear case where a release from fees could not be granted. However, he said based on today's discussions, it seems like perhaps there should be some relief for **Klassen**. He said he thought the fees should be waived.

Sailor said this is the problem with sewer-only accounts. He said that if the holder of a sewer-only account no longer occupies the property, there is no one on the account anymore and the account is dropped. He said City staff has to closely watch the 215 remaining sewer-only accounts in the City to ensure those using the sewer system are paying. He added that the City sets the sewer-only fees and they can't be changed by the Board of Works.

Stegelmann confirmed Sailor's understanding and said only the Common Council can change sewer rates.

Mayor Stutsman confirmed with staff that the Board can suspend sewer fees for a period of time. He said Klassen can then return to the Board and give an update and City staff can monitor for any possible water usage.

Mayor Stutsman/Landis moved to waive the sewer charges at 417 Gra Roy Drive for six months. The motion passed 4-0.

Mayor Stutsman said it was his expectation that **Klassen** would return in six months and provide an update on his work and could seek an extension if needed. He said this was a better way to move forward than an indefinite fee suspension. **Klassen** said he would prefer a year, but said he would accept a six-month release from the fees.



5) Allison & Kyle Stiffney request: Approve height reduction of fence and replacement and update of the existing patio at 702 S. 6th Street with some encroachment into the City's right-of-way

Kyle Stiffney of 702 S. 6th Street asked the Board to give permission to update the home's existing 30-year-old patio for aesthetic reasons and to remove and lower and six-foot-tall fence for safety reasons. He said the fence has already been removed and replaced with a smaller fence. He said the patio footprint would not be increased. He added that the city previously approved the patio extending into the City's right-of-way.

In a written request to the Board, **Stiffney** wrote that he had a 320 square foot (20' x 16') brick patio surrounded by a wooden fence that extends into the City right-of-way. Facing north, the patio is located on the north side of the house and west side of the concrete driveway. He indicated that this patio was installed in the early 1990s with Board of Works approval and existed prior to Stiffney and his wife purchasing the home in 2018. He said this longstanding approval should be "grandfathered."

Stiffney wrote that the fence surrounding the patio created a safety risk because it limited the visibility of pedestrians on the sidewalk from the driveway. He proposed replacing the existing brick surface with concrete pavers and reducing the fence height to a maximum of two feet on the north and east sides.

Stiffney indicated the overall size of the patio and the encroachment into the right-of-way would remain as it has been since 1992. He wrote the concrete pavers would be able to be disassembled and reassembled in the event the City needed to access that portion of the right-of-way. He acknowledged this would be at the homeowner's expense.

In a report for the Board, Assistant Planning & Zoning Administrator Rossa Deegan wrote that the details of the approval of a hot tub/patio area and fence approval at 702 S 6th Street were as follows:

- Board of Zoning Appeals approval for a 6' high fence and hot tub in front yard setback up to the Douglas Street right-of-way approved on Sept. 22, 1992.
- Board of Works tabled the request to locate the fence and patio in right-of-way (33" from sidewalk) on Sept. 28, 1992.
- The Board approved the request to locate the fence and patio in right-of-way on 10-5-92. It's unclear if it was approved at a distance of 33" from sidewalk or 6' based on the meeting minutes. The Planning Department does not have diagrams referenced in the minutes.
- A zoning clearance for a 16' x 21' patio was issued Oct. 7, 1992 and was attached to the Board's meeting packet.

Deegan also wrote that the layout included in the zoning clearance is the same one used for the variance request, but it does not show an encroachment into the right-of-way. Measurement of the patio area in recent aerials indicate the patio area is closer to 10' x 21' than 16' x 21'.

Mayor Stutsman asked City staff to respond to Stiffney's request.

City Director of Public Works & Utilities Dustin Sailor summarized the Board's previous review and approval of the patio and fence in 1992. He said then-City Engineer Horace Miller recommended against approval, but the Board granted approval anyway. He stated there was some ambiguity on the approved location of the fence and patio. Despite the previous approval, Sailor said the City should be consistent and not "grandfather in" new requests even while acknowledging that a case could be made to approve this request.

Mayor Stutsman stated that when approving such requests, it has been the Board's practice to impose a condition that if the City needs access to the right-of-way, any surface, such as pavers or bricks, must be removed and restored at the property owner's expense. **Stiffney** responded that he agreed to that condition in his written request to the Board of Works. He noted there is no sewer line in the right of way and only an 80-year-old maple tree.



Board member Landis said he has often discussed with **Dustin Sailor** the dilemma posed by home improvements in the City's right-of-way. He said City staff members are troubled when a homeowner becomes upset when workers remove a brick patio or some other improvement to access pipes in the right-of-way. While he said **Stiffney** has stated he is willing to remove the patio to allow for City work, other residents are not as accommodating. And that is why Landis said it's important that there is a City record that this condition was imposed and accepted. **Stiffney** said he understood Landis' point.

Mayor Stutsman said because of the Board's previous approval, it appeared **Stiffney** wanted to alter something already done for the better, so he would be in favor of granting the request.

Board member Landis said that if **Stiffney's** home was in a new neighborhood, the City would never approve such a request. However, he said Goshen has a mix of old and modern neighborhoods with varying setbacks. And in this case, he said, the home doesn't really have a backyard that could accommodate a patio, so it's problematic for a homeowner in Stiffney's part of town to obey the setback standards of modern neighborhoods.

Board member Swartley said she agreed with approving Stiffney's request.

Mayor Stutsman/Landis moved to approve the update of the existing patio at 702 S. 6th Street with some encroachment into the City's right-of-way with the condition that the homeowner will bear the expense of removing and replacing the patio if the City or a utility needs access to the right-of-way. Motion passed 4-0.

6) Patriot Tree Corp.: Request to close a portion of 8th Street for one day, Jan. 24 to Jan. 27, 2023

Crist Helmuth of Patriot Tree Corp., asked the Board to approve the closure of a section of South 8th Street for a tree removal. He said closure was requested from Jackson Street to a few blocks south of 1006 S. 8th Street for just one day on Jan. 24 through Jan. 27, 2023. He said the Street Department has agreed to provide barricades. City staff did not object to the request.

Nichols/Swartley moved to approve the closure of South 8th Street, from Jackson Street to Franklin Street south of 1006 S. 8th Street, for one day from Jan. 24-Jan. 27, 2023 for a tree removal. Motion passed 4-0.

7) Legal Department: Resolution 2023-01, Acquisition of Real Estate at 1402 West Wilden Avenue

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to adopt Resolution 2023-01, Acquisition of Real Estate at 1402 West Wilden Avenue.

Marks said the City wishes to acquire the real estate at 1402 West Wilden Avenue for use by the Waste Water Treatment Plant. Resolution 2023-01 approves the terms and conditions of a purchase agreement with LDM Investments, LLC for the City's acquisition of the real estate and ratifies the Mayor's execution of the purchase agreement on Dec. 22, 2022. The resolution further authorizes the Mayor to execute any other documents on behalf of the Board and the City of Goshen necessary to effectuate the City's acquisition of the property.

Under the terms of the agreement, the City will pay LDM Investments, LLC \$345,000 for the real estate and the closing will take place on or before March 31, 2023.

