

**REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF GOSHEN,
TO BE HELD JUNE 6, 2017 AT 7:00 P.M. AT THE COUNCIL CHAMBERS
111 EAST JEFFERSON STREET, GOSHEN, INDIANA**

.....
**OUT OF RESPECT TO OTHERS IN THIS MEETING, PLEASE TURN CELL PHONES,
BEEPERS AND PAGERS OFF OR TO SILENT MODE. IF A PHONE CONVERSATION
IS NECESSARY, PLEASE STEP OUTSIDE OF THE MEETING ROOM. THANK YOU.**

Call to Order by Mayor Jeremy Stutsman

Pledge of Allegiance

Roll Call of Council: Mr. Ahlersmeyer _____ Youth Advisor Biller _____
Ms. Gautsche _____ Ms. King _____ Mr. McKee _____ Mr. Orgill _____
Mr. Scharf _____ Mr. Weddell _____

Special Presentation – Youth Advisor Jacob Biller

Mayoral Appointment of Jason Barahona Rosales as Youth Advisor to City Council

Swearing in of Jason Barahona Rosales

Roll Call of Council: Mr. Ahlersmeyer _____ Youth Advisor Barahona _____
Ms. Gautsche _____ Ms. King _____ Mr. McKee _____
Mr. Orgill _____ Mr. Scharf _____ Mr. Weddell _____

Approval of Agenda and Changes to Agenda

Approval of Minutes

Minutes from April 11th (With Changes), May 2nd and May 16th

Agenda Items:

1. ORDINANCE 4908

(SECOND & FINAL READING)

AMEND 2017 SALARY ORDINANCE 4884

PUBLIC HEADING ORDINANCE 4910

1. ORDINANCE 4910

**(FIRST READING)
(SECOND READING)**

ADDITIONAL APPROPRIATIONS

2. RESOLUTION 2017-13

APPROVE LEASE AGREEMENT WILDEN AVENUE REAL ESTATE

3. RESOLUTION 2017-15

**APPROVE THE CONTRACT WITH THE STATE OF INDIANA FOR HIGHWAY
LIGHTING DEVICES ON STATE HIGHWAYS**

**4. TAX PHASE-IN DETERMINATION OF COMPLIANCE WITH STATEMENT OF
BENEFITS FOR LIPPERT COMPONENTS MANUFACTURING INC**

PRIVILEGE OF FLOOR

Next Council Meeting: June 20, 2017 (Regular Council Meeting)

ADJOURNMENT OF MEETING

ORDINANCE 4908

Amend 2017 Salary Ordinance 4884

WHEREAS Ordinance 4884 approves the 2017 maximum annual compensation for the employees of the Civil City of Goshen, City of Goshen Water and Sewer Utilities, and City of Goshen Stormwater Utility;

WHEREAS the Council passed Ordinance 4627 in 2011 to upgrade the First Deputy position in the Clerk-Treasurer's Office to a grade 13 as the position was assuming additional duties and responsibilities within the Water and Sewer Utilities Billing Office. The share of costs for compensation and benefits was paid 80% by Civil City and 20% by Water & Sewer Utilities;

WHEREAS due to reorganization within both the Clerk-Treasurer's Office and the Water and Sewer Utilities Billing Office, the First Deputy position is no longer assuming duties and responsibilities within the Water and Sewer Utilities Billing Office; and

WHEREAS City Administration would like to create a new Attorney position within the Legal Department.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that Ordinance 4884, shall be amended as follows:

(1) The grade of the First Deputy position under the Clerk-Treasurer's Office shall be changed to a grade 12 in EXHIBIT A, 2017 Positions, Classifications and Grades. The compensation and benefits of the First Deputy position shall be paid entirely by Civil City. The classification of the First Deputy shall remain Non-Covered, Eligible (Salary).

(2) The position title of the current Assistant City Attorney position under the Legal Department shall be changed to Planning and Zoning Attorney in Section 6, Health Insurance; Section 11, Increment Pay, paragraph (e)(1); Section 12, Longevity Bonus, paragraph (a); EXHIBIT A, 2017 Positions, Classifications and Grades; and Exhibit D, 2017 Wage Table for Ungraded Positions. The classification of the Planning and Zoning Attorney shall remain Non-Covered, Ineligible (Salary), ungraded, and receive a salary of \$276.26 bi-weekly.

