



## **Board of Public Works & Safety and Stormwater Board**

Regular Meeting Agenda

**2:00 p.m., March 27, 2023**

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: March 20, 2023**

### **Approval of Agenda**

- 1) Fire Department:** Approve promotion of Jonathan M. Weishaupt to the rank of Fire Sergeant, effective April 2, 2023
- 2) Fire Department:** Approve promotion of Garrett T. Sheline to the rank of Fire Lieutenant, effective April 2, 2023
- 3) Fire Department:** Approve retirement of Lieutenant Mike Bontrager, effective April 1, 2023
- 4) Police Department:** Approve Conditional Offer of Employment to Seth D. Bayes as a probationary patrol officer
- 5) St. John the Evangelist Catholic Church request:** Approval for permission to block part of 3rd Street, Monroe Street and the adjacent alley, from 2-6 p.m. on April 7, 2023, for a church procession
- 6) Legal Department:** Agreement with Borntreger, Inc. for the re-roofing of City Hall with a Duro-Last Membrane
- 7) Legal Department:** Award the contract to Automate LLC, as the lowest responsible and responsive offeror, for the installation, configuration and startup of upgraded programmable logic controllers at a cost of \$108,000
- 8) Water & Sewer Utilities Business Office:** Request to grant sewer relief to Adriana Salazar, 911 South 15th Street



**9) Engineering Department:** Approve the closure of the pedestrian path and the northbound turn lane of Indiana Avenue, between Plymouth Avenue and the Indiana Avenue Apartments entrance from March 29, 2023 until April 5, 2023, depending on the weather

**10) Engineering Department:** Consider four Traffic Commission signage recommendations

**11) Engineering Department:** Approve the agreement with McCrite Milling & Construction Co., Inc. for the 2023 City Street Department Milling Package project in the amount of \$19,005

**12) Engineering Department:** Approve and authorize the Board to execute the Agreement with Genesis Products, Inc. and Nuway Construction for the Completion of the Construction Project at 1778 Eisenhower Drive South

**13) Engineering Department:** Approve and authorize the Mayor to sign Change Order No. 4 for the Wilden Avenue Reconstruction project, increasing the contract amount by \$134,090, for a revised contract amount of \$7,112,620.83

**14) Engineering Department:** Approve and authorize the Mayor to sign Change Order No. 5 for the Wilden Avenue Reconstruction project, increasing the contract amount by \$30,888, for a revised contract amount of \$7,143,508.83

### **Privilege of the Floor**

### **Approval of Civil City and Utility Claims**

### ***Adjournment***



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD  
MINUTES OF THE MARCH 20, 2023 REGULAR MEETING**

*Convened at 2 p.m. in 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 Stutsman called the meeting to order at 2:00 p.m.

**REVIEW/APPROVE MINUTES:** Mayor Stutsman presented the minutes of the March 13, 2023 Regular Meeting. Board member Mike Landis moved to approve the minutes of the March 13, 2023 meeting as presented. The motion was seconded by Board member Barb Swartley. Motion passed 4-0.

**REVIEW/APPROVE AGENDA:** Mayor Stutsman presented the meeting agenda with two additions: 9) *Engineering Department: Approve temporary closure of West Wilden Avenue for road construction* and 10) *Approve agreement with Katie Nelson for payment of City property damage.* Board member Landis moved to approve the agenda as amended. Board member Swartley seconded the motion. Motion passed 4-0.

**1) Resident request: Approve installation of a 34-foot wide concrete driveway at 1503 Garland Drive and replace existing curb and sidewalk (Neal Frey)**

**Neal Frey of 1503 Garland Drive in Goshen,** told the Board that he is building a new home where the previous home had burned down. He asked the Board to allow the installation of a concrete driveway the width of the garage, which is 34 feet to the right-of-way line.

**Frey** said his contractor will remove the existing curb and public sidewalk and replace both as required. He said his contractor will install the driveway, curb and sidewalk per the City Engineering Department specifications. He said Team Construction Co. intends to do the work as the weather allows.

In his written request, **Frey** listed the following reasons for approving his request:

- Keeping cars parked on the driveway as opposed to on-street parking is aesthetically more pleasing and certainly safer.
- It will be safer, since this property is located on a corner lot; if cars are parked on the street it could be difficult for traffic to see around the corner and pose the potential for a collision.
- It will be safer as backing out of the driveway from both sides of the road with a car parked on the road poses a potential hazard.
- With the setback distance without the full width, it would require that Frey cross and drive on the grass if he parks a trailer in the garage.
- Driveways in the same neighborhood located at 1618 Winsted, 1508 Brookfield, 1401 and 1403 Elmhurst are of similar widths.

In response to a question from **Board member Swartley**, **Frey** said the driveway will be primarily for vehicles. He also said the previous driveway and curb were removed.



**Mayor Stutsman** asked if City staff had any comments about the request. **City Civil Traffic Engineer Josh Corwin** said the Engineering Department continues to encourage driveways to be a maximum of 24 feet, but it didn't have any specific issues with this request. In response to a question from **Board member Swartley**, **Corwin** confirmed there are other driveways in the neighborhood with driveways wider than 24 feet.

In response to a question from **Board member Landis, Frey** said it is about 32 feet from the garage wall to the curb. **Frey** said he plans to park a trailer in the driveway and wants it to be wider so he doesn't have to drive on the grass.

**Landis/Swartley moved to allow Neal Frey to install a 34-foot wide concrete driveway at 1503 Garland Drive. Motion passed 4-0.**

**2) Business request: Approve request by Peachey Roofing to temporarily close the west side sidewalk in front of 105 South Third Street during the installation of a new roof**

**Abram Peachey**, owner of Peachey's Roofing and General Construction, told the Board the company has a permit to install a metal roof on a house at 105 South 3rd Street. He asked the Board to allow the closure of the sidewalk in front of the home so he could work on the roof on Tuesday, March 21 2023.

In response to a question from **Mayor Stutsman**, **Peachey** said he would be blocking the sidewalk for six to eight hours. He said there is no parking in that area. He said he would not be placing any heavy equipment on the sidewalk – only ladders and planks. Because of the short duration of the closure, **Mayor Stutsman** said he didn't object to the request.

**Landis/Swartley moved to approve the request from Peachey Roofing and General Construction to temporarily close the sidewalk in front of 105 South Third Street during the installation of a new roof on March 21, 2023. Motion passed 4-0.**

**3) Planning & Zoning Department: Accept the Parke North Second plat with dedication of right of way and easements**

**Rhonda L. Yoder, City Planning & Zoning Administrator**, told the Board that a one-lot subdivision has been submitted for Parke North Second, which is the second phase of Parke North subdivision. The property is zoned Industrial M-1. Yoder said the subdivision meets the requirements of the Zoning and Subdivision Ordinances.

**Yoder** said there is no public infrastructure being constructed as part of the plat, so no bond/surety is required. The subdivision drainage plan was accepted by the Board of Works on Feb. 13, 2023. She said the plat includes dedication of right of way for Kercher Road, and includes a number of easements. Yoder asked the Board to accept the Parke North Second plat with dedication of right of way and easements, and sign the plat.

**Landis/Swartley moved to accept the Parke North Second plat with dedication of right of way and easements. Motion passed 4-0.**

**4) Legal Department: Resolution. 2023-12, Interlocal Agreement with the City of Nappanee for the Completion of a Joint Federal Aid Project to Purchase and Install Electric Vehicle Charging Stations**

**Assistant City Attorney Matt Lawson** presented to the Board Resolution 2023-12, an Interlocal Agreement with the City of Nappanee to jointly purchase and install electric vehicle charging stations. This joint project will be funded, in part, with federal Carbon Reduction Program funds.



**Background:**

Together with the City of Nappanee, the City of Goshen filed a joint application for federal Carbon Reduction Program funding to develop one electric vehicle charging station in Goshen and two in Nappanee. The estimated cost of the project will be approximately \$260,700. Installing a Level 3 Direct Current Fast Charging Electric Vehicle Charging Station in downtown Goshen is estimated to cost \$212,800, with an 80% federal share of \$170,240 and a 20% local match of \$42,560. The Level 2 Electric Vehicle Charging Station is estimated to cost \$47,900 with an 80% federal share of \$38,320 and 20% local match of \$9,580.

The City of Goshen will be responsible for overseeing the project in Nappanee, which will include consulting with Nappanee city officials, selecting a consultant for preliminary engineering, helping select the station sites, arranging for electrical services, selecting equipment, designing signage, and invoicing Nappanee for the City's share of the project.

**Landis/Swartley moved to approve Resolution 2023-12, *Interlocal Agreement with the City of Nappanee for the Completion of a Joint Federal Aid Project to Purchase and Install Electric Vehicle Charging Stations*. The motion passed 4-0.**

**5) Legal Department: Resolution 2023-11 – Ratifying the Special Purchase of a 2023 International Grapple Truck, Model MC607 SBA**

**Brandy Toms, a paralegal with the City Legal Department**, told the Board that attached to the meeting packet for the Board's approval was Resolution 2023-11, *Ratifying the Special Purchase of a 2023 International Grapple Truck, Model MC607 SBA*. She said Indiana Code 5-22-10-5 allows the City to make a special purchase when there exists a unique opportunity to obtain supplies and services at a substantial savings to the City.

**Toms** said the City Street Department needs a grapple truck – a truck with a crane or boom extension to grab and load heavy items – to more effectively and efficiently perform various projects throughout the City.

**Toms** said **City Fleet Manager Carl Gaines** contacted W.A. Jones and learned that this truck would cost about \$300,000. Gaines had an opportunity to inspect a similar unit, learning the cost to South Bend was approximately \$216,000. Gaines reached out to Best Equipment, Co., Inc. and was informed of the availability of a 2023 International Grapple Truck that was drastically discounted after being used as a demonstration unit at a work truck show after a customer purchase fell through.

Upon learning of the availability of this unit, **Toms** said Gaines contacted **Mayor Stutsman** about the availability, the substantial savings to the City and of the limited time it would be available. Given all these factors, Mayor Stutsman approved the purchase and delivery of the equipment was made to City Garage on March 10, 2023. Toms asked the Board to ratify the purchase of the 2023 International Grapple Truck from Best Equipment, Co, Inc. for \$196,441.47.

**Mayor Stutsman** said the City might make this kind of purchase again. He said **Carl Gaines** does an excellent job finding purchase options for the City. He said City bids and purchases are being delayed these days because of backlogs of orders. So, he said the City moved forward with this purchase because it's a good opportunity.

In response to a question from **Board member Landis**, the **Mayor** also described the appearance and function of a grapple truck, adding that when the truck is used to pick up piles of brush, fewer staff members will be needed.

**Landis/Swartley moved to pass and adopt Resolution 2023-11, *Ratifying the Special Purchase a 2023 International Grapple Truck, Model MC607 SBA from Best Equipment, Co, Inc. at a cost of \$196,441.47*. The motion passed 4-0.**



**6) Water & Sewer Office: Request to approve unpaid final accounts**

**Kelly Saenz, Manager of the Goshen City Utilities Office**, said that the original amount of unpaid final Water/Sewer accounts for this period, through Dec. 19, 2022, was \$11,000.76. Collection letters were sent out and payments of \$3,103.99 were collected. The uncollected amount was \$7,896.77. So, Saenz asked the Board to move the office's uncollected final accounts from active to Collection, Sewer Liens and Write offs.