The property, which currently houses **Teledata Inc.**, has approximately 3,000 square feet of office space and 4,500 square feet of floor or storage space. A 14-foot overhead door gives access to warehouse space. The office space has a reception area, six offices, a common work area, a conference room and a break area. The lot size is 37,462 square feet.



Mayor Stutsman said that in December, City staff informed him that this property was available for purchase and that it was directly across the river from the City wastewater treatment plant. During the most recent upgrades to the plant, the City had planned to construct a building for storage and seasonal equipment. That building was eliminated from the project because it would have been in the flood plain and because of its \$600,000 cost.

Mayor Stutsman said this building is cheaper, will meet the City Utility's needs and is in a great location. As an extra benefit, he said the front offices are "immaculate."

Because of actions of previous Clerk-Treasurers, **Mayor Stutsman** said City records are being stored all over the City in different buildings. He said the Teledata building purchase will allow for the consolidation of the storage of all of the City's records in a secure location. So, he said the purchase will serve two purposes for the City.

Nichols/Swartley moved to adopt Resolution 2023-01, Acquisition of Real Estate at 1402 West Wilden Avenue. Motion passed 4-0.

8) Legal Department: Agreement with Eurofins Eaton Analytical, LLC for 2023 Drinking Water Compliance Standards Testing

Assistant City Attorney Matt Lawson said the City was seeking an agreement with Eurofins Eaton Analytical, LLC for 2023 Drinking Water Compliance Standards Testing. He said Eurofins Eaton Analytical, LLC will be compensated \$2,845 for the services.

Nichols/Swartley moved to approve and authorize the Mayor to execute the agreement with Eurofins Eaton Analytical, LLC for 2023 Drinking Water Compliance Standards Testing, at a cost of \$2,845. The motion passed 4-0.

9) Legal Department: Approve the settlement agreement and mutual release to settle the claim made by Anita Shannon, and authorize Mayor Stutsman to execute the agreement

City Attorney Bodie Stegelmann told the Board that the City purchased real property from Anita Shannon located at 708 E. Lincoln Avenue as part of a public works project. He said the City issued an IRS Form 1099 to Shannon that attributed income to Shannon, and caused the IRS to assess income taxes to Shannon.

Stegelmann said Shannon hired an attorney to help her resolve the IRS claim of unpaid taxes, and served the City with a Notice of Tort Claim. City staff has been able to resolve the claim for the sum of \$3,565.00.

Stegelmann asked the Board to approve the settlement agreement pursuant to the terms of the Settlement Agreement and Mutual Release document provided herewith and authorize Mayor Stutsman to execute the agreement on behalf of the Board.

Mayor Stutsman said he agreed with the settlement. He also said he wanted to state for the record that this incident did not happen while **Richard R. Aguirre** was the City's Clerk-Treasurer.

Nichols/Swartley moved to approve the Settlement Agreement and Mutual Release to settle the claim made by Anita Shannon, and authorize Mayor Stutsman to execute the agreement on behalf of the Board of Public Works and Safety. Motion passed 4-0.

10) Legal Department: Approve agreement with the Arion Consultants, Inc. for work on the Lower Elkhart River Water Quality Management Planning Grant in the not to exceed amount of the City of Goshen's Grant award of \$154,725



Assistant City Attorney Matt Lawson asked the Board to approve an agreement with Arion Consultants to complete the work associated with the Lower Elkhart River Water Quality Management Planning Grant, which was awarded to the City of Goshen near the end of 2022. He said Arion Consultants will be paid a not-to-exceed amount of \$154,725 for work performed in accordance with this agreement, which is equivalent to the total grant amount awarded to the City of Goshen.

According to a scope of services agreement, Arion Consultants will: produce a watershed management plan (WMP) for the Lower Elkhart River watershed, Hydrologic Unit Codes (HUC) 0405000117 and 0405000119; coordinate water quality monitoring; develop and implement an education and outreach program designed to bring about behavioral changes that will lead to reduced nonpoint source pollution in the watershed; and prepare and submit an electronic copy of a progress report to IDEM (Indiana Department of Environmental Management) with each invoice, on at least a quarterly basis.

Nichols/Swartley moved to approve and authorize the Mayor to execute the agreement with the Arion Consultants, Inc. to complete the work associated with the Lower Elkhart River Water Quality Management Planning Grant in the not to exceed amount of the City of Goshen's Grant award of \$154,725. The motion passed 4-0.

11) Planning & Zoning Department: Approval of Community Based Development Organization Agreement for Multi-Unit Housing Rehabilitation for Program Year 2022

Theresa Cummings, the City Community Development Specialist, asked the Board to approve the CBDO (Community Based Development Organization) agreement for multi-unit housing rehabilitation for the Community Development Block Grant Program Year 2022, and authorize the Mayor to sign the agreement.

Cummings said the housing grant will provide LaCasa, Inc. with \$130,000 for multi-family housing rehab. She said CDBG funding for this project was made available and implementation is scheduled to begin within this program year (2022), in the spring. The agreement was attached to the Board's agenda packet.

Nichols/Swartley moved to approve the CBDO agreement for the multi-unit housing rehabilitation project for CDBG Program Year 2022, and authorize Mayor Stutsman to sign the agreement. Motion passed 4-0.

12) Water & Sewer Department: Request for road closure on Chicago Avenue between North Harrison Street and North Riverside Boulevard

Kent Holdren, Superintendent of City Water Treatment and Sewer Department, told the Board that the City Water and Sewer Department will be repairing a main line water valve on Chicago Avenue, between North Harrison Street and North Riverside Boulevard.

Holdren said he work will require excavation of the road, with a trench that will be approximately nine feet in depth. For the safety of the work crews and the public, he said the City is requesting permission to close Chicago Avenue, between North Harrison Street and North Riverside Boulevard, to thru traffic starting 8 a.m. Tuesday, Jan. 24 and reopening for traffic on Friday evening, Jan. 27. He said City staff will post signage of the detour route.

Nichols/Swartley moved to approve the closure of Chicago Avenue, between North Harrison Street and North Riverside Boulevard, to thru traffic starting 8 a.m. Tuesday, Jan. 24 and reopening for traffic on Friday evening, Jan. 27. Motion passed 4-0.



13) Engineering Department: Approve the acceptance of the infrastructure and maintenance bond for the 2022 Concrete Paving project

City Director of Public Works & Utilities Dustin Sailor told the Board that the installation of infrastructure (concrete pavement, rolled curb, ADA ramps and sidewalk) has been satisfactorily completed for the 2022 Concrete Paving Project. The Engineering Department recommends that the infrastructure be accepted for maintenance. The one-year maintenance bond in the amount of \$101,448.59 (10% of the construction costs) for the infrastructure has been submitted to the City of Goshen Engineering Department and was attached to the Board's agenda packet.

Nichols/Swartley moved to approve the acceptance of the infrastructure and maintenance bond for the 2022 Concrete Paving project. Motion passed 4-0.

14) Engineering Department: Approve revocable license agreement to encroach into easement with Keystone RV Co., 2694 Hackberry Drive, for building expansion/improvements

City Director of Public Works & Utilities Dustin Sailor told the Board that attached to the Board's meeting packet was an Agreement to Encroach into Easement with Keystone RV Company at 2694 Hackberry Drive. Keystone RV is seeking to expand its building over the original easement and to relocate the utilities presently in the original easement to a location east of the current easement and expanded building and improvements.