(3) A new Assistant City Attorney position shall be created under the Legal Department in EXHIBIT A, 2017 Positions, Classifications and Grades. The classification of the new Assistant City Attorney position shall be Covered, Exempt (Salary), and be a grade 29.

PASSED by the Goshen Common Council on May 16, 2017.

Jeremy P. Stutsman, Presiding Officer

Attest:

Angie McKee, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May _____, 2017 at _____ a.m./p.m.

Angie McKee, Clerk-Treasurer

APPROVED and ADOPTED on May _____, 2017.

Jeremy P. Stutsman, Mayor

CITY OF GOSHEN, INDIANA

POSITION DESCRIPTION

Department: Legal

Position: Assistant City Attorney

Job Category: PAT (Professional, Administrative, Technological)

Scheduling: 40 - 50 Hours per week

FLSA Status: Exempt (Salary)

Date of Announcement:

Application Deadline: Until position is filled

Working under the supervision of the City Attorney, the individual is responsible for providing the City of Goshen with legal representation and legal counsel in all matters affecting the City of Goshen.

Essential Duties and Responsibilities:

The following duties are not to be construed as exclusive or all-inclusive.

- Provides legal advice to the Mayor, City Council, committees, commissions and staff through direct consultation and written legal opinions; may attend meetings to provide legal direction and advice.
- Prepare documents to establish or modify economic development areas.
- Prepare documents for the annexation of real estate into the City.
- Prepares and reviews ordinances, regulations, contracts and other legal documents; ensures compliance with local, state and federal laws.
- Studies, organizes, interprets and applies laws, court decisions, ordinances and other sources in advising officials of the City in legal matters.
- Advises on legal aspects associated with Human Resources, Labor Relations, Risk Management, Federal Labor Standards issues.
- Attends meetings and gives advice on legal questions that arise including advice as to alternative legal and administrative approaches to solve matters that come before the City of Goshen.
- Exercises initiative and independent judgement.
- Must have knowledge of legal principles and their application to Indiana Code, municipal ordinances and constitutional law, the organization, powers and limitations of governmental functions and officials with particular emphasis on municipalities.
- Represents City departments and agencies before the Common Council and various Boards and Commissions.
- Negotiates land acquisitions and sales including easements and rights of way and prepares documents related to such real estate transactions.
- Provide updates to developments on legislation relevant to the City.
- Prepares development agreements.
- Prepares requests for proposals and bids to buy or sell real estate and personal property.
- Participates in employee discipline hearings.
- Enforce unsafe and vacant housing ordinances.
- Performs other related duties as assigned.

Minimum Training, Education and Experience Required:

- Juris Doctorate degree from an accredited law school and license to practice law in Indiana.
- Three (3) years of experience as a practicing attorney preferred.

Minimum Physical and Mental Abilities Required:

- Ability to exert physical effort in sedentary to light work involving routine stooping, kneeling, crouching, and reaching.
- Ability to sit a desk for long periods of time.
- Ability to operate a variety of office equipment.

Supervisory Responsibility:

- This job has no supervisory responsibilities.

Language Ability and Interpersonal Communication:

- Ability to read, analyze and interpret complex documents.
- Ability to respond effectively to the most sensitive inquiries or complaints.
- Ability to make effective and persuasive presentations to public officials and public groups.
- Ability to analyze and interpret applicable codes, laws, ordinances and statutes.
- Ability to obtain information through interviews; deal fairly and courteously with the public; handle multiple assignments; and work effectively with interruption.
- Ability to work with various cultural and ethnic groups in a tactful and effective manner.
- Ability to establish and maintain effective working relationships with those contacted in the course of work.
- Ability to communicate effectively with Mayor, City Attorney, Department Heads, special interest groups, City Council members, other city employees and the general public verbally and in writing.

Environmental Adaptability:

- Ability to work effectively in an office environment. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Rate of Pay:

- Grade 29 - \$70,000 Annual Salary

Work Hours:

- Monday - Friday, 8:00 a.m. - 5:00 p.m. - Generally (Some evening hours)

Applications available in Human Resources, 204 E. Jefferson St., Goshen or online at www.goshenindiana.org. Click Job Opportunities.