**Board member Landis** asked the length of time it took to add up to \$11,000.76. **Saenz** said the totals reflected unpaid final Water/Sewer accounts for December and part of January.

**Landis/Swartley made a motion 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.**

**7) Engineering Department: Approve the closure of the pedestrian path and the northbound turn lane of Indiana Avenue between Plymouth Avenue and the entrance to the Indiana Avenue Apartments from March 29, 2023 until April 1, 2023**

**City Civil Traffic Engineer Josh Corwin** told the Board that Ancon Construction has requested permission to close the pedestrian path and the northbound turn lane of Indiana Avenue for the Indiana Avenue Apartments, between Plymouth Avenue and the entrance to the Indiana Avenue Apartments, from Wednesday, March 29 until Saturday, April 1, 2023.

**Corwin** said the schools will be on spring break while the work is being performed. Work during this period, will include the removal of seven failed sidewalk panels, and replacing them with new panels. Northbound traffic will still have access on Plymouth Avenue, as shown in the traffic control plan attached to the agenda packet.

In response to a question from **Mayor Stutsman**, **Corwin** said he believed the concrete panels were broken during construction.

**Landis/Swartley moved to approve the closure of the pedestrian path and the northbound turn lane of Indiana Avenue between Plymouth Avenue and the entrance to the Indiana Avenue Apartments from March 29, 2023 until April 1, 2023. Motion passed 4-0.**

**8) Engineering Department: Approve temporary Right of Entry agreement with James and Jennifer Hochstetler for property at 403 Oak Lane, and authorize Mayor Stutsman to sign on behalf of the City**

**City Civil Traffic Engineer Josh Corwin** told the Board that in order to properly complete the asphalt pavement on the north side of Oak Lane, work will extend beyond the existing right of way of Oak Lane.

**Corwin** said the temporary right of entry agreement will provide the contractor access to remove the existing concrete and repave with asphalt. The existing concrete has failed and will need to be removed in order for the asphalt paving to work properly. He said all disturbed areas will be restored per current City Standards.

**Landis/Swartley moved to approve the temporary right of entry agreement with James & Jennifer Hochstetler for property at 403 Oak Lane, and authorize Mayor Stutsman to sign on behalf of the City. Motion passed 4-0.**

**9) Engineering Department: Approve temporary closure of West Wilden Avenue for road construction**

**City Civil Traffic Engineer Josh Corwin** told the Board that in order to complete the final phases of the Wilden Avenue Road Reconstruction project, Rieth-Riley needs to close Wilden Avenue to through traffic, from Rock Run Creek to Main Street, starting Monday, March 20 until Friday, Aug. 25, 2023.



**Corwin** said construction will occur in two phases: Phase 1 will extend from Rock Run Creek through 1st Street; Phase 2 will extend from 1st Street to Main Street. Traffic will be detoured via Indiana Avenue/County Road 21 to County Road 26 to Main Street / State Road 15. Traffic will be maintained at all times on Main Street / SR 15.

Corwin said local access to residents within the closure will also be maintained. He also said Goshen schools, the City Police and Fire departments, and residents within the closure area have been notified of the work.

**Mayor Stutsman** said he was glad this is the first major project moving forward of the 2023 construction season.

**Landis/Swartley moved to approve the closure of Wilden Avenue to through traffic, from Rock Run Creek to Main Street, starting today, March 20 until Friday, Aug. 25, 2023. Motion passed 4-0.**

**10) Approve agreement with Katie Nelson for payment of city property damage**

**Brandy Toms, a paralegal with the City Legal Department**, told the Board that attached to the meeting packet for the Board's approval and authorization for the Mayor to execute was a payment agreement between the City and Katie Nelson of Walkerton, Indiana for reimbursement of repair costs for damage to City property (a fire hydrant) as a direct result of an automobile accident on Dec. 3, 2022 in which Ms. Nelson was at fault.

**Toms** said total costs to repair the damage was \$1,016.93. **Nelson** has agreed to reimburse City for the damages in 12 weekly payments of \$84.74 each. She said Nelson made her first payment today, in the sum of \$100. The Legal Department asked that the payment agreement be approved and executed.

**Landis/Swartley moved to approve and authorize the Mayor to execute the payment agreement between the City and Katie Nelson for reimbursement of repair costs of damage to City property as a result of an auto accident on Dec. 3, 2022, in the total amount of \$1,016.93, which will be paid in 12 weekly installments of \$84.74 each. Motion passed 4-0.**

At 2:23 p.m., Mayor Stutsman temporarily closed the Board of Works & Safety meeting and convened the City of Goshen Stormwater Board to consider one agenda item.

**CITY OF GOSHEN STORMWATER BOARD**

**Regular Meeting Agenda**

**2:00 p.m., March 20, 2023**

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

**Members: Mayor Stutsman, Mike Landis and Mary Nichols**

**10) Approve the Agreement with Wessler Engineering, Inc. for professional services for updating Goshen's Stormwater Quality Management Plan, Water Quality Characterization Report, and Assorted Standard Operating Procedures for a cost not to exceed \$46,000**

**City Civil Traffic Engineer Josh Corwin** told the Board that the City of Goshen Stormwater Department is working to comply with the updated requirements of Indiana's current Municipal Separate Storm Sewer System General Permit (MS4GP), which took effect on Dec. 18, 2021.



As part of this process, **Corwin** said the Stormwater Department would like to contract with Wessler Engineering, Inc. to update the City's current Stormwater Quality Management Plan and Water Quality Characterization Report by July 15, 2023, at a cost not to exceed \$30,000. In addition, Wessler Engineering will review the current stormwater management related standard operating procedures (SOPs) and update and create new SOPs as needed to comply with the current MS4GP requirements by Nov. 5, 2023, at a cost not to exceed \$16,000.

The Stormwater Department requested that the Board of Public Works accept the attached agreement with Wessler Engineering, Inc. and give approval for Mayor Stutsman to sign the agreement.

**Landis/Nichols moved to approve the Agreement with Wessler Engineering, Inc. for Professional Services for updating Goshen's Stormwater Quality Management Plan, Water Quality Characterization Report, and Assorted Standard Operating Procedures for a cost not to exceed \$46,000. Motion passed 4-0.**

**Mayor Stutsman adjourned the City of Goshen Stormwater Board and reconvened the Board of Works & Safety meeting at 2:25 p.m.**

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

**Mayor Stutsman opened Privilege of the Floor at 2:25 p.m.**

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

**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 2:25 p.m.**

**EXHIBIT #1: Memorandum, dated March 20, 2023, which was prepared and circulated at the meeting by the Engineering Department for added agenda item 9) Engineering Department: Approve temporary closure of West Wilden Avenue for road construction. Attached to the memorandum were two color maps showing the closures and two phases of construction.**

**EXHIBIT #2: Memorandum, dated March 20, 2023, which was prepared and circulated at the meeting by Brandy L. Toms of the City Legal Department for added agenda item 10) Approve agreement with Katie Nelson for payment of city property damage. Attached to the memorandum was a payment agreement between Katie Nelson and the City of Goshen and 12 pages of supporting documentation and photos.**





**APPROVED:**

---

**Mayor Jeremy P. Stutsman**

---

**Mike Landis, Member**

---

**Mary Nichols, 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

March 21, 2023

To: Board of Works and Public Safety

RE: Promotion of Jonathan M. Weishaupt to Fire Sergeant

From: Fire Chief Danny Sink

Jonathan M. Weishaupt has passed all of the required tests and standards for promotion to the rank of Fire Sergeant and it is my pleasure to request your approval for the promotion of Jonathan M. Weishaupt to the rank of Fire Sergeant for the Goshen Fire Department effective, April 02, 2023.

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

March 21, 2023

To: Board of Works and Public Safety

RE: Promotion of Garrett T. Sheline to Fire Lieutenant

From: Fire Chief Danny Sink

Sergeant Garret T. Sheline has passed all of the tests and standards required for promotion at GFD.

It is my pleasure to request your approval for the promotion of Garrett T. Sheline to the rank of Fire Lieutenant for the Goshen Fire Department effective April 2, 2023. 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

March 21, 2023

To: Board of Works and Public Safety

RE: Lieutenant Mike Bontrager Retirement

From: Chief Danny Sink

After 27 years of dedicated service to the Goshen community; **Lieutenant Mike Bontrager has submitted his letter of intent to retire effective April 01, 2023** and I ask that you affirm Mike's retirement from GFD.

We have enjoyed our years of working together with Lieutenant Bontrager and we thank him for his many contributions to GFD. We would like to wish Mike and Jane the very best in their new endeavors.



## 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](http://www.goshenindiana.org)

March 27, 2023

**To:** Goshen Board of Public Works and Safety

**From:** Shannon Marks, Legal Compliance Administrator

**Subject:** Goshen Police Department Conditional Offer of Employment to Seth D. Bayes

On behalf of the Police Department, it is recommended that the Board extend a conditional offer of employment to Seth D. Bayes, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement on behalf of the City and the Board.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Police Department as a probationary patrol officer 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.

Additionally, the agreement also provides for payment of a hiring bonus. The eligibility prerequisites set forth in collective bargaining agreement have been formally waived by the FOP. Seth has completed the Tier I basic training requirements, has been employed with another Indiana law enforcement agency for at least one year within the last 24 months, and is a first-time employee of the Goshen Police Department.

The Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Police Department.

### Suggested motions:

- (1) Move to extend a conditional offer of employment to Seth D. Bayes as a probationary patrol officer.
- (2) Move to approve the Conditional Offer of Employment Agreement with Seth D. Bayes, which includes the payment of a hiring bonus, and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement.

## **GOSHEN POLICE DEPARTMENT CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2023, which is the date of the last signature set forth below, by and between **Seth D. Bayes** ("Bayes") and **City of Goshen, 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, City and Bayes agree as follows:

### **CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT**

City conditionally offers Bayes employment as a probationary patrol officer of the Goshen Police Department. Bayes accepts City's conditional offer of employment. City does not have a current position available in the Goshen Police Department. City and Bayes understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Police Department rank and file must exist. Bayes understands that currently no vacancy exists in the rank and file of the Police Department. Although the Goshen Police Department is initiating the pension physical and psychological testing, Bayes understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of police officers.
- (2) Bayes agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Bayes understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Bayes to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Bayes's expense. If additional reports and/or testing are required, Bayes may elect to terminate this agreement.
- (4) InPRS will determine whether Bayes has any Class 3 excludable conditions. Bayes understands that if InPRS finds that Bayes has any Class 3 excludable conditions, Bayes will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Bayes's employment if the disability is related to the Class 3 excludable condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.
- (5) City and Bayes understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment

to Bayes if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Police Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Bayes accepts City's withdrawal and this agreement shall be terminated.