Nichols/Swartley moved to approve the Revocable License Agreement to Encroach Into Easement with Keystone RV Co. at 2694 Hackberry Drive for a building expansion and improvements. Motion passed 4-0.

15) Engineering Department: Approve Change Order No. 5 to extend the completion date for over seeding to May 15, 2023, and completion of all other punch list items to May 31, 2023

City Director of Public Works & Utilities Dustin Sailor told the Board that HRP Construction has requested a revised completion date of May 31, 2023 for The Crossing Subdivision Drainage project. He said Goshen Engineering concurs the original substantial completion date of Nov. 1, 2022, should be extended due to the weather and site conditions not allowing the punch list items to be completed. These items include, over-seeding, stabilization, rut correction, millings compaction, and straightening arborvitae.

Sailor said Goshen Engineering recommends the Board approve an extension for over-seeding until May 15, 2023, and for all other punch list items until May 31, 2023.

Nichols/Swartley moved to approve Change Order No. 5 to extend the completion date for over-seeding to May 15, 2023, and completion of all other punch list items to May 31, 2023. Motion passed 4-0.

16) Clerk-Treasurer's Office: Approve encumbrances from the 2022 Budget to the 2023 Budget

Deputy Clerk-Treasurer Jeffery Weaver told the Board that attached to the Board's meeting packet for the Board's approval and execution was the list of accounts with a balance in the 2022 City budget that will be encumbered into the 2023 budget.

In a memorandum provided to the Board, **Weaver** indicated that at the end of each year, department heads review any unspent budget and compare it to their outstanding invoices or contracts. If any 2022 unspent budget is available to pay an outstanding 2021 invoice or contract, then the amount can be encumbered into 2023, but only for the approved expense.



Weaver indicated the attached budgeted amounts were remaining in the 2022 budget, and department heads requested to encumber the amounts into 2023. For each encumbrance, the department heads presented an invoice, purchase order, or executed agreement or contract. They were reviewed by the Clerk-Treasurer's and Mayor's offices. The final approval for these encumbrances falls on the Board to approve the total encumbrance amount.

Weaver reported the encumbrances for 2023 total \$14,573,893.53 – the largest amount the City has ever encumbered due primarily in delays in our capital projects; 75% of the total encumbrances, or \$11,072,389.29 are capital expenses, and the remaining amounts are various contracts or invoices for services and supplies.

Mayor Stutsman said 2022 was the largest-ever budget for the City of Goshen because in 2020 and 2021, several projects were delayed because of interruptions and delays caused by the COVID-19 pandemic. He said the City is "still playing catch up" to get those projects moving forward. The Mayor said that while this is a high number of encumbrances, it was expected and he believes in the coming years that encumbrances will decline. He also noted that most of the encumbrances were for capital projects,

Nichols/Swartley moved to approve \$14,573,893.53 of encumbrances from 2022 into the 2023 budget. Motion passed 4-0.

17) Legal Department: Approve and authorize Mayor to execute a revised agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of \$21,924.00

Assistant City Attorney Matt Lawson said that on Dec. 12, 2022, the Board approved and authorized Mayor Stutsman to execute an agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA (Supervisory control and data acquisition) system.

After the Board approved the agreement, **Lawson** said Q-mation, Inc. negotiated changes to some of the terms. He said City staff agreed to these revisions and recommended that the Board approve the revised agreement and authorize Mayor Stutsman to execute the agreement.

Lawson said the cost for Q-Mation's services under this agreement will remain at \$21,924.

NOTE: The City Legal Department provided a memorandum and new draft agreement for consideration by the Board (EXHIBIT #1)

Nichols/Swartley moved to approve and authorize Mayor Stutsman to execute a revised agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of \$21,924. Motion passed 4-0.

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

Mayor Stutsman opened Privilege of the Floor at 2:54 p.m.

There were no public comments, so Mayor Stutsman closed Privilege of the Floor.

At 2:54 p.m., Mayor Stutsman temporarily closed the Board of Works & Safety meeting and convened the City of Goshen Stormwater Board to consider a single agenda item.



CITY OF GOSHEN STORMWATER BOARD

Regular Meeting Agenda

2:00 p.m., Jan. 23, 2022

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

Members: Mayor Stutsman, Mike Landis and Mary Nichols

1) **Stormwater Department: Public hearing and proposed agreement regarding erosion and sediment control issues associated with the Green Oaks of Goshen construction project located at 282 Johnston St.**

City Stormwater Coordinator Jason Kauffman said he was appearing before the Board to discuss erosion control and stormwater issues at the Green Oaks of Goshen construction project located at 282 Johnston St. He noted that he had provided a staff report in the meeting packet, but also would be presenting information using a PowerPoint presentation, "Green Oaks of Goshen" (EXHIBIT 2).

BACKGROUND:

In a memorandum to the City Stormwater Board, Kauffman reported that the developer of the **Green Oaks of Goshen assisted living facility, 282 Johnston Street, began land disturbance and construction activities in September 2021, and until April 2022, the management of erosion and sediment control measures met local and state requirements.**

However, **Kauffman wrote that in April 2022, the Goshen Stormwater Department and the Elkhart County Soil and Water Conservation District began to routinely observe erosion and sediment control practices in violation of the Project's stormwater pollution prevention plan (SWPPP). In total, the Goshen Stormwater Department has issued six (6) Notices of Violation to the owner and contractors (Evergreen Construction Company and Ritschard Bros. Inc.).**

He wrote that these violations included:

1. Stone Construction Dive is either not properly maintained or missing
2. Inlet Protection measures not installed or properly maintained
3. Sediment Tracking onto Johnston Street was not cleaned up in a timely manner
4. Disturbed Soils not Stabilized in a timely manner
5. Missing Stormwater Permit Documentation (i.e., Notice of Intent (NOI) and SWPPP Contact Information)
6. Perimeter Protection measures not properly installed or maintained
7. Uncontained Concrete Washout or Mortar Washout dumped on the ground
8. Inappropriate Dewatering techniques

Kauffman indicated that these erosion and sediment control violations persisted over the months resulting in the discharge of sediment from the construction project to the Moose Lodge Pond to the south, which has an eventual release to Rock Run Creek. Some attempts to correct the issues occurred but the issues persisted. There was sufficient work completed to finally stabilize disturbed soils around the stormwater detention basin, but it was not sufficiently completed until late August when the Goshen Stormwater Department began asking for areas of disturbed soil to be stabilized in April.



Kauffman wrote that of the above violations, numbers 6 & 7 continued to be out of compliance and numbers 2 & 3 continued to need routine maintenance during a January 17, 2023, inspection.

Kauffman wrote that a summary of the violation occurrences and the points assigned to each violation through the Stormwater Enforcement Matrix was provided for the Stormwater Board's review and use. In total, Green Oaks of Goshen has accumulated 712 points with violations ranging from one occurrence to eight occurrences.

The Goshen Stormwater Department requested progression into the next level of enforcement by proceeding with one of the three remaining steps per Section 7.02, Notice of Violation, of Ordinance 4328, which is to be directed by the Stormwater Board.

NOV Action 3 - Enter into an agreed order with the approval of the Board of Works and Safety which order may include payment of a fine by the violator.