The City of Goshen provides equal employment opportunities to all employees and applicants for employment. EOE/Drug Free/Smoke Free

ORDINANCE 4910

ADDITIONAL APPROPRIATION ORDINANCE

WHEREAS, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget; now therefore:

SECTION 1: Be it ordained by the Common Council of the City of Goshen, Elkhart County, Indiana, that for the expenses of the taxing unit the following additional sums of money are hereby appropriated out the funds named and for the purposes specified, subject to the laws governing the same:

GENERAL FUND

LEGAL

Full-Time Personnel.....\$50,000.00

PASSED AND ADOPTED, this 16th day of May, 2017, by the Common Council of the City of Goshen, Indiana.

Presiding Officer

ATTEST: _____
Angie McKee, Clerk-Treasurer

Presented by me to the Mayor of the City of Goshen, Indiana, on the ____ day of May 2017.

Angie McKee, Clerk-Treasurer

This Ordinance approved and signed by me on the ____ day of May 2017.

Jeremy Stutsman, Mayor

RESOLUTION 2017-13

Approve Lease for Wilden Avenue Real Estate

WHEREAS the City of Goshen owns real estate at 1000 West Wilden Avenue, some of which consists of vacant land.

WHEREAS the Goshen Board of Public Works and Safety received sealed bids on May 1, 2017 to lease a portion of the real estate located at 1000 West Wilden Avenue consisting of an unimproved area of approximately 54,400 square feet (160' by 340') located on the west side of North Indiana Avenue (hereinafter referred to as "Wilden Avenue Real Estate").

WHEREAS the City and Solscient Energy, LLC have negotiated a lease agreement for the Wilden Avenue Real Estate, a copy of which is attached to this resolution.

WHEREAS IC 36-1-11-10(f) requires the Common Council to approve the lease if the term of the lease is longer than three (3) years.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the lease between the City of Goshen and Solscient Energy, LLC for the Wilden Avenue Real Estate in substantially the same form as attached to and made a part of this resolution.

PASSED by the Goshen Common Council on _____, 2017.

Presiding Officer

Attest:

Angie McKee, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2017 at _____
a.m./p.m.

Angie McKee, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2017.

Jeremy P. Stutsman, Mayor

LEASE AGREEMENT

THIS LEASE AGREEMENT, is made and entered into on _____, 2017, by and between the **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, hereinafter collectively referred to as “City” and **Solscient Energy, LLC**, hereinafter referred to as “Solscient.”

WHEREAS City sought bids for the lease of a portion of the real estate located at 1000 West Wilden Avenue, Goshen, Indiana (hereinafter referred to as the “Wilden Avenue Real Estate”).

WHEREAS Solscient’s proposal to lease the Wilden Avenue Real Estate for a solar energy generation system is an appropriate use of the Wilden Avenue Real Estate.

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

LEASED PREMISES

City agrees to lease to Solscient and Solscient agrees to lease from City the following real estate located in the City of Goshen, Elkhart Township, Elkhart County, Indiana as depicted on the map set forth below, and more particularly described as follows:

A part of the Southeast Quarter (SE ¼) of Section Five (5), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana, more particularly described as follows:

Beginning at the southeast corner of Section Five (5), Township Thirty-six (36) North, Range Six (6) East, Elkhart County, Indiana; thence West on the section line three hundred forty (340) feet; thence North one hundred sixty (160) feet; thence East three hundred forty (340) feet to the east line of the Southeast Quarter (SE ¼) of Section Five (5) and centerline of North Indiana Avenue; thence South one hundred sixty (160) feet along the east line of the Southeast Quarter (SE ¼) of Section Five (5) and centerline of North Indiana Avenue to the point of beginning. Containing 1.24 acres, more or less.

Part of parcel numbers 20-11-05-478-006.000-015 and 20-11-05-478-005.000-015

hereinafter referred to as the “Wilden Avenue Real Estate.”



Wilden Avenue Real Estate

TERM

The term of this lease shall commence on June 1, 2017 and continue for a period of fifteen (15) years ending on May 31, 2032.