### **HIRING BONUS**

- (1) City agrees to pay a hiring bonus upon Bayes's commencement of employment provided that Bayes meets the following prerequisites:
  - (a) Bayes has successfully completed the minimum Tier I basic training requirements established by the Indiana Law Enforcement Training Board;
  - (b) Bayes has separated from another Indiana law enforcement agency as an active reserve officer or a paid police officer within twenty-four (24) months of accepting the employment offer with the City (within twenty-four (24) months of the date of this agreement);
  - (c) Bayes has served with the other Indiana law enforcement agency as an active reserve officer or paid police officer for a minimum of one (1) year; and
  - (d) Bayes will be a first-time employee of the Goshen Police Department as a police officer.
- (2) By execution of this agreement, Bayes certifies that Bayes meets the prerequisites set forth in paragraph (1).
- (3) Upon commencement of employment, City agrees to pay Bayes a hiring bonus payment of Eight Thousand Dollars (\$8,000) over Bayes's first five (5) years of employment with the City as follows:
  - (a) Two Thousand Dollars (\$2,000) shall be paid upon Bayes's date of hire;
  - (b) Two Thousand Dollars (\$2,000) shall be paid upon Bayes's second employment anniversary date with City; and
  - (c) Four Thousand Dollars (\$4,000) shall be paid upon Bayes's fifth employment anniversary date with City.
- (4) Upon commencement of employment, City agrees to pay Bayes a base wage equal to the base wage paid to a patrol officer as set forth in the current salary ordinance. In addition, Bayes shall be credited with forty-five (45) hours of paid sick leave.
- (5) Bayes's appointment shall be probationary for a period not to exceed one (1) year. The Police Chief may recommend to the Goshen Board of Public Works and Safety that Bayes receive permanent appointment at any time within the probationary period.
- (6) In the event that Bayes voluntarily leaves city employment or is terminated for cause prior to Bayes's second employment anniversary date, Bayes agrees to repay City the hiring bonus payment of Two Thousand Dollars (\$2,000) paid under paragraph (3)(a). No repayment will be due City if Bayes leaves city employment due to disability or illness which make it impractical to continue to serve as a police officer in the foreseeable future, or due to death.
- (7) Bayes's repayment to City under paragraph (6) is due within thirty (30) days of Bayes's last day of employment with City and Goshen Police Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum

beginning thirty (30) days after Bayes's last day of employment with City and Goshen Police Department.

- (8) Bayes shall forfeit any future hiring bonus payments under paragraphs (3)(b) or (3)(c) if:
- (a) Any disciplinary action in excess of a written warning is taken against Bayes at any time during the first five (5) years of employment; and
  - (b) Bayes receives a performance evaluation with a score less than thirty-two (32) after Bayes's first year of employment.

**AMENDMENT**

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

**SEVERABILITY**

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

**INDIANA LAW**

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

**BINDING EFFECT**

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

**ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

\_\_\_\_\_  
Seth D. Bayes

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor/Deputy Mayor  
City of Goshen, Indiana

Date: \_\_\_\_\_





# St. John the Evangelist Catholic Church

109 West Monroe Street • Goshen, IN 46526 • 574.533.3385

March 23, 2023

City of Goshen  
Board of Public Works and Safety  
Goshen, IN 46526

Dear Members of the Goshen Board of Public Works and Safety:

St. John the Evangelist Catholic Church respectfully submits for your review of the following request.

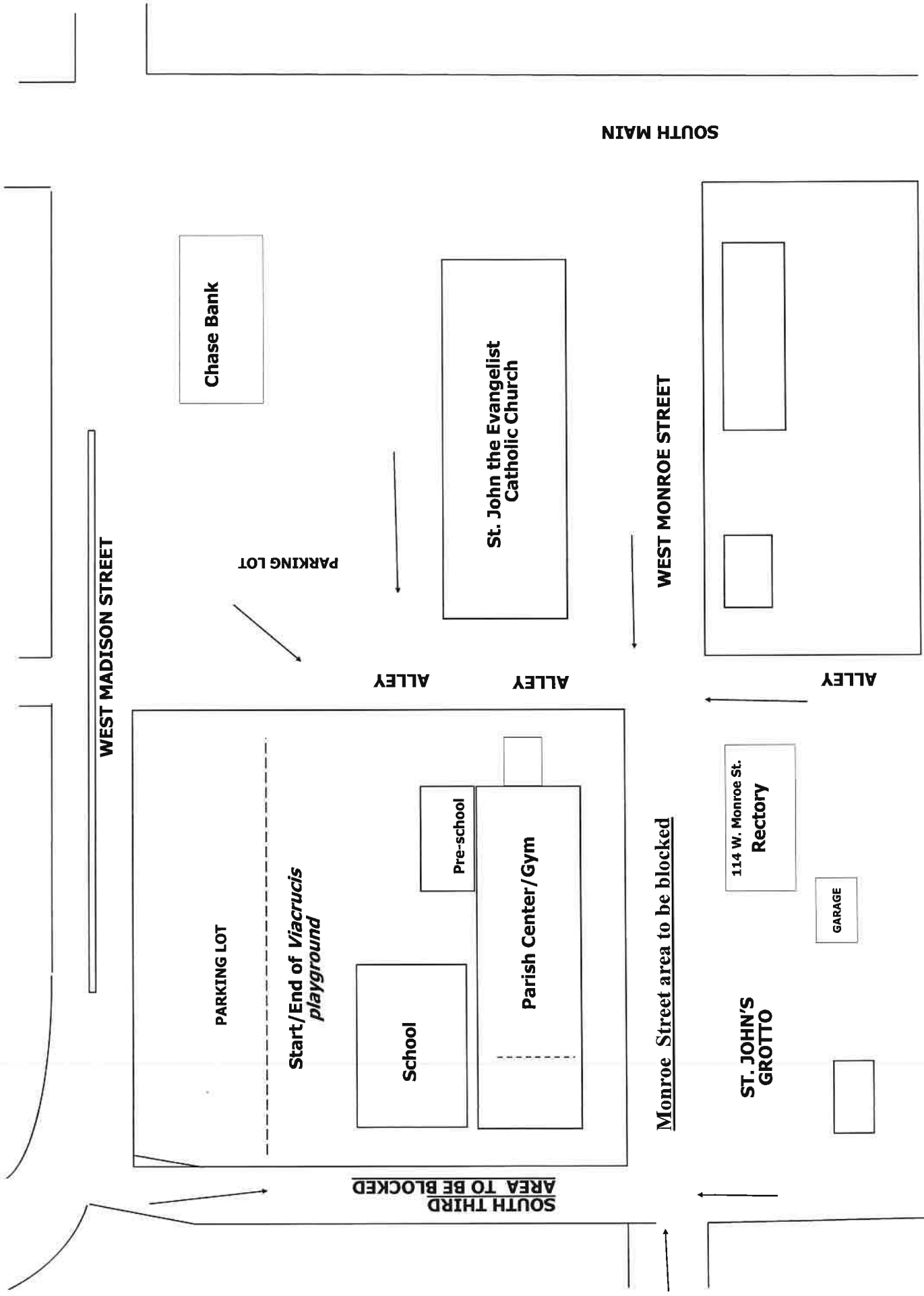
Our plans are for our annual Reenactment of the Lord's Passion (*Viacrucis*) on Good Friday, Friday April 7, 2023. This event allows our parishioners to come together for fellowship, and witness the Reenactment, which brings spiritual goodness. The *Viacrucis* will be held on the Grounds of St. John the Evangelist Church (school parking lot), and will be processing through 3<sup>rd</sup> Street, Monroe Street, and the alley between the school and the church. In order to safely allow our parishioners to enjoy the *Viacrucis*, we are requesting the Board's permission to block part of 3<sup>rd</sup> street, Monroe street, and the alley. We ask that it be blocked from 2:00pm to 6:00pm when the event is completed.

I have included for your convenience a diagram of our parish grounds that indicates the areas that we hope to have blocked with the Board's approval.

Thank you for your time and consideration.

Sincerely,

Jonathan Evangelista  
Pastoral Associate  
St. John the Evangelist Catholic Church  
109 W. Monroe St. Goshen, IN 46526  
574-533-3385 ext. 1216  
jevangelista@stjohncatholic.com



**St. John the Evangelist Catholic Church, 109 W. Monroe Street, Goshen, IN 46526  
 Viacrucis Reenactment — April 7, 2023 At 2PM-6PM**



**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](http://www.goshenindiana.org)

March 27, 2023

**To:** Board of Public Works and Safety  
**From:** Brandy L. Toms  
**Subject:** Agreement with Borntlager, Inc. for the Reroof of City Hall with a Duro-Last Membrane

Attached for the Board's approval and authorization for Mayor Stutsman to execute is an agreement with Borntlager, Inc. for reroofing of City Hall with a Duro-Last Membrane. Borntlager, Inc. will be paid \$4,658 for this service.

**Suggested Motion:**

Approve and authorize Mayor Stutsman to execute the agreement with Borntlager, Inc, for the reroofing of City Hall with a Duro-Last Membrane.

# AGREEMENT

## Complete Reroof of City Hall with Duro-Last

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Borntrager, Inc.** (“Contractor”), whose mailing address is 1715 E. Monroe, Goshen, Indiana and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

### **Section 1. Contractor Duties**

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

- (A) Remove and dispose of existing roofing and debris;
- (B) Inspect existing decking for any water damage. Replacement of any damaged decking will be done at an additional cost of \$7.50 per sqft. upon prior inspection and approval from City.
- (C) Install .50 white Duro-Tuff single-ply roofing over 2.6” (R-15) rigid Isocyanurate insulation board mechanically fastened to existing deck per manufacturer’s specifications and details.
- (D) Install white Duro-Last flashing on adjoining wall; terminated 12” from deck.
- (E) Install Duro-Last pre-fabricated flashing on all roof penetrations as needed.
- (F) Install 4” 24-guage prefinished Kynar coated metal fascia around exterior perimeter matching existing Terra Cotta tile roofing.
- (G) Install all necessary termination bar and accessories as needed.
- (H) Clean premises of all roofing scraps and debris created by this project.

### **Section 2. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall complete all Duties within ninety (90) calendar days of the date of the notice to proceed.

### **Section 3. Compensation**

- (A) City agrees to compensate Contractor the sum of Four Thousand Six Hundred Fifty-Eight Dollars (\$4,658) for performing all Duties.

### **Section 4. Payment**

- (A) City shall pay Contractor for Duties under this agreement in two (2) invoices, with the first one to cover costs of materials and the second paying the balance however, neither invoice shall exceed fifty (50%) of the total bill in the sum of Four Thousand Six Hundred Fifty-Eight Dollars (\$4,658).
- (B) Payment shall be upon City's receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

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

- (C) 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.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

### **Section 5. Licensing/Certification Standards**

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

### **Section 6. Warranty**

A fifteen (15) year non-prorated manufacturer's warranty on all materials and labor will be furnished to City within thirty (30) days after completion of project.

### **Section 7. Independent Contractor**

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this

agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.

- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

### **Section 8. Non-Discrimination**

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

### **Section 9. Employment Eligibility Verification**

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

### **Section 10. Contracting with Relatives**

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

### **Section 11. No Investment Activities in Iran**

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

## **Section 12. Indemnification**

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

## **Section 13. Force Majeure**

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

## **Section 14. Default**

- (A) If Contractor fails to perform the work or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.