NOV Action 4 - Issue a stop work order until all corrective measures have been completed.

NOV Action 6 - File a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this ordinance has been violated and requesting the imposition of fines.

Kauffman wrote that the **Goshen Stormwater Department recommended the Goshen Stormwater Board consider NOV Action 3 and enter into an agreed order with all parties.** A draft agreed order was prepared by the City Legal Department and was made available for the Stormwater Board's use.

A notice of violation and notice of hearing before the City Stormwater Board was mailed to: Green Oaks of Goshen, LLC, 566 West Lake Street #400, Chicago, Illinois, 60661; Evergreen Construction Company 566 West Lake Street #400, Chicago, Illinois, 60661; and Ritschard Brothers Inc., 1204 West Sample Street. South Bend, Indiana 46619.

The meeting agenda packet included detailed information about the alleged violations, including photographs. It also included a draft Agreed Order of the City of Goshen Board of Public Works and Safety and Stormwater Board, which outlined the violations and actions necessary to bring the construction site into compliance with the Goshen City Code and the consequences (court enforcement) if the parties failed to comply with the order.

DISCUSSION AND OUTCOME OF THE STORM WATER BOARD'S PUBLIC HEARING ON JAN. 23, 2023:

Using his PowerPoint presentation, **Kauffman** summarized his written report and attachments. His report included photographs of the construction site taken today. He said this case was of concern to the City because runoff from the site eventually flows into Rock Run Creek.

Kauffman described efforts that had been made to limit runoff and the discharge of sediments and said there were 17 inspections of the site from April 14, 2022 to Jan. 13, 2023. He reviewed and described the impact of the alleged violations using a series of photographs. He said the biggest issue has been the management of concrete washout.

Kauffman said that as of Jan. 23, 2023, conditions at the construction site had been improved, but there was still evidence of continuing violations. Because of the longstanding alleged violations, **Kauffman** said he was recommending that the Board pass the agreed order of violations by the City and the parties.

Asked by **Mayor Stutsman** of the impact of the proposed order, **Kauffman** said the order will state that all parties agree there have been violations and moving forward the site will be maintained in proper order, the requirements will be followed and there will be no further violations.



Mayor Stutsman asked that in the case of trucks depositing sediment on the street, what would constitute the timely cleanup of that debris. **Kauffman** said that would be at the end of the day or before the next rain event – whichever comes first.

Mayor Stutsman asked if a representative from Green Oaks of Goshen wanted to respond.

David Foos, a project executive from **Evergreen Construction Co.**, said the company has been addressing the issues as they have arisen. He said it is "a big project. We have a lot of moving parts and a lot of trucks moving in and out." He said some of the photos were taken during the time of construction and there wasn't ample time to clean up, nor were they taken at the end of the day.

Still, **Foos** said work has been done to prevent any violations. He showed Board members photos from his cell phone that depicted measures to prevent concrete washouts. **Foos** said the company was committed to implementing measures to mitigate any issues and ensure streets, water and the environment stay clean.

Foos said that it is a big project with many moving parts, but the company always tries to react as quickly as possible.

Asked by **Board member Landis** about his role with the company and whether he was often on site, **Foos** said the company has superintendents on site and that he is the project executive for the construction company and represents the owner of the development.

Landis said that earlier in his career he worked as a job foreman and his boss required that he leave construction sites clean at the end of the day. He asked **Foos** if the company's site superintendents took their jobs seriously, noting the repeated pattern of alleged violations.

Foos responded that on Friday he actually cleaned the street. He said he was "old school," but that many younger people who work in construction today are not as dedicated or passionate and constantly need to be reminded, so it has been difficult to get them to care for the site. **Foos** said he will be on site more often to ensure the alleged violations are addressed.

Asked by **Landis** if he was willing to sign the agreed order of violations, **Foos** said he would need to have it reviewed by the company's attorneys first. He said that he would have no problem signing it if they didn't object, but added the requirements should be filed without signing an agreement.

Asked by **Mayor Stutsman** to describe what the agreed order would do, **Kauffman** said the intent is that all parties would be put on the same page and ensure the requirements are followed. He said the next step if there was non-compliance would be fines, but the City would prefer not to go that route.

Mayor Stutsman said he was glad to hear that because he didn't want to impose fines before giving the company the opportunity to comply. **Landis** noted this was the first step before any fines would be imposed. **City Attorney Bodie Stegelmann** said the City's general position is to encourage compliance, and that is the spirit of the draft order, even though the City could impose fines now. The **Mayor** said he agreed with that approach.

Mayor Stutsman clarified the requested motion. **Kauffman** said the agreed order was provided to the company for its review. **Mayor Stutsman** asked if there should be some allowance for winter weather conditions. **Kauffman** said that could be considered.

City Attorney Stegelmann said the Board could add the words "weather permitting" to the requested motion.

Kauffman said he approved of that addition. **Landis** asked how City staff would respond if continued violations were found. **Stegelmann and Kauffman** said the company would be informed and the Board could review the matter.



In response to a question from **Landis**, **Kauffman** described the timing of future inspections in case of further violations. He also described the notification the company is given of inspections.

Mayor Stutsman said he appreciated that the company wanted to comply with the requirements and work with the City. **Foos** said that the construction company is not just the general contractor, but also will own the building. He said the company was committed to being part of the community and would be trying its best to do what's right. **Foos** also said the situation has been difficult because the City has conducted such frequent inspections.

Asked by **Mayor Stutsman** about the frequency of inspections at large construction sites and whether there have been more than usual for Green Oaks, **Kauffman** said more time has been spent at this site because there is water flowing through it that eventually gets to Rock Run Creek. He said such sites are a high priority for inspections.

Nichols/Landis moved to enter into an agreed order with the identified parties associated with the Green Oaks of Goshen project for immediate and full compliance with local and state regulations and the project's stormwater pollution prevention plan, weather permitting. Motion passed 3-0.

Mayor Stutsman adjourned the City of Goshen Stormwater Board and reconvened the Board of Works & Safety meeting at 3:25 p.m.

Approval of Civil City and Utility Claims

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

Adjournment

Mayor Stutsman adjourned the Board of Works meeting at 3:25 p.m.

EXHIBIT #1: A memorandum and amended agreement between the City and Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of \$21,924.00. Brandy Toms, a paralegal with the City Legal Department, prepared the memorandum to the Board in support of agenda item #1. Legal Department: Approve and authorize Mayor to execute a revised agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of \$21,924.00

EXHIBIT #2: PowerPoint presentation, titled "Green Oaks of Goshen" dated Jan. 23, 2023 and prepared and presented by City Stormwater Coordinator Jason Kauffman in support of City Stormwater Board agenda item #1. Stormwater Department: Public hearing and proposed agreement regarding erosion and sediment control issues associated with the Green Oaks of Goshen construction project located at 282 Johnston St.



APPROVED

A handwritten signature in blue ink, appearing to be "J. Stutsman", written over a horizontal line.

Mayor Jeremy P. Stutsman

A handwritten signature in black ink, appearing to be "Michael A. Landis", written over a horizontal line.

Mike Landis, Member

A handwritten signature in black ink, appearing to be "Mary Nichols", written over a horizontal line.