LEASE PAYMENTS

1. Solscient agrees to pay City the sum of Four Thousand Two Hundred and 00/100 Dollars (\$4,200.00) upon execution of the lease agreement. In addition, Solscient agrees to pay and City agrees to accept the sum of Four Thousand Two Hundred and 00/100 Dollars (\$4,200.00) per year in advance commencing on June 1, 2018 and the same amount of June 1 of each year through June 1, 2021. The lease payment will be adjusted for inflation on June 1, 2022 and June 1, 2027. The Consumer Price Index for the Chicago Area will be used to establish the rate of inflation or deflation.
2. Lease payments shall be made without notice or demand to City of Goshen Clerk-Treasurer’s Office at 202 South Fifth Street, Goshen, Indiana 46528, or at such other place as City may from time to time designate in writing.

TAXES AND ASSESSMENTS

1. If City’s tax exempt status is removed on the Wilden Avenue Real Estate, Solscient will pay all real estate taxes on the Wilden Avenue Real Estate. Solscient will pay any personal property taxes resulting from the installation of any equipment or any improvements added or installed by Solscient throughout the lease term.
2. Solscient will pay any stormwater user fees on the Wilden Avenue Real Estate.

CONDITION AND USE OF PREMISES

1. City makes no warranty, expressed or implied, that the Wilden Avenue Real Estate is fit for any particular purpose.
2. If required, City and Solscient will jointly petition the Planning Commission for a use variance suitable for Solscient's proposed use of the Wilden Avenue Real Estate.
3. Solscient has examined and knows the condition of the Wilden Avenue Real Estate and is satisfied with the condition of the premises. Solscient taking possession of the Wilden Avenue Real Estate shall be conclusive evidence that the premises was in good and satisfactory condition when Solscient took possession.
4. Solscient shall keep the Wilden Avenue Real Estate in a clean and orderly condition during the term of the lease. City assumes no responsibility for the maintenance of the Wilden Avenue Real Estate.
5. Solscient will allow City reasonable access to any City utilities that may lie under the leased real estate.
6. Solscient agrees to use the Wilden Avenue Real Estate to install a photovoltaic solar energy generation system for the purposes of generating electricity for sale to NIPSCO under NIPSCO's Rate 665 Feed-In-Tariff program.
7. Solscient agrees to use the Wilden Avenue Real Estate in conformity with all applicable laws and regulations of any government entity or public authority, including but not limited to the City's stormwater drainage requirements and all City planning and zoning requirements.
8. Solscient shall use the Wilden Avenue Real Estate in a manner that would not be reasonably offensive to the owners or users of adjoining real estate or would tend to create a nuisance and shall be compatible with the City's adjoining/neighborhood wastewater treatment plant and shall not negatively affect the plant's operations. Further, Solscient's operations shall not cause any environmental contamination to the Wilden Avenue Real Estate.

IMPROVEMENTS TO PREMISES

1. City and Solscient acknowledge that Solscient will need to make certain improvements or alterations to the Wilden Avenue Real Estate to make the premises useful for Solscient's purpose. All improvements will be at Solscient's expense.
2. Solscient will design, engineer, procure equipment and components, construct, own and operate a 322.24kW (DC) ground mounted solar array which will include the following components:
 - a. 1007 solar panels (320Wp), Tier 1 manufacturer
 - b. 7 SMA Sunny Tripower 30kW inverters
 - c. Solar Flex Rack Series 3GL fixed pitch racking system
 - d. Master distribution panel
 - e. Pad mounted 480V – 12.47kVA step-up transformer
 - f. NIPSCO Meter
 - g. Utility accessible AC disconnect switch
 - h. Energy monitoring system with weather station
 - i. Balance of systems components and equipment.

3. Solscient will remove all trees and stumps at their expense that create shading on the Wilden Avenue Real Estate.
4. Solscient will construct an eight foot (8') chain link fence with one wide access gate around the Wilden Avenue Real Estate. The access to the Wilden Avenue Real Estate shall be as agreed upon by City's Engineering and Utilities.
5. Solscient will drive a four inch (4") by six inch (6") steel I-beam or helix anchor posts into the ground for foundations of racking system.
6. Solscient will construct modest trenching for conduit between rows of solar panels to run DC wire.
7. Solscient will pour a concrete pad approximately six feet (6') by eighteen feet (18') to site pad mounted transformer, NIPSCO meter and disconnect switch. String transformers will be pole mounted.
8. Solscient will perform trenching or directional boring to Indiana Avenue for HV lines.
9. Solscient will erect two poles at road for NIPSCO meter and NIPSCO disconnect switch (alternative to Pad Mount).
10. Solscient will seed the area within the fence with low growth fescue.