- (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the work described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

### **Section 15. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work completed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

### **Section 16. Notice**

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

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

Contractor: Borntrager, Inc.  
Attention: Margo Searfoss  
1715 East Monroe  
Goshen, Indiana 46528

### **Section 17. Subcontracting or Assignment**

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



## **Section 18. Amendments**

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

## **Section 19. Waiver of Rights**

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

## **Section 20. Applicable Laws**

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

## **Section 21. Miscellaneous**

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

## **Section 22. Severability**

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

## **Section 23. Binding Effect**

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

**Section 24. Entire Agreement**

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

**Section 25. Authority to Bind Contractor**

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

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

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

**Borntrager, Inc.**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_



**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

March 27, 2023

**To:** Board of Public Works and Safety  
**From:** Brandy L. Toms  
**Subject:** Quote for programmable logic controllers (PLC) upgrades

The City solicited quotes for the installation, configuration and startup of upgraded programmable logic controllers in accordance with Indiana Code § 5-22-8-3. Below is a summary of the quotes received:

Vendor	Quote Total
Automate	\$108,000.00
Donohue	\$129,000.00
Kendall Electric	\$117,627.31

It is recommended that the Board of Public Works and Safety award the contract to Automate LLC as the lowest responsible and responsive offeror for the installation, configuration and startup of upgraded programmable logic controllers at a cost of \$108,000 and authorize Mayor Stutsman to execute the same.

**Suggested Motion:**

Motion to award the contract to Automate LLC as the lowest responsible and responsive offeror for the installation, configuration and startup of upgraded programmable logic controllers at a cost of \$108,000 and authorize Mayor Stutsman to execute the same.

# AGREEMENT

## With Automate LLC for the Installation of Programmable Logic Controllers (PLC) Upgrades

THIS AGREEMENT is entered into on \_\_\_\_\_, 2023, which is the last signature date set forth below, by and between **Automate LLC** (“Contractor”), whose mailing address is 21279 Protecta Drive, Elkhart, IN 46516, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

### **Section 1. Contractor Duties**

Contractor shall provide City the services for the installation of programmable logic controllers upgrades, which services are more particularly described in Contractor’s March 13, 2023 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.

Contractor’s Duties under this agreement include:

- (A) Removal of existing PLCs
- (B) Installation of new PLCs
- (C) Upgrade firmware of new PLCs
- (D) Upgrade firmware on 1756-ENBT cards as necessary
- (E) Transfer and modification of PLC program from existing PLCs to the new PLCs
- (F) Startup of new PLCs at each station

### **Section 2. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall commence the Duties within one (1) to two (2) weeks after receiving a notice to proceed from City.

### **Section 3. Compensation**

- (A) City agrees to compensate Contractor the sum of One Hundred Eight Thousand Dollars (\$108,000) for performing all Duties.

### **Section 4. Payment**

- (A) City shall pay Contractor for Duties satisfactorily completed under this agreement.
- (B) Payment shall be upon City's receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

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

- (C) 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.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

### **Section 5. 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 Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

### **Section 6. Licensing/Certification Standards**

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

### **Section 7. Warranty**

Contractor shall warrant all materials and services to be free of defects and to conform to the requirements of the specifications set forth by the City for a period of one (1) year after completion of the service and acceptance by City. This warranty shall survive any inspections, testing, acceptance, or payment by City.

### **Section 8. Independent Contractor**

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property

arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.

- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

### **Section 9. Non-Discrimination**

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

### **Section 10. Employment Eligibility Verification**

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

### **Section 11. Contracting with Relatives**

Pursuant to Indiana Code § 36-1-21, if the Contractor is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the

Contractor certifies that Contractor has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

### **Section 12. No Investment Activities in Iran**

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

### **Section 13. Indemnification**

Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Contractor or any of Contractor's agents, officers and employees during the performance of 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 Contractor is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required under this agreement.

### **Section 14. Insurance**

- (A) Prior to commencing work, the Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Contractor shall at least include the following types of insurance with the following minimum limits of liability:
  - (1) Workers Compensation and Employer's Liability - Statutory Limits
  - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

### **Section 15. 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 16. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
  - (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
  - (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

## **Section 17. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.



- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**Section 18. Notice**

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

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

Contractor: Automate LLC  
Attention: D. Tim Stout, Owner  
21279 Protecta Drive  
Elkhart, IN 46516

**Section 19. Subcontracting or Assignment**

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

**Section 20. 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 21. 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 22. Applicable Laws**

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.

- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so maybe deemed a material breach of agreement.

**Section 23. 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 24. 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 25. 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 26. Entire Agreement**

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

**Section 27. 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

**Automate LLC**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## PROJECT PROPOSAL

To: City of Goshen  
Clerk-Treasurer's Office  
202 South 5<sup>th</sup> Street  
Goshen, IN 46528

Date: March 13, 2023  
This proposal is valid for 60 days from the above date.

Automate, LLC and its owner, D. Tim Stout, are pleased to submit this proposal in accordance with your request on February 23, 2023.

### *Water and Wastewater Programmable Logic Controller (PLC) Upgrade*

#### Basis of Proposal

The following proposal is to upgrade the existing Allen Bradley ControlLogix PLCs on 15 control systems throughout the water & wastewater department.

#### Proposal Equipment and Services

Automate, LLC will provide the following materials and services:

##### Materials:

- (15) Allen Bradley ControlLogix PLCs, 1756-L81E

##### Services:

- Removal of existing PLCs
- Installation of new PLCs
- Upgrade firmware on new PLCs
- Upgrade firmware on 1756-ENBT cards as necessary
- Transfer and modification of PLC program from existing PLCs to the new PLCs
- Startup of new PLCs at each station

#### Warranty

Automate, LLC shall warrant all materials and services furnished under this proposal to be free of defects and to conform to the requirements of the bid package set forth by the City of Goshen. The warranty shall be for a period of one year after completion of the service and acceptance by the City of Goshen. This warranty shall survive any inspections, testing, acceptance, or payment by the City of Goshen.

Indemnification

Automate, LLC 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, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by Automate, LLC or any of Automate, LLC's agents, officers and employees during the performance of this project. Such indemnity shall include reasonable attorney's fees and other expenses incurred by the City of Goshen, and shall not be limited by reason of insurance coverage required by this project.

Insurance

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

Pricing

Price as Proposed.....\$108,000.00

Lead Time

Estimated 1 – 2 weeks from acceptance of this proposal to begin the project. Completion is dependent on the City of Goshen's availability to shut down each piece of equipment to allow for the upgrades.


Terms of Payment

Purchase orders may be issued to Automate, LLC via email to Lisa at [lstout@automate-llc.com](mailto:lstout@automate-llc.com) or via mail to 21279 Protecta Drive, Elkhart, IN 46516.

All payments will be due Net 45 days. The project will be invoiced in 2 stages:

- 50% - Upon completion of half of the project
- 50% - Upon completion and acceptance of project

Authorized Signature: \_\_\_\_\_



D. Tim Stout, Owner  
[tstout@automate-llc.com](mailto:tstout@automate-llc.com)



Kelly Saenz, Manager  
WATER & SEWER UTILITIES BUSINESS OFFICE  
CITY OF GOSHEN  
203 South Fifth Street • Goshen, IN 46528-3713  
  
Phone (574) 533-9399 • Fax (574) 533-6961  
watersewer@goshencity.com • www.goshenindiana.org

March 23, 2023

To: Board of Public Works and Safety  
From: Kelly Saenz, Utility Billing Office Manager  
Subject: Request for Sewer Relief -911 S 15<sup>th</sup> Street

Attached is a letter from Adriana Salazar, resident at 1206 Egbert Ave, Goshen In. Ms. Salazar is requesting sewer relief from a water leak caused by broken water line within her home. In addition, Ms. Salazar is requesting the late fee of \$59.46 also be included in this relief.

This leak occurred on 12/26-1/7. The repair has since been paid.

The Utility Office attempted to notify Ms, Salazar of her water leak on 12/29/2022. Upon making contact with the customer the Goshen Water & Sewer office was able to determine the water did not flow into in the sewer and therefore, would qualify for sewer relief.

The total amount of credit to the customer for this leak is as follows:

12/15-1/15- Total Sewer Billed	\$817.98
Sewer Average:	\$ 24.75
Total Amount of Credit:	\$793.23

**Move to grant Ms. Salazar's request for sewer relief in the amount of \$293.23 plus \$59.46 late fee for a total amount of \$352.69.**

## Eldridge, Michelle

---

**From:** Saenz, Kelly  
**Sent:** Tuesday, March 07, 2023 4:36 PM  
**To:** Eldridge, Michelle  
**Subject:** FW: 911 Sewer relief

**From:** Beard, Matt <mattbeard@goshencity.com>  
**Sent:** Tuesday, March 7, 2023 1:44 PM  
**To:** Holdren, Kent <kentholdren@goshencity.com>; Saenz, Kelly <kellysaenz@goshencity.com>  
**Subject:** 911 Sewer relief

I met with the owner of 911 S 15th St to see if they qualified for sewer relief. The damaged pipes were all in the ceiling of the house. The house sits on a crawl space and does not have a sump pump. One of the leaks occurred in the bathroom room but the shower has a good sized lip where it would meet the floor. I don't believe water made it into the

sewer. Yes they would qualify.











Sent from my iPhone



Account Number    
 Zone

Address    
 Name

General | Metered | Non-Metered | Financial | Information | Comments | History | Consumption History | Service Orders | Devices

Code     
 Description

Code	Description	Date	Addr/Occup
CALL	CALLED CUSTOMER	LFT MESS- LEAK 12-29-22	<input type="button" value="Home"/>
CALL	CALLED CUSTOMER	LFT MESS- MAIL RET 1-20-23	<input type="button" value="Home"/>
OWN	OWNER	ARMANDO SALAZAR	<input type="button" value="Home"/>

Edit This Record

View | michelleldr



Account Number    
 Zone

Address    
 Name

General | Metered | Non-Metered | Financial | Information | Comments | History | Consumption History | Service Orders | Devices

Services

Period  Thru

Grid  Graph



Year <input type="text" value="2023"/>									
Month	Date	Read		Total Consumption	Demand		Reading		Occupant
		Previous	Current		Read	Consumption	Flag	Source	
- Year: 2023 Total 1									
Jan	01/15/2023	13261	24497	11236			Regular	Hand Held	03
- Year: 2022 Total 12									
Dec	12/15/2022	12949	13261	312			Regular	Hand Held	03
Nov	11/15/2022	12649	12949	300			Regular	Hand Held	03
Oct	10/15/2022	12351	12649	298			Regular	Hand Held	03
Sep	09/15/2022	12031	12351	320			Regular	Hand Held	03
Aug	08/15/2022	11620	12031	411			Regular	Hand Held	03
Jul	07/15/2022	11261	11620	359			Regular	Hand Held	03
Jun	06/15/2022	10787	11261	474			Regular	Hand Held	03
May	05/15/2022	10293	10787	494			Regular	Hand Held	03
Apr	04/15/2022	9911	10293	382			Regular	Hand Held	03
				Avg 808					