Mary Nichols, Member

A handwritten signature in black ink, appearing to be "Barb Swartley", written over a horizontal line.

Barb Swartley, Member

ATTEST

A handwritten signature in black ink, appearing to be "Richard R. Aguirre", written over a horizontal line.

Richard R. Aguirre, City of Goshen Clerk-Treasurer

EXHIBIT #1



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: Brandy L. Toms
Subject: Agreement with Q-mation, Inc.
Date: January 23, 2023

On December 12, 2022, this Board approved and authorized Mayor Stutsman to execute an agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system. After the Board approved the agreement, Q-mation, Inc. negotiated changes to some of the terms. The City agrees to these revisions and now brings before this Board the revised agreement for its approval and authorization for Mayor Stutsman to execute. The cost for Q-Mation's services under this agreement will remain at Twenty-One Thousand Nine Hundred Twenty-Four Dollars (\$21,924.00).

Suggested Motion:

Move to approve and authorize Mayor Stutsman to execute a revised agreement with Q-mation, Inc. for the management of software licensing upgrades for the City's SCADA system, in the amount of Twenty-One Thousand Nine Hundred Twenty-Four Dollars (\$21,924.00).

REVISED AGREEMENT

With Q-Mation dba Wonderware North for Management of Software License Upgrades for the Scada System

THIS AGREEMENT is entered into on _____, 2023, which is the last signature date set forth below, by and between **Q-Mation aba Wonderware North** ("Supplier"), whose mailing address is 425 Caredean Drive, Horsham. PA 19044, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety ("City").

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

Section 1. Supplier Duties

Supplier shall provide City the services for the management of software license upgrades for the Scada System, which services are more particularly described in Supplier's November 2, 2022 proposal attached as Exhibit A (hereinafter referred to as "Duties").

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

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) This agreement shall be effective from January 26, 2023 through to January 26, 2024.

Section 3. Compensation

City agrees to compensate Supplier the sum of Twenty-One Thousand Nine Hundred Twenty-Four Dollars (\$21,924) for performing all Duties.

Section 4. Payment

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

City of Goshen
c/o Goshen Water & Sewer Department
308 North 5th Street
Goshen, IN 46528

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

Section 5. Ownership of Documents

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

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

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

Section 8. Non-Discrimination

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

Section 9. Employment Eligibility Verification

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

Section 10. Contracting with Relatives

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

Section 11. No Investment Activities in Iran

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

Section 12. Indemnification

Supplier shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Supplier or any of Supplier's agents, officers and employees during the performance of services under this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Supplier is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required under this agreement.

Section 13. Force Majeure

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is

beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

Section 14. Default

- (A) Supplier may be considered in default by the City if any of the following occur:
- (1) There is a substantive breach by Supplier of any obligation or duty owed under the provisions of this contract.
 - (2) Supplier is adjudged bankrupt or makes an assignment for the benefit of creditors.
 - (3) Supplier becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
 - (4) Supplier becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
 - (5) A receiver, trustee, or similar official is appointed for Supplier or any of Supplier's property.
 - (6) Supplier is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Supplier unable to perform the services described under these Specification Documents.
 - (7) The contract or any right, monies or claims are assigned by Supplier without the consent of the City.

Section 15. Notice

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

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

Supplier: Q-mation, Inc dba Wonderware North
Attention: Susie Boos
425 Caredean Drive
Horsham, PA 19044

Section 16. Subcontracting or Assignment

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

Section 17. Amendments

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

Section 18. Waiver of Rights

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

Section 19. Applicable Laws

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

Section 20. Miscellaneous

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

Section 21. Severability

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

Section 22. Binding Effect

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

Section 23. Entire Agreement

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

Section 24. Authority to Execute

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

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

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

Q-mation, Inc aba Wonderware North

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____

November 2, 2022

Company Name **Goshen WWTP**
Contact **Marvin Shepherd**
Support Agreement ID **102563**
Support Level **Standard**
Expiration Date **January 26, 2023**
Reference **GoshenWWTP_102563_Shepherd_01262023WCF**

Marvin:

Thank you for your investment in AVEVA products and participation in the **AVEVA Customer FIRST Support Program**. The Customer FIRST Support Program ensures that you continue to get the most value from your investment by providing access to software license upgrades along with convenient access to highly skilled resources to remedy any issues you experience as you install, fine-tune, and upgrade your AVEVA software. Through any phase of your application lifecycle, Customer First membership gives you the support, services, and resources you need to be successful.

AVEVA Customer FIRST includes the following benefits:

- Free software version upgrades, fixes, patches and service packs keep your AVEVA software current and secure, leveraging new features and ensuring that existing applications keep running
- Customer FIRST mobile app gives you a quick overview of your support and services agreement
- Access to award-winning live technical support, with expert assistance throughout the software lifecycle
- Software Utilities – Leverage a growing stable of software utilities, including: the Software Asset Manager, to quickly and easily track and manage your AVEVA software licenses and apply security and performance software updates at multiple locations; and the Customer FIRST Benefits Mobile App, to get a quick overview of your support and services agreement
- Optional Services and System Management – Enjoy access to a wide array of optional services and discounts, based on the needs of your business and your budget. *The exact features vary with the AVEVA software you own.*

PLUS with Premium and Elite memberships, enjoy the following additional benefits:

- Access to 24/7/365 technical support
- Up to 24 hours of expert guidance on best practices, from initial rollout through ongoing phases of your AVEVA installation through dedicated technical support consulting services
- Free Software License Replacements for damaged or lost licenses

Customer First Support Agreements will carry no "grace period" beyond a support agreement expiry date. If an agreement lapses, the customer has the following 30 days to renew with a mandatory 10% penalty fee. Beyond 30 days, renewal still requires a 10% penalty AND the agreement loses its license volume-based discount.

Customer FIRST Support Renewal

Agreement Expiration Date: January 26, 2023

Standard Level Support

The renewal quotation below is based on the attached list of licenses registered to your site. Please review license list below for accuracy and alert us of changes, upon which we will revise the proposal and official License List accordingly. Licenses not on the agreement will not be eligible for support/upgrades.

You have the flexibility to choose between Standard, Premium and Elite levels of support. Below is the price to maintain your current level of support – please let us know if you would like pricing on any alternate levels.

Part Number	Description	Price
WWCFS-2000	Wonderware Customer FIRST Agreement – Standard Level – One Year	\$21,924

A budgetary number for planning purposes for the upcoming support year(s) can be provided at request. The final support agreement pricing for the next year is typically based on an inflationary (0-3.5%) increase in license value as well as licenses purchased during the support agreement term.

Simply call or e-mail me if you have any questions.

Best Regards,

Suzie Boos

Wonderware North
sboos@wonderwarenorth.com

Reference WCF Support Agreement ID 102563 and address your order to Wonderware North (Q-mation)

Ordering Information	Terms & Conditions
Q-mation DBA Wonderware North 425 Caredean Drive Horsham, PA 19044 Email sales@wonderwarenorth.com Fax (215) 675-9712 Phone (877) 900-4996	<ol style="list-style-type: none"> 1. Quotation is valid for 60 days from date of issue. 2. Quotation does not include any taxes. Tax exemption number must be on file or applicable taxes will be added. 3. Tax ID: 23-2549974 4. Payment terms are Net 30 Days 5. Software delivery is 1 – 2 weeks ARO 6. Transportation is prepaid and added 7. F.O.B. is Wonderware North, Horsham, PA

Customer First Support Agreements will carry no "grace period" beyond a support agreement expiry date. If an agreement lapses, the customer has the following 30 days to renew with a mandatory 10% penalty fee. Beyond 30 days, renewal still requires a 10% penalty AND the agreement loses its license volume-based discount.