RISK OF LOSS

Solscient shall assume the risk of loss for all equipment, components, goods or supplies which are located on the Wilden Avenue Real Estate.

INSURANCE

1. Solscient shall furnish the City with a certificate of insurance evidencing general liability insurance coverage in effect at the commencement of any construction by Solscient or upon Solscient's possession of the Wilden Avenue Real Estate, whichever is later. The insurance policy shall remain in full force with policy minimum limits of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in aggregate. Solscient shall specifically include City as an additional insured on the policy.
2. Each certificate shall require that written notice be given to City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

INDEMNIFICATION

Solscient shall indemnify, defend, and hold City harmless from any liability, penalty, loss, damage, costs or other expenses, including reasonable attorney fees, arising from any injury to any person or any damage to property as a result of any accident or occurrence resulting from Solscient's use of the Wilden Avenue Real Estate.

DEFAULTS AND REMEDIES

1. A default will have occurred under this lease agreement if:
 - a. Solscient fails to pay the full amount of any installment of rent on or before the date when it is due;
 - b. Either party fails to observe or perform any provision of this lease;
 - c. Solscient abandons or vacates the Wilden Avenue Real Estate; or
 - d. Solscient declares bankruptcy or if a receiver is appointed for the purpose of allocating Solscient's assets and income for the benefit of Solscient's creditors.
2. If a default has occurred under this lease and such default continues for thirty (30) days after written notice to the defaulting party, the non-defaulting party has the following remedies:
 - a. The right to give the defaulting party notice of the non-defaulting party's termination of this lease as of a date specified in the notice, the date to be not earlier than the date of the notice;
 - b. The right to make any expenditure to cure any defaulting party's breach and to charge such expenditures to the defaulting party;
 - c. The right to collect from the defaulting party by any lawful means:
 - i. Any rent due and unpaid;
 - ii. Any deficiency which results from a breach of the defaulting party;
 - iii. Any money advanced or expenditure made by the non-defaulting party pursuant to this lease; and
 - iv. All of the non-defaulting party's reasonable and necessary attorney fees for enforcing this lease, together with reasonable and necessary out-of-pocket expenses or costs incurred in enforcing this lease.
 - d. The non-defaulting party has the right to accelerate all payments due under this agreement.

TERMINATION

This lease may be terminated before the end of the lease term if City and Solscient agree in writing, approved by the Goshen Board of Public Works and Safety, to terminate the lease agreement.

WAIVER OF BREACH

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

ASSIGNMENT AND SUB LEASE

Solscient may not assign or sub lease any portion of the Wilden Avenue Real Estate without the written consent of City.

MODIFICATION

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

NOTICES

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.

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

Notices to Solscient: Solscient Energy, LLC
 Attention: Granger Souder
 1510 N. Westwood Avenue
 Toledo, OH 43606

and

Solscient Energy, LLC
Attention: Peter Smith, Registered Agent
1668 E. Kosciusko Drive
Warsaw, IN 46582

CONFLICT OF INTEREST/NON-COLLUSION

Solscient certifies, under the penalties for perjury, the following:

1. Solscient has not entered into a combination or agreement relative to the price to be bid.
2. Solscient has not taken any action to prevent a person from submitting a bid.
3. Solscient has not induced a person to refrain from submitting a bid.
4. Solscient's bid was made without reference to any other bid unless specifically so indicated.
5. Solscient not in a situation where Solscient's private interest would interfere with Solscient's loyalty or responsibilities to City or raise questions about such interference. Solscient agrees not to accept work, enter into a contract, accept an obligation or engage in any activity, paid or unpaid, that is inconsistent or incompatible with Solscient's obligations, or the scope of services to be rendered to the City. Solscient warrants that, to the best of Solscient's knowledge, there is no other contract or duty on Solscient's part that conflicts with or is inconsistent with the interest of the City.