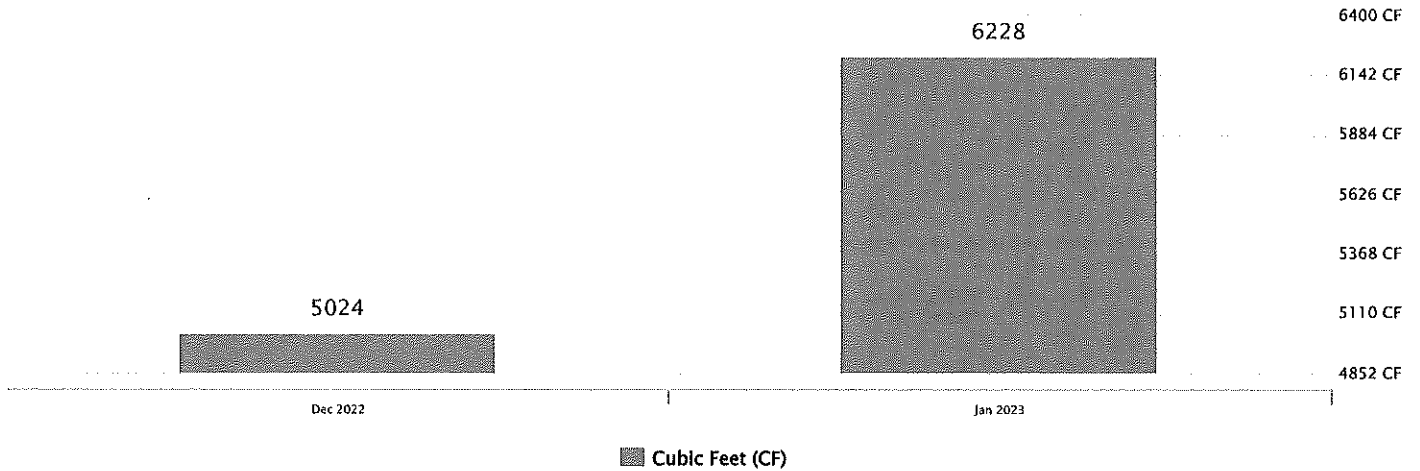
Edit This Record

View michelleldr

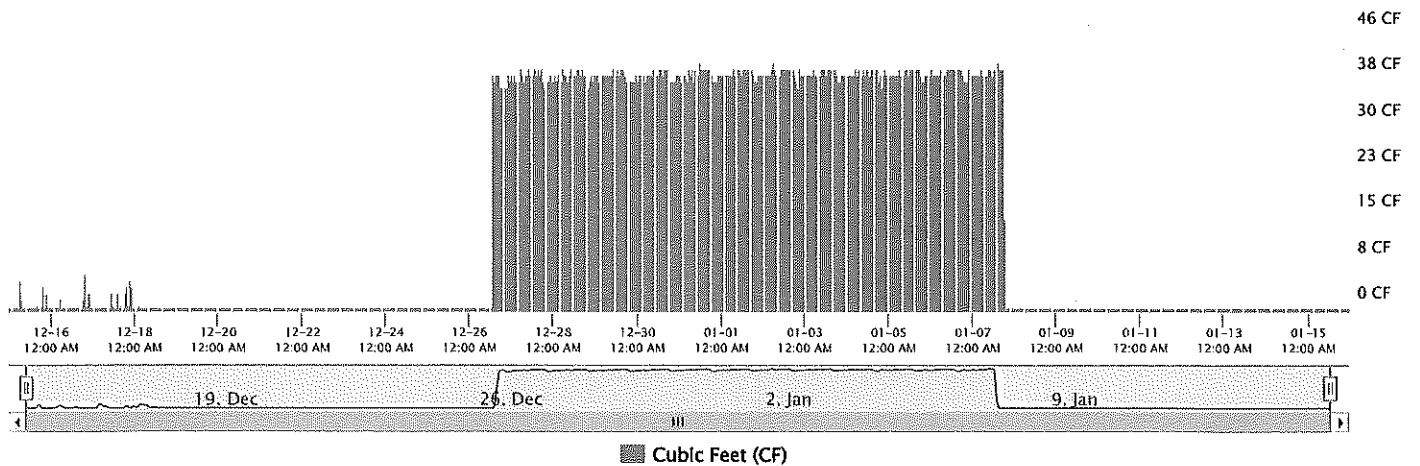
# 12/15/2022 - 01/15/2023

Device Number: 828488261P  
Account Number: 311-0070-03  
Radio Number: 16080530  
Customer Name: SILVESTRE SALAZAR  
Processed Date/Time: 03/07/23 22:00:14 EST  
Uploaded Date/Time: 03/07/23 16:03:36 EST  
Location: 911 S 15th St Goshen City IN 46528

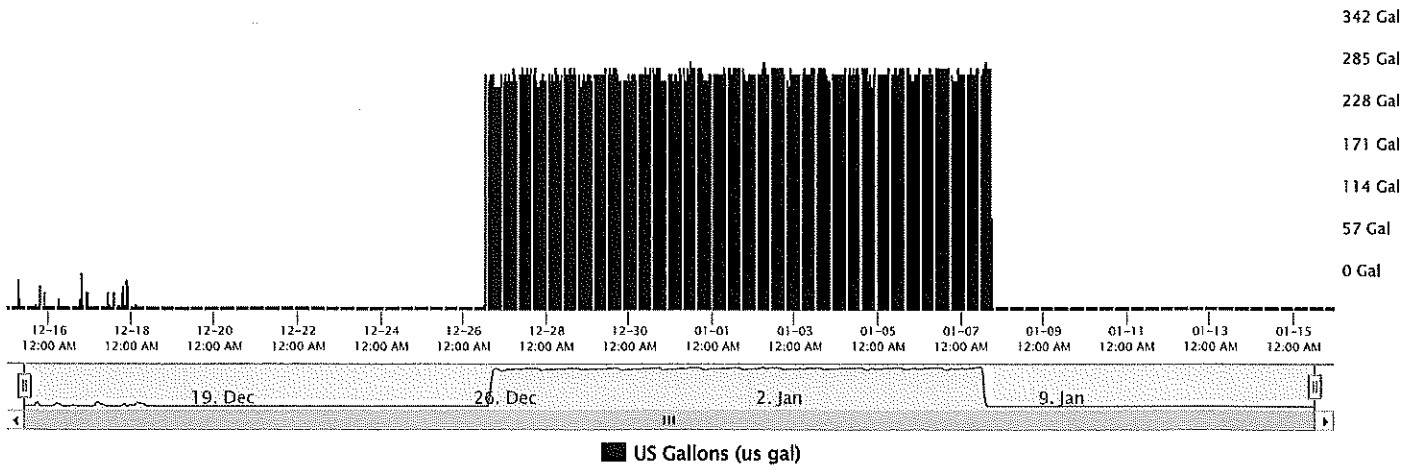
## Consumption Overview - Volume (CF)



## Volume (CF)



## Volume (Gal)





**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Engineering Department

RE: **INDIANA AVENUE APARTMENTS  
INDIANA AVENUE LANE RESTRICTIONS- REVISED (JN: 2020-2010)**

DATE: March 27, 2023

---

Ancon Construction has requested permission to close the pedestrian path and the northbound turn lane of Indiana Avenue for the Indiana Avenue Apartments between Plymouth Avenue and the entrance to the Indiana Avenue Apartments, from Wednesday, March 29 until Saturday, April 1. This timeframe was approved through the BOW on March 20, 2023. After further review, the contractor is asking these days be weather dependent and extend the lane restriction date through April 5, 2023 in case there is a weather delay. The schools will be on spring break while the work is being performed. Work during this period, will include the removal of 7 failed sidewalk panels, and replacing with new panels. Northbound traffic will still have access on Plymouth Avenue.

**Requested motion: Move to approve the closure of the pedestrian path and the northbound turn lane of Indiana Avenue between Plymouth Avenue and the entrance to the Indiana Avenue Apartments to be weather dependent and extend the timeframe from March 29, 2023 until April 5, 2023.**

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

\_\_\_\_\_  
Jeremy Stutsman, Mayor

\_\_\_\_\_  
Barb Swartley, Member

\_\_\_\_\_  
Mary Nichols, Member

\_\_\_\_\_  
Michael Landis, Member





**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Traffic Commission

FROM: Engineering Department

RE: **COMMISSION RECOMMENDATIONS**

DATE: March 24, 2023

---

From the last two meetings, the Traffic Commission has given a positive recommendation to the Board of Works for the following items. The original memo from Engineering to the Traffic Commission for each item is attached for reference:

1. Place full size "No Parking" signs near the intersection of Bridge St. and N 8<sup>th</sup> St.
2. Place a "No Outlet" sign on Park Meadows north of the intersection with Hay Parkway
3. Place additional stop signs to make the intersection of Park West Drive and Pringle Drive an "all-way" stop.
4. Place two "No Outlet" signs on Braxton Court, one on each entrance leg to the cul-de-sac.



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Traffic Commission

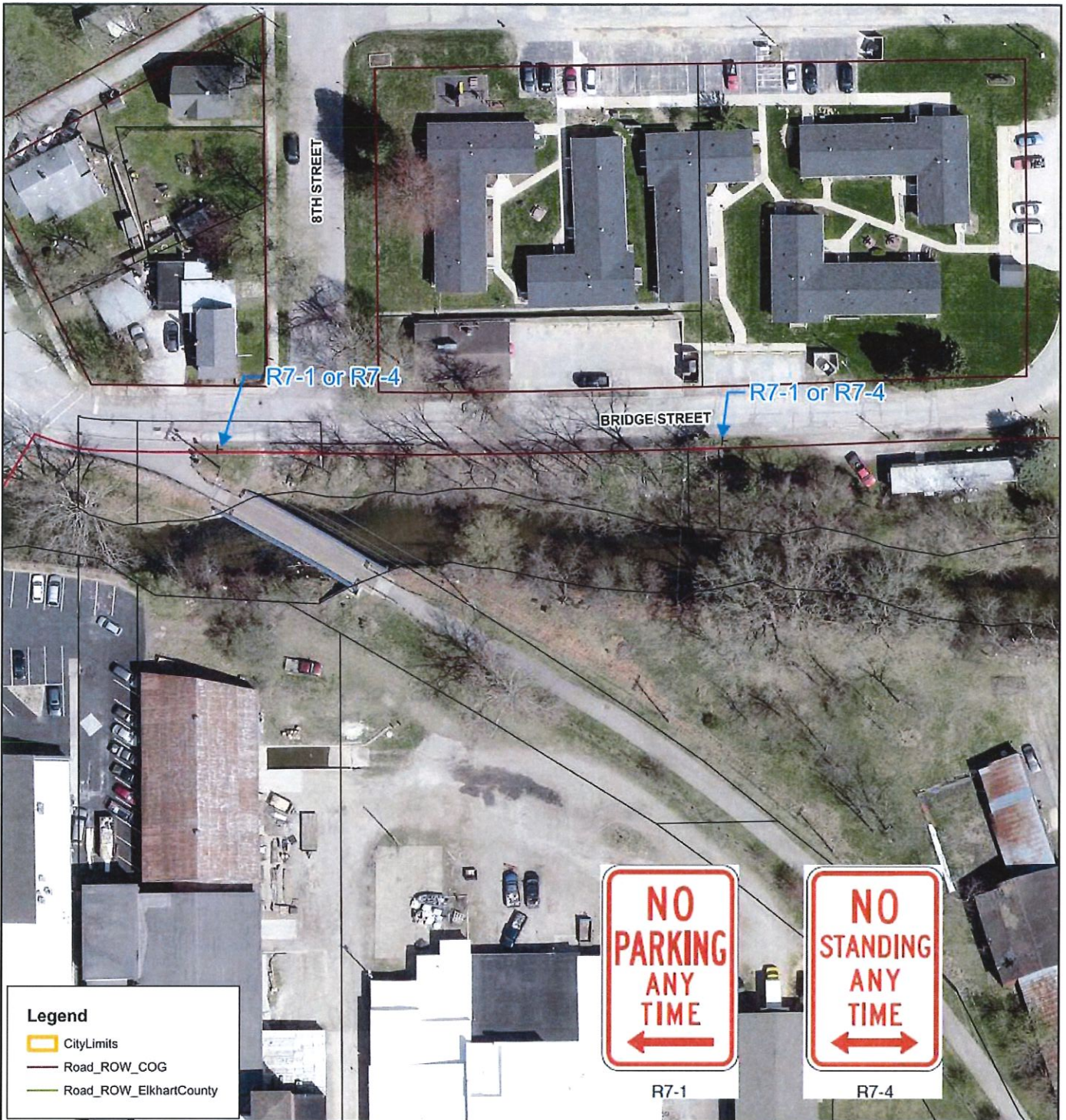
FROM: Engineering Department

RE: **BRIDGE STREET PARKING**

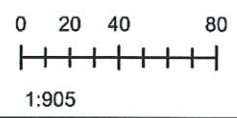
DATE: October 18, 2022

---

The engineering office has received a resident from the police department to revisit the parking restrictions near the intersection of Bridge St and N 8<sup>th</sup> St. Drivers continue to disregard the “No Parking” signs and parking remains an issue in the area. It has been noted that the size of the signs may be too small to be noticed by some. Attached is the exhibit from the previous time the parking near this intersection was considered.