Goshen WWTP (Goshen, IN) - License List

Part Number	Part Description	Software License Number
ComDrv-01-C-23	UppC, Communication Drivers 2023 Standard	1109535-4
12-12965	Upp, Info Server Standard Client Per Concurrent User	1154625-2
AVCAL-01-C-19	UppC, AV CAL without MS CAL Single	1154626-4
AVCAL-01-C-19	UppC, AV CAL without MS CAL Single	1154627-4
InTch-05-N-20	InTouch HMI 2020 Wrkst 3000 Tag with I/O	2345908-0
SupClt-03-C-23	UppC, Supervisory Client 2023 with Historian Client	283065-8
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109510-3(part of 283065)
DevStd-04-C-23	UppC, Dev Studio 2023 Unlim Unlim / Unlim / 500	1109470-4
12-12771	WW Skelta BPM Developer Edition 1 user	1571840-0(part of 1109470)
SysPlt-08-C-23	UppC, System Platform 2023 25000 IO / 12000 History	1109480-5
ComDrv-51-C-23	UppC, Communication Drivers 2023 Standard	1109481-5(part of 1109480)
InfSvr-51-C-17	UppC, Information Server Portal	1109482-3(part of 1109480)
HstStd-56-C-23	UppC, Historian 2023 Standard, 12000 Tag	1109483-5(part of 1109480)
AppSvr-10-C-23	Application Server 2023 25000 I/O	1109484-7(part of 1109480)
12-12285	Upp, Application Server 2014R2 Platform	1109485-1(part of 1109480)
12-12285	Upp, Application Server 2014R2 Platform	1109486-1(part of 1109480)
12-12285	Upp, Application Server 2014R2 Platform	1109487-1(part of 1109480)
12-12286	Upp, Application Server 2014R2 GR Platform	1571839-0(part of 1109480)
ComDrv-51-C-23	UppC, Communication Drivers 2023 Standard	1571841-3(part of 1109480)
SupClt-03-C-23	UppC, Supervisory Client 2023 with Historian Client	1109488-6
12-12285	Upp, Application Server 2014R2 Platform	1109489-1(part of 1109488)
SupClt-03-C-23	UppC, Supervisory Client 2023 with Historian Client	1109490-5
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109499-1(part of 1109490)
SupClt-03-C-23	UppC, Supervisory Client 2023 with Historian Client	1109491-6
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109500-3(part of 1109491)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109492-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109501-1(part of 1109492)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109493-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109502-1(part of 1109493)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109494-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109503-1(part of 1109494)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109495-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109504-1(part of 1109495)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109496-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109505-1(part of 1109496)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109497-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109506-1(part of 1109497)
SupClt-02-C-23	UppC, Supervisory Client 2023 without Historian Client	1109498-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109507-1(part of 1109498)
SupClt-03-C-23	UppC, Supervisory Client 2023 with Historian Client	1109508-4
12-12285TP	Upp, Application Server 2014R2 RDS Session	1109509-1(part of 1109508)
SupCIF-03-C-23	UppC, Supervisory Client 2023 with Historian Client, RDS, FLB	1109511-7
12-12285	Upp, Application Server 2014R2 Platform	1109512-1(part of 1109511)
SupCIF-03-C-23	UppC, Supervisory Client 2023 with Historian Client, RDS, FLB	1109513-6

Customer FIRST Support Renewal

12-12285TP	Upg, Application Server 2014R2 RDS Session	1109522-3(part of 1109513)
SupClF-03-C-23	UpgC, Supervisory Client 2023 with Historian Client, RDS, FLB	1109514-5
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109523-1(part of 1109514)
SupClF-03-C-17	UpgC, Supv Client 2017 with Historian Client, RDS, FLB	1109515-5
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109524-3(part of 1109515)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109516-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109525-1(part of 1109516)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109517-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109526-1(part of 1109517)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109518-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109527-1(part of 1109518)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109519-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109528-1(part of 1109519)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109520-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109529-1(part of 1109520)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109521-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109530-1(part of 1109521)
SupClF-03-C-23	UpgC, Supervisory Client 2023 with Historian Client, RDS, FLB	1109531-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109532-1(part of 1109531)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1109533-4
12-12285TP	Upg, Application Server 2014R2 RDS Session	1109534-1(part of 1109533)
SysPlt-02-C-23	UpgC, System Platform 2023 Starter 1 Client 5K IO/500 History	1109536-4
19-0068	Application Server Platform	1109537-0(part of 1109536)
AppSvr-08-C-23	Application Server 2023 5000 I/O	2050809-1(part of 1109536)
HstStd-53-C-23	UpgC, Historian 2023 Standard, 500 Tag	2050810-1(part of 1109536)
ComDrv-51-C-23	UpgC, Communication Drivers 2023 Standard	2050811-1(part of 1109536)
SupClt-51-C-23	UpgC, Supervisory Client 2023 with Historian Client	2050812-1(part of 1109536)
SupClF-03-C-23	UpgC, Supervisory Client 2023 with Historian Client, RDS, FLB	1190515-3(part of 1190512)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244052-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244058-1(part of 1244052)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244053-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244059-1(part of 1244053)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244054-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244060-1(part of 1244054)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244055-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244061-1(part of 1244055)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244056-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244062-1(part of 1244056)
SupClt-02-C-23	UpgC, Supervisory Client 2023 without Historian Client	1244057-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244063-1(part of 1244057)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244064-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244070-1(part of 1244064)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244065-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244071-1(part of 1244065)
SupClF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244066-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244072-1(part of 1244066)

Customer FIRST Support Renewal

SupCIF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244067-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244073-1(part of 1244067)
SupCIF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244068-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244074-1(part of 1244068)
SupCIF-02-C-23	UpgC, Supervisory Client 2023 without Historian Client, RDS, FLB	1244069-3
12-12285TP	Upg, Application Server 2014R2 RDS Session	1244075-1(part of 1244069)