GOVERNING LAWS

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

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

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

SEVERABILITY

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

City:

Jeremy P. Stutsman, Mayor

Date: _____, 2017

Solscient:

By: _____

Printed: _____

Title: _____

By: _____

Printed: _____

Title: _____

Date: _____, 2017

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on _____, 2017, personally appeared Jeremy P. Stutsman, Mayor of the **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana, on behalf of the Goshen Board of Public Works and Safety, and acknowledged the execution of the foregoing instrument.

(SEAL)

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

STATE OF OHIO)
) SS:
COUNTY OF _____)

Before me, the undersigned Notary Public, on _____, 2017, personally appeared _____, the _____ of **Solscient Energy, LLC**, and acknowledged the execution of the foregoing instrument.

(SEAL)

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

STATE OF OHIO)
) SS:
COUNTY OF _____)

Before me, the undersigned Notary Public, on _____, 2017, personally appeared _____, the _____ of **Solscient Energy, LLC**, and acknowledged the execution of the foregoing instrument.

(SEAL)

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

This instrument was prepared by Larry A. Barks, Goshen City Attorney, Attorney No. 3568-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 533-9536.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law (Larry A. Barks).

RESOLUTION 2017-15

**Approve the Contract
with the State of Indiana
for Highway Lighting Devices on State Highways**

WHEREAS the City of Goshen and the Indiana Department of Transportation have negotiated a contract for the installation, operation and maintenance of wall mounted underpass lighting at the Lincoln Avenue and Cottage Avenue underpasses at US 33.

WHEREAS pursuant to Indiana Code § 36-1-7 et seq., a power that may be exercised by one governmental entity may be exercised by one entity on behalf of another entity if the entities enter into a written agreement.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the terms and conditions of the Contract with the State of Indiana for Highway Lighting Devices on State Highways attached to and made a part of this resolution.

PASSED by the Goshen Common Council on June ____, 2017.

Presiding Officer

Attest:

Angie McKee, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on June ____, 2017 at ____ a.m./p.m.

Angie McKee, Clerk-Treasurer

APPROVED and ADOPTED on June ____, 2017.

Jeremy P. Stutsman, Mayor

C O N T R A C T
FOR HIGHWAY LIGHTING DEVICES ON STATE HIGHWAYS
IN CITY OF GOSHEN, ELKHART COUNTY, INDIANA
EDS #A249-17-LT170001

THIS CONTRACT by and between the STATE OF INDIANA through the INDIANA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "INDOT" and the CITY OF GOSHEN hereinafter referred to as the "CITY" through their duly authorized and undersigned officials,

W I T N E S S E T H:

WHEREAS, in the interest of motorist and community safety, the CITY wishes to have highway lighting devices (the lighting) installed and maintained on state right-of-way in and near the City of Goshen, Elkhart County, Indiana, with the fixture type and locations shown in Exhibit "A", attached and made a part of this Contract; and,

WHEREAS, INDOT deems the installation and maintenance of the lighting at the locations shown in Exhibit "A", to be beneficial to the public, to the extent of permitting such improvements to be made on the state highway and participating in the same under conditions as specified below:

IT IS THEREFORE AGREED BY AND BETWEEN INDOT and the CITY that the lighting at locations shown in Exhibit "A", installed and maintained under terms and conditions as follows:

1. TERM OF CONTRACT

- a. Effective date: This CONTRACT shall become effective on the date it is approved by the Attorney General of Indiana or an authorized representative.
- b. Termination date is the earliest of:
 1. If the highway lighting permitted by this Contract has not been installed within two (2) years of the date of the approval required in 1.a., this Contract shall terminate.
 2. If the highway lighting permitted by terms of this Contract is removed from the highway right-of-way, this Contract shall terminate on the date the highway lighting is removed.
 3. The date a lack of funding determination is made by the State Budget Director as provided in Section 8 of this CONTRACT.
 4. If the State determines there has been an ethics violation, the date notice is given to the CITY as provided in Section 5 of this CONTRACT.

2. CONSTRUCTION AND ACCEPTANCE OF THE LIGHTING

The lighting will be constructed under terms of INDOT construction contract IR-30087. After satisfactory completion of the lighting installation, the lighting

will become the property of the CITY. Costs for electrical energy shall be paid as provided in Section 7.

3. RIGHTS OF ENTRY

INDOT grants the CITY, its contractor and subcontractors permission to enter upon the State right-of-way for the sole purpose of maintaining the lighting at the locations shown in Exhibit "A".