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.



**"No Parking" Signs  
Bridge Street**

Date: 2/17/2021  
 Drawn by: JSC

**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



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Traffic Commission

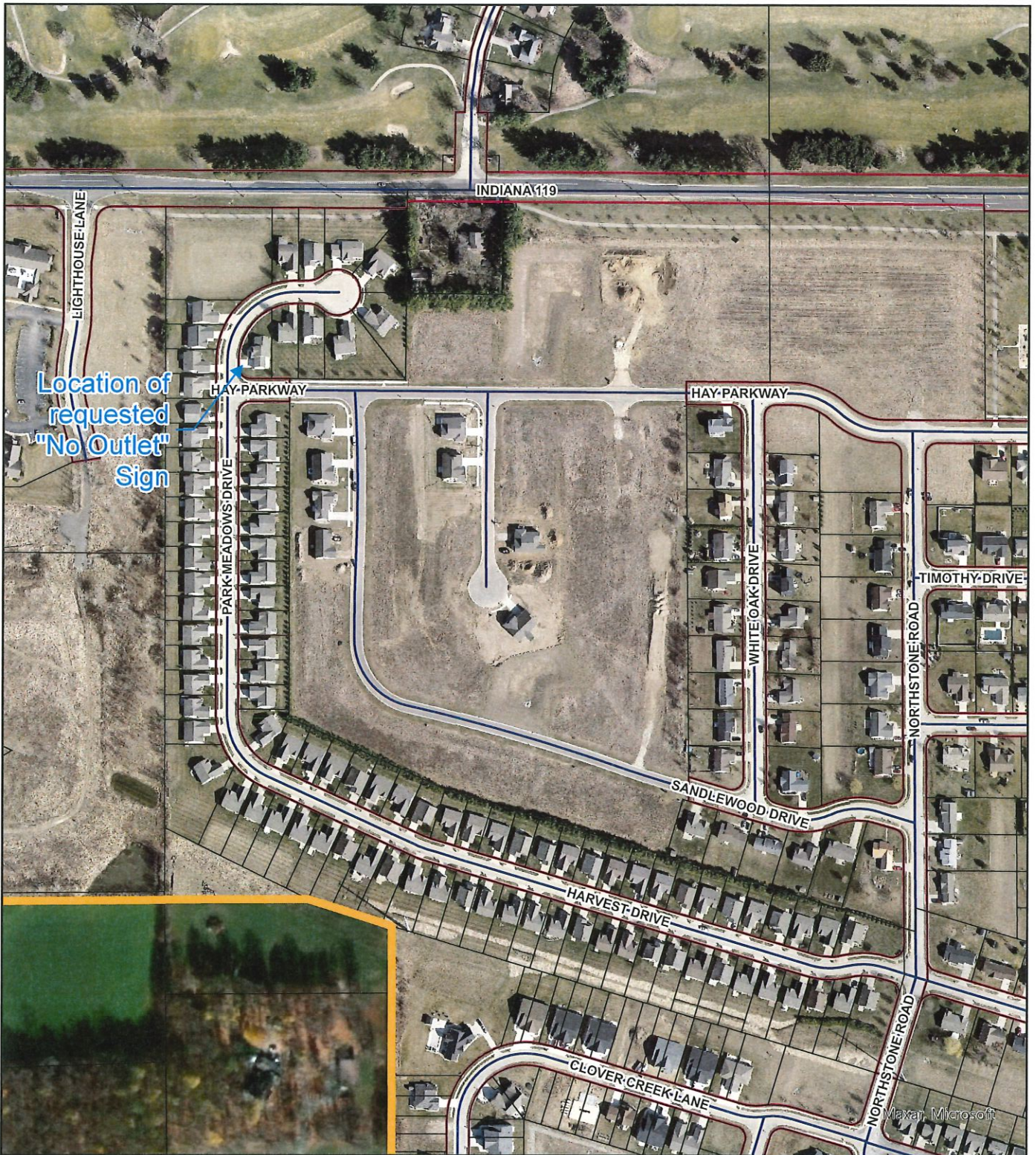
FROM: Engineering Department

RE: **PARK MEADOWS “NO OUTLET” REQUEST**

DATE: October 18, 2022

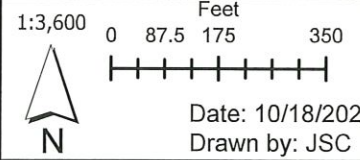
---

The engineering office has received a request for the placement of a “No Outlet” sign on Park Meadows north of the intersection with Hay Parkway as a result of numerous vehicles, such as large delivery trucks, attempting to access Plymouth via Park Meadows Drive and having to turn around in the cul-de-sac. Engineering would support this request.



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.

**Request for "No Outlet" Sign  
Park Meadows Dr.**



**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



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Traffic Commission

FROM: Engineering Department

RE: **PARK WEST SIGN REQUEST**

DATE: October 18, 2022

---

The engineering office has received a resident request place speed limit signs at the entrances to the Park West subdivision at each end of Park West Drive, plus additional signs in the middle of the subdivision and along Pringle Dr. The resident is also to make the intersection of Park West and Pringle into a all-way stop. The resident feels the subdivision is being used as a “cut-thru” by non-residents of the subdivision and many of them are speeding in the process.

**Staff Opinion:**

As is usually noted with these requests, the placement of additional speed limit signs and unwarranted stop signs typically has little long-term impact on the corridor travel speed. Staff would support the placement of a limited number of speed limit signs. While the all-way stop would likely not have a significant impact on speeds, it would increase the travel time in the corridor and may deter non-resident drivers from attempting to use the subdivision as a “cut-thru”.

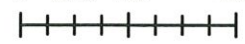


The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee 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.

1:3,600

Feet

0 87.5 175 350



Date: 10/18/2022

Drawn by: JSC

### Request for Additional Signs Park West

**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



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Traffic Commission

FROM: Engineering Department

RE: **LARIMER SIGN REQUEST**

DATE: February 13, 2023

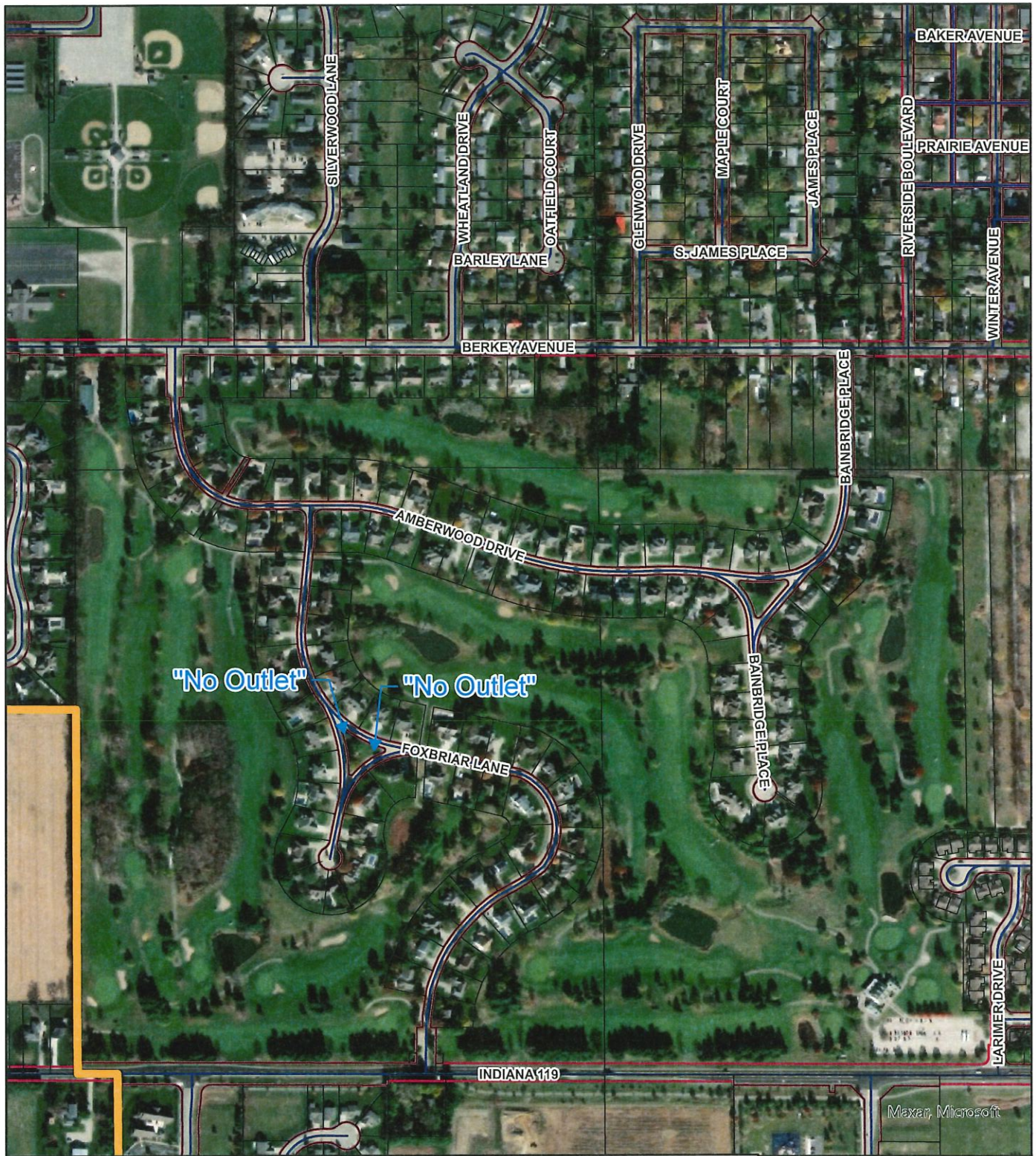
---

In October, the commission considered a request for the placement of “No Outlet” signs at the entrance to the cul-de-sacs in the Larimer Greens subdivision and the item was tabled at that time. Since that meeting, the engineering office has received additional calls and emails in support of the placement of the signs. It has also been confirmed since the previous meeting that there are two “No Outlet” signs currently at the east cul-de-sac, Bainbridge Place. Therefore, the request is clarified to only be for two new signs at the entrance to the Braxton Court cul-de-sac.