Green Oaks of Goshen

City of Goshen Stormwater Department

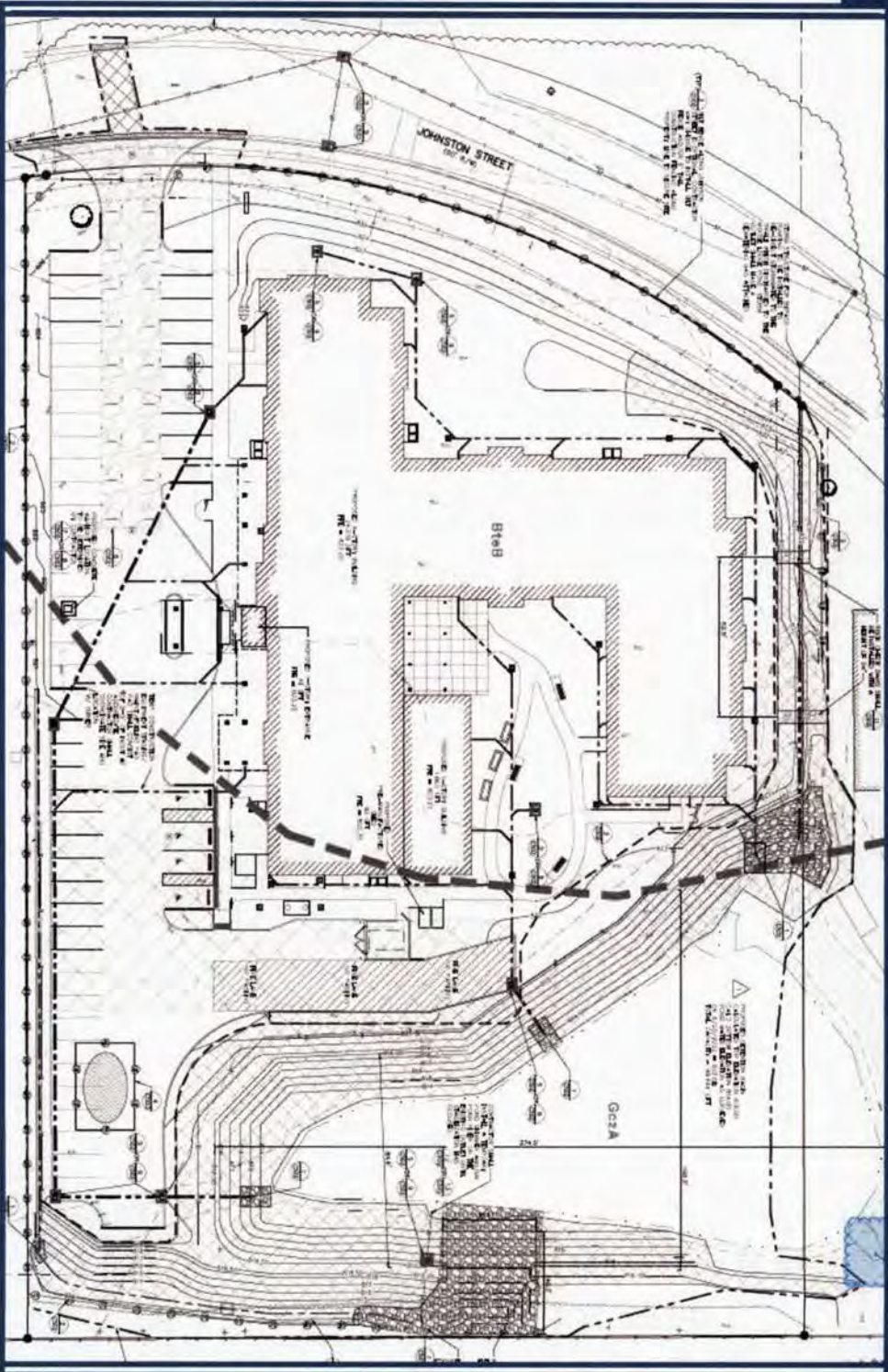
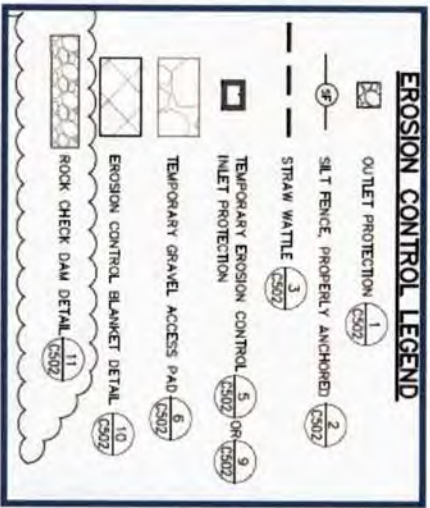


January 23, 2023 – Board of Stormwater

Picture of Site



Site Plan & Location



Site Visits Since Erosion & Sediment Control Issues Started

1. April 14, 2022
2. June 2, 2022 (SWCD)
3. June 16, 2022
4. June 23, 2022
5. July 7, 2022
6. August 8, 2022
7. October 6, 2022
8. October 28, 2022
9. November 7, 2022
10. November 14, 2022
11. November 30, 2022 (SWCD)
12. December 12, 2022
13. December 16, 2022
14. December 22, 2022
15. December 28, 2022
16. December 30, 2022
17. January 13, 2023

Enforcement Matrix

Offense	First Occurrence	Second Occurrence	Third Occurrence	Fourth and Subsequent Occurrences
Administrative				
Construction without a Stormwater Pollution Prevention Plan (SWPPP)	100**	150**	200**	500**
SWPPP Amendment Required	10	20	40	100
NOI not properly posted	0	2	4	8
Location of SWPPP not posted	0	2	4	8
Self-inspection not performed/forms not provided	0	10	20	30
Permit Renewal deadline missed	30	30	30	30
BMPs				
Concrete/Mortar Washout (WO)				
a. discharge is going directly into a surface water	50**	50**	75**	100**
b. discharge into a catch basin (CB) (connected to an MSA conveyance)	25*	50**	75**	100**
c. discharge into a catch basin (CB) (not connected to an MSA conveyance)	20*	30*	40*	50**
d. discharge does not reach CB or surface water	0	4	8*	12*
e. maintenance required (WO water is still contained)	0*	4	8	12
f. maintenance required (WO water is leaking out)	5*	10*	20*	40*
Perimeter Protection				
a. not installed (on plans)	0	10	25	40
b. maintenance required (sediment is not leaving site)	0	5	10	25
c. maintenance required (sediment is leaving site)	5	10	15*	30*
Construction Entrance/Exit				
a. not installed (on plans)	0	20	30*	40**
b. maintenance required (tracking is not occurring)	0	10	20	30
c. maintenance required (tracking is occurring)	0*	15*	25*	40*
Site Stabilization				
a. not installed when or as required by SWPPP	0	10	20	30
b. not installed correctly	0	10	20	30

Offense	First Occurrence	Second Occurrence	Third Occurrence	Fourth and Subsequent Occurrences
Inlet Protection				
a. not installed (on plans)	0	5	10	15
b. maintenance required (on-site impact)	0	2	4	6
c. maintenance required (off-site impact)	5	10*	15*	20**
d. discharge to an inlet connected to an MSA conveyance	25*	50**	75**	100**
Dewatering				
a. causing erosion or depositing sediments	0	5	10	25
b. discharge of sediment/other pollutants into a surface water or an MSA conveyance	50**	50**	75**	100**
Runoff Controls (check dams, outlet protection)				
a. not installed or not installed correctly (on plans)	0	10	20	30
b. maintenance required (erosion is occurring)	0	5	10	25
c. discharge of sediment/other pollutants into a surface water	50**	50**	75**	100**
Other				
a. not installed or not installed correctly (on plans)	0	5	10	15
b. maintenance required (on-site impact)	0	2	4	6
c. maintenance required (off-site impact)	5	10*	15*	20*
Trash/Litter				
Spill Control/Containment	0	2	4	8
Direct discharge of pollutants to a surface water	0	5	10	15
Total Points per Occurrence	50**	50**	75**	100**
Severity of Violation	Response	Form of Communication		
Minimal (No Impact)	Educational	site visit, call, meeting, email, inspection report (or combination)		
Minor (Indirect Impact)	Non-Compliance Notice	Minor violation - Requires a written response. No penalties if violations are corrected.		
Moderate (Direct Impact)	Warning Letter	Formal enforcement. Penalties may be assessed.		
Significant (Direct Impact)	Notice of Violation (NOV)	Significant violation(s). Immediate corrective action required. Stop Work Order Issued.		