4. MAINTENANCE

- a. The maintenance of the lighting shall be done either by a contractor prequalified with INDOT for lighting work or by CITY employees. Prequalification information is available on INDOT's website at: <http://www.in.gov/indot/7179.htm>.
- b. The maintenance, and any removal of the lighting shall be in accordance with all current procedures for temporary traffic control and work zone safety, including but limited to those procedures defined in the *Indiana Department of Transportation Polices, Processes, & Procedures on Work Zone Safety & Mobility* and Part 6 of the *Indiana Manual on Uniform Traffic Control Devices*.
- c. The Ft. Wayne Maintenance Director may require the CITY to perform specific maintenance activities, such as relamping, if the illumination of the roadway is not uniform, or if there is other evidence that the lighting permitted by this Contract is not being adequately maintained.
- d. The lighting may be removed by INDOT, if INDOT determines that the CITY is not adequately maintaining the highway lighting and INDOT provides thirty (30) days notice that the highway lighting will be removed.
- e. The lighting may be removed by INDOT at any time, if INDOT determines that there are safety problems with the lighting type based on an increase in night-time accidents or from research at other locations, and the safety problems cannot be corrected.
- f. The CITY may request in writing that locations upon INDOT's highway system be added to or removed from Exhibit "A". The form attached to this Contract as "Exhibit B", which is attached and made a part of this Contract, will be used to document any change. Written approval from the Ft. Wayne District Deputy Commissioner is required before a change to Exhibit "A" is effective. Terms of this Contract shall apply to locations added to Exhibit "A" as if the added location had been an original part of this Contract.

5. CITY RESPONSIBILITIES

The CITY responsibilities shall include but are not limited to:

- a. Wherever in this contract any obligation or responsibility is assumed by the CITY, same shall be deemed an obligation of said CITY.
- b. The CITY shall perform all work permitted under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations.
- c. **Compliance With Laws**

1. The CITY shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by INDOT and the CITY to determine whether the provisions of this Contract require formal modification.
2. The CITY and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. If the CITY has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the CITY shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract. If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
3. The CITY certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to INDOT. The CITY agrees that any payments currently due to INDOT may be withheld from payments due to the CITY. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CITY is current in its payments and has submitted proof of such payment to INDOT.
4. The CITY warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by INDOT, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, the CITY agrees that INDOT may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
5. If a valid dispute exists as to the CITY's liability or guilt in any action initiated by INDOT or its agencies, and INDOT decides to delay, withhold, or deny work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.
6. Any payments that INDOT may delay, withhold, deny, or apply under this section

shall not be subject to penalty or interest under IC § 5-17-5.

7. The CITY warrants that the CITY and its contractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with INDOT.
8. The CITY affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
9. As required by IC 5-22-3-7:
 - i. the CITY and any principals of the CITY certify that (A) the CITY, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CITY will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - ii. The CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- d. **Indemnification** - The CITY agrees to indemnify, defend, and hold harmless INDOT, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CITY and/or its contractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the CITY.
- e. **Drug-Free Workplace Certification** - The CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CITY will give written notice to INDOT within ten (10) days after receiving actual notice that the CITY or an employee of the CITY in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with INDOT for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract

amount set forth in this Contract is in excess of \$25,000.00, the CITY hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CITY and made a part of the contract or agreement as part of the contract documents.

The CITY certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CITY's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
 2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 3. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CITY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 4. Notifying INDOT in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
 5. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- f. **Non-Discrimination** - Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans

with Disabilities Act, the CITY covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). CITY certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CITY or any contractor.

The State is a recipient of federal funds, and therefore, where applicable, CITY and any contractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

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

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

6. NOTICE

- a. Wherever in or under this contract notice must or may be given by INDOT to the CITY, such notice shall be deemed given when addressed to the CITY at 204 East Jefferson Street, Suite 1, Goshen, IN 46528, and deposited postage paid in the U.S. Mail system of collection.
- b. Wherever in or under this contract notice must or may be given by INDOT to the Project Engineer, such notice shall be deemed given when INDOT transmits the notice verbally or in writing including electronic communications to the Project Engineer in person or to the contact numbers or addresses presented at the preconstruction conference.
- c. Wherever in or under this contract notice must or may be given by INDOT to the CITY's contractor or sub-contractor, such notice shall be deemed given when INDOT transmits the notice verbally or in writing including electronic communications to the contractor or sub-contractor in person or to the contact numbers or addresses presented at the preconstruction conference.

d. Wherever in or under this contract notice must or may be given by the CITY to INDOT, such notice shall be deemed given when received by the Traffic Engineer at the Ft. Wayne District Office, 5333 Hatfield Rd., Ft. Wayne, IN 46808.