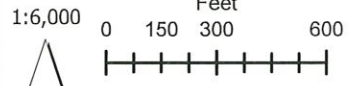
**Staff Opinion:**

Staff would support the placement of “No Outlet” signs at the cul-de-sac entrances.





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.



Date: 10/18/2022  
 Drawn by: JSC

### Request for "No Parking" Signs Terrace Park

**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



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering Department

RE: **2023 STREET DEPT. MILLING PACKAGE  
(JN: 2023-0019)**

DATE: March 24, 2023

---

On March 9 and 12, 2023, we received proposals for the above referenced project. Following are the results:

McCrite Milling & Construction Co., Inc. - \$19,005.00  
Specialties Company - \$25,159.00

The Engineering Department is requesting the Board of Public Works and Safety to award the contract to McCrite Milling & Construction Co., Inc. as the lowest responsive and responsible quoter.

**Requested Motion: Approve the Agreement with McCrite Milling & Construction Co., Inc. for the 2023 Street Dept. Milling Package project in the amount of \$19,005.00.**

**AGREEMENT  
WITH MCCRITE MILLING & CONSTRUCTION CO., INC. FOR  
THE 2023 ASPHALT MILLING PROJECT**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2023, by and between **McCrite Milling & Construction Co., Inc.** ("Contractor"), whose mailing address is 810 Industrial Blvd., New Albany, IN 47150, 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:

**1. Scope of Services.**

Contractor shall preform all work for the 2023 ASPHALT MILLING PROJECT, which shall include providing all labor, materials, tools, equipment, supplies, cost of insurance and bonds, and other miscellaneous costs necessary to complete the work in accordance with the Project Specifications attached as Exhibit A, and the current edition of INDOT's Standard Specifications which is incorporated into this agreement by reference. For the purposes of this agreement, all services shall be referred to as the "Project."

**2. Effective Date; Project Completion**

- (A) The contract shall become effective on the day of execution and approval by the Goshen Board of Public Works and Safety and Contractor.
- (B) Contractor shall begin work on the Project as soon as practical and in proper weather conditions. Once Contractor mobilizes, progressive work effort shall be maintained to complete the work as expeditiously as is consistent with professional skill and care in the orderly progress of the Project.
- (C) Contractor shall perform all work on this Project between the hours of 7:00 am and 7:00 pm, Monday through Friday. Contractor shall coordinate the work schedule for the Project with City's Street Commissioner at least 48 business hours prior to beginning work.
- (D) Contractor shall complete the Project by June 1, 2023.

**3. Compensation**

- (A) City shall pay Contractor for each square yard of surface milled at a cost of \$1.05 per square yard with an estimated quantity of 18,100 square yards of surface anticipated to be milled at an approximate cost of Nineteen Thousand Five Dollars (\$19,005).
- (B) The compensation shall cover and include all Contractor's costs necessary to provide for all supervision, labor, materials, equipment, services, permits and other components required to complete the Project, including any incidentals whether or not specifically called for in the Project Specifications.

**4. Payment**

- (A) Upon receipt of a detailed invoice, City shall pay Contractor for the work under this contract upon Contractor's completion of the Project, and the final inspection and acceptance by City.
- (B) Contractor shall submit to City the detailed invoice to the following address, or at such other address as City may designate in writing.

City of Goshen  
c/o Goshen Engineer Department  
204 E. Jefferson Street, Suite 1  
Goshen, IN 46528

- (C) Provided there is no dispute on amounts due, payment will be made to Contractor within forty-five (45) days following City's receipt of the detailed invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

**5. Materials and Workmanship; Inspection**

- (A) All products, materials, components, equipment, supplies or workmanship entering into the performance of this contract shall be as specified, free of defects, and subject to the City's inspection and testing.
- (B) City shall have the right to reject materials and/or workmanship and require the correction or replacement of products, materials, components, equipment, supplies or workmanship which are defective or do not conform to the requirements of the Specifications.

**6. Independent Contractor**

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

**7. Non-Discrimination**

Contractor and any subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to the employee or applicant'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.

**8. Employment Eligibility Verification**

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor

is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.

- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and Contractor shall not retain an employee or continue to contract with a person that Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this contract, to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

## **9. Indemnification**

Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by Contractor or any of Contractor's agents, officers, and employees during the performance of this contract. Such indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage required by this contract.

## **10. Insurance**

- (A) Prior to commencing work, Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Contractor shall at least include the following types of insurance with the following minimum limits of liability:
  - (1) Workers Compensation and Employer's Liability - Statutory Limits
  - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate
  - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (4) Excess Umbrella Coverage - \$1,000,000 each occurrence

## **11. 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 fifteen (15) 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.

## **12. Default**

- (A) If Contractor fails to perform the work or comply with the provisions of this contract, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
  - (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the work described under these Specification Documents.
  - (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

## **13. Termination**

- (A) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this contract, in whole or in part, in the event of default by Contractor.

- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### **14. Subcontracting or Assignment of Contract**

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

#### **15. Amendments**

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

#### **16. Waiver of Rights**

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

#### **17. Applicable Laws**

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

#### **18. Miscellaneous**

- (A) Any provision of this contract 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 contract.
- (B) 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.
- (C) These documents 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.
- (D) In the event legal action is brought to enforce or interpret the terms and conditions of these documents, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

#### **19. Severability**

In the event that any provision of the contract 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 contract shall not affect the validity or enforceability of any other provision of the contract.

**20. Binding Effect**

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

**21. 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

**McCrite Milling & Construction Co., Inc.**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_





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 GENESIS PRODUCTS INC, PLAT 10 – JN: 2022-2004**

DATE: March 27, 2023

---

The Stormwater Department requests the approval of an Agreement for the Completion of Construction for 1778 Eisenhower Drive South. The building has passed its final building inspection and the project is substantially completed except for exterior stabilization work, planting all required landscaping at the site, installation of final layer of hard surface for the parking lot, removal of old drive and installation of new drive. This final requirement cannot be completed at this time due to weather conditions.

The property owner Genesis Products, Inc, and builder Nuway Construction, agree to complete all listed work by June 15, 2023. The expected cost of work is two hundred and forty two thousand six hundred and sixty three dollars (\$242,663.00) and a surety in the form of a letter of credit for that amount has been remitted to the Clerk-Treasurer's office.

**Requested Motion: Approve and authorize the Board to execute the Agreement with Genesis Products, Inc and Nuway Construction for the Completion of the Construction Project at 1778 Eisenhower Drive South.**

## AGREEMENT FOR THE COMPLETION OF THE CONSTRUCTION PROJECT

THIS AGREEMENT is entered into on March 27, 2023, 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: Genesis Products, Inc

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

Builder: Nuway Construction

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: 1778 Eisenhower Drive South, 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 15, 2023, 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 93,300 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: 7 London Plane trees, 6 Swamp White Oak trees, 5 Red Oak trees, 4 Bald Cypress trees, and 6 Accoolade trees

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. 102,958 sq ft of topcoat asphalt
- 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 \_\_\_\_\_ square feet of concrete sidewalk and/or curbing at or adjacent to the Site parallel to the following public street: \_\_\_\_\_  
\_\_\_\_\_
- Install approximately \_\_\_\_\_ of concrete sidewalk at the Site to the building entrance.
- Install the following certain parts or equipment at the Site: 21,00 sqft of retention, 13,000 sqft of soil to be spread, 3,000 sqft full-depth asphalt replacement, grooved thermo lane markings across Eisenhower drive patch, removal of existing drive and culverts on northeast side, culvert end section and rip-rap for new drive, restoration of damaged parking spots
- 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 two hundred and forty two thousand six hundred and sixty three Dollars (\$ 242,663.00 ) 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: Genesis Products, Inc  
1853 Eisenhower Drive  
Goshen, IN  
46526

Builder: Nuway Construction  
2119 Carmen Ct  
Goshen, IN  
46526

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.

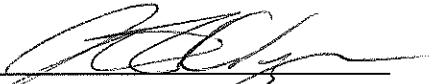
11. **ATTORNEY FEES.** In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party, including reasonable attorneys' fees.
12. **SEVERABILITY.** In the event 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:<sup>1</sup>**

Property Owner:

Signature:   
Printed: Jon Venger  
Title (if any): President  
Date: 2/9/23

Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title (if any): \_\_\_\_\_  
Date: \_\_\_\_\_

Builder:

Signature:   
Printed: Kylie Steele  
Title: Project Manager  
Date: 03/23/23

**Goshen:**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor  
Date: \_\_\_\_\_

<sup>1</sup> 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.

\_\_\_\_\_  
Michael Landis, Board of Works and Safety

Date: \_\_\_\_\_

\_\_\_\_\_  
Mary Nichols, Board of Works and Safety

Date: \_\_\_\_\_

\_\_\_\_\_  
Barb Swartley, Board of Works and Safety

Date: \_\_\_\_\_



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Goshen Engineering

RE: **WILDEN AVENUE RECONSTRUCTION CO#4  
(JN: 2014-0035)**

DATE: March 27, 2023

---

Attached please find Change Order No. 4 for the contract with Rieth-Riley for the Wilden Avenue Reconstruction project.

This change order is for additional costs expected for water main backfill material. During the course of the project it was discovered that, due to an error in the project specifications, the costs for INDOT Structure Backfill, Type 1, were not incorporated into the cost for installing water main. As the in-situ material is not expected to be suitable for use as backfill, Structure Backfill will be required for water main construction. Engineering staff and the City's project inspection consultant, DLZ, negotiated a reduced price for the water main backfill material. Change Order No. 4 increases the contract price by \$134,090.00 (1.93% of the original contract amount) making the current contract amount \$7,112,620.83. No time is being added to the contract for this change.

<b>Original contract amount</b>	<b>\$6,965,019.56</b>
Change Order No. 1	\$ 1,221.51
Change Order No. 2	\$ 12,289.76
Change Order No. 4	\$ 134,090.00
<b>Revised contract amount</b>	<b>\$7,112,620.83</b>

**Suggested Motion: Move to approve and authorize the mayor to sign Change Order No. 4 increasing the contract amount by \$134,090.00, for a revised contract amount of \$7,112,620.83**



**INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary**

**Contract Information**

District:FT. WAYNE DISTRICT

Contract No.: R -37647

AE:Koch, Michael

Letting Date:05/05/2022

PE/S:Wakeman, John

Status:Pending

**Change Order Information**

Date Generated: 03/13/2023

Change Order No.: 004

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: ERRORS & OMISSIONS, Design/Plan Related

Description: Structure Backfill, Type 1, Water Main

Original Contract Amount	\$ 6,965,019.56	
Current Change Order Amount	\$ 134,090.00	Percent: 1.925 %
Total Previous Approved Changes	\$ 13,511.27	Percent: 0.194 %
Total Change To-Date	\$ 147,601.27	Percent: 2.119 %
Modified Contract Amount	\$ 7,112,620.83	

**Time Extension Information**

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE: \_\_\_\_\_ DCE: \_\_\_\_\_ SCE: \_\_\_\_\_ DDCM: \_\_\_\_\_

SS Days \_\_\_\_\_ SP Days Value \$ \_\_\_\_\_

Revised Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

**INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary**

**Review and Approval Information**

Required Approval Authority AE:\_\_\_\_\_ DCE:\_\_\_\_\_ SCE:\_\_\_\_\_ \* DDCM:\_\_\_\_\_ \*  
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K - ) ( -- LE \$ 2 M -- ) ( -- GT \$ 2 M -- )  
(Days per Contract) ( 50 SS days ) ( 100 SS days ) ( 200 SS Days ) ( GT 200 SS days)