* Corrective action required immediately or within one business day
 ** Stop Work Order issued immediately

Inspection Notes

* Corrective action required immediately or within one business day

** Stop Work Order issued immediately

Violation	First Occurrence	Second Occurrence	Third Occurrence	Fourth Occurrence	Fifth Occurrence	Sixth Occurrence	Seventh Occurrence	Eighth Occurrence	Total Points
Concrete/Mortar Washout - Maintenance Required (water is leaking out)	10/6/2022	10/28/2022	11/7/2022	11/14/2022	12/12/2022	12/16/2022	12/22/2022	1/13/2023	235
	5*	10*	20*	40*	40*	40*	40*	40*	
Construction Entrance/Exit - Maintenance Required (tracking is occurring)	7/7/2022	10/28/2022	11/7/2022	11/14/2022	12/12/2022	12/16/2022	12/22/2022		200
	0*	15*	25*	40*	40*	40*	40*		
NOI Not Properly Posted	11/7/2022	11/14/2022	12/12/2022						6
	0	2	4						
Location of SWPPP Not Posted	11/7/2022	11/14/2022	12/12/2022						6
	0	2	4						
Self-Inspection Not Performed	4/14/2022								0
	0								
Runoff Control Not Installed or Not Installed Correctly	4/14/2022	6/23/2022	7/7/2022						30
	0	10	20						
Site Stabilization Not Installed When or As Required by SWPPP	4/14/2022	6/14/2022	6/23/2022	7/7/2022	8/8/2022				90
	0	10	20	30	30				
Perimeter Protection - Maintenance Required (sediment is not leaving site)	6/14/2022	8/8/2022	1/13/2023						15
	0	5	10						
Perimeter Protection - Maintenance Required (sediment is leaving site)	7/7/2022								5
	5								
On-Site Fueling Area and Material Storage Spill Control/Containment	6/14/2022	6/23/2022	7/7/2022	10/6/2022	10/28/2022				45
	0	5	10	15	15				
Inlet Protection - Maintenance Required (Off-Site Impact)	6/2/2022	7/7/2022	11/7/2022						30
	5	10*	15*						
Dewatering - Causing Erosion or Depositing Sediment	10/28/2022								0
	0								
Dewatering - Discharge of Sediment/Other Pollutants into Surface Water	12/28/2022								50
	50**								
Total Points									712

Concrete/Mortar Washout Containment



Concrete/Mortar Washout Containment



Construction Entrance and Sediment Tracking



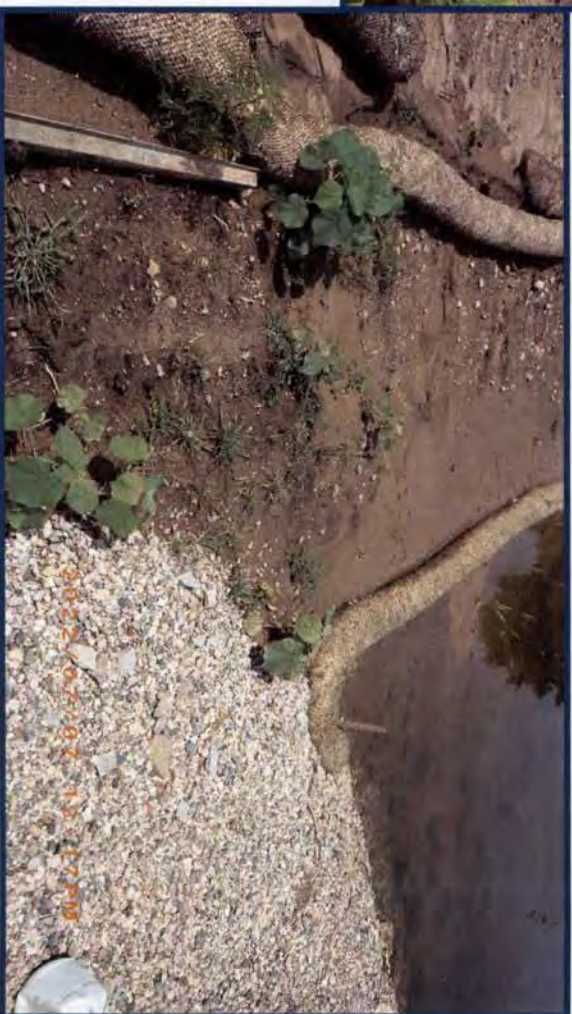
Construction Entrance and Sediment Tracking



NOI and SWPPP Not Properly Posted



Site Stabilization and Perimeter Protection



Site Stabilization and Perimeter Protection



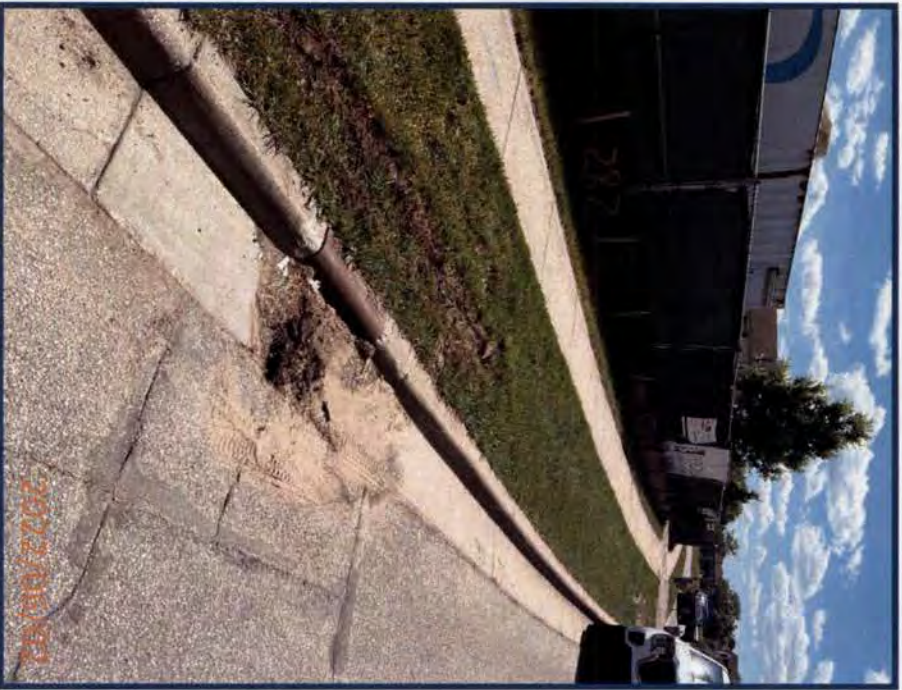
Site Stabilization and Perimeter Protection



Site Stabilization and Perimeter Protection



Inlet Protection



Dewatering



Current Site Conditions – January 23, 2023



Questions?