Verbal Approval Required? Y / N If Y, by \_\_\_\_\_ Date Issued \_\_\_\_\_

Total Change To-Date>5%? Y / N If Y , Copy to Program Budget Manager \_\_\_\_\_

Scope/Design Recommendation Y / N If Y, Referred to Project Manager(PM) \_\_\_\_\_  
Required? Date to PM \_\_\_\_\_ Date Returned \_\_\_\_\_

Approval Authority Concurs with PM? Y / N If Y, Concurrence by \_\_\_\_\_ Date \_\_\_\_\_  
If N,Resolution: Approved \_\_\_\_\_ Disapproved \_\_\_\_\_  
Resolved by \_\_\_\_\_ Date \_\_\_\_\_

LPA Signatures Required? Y / N If Y, Date to LPA \_\_\_\_\_ Date Returned \_\_\_\_\_

FHWA Signatures Required? Y / N If Y, Date to FHWA \_\_\_\_\_ Date Returned \_\_\_\_\_

\* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer \_\_\_\_\_ Date \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract No: R -37647  
Change Order No: 004

INDIANA  
Department of Transportation

Date: 03/13/2023  
Page: 3

Contract: R -37647  
Project: 1400715 - State: 140071500LC2  
Change Order Nbr: 004  
Change Order Description: Structure Backfill, Type 1, Water Main  
Reason Code: ERRORS & OMISSIONS, Design/Plan Related

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount Change
0139	1400715	0139	211-09264	CYS	58.300	2300.000	C	Amount:\$ 134,090.00

Item Description: STRUCTURE BACKFILL TYPE 1  
Supplemental Description1: Water main backfill  
Supplemental Description2:

Total Value for Change Order 004 = \$ 134,090.00

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.

General or Standard Change Order Explanation

A contract time adjustment is not required for this change.

General or Standard Change Order Explanation

The Unique Special Provision (USP) for water main is conflicting with respect to payment for backfill of water main pipe. While the Basis for Payment section (pg. 107) indicates that structure backfill for water main is included in the cost of other items, the Method of Measurement section (pg. 106) states Structure Backfill will be measured in accordance with INDOT SS Section 211.09. There is an original contract pay item for Structure Backfill which would support direct payment. Following discussions with the designer, it was determined that the planned quantity for Structure Backfill did not include quantity for backfilling the water main. Discussions between DLZ, INDOT, and the City concluded that the conflicting comments in the USP would support the claim that Structure Backfill for the water main should be paid for separately. Due to the missing pay item quantity, this is coded as an Error and Omissions change order, but is not considered recoverable. The contract item for backfill for this project is participating and as a result, this Structure Backfill item is also participating. Rieth-Riley agreed to provide a revised price for the water main backfill given the significant change to a major contract pay item. As such, Structure Backfill will be paid at the original contract price up to 100% of the original item, which will cover installation of the sewer items, and the Structure Backfill quantity over 100% of the original contract amount will be paid at the revised and reduced contract price established with this change order. This agreement is in accordance with INDOT SS Section 104.02, except Rieth-Riley has agreed to compensation at the original bid price up to 100% of the original contract quantity in lieu of 125% as defined in the INDOT SS. No additional time was requested or is warranted for this change in quantity. All items were discussed with the INDOT AE and PM, as well as the City of Goshen ERC, during the development of this change order.

Change Order Explanation for Specific Line Item

\*\*\*\*\*  
It is the intent of the parties that this change order is full and complete compensation for the work describe above.  
Notification and consent to this change order is hereby acknowledged.

Contractor: Rieth Riley Construction

Signed By: [Signature]

Date: 3/16/23

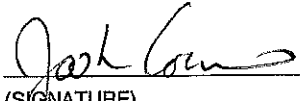
NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.

Contract No:R -37647  
Change Order No:004

INDIANA  
Department of Transportation

Date:03/13/2023  
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

  
(SIGNATURE)

City Engineer  
(TITLE)

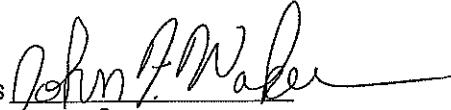
3/24/23  
(DATE)

(SIGNATURE)

(TITLE)

(DATE)

SUBMITTED FOR CONSIDERATION

PE/S   
DLZ

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level	Name of Approver	Date	Status
Project Engineer/Supervisor	Wakeman, John	00/00/0000	Action Pending
Area Engineer	Koch, Michael	00/00/0000	Action Pending



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Goshen Engineering

RE: **WILDEN AVENUE RECONSTRUCTION CO#5  
(JN: 2014-0035)**

DATE: March 27, 2023

---

Attached please find Change Order No. 5 for the contract with Rieth-Riley for the Wilden Avenue Reconstruction project.

This change order is for costs related to the addition of water service taps to the project. According to the original project specifications, the City was responsible for making all water service taps to the new water main. However, Goshen Water Department crews typically do not install taps when on a new water main when it is under construction. Change Order No. 5 increases the contract price by \$30,888.00 (0.44% of the original contract amount) making the current contract amount \$7,143,508.83. No time is being added to the contract for this change.

Change Order No. 4 and Change Order No. 5 are being presented separately, due to how they were processed through INDOT. Change Order No. 3 is a time extension, only, and is still being reviewed.

<b>Original contract amount</b>	<b>\$6,965,019.56</b>
Change Order No. 1	\$ 1,221.51
Change Order No. 2	\$ 12,289.76
Change Order No. 4	\$ 134,090.00
Change Order No. 5	\$ 30,888.00
<b>Revised contract amount</b>	<b>\$7,143,508.83</b>

**Suggested Motion: Move to approve and authorize the mayor to sign Change Order No. 5 increasing the contract amount by \$30,888.00, for a revised contract amount of \$7,143,508.83.**

**INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary**

**Contract Information**

District:FT. WAYNE DISTRICT

Contract No.: R -37647

AE:Koch, Michael

Letting Date:05/05/2022

PE/S:Wakeman, John

Status:Draft

**Change Order Information**

Date Generated: 00/00/0000

Change Order No.: 005

Date Approved: 00/00/0000

EWA: Y or Force Acct: N

Reason Code: CHANGED COND, Constructability Related

Description: Watermain Connection

Original Contract Amount \$ 6,965,019.56

Current Change Order Amount \$ 30,888.00

Percent: 0.444 %

Total Previous Approved Changes \$ 13,511.27

Percent: 0.194 %

Total Change To-Date \$ 44,399.27

Percent: 0.638 %

Modified Contract Amount \$ 7,009,418.83

**Time Extension Information**

Date Initiated 00/00/0000

Date Completed 00/00/0000

Original Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SP Date 00/00/0000 or SP Days

(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension

SS Days 0 SP Days 0 SP Days Value \$ 0.00

Previous Time Approved

SS Days by AE:\_\_\_\_\_ DCE:\_\_\_\_\_ SCE:\_\_\_\_\_ DDCM:\_\_\_\_\_

SS Days\_\_\_\_\_ SP Days Value \$ \_\_\_\_\_

Revised Contract Time

SS Completion Date 00/00/0000 or SS Calendar/Work Days 0

SS Date 00/00/0000 or SP Days 0

**INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary**

**Review and Approval Information**

Required Approval Authority AE: \_\_\_\_\_ DCE: \_\_\_\_\_ SCE: \_\_\_\_\_ \* DDCM: \_\_\_\_\_ \*  
(\$ per Change Order) (- LE \$ 250K-) (- LE \$ 750K - ) ( -- LE \$ 2 M -- ) ( -- GT \$ 2 M -- )  
(Days per Contract) ( 50 SS days ) ( 100 SS days ) ( 200 SS Days ) ( GT 200 SS days)

Verbal Approval Required? Y / N If Y, by \_\_\_\_\_ Date Issued \_\_\_\_\_

Total Change To-Date>5%? Y / N If Y, Copy to Program Budget Manager \_\_\_\_\_

Scope/Design Recommendation Required? Y / N If Y, Referred to Project Manager(PM) \_\_\_\_\_  
Date to PM \_\_\_\_\_ Date Returned \_\_\_\_\_

Approval Authority Concurs with PM? Y / N If Y, Concurrence by \_\_\_\_\_ Date \_\_\_\_\_  
If N,Resolution: Approved \_\_\_\_\_ Disapproved \_\_\_\_\_  
Resolved by \_\_\_\_\_ Date \_\_\_\_\_

LPA Signatures Required? Y / N If Y, Date to LPA \_\_\_\_\_ Date Returned \_\_\_\_\_

FHWA Signatures Required? Y / N If Y, Date to FHWA \_\_\_\_\_ Date Returned \_\_\_\_\_

\* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer \_\_\_\_\_ Date \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract No: R -37647  
Change Order No: 005

INDIANA  
Department of Transportation

Date: 03/13/2023  
Page: 3

Contract: R -37647  
Project: 1400715 - State: 140071500LC2  
Change Order Nbr: 005  
Change Order Description: Watermain Connection  
Reason Code: CHANGED COND, Constructability Related

CLN	PCN	PLN	Item Code	Unit	Unit Price	CO Qty	Comment	Amount	Change
0140	1400715	0140	715-11896	EACH	468.000	66.000	C	Amount:\$	30,888.00

Item Description: WATER SERVICE CONNECTION

Supplemental Description1: ,Tapping of main

Supplemental Description2:

Total Value for Change Order 005 = \$ 30,888.00

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.

General or Standard Change Order Explanation

A contract time adjustment is not required for this change.

General or Standard Change Order Explanation

This contract includes pay item 0059 "Water Service Line", which is intended to compensate the contractor by the linear foot for installation of a new water service (pg. 106). The CIB also states that the Goshen Water Department will make all tap connections to the existing main (pg. 104), including those for taps for new water service lines. Following discussion, the City agreed that it would be best to have the contractor complete the taps to the main for the services. Rieth-Riley acknowledged that the only cost not included in their Water Service Line bid price is just the tap itself. The price was submitted and accepted by the City for the work involved. This change order creates a new line item for each line tap for a new service. This change was approved by the City of Goshen ERC, and also by the INDOT AE and PM. The Water Service Line item is non-participating per the original contract and therefore this item is non-participating as well. No additional time was requested by the contractor for this work, nor is any time being granted.

Change Order Explanation for Specific Line Item

\*\*\*\*\*

It is the intent of the parties that this change order is full and complete compensation for the work describe above.

Notification and consent to this change order is hereby acknowledged.

Contractor: Rieth Riley Construction

Signed By: Trish Church

Date: 3/16/23

\*\*\*\*\*

NOTE: Other required State and FHWA signatures will be obtained electronically through the SiteManager system.



Contract No:R -37647  
Change Order No:005

INDIANA  
Department of Transportation

Date:03/13/2023  
Page: 4

\*\*\*\*\*

APPROVED FOR LOCAL PUBLIC AGENCY

*Josh Cowan*  
(SIGNATURE)

City Engineer  
(TITLE)

3/24/23  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\*\*\*\*\*

SUBMITTED FOR CONSIDERATION

PE/S *John F. Weidemann*  
*DLZ*

\*\*\*\*\*

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

Approval Level                      Name of Approver                      Date                      Status

\*\*\*\*\*