7. PAYMENTS

As required by IC 4-13-2-14.8: Notwithstanding any other law, rule, or custom, a person or company whom has a contract with the State or submits invoices to the state for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credit. For forms and additional information, the CITY may visit the Auditor of State's website at: <http://www.in.gov/auditor/2340.htm>.

a. To providers other than INDOT, the CITY shall pay for:

1. Electrical energy to operate the lighting at the locations shown in **Exhibit "A"** from the initial testing and turn on until the lighting devices are removed. The CITY shall make arrangements with the utility company to bill the CITY directly for the energy provided. The CITY shall provide the Traffic Engineer with written documentation of said billing authorization before the lighting is accepted.

2. The maintenance of the lighting at the locations shown in **Exhibit "A"**.

b. In its normal course of business, INDOT will incur the cost of the review of the lighting design and maintenance plans and all other administrative responsibilities INDOT incurs as part of this Contract.

8. GENERAL PROVISIONS

a. **Assignment** - The CITY binds its successors and assignees to all the terms and conditions of this Contract. The CITY shall not assign or subcontract the whole or any part of this Contract without INDOT's prior written consent.

b. **Attorney General Approval** - This Contract shall not be effective unless and until approved by the Attorney General of Indiana, or an authorized representative, as to form and legality.

c. **Debarment and Suspension** -

1. The CITY certifies by entering into this Contract that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CITY.

2. The CITY certifies that it has verified the state and federal suspension and debarment status for all contractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The CITY shall

immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Contract.

- d. **Delay of work.** No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- e. **Force Majeure, Suspension and Termination** - In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- f. **Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this Contract, the Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- g. **Termination for Convenience.** This Contract may be terminated, in whole or in part, by INDOT whenever, for any reason, INDOT determines that such termination is in its best interest. Termination of services shall be effected by delivery to the CITY of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective.
- h. **Governing Laws.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
- i. **Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties. Except, elements of the lighting and associated work design may be added, deleted or modified in the normal course of plan review or construction field revision, and locations may be added to or removed under Section 4 of this Contract without submittal to the Attorney General for approval.
- j. **Non-Waiver.** No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

k. **Order of Precedence.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order:

- (1) This Contract,
- (2) attachments prepared by INDOT,
- (3) attachments prepared by the CITY.

All of the foregoing are incorporated fully by reference.

l. **Severability.** Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract.

m. **Subsequent Acts.** The parties agree that they will, at any time and from time to time, from and after the execution of this Contract, upon request, perform or cause to be performed such acts, and execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such documents as may be reasonably required for the performance by the parties of any of their obligations under this Contract.

n. **Substantial Performance.** This Contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

o. **Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY as a result of this Contract.

p. **Previous Contracts Superseded or Revoked.** This Contract supersedes and revokes any previous contract between said parties hereto pertaining to lighting at the locations shown in Exhibit "A". Such above terms and conditions as they apply to INDOT shall remain in effect only so long as the location mentioned herein is a part of the State Highway System.

q. **Authorizations.** Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

Non-collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that the undersigned is the contracting party, or that the undersigned is the properly authorized representative, agent, member or officer of the contracting party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the contracting party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the CITY attests to compliance with the disclosure requirements in IC 4-2-6-10.5.

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

CITY OF GOSHEN

STATE OF INDIANA
INDIANA DEPT OF TRANSPORTATION

Jeremy P. Stutsman
Mayor

Todd H. Johnson
Fort Wayne District Deputy Commissioner

Date: _____

Date: _____

Approved:
Department of Administration

Approved:
State Budget Agency

Jessica Robertson, Commissioner (FOR)

Jason D. Dudich, Director (FOR)

Date: _____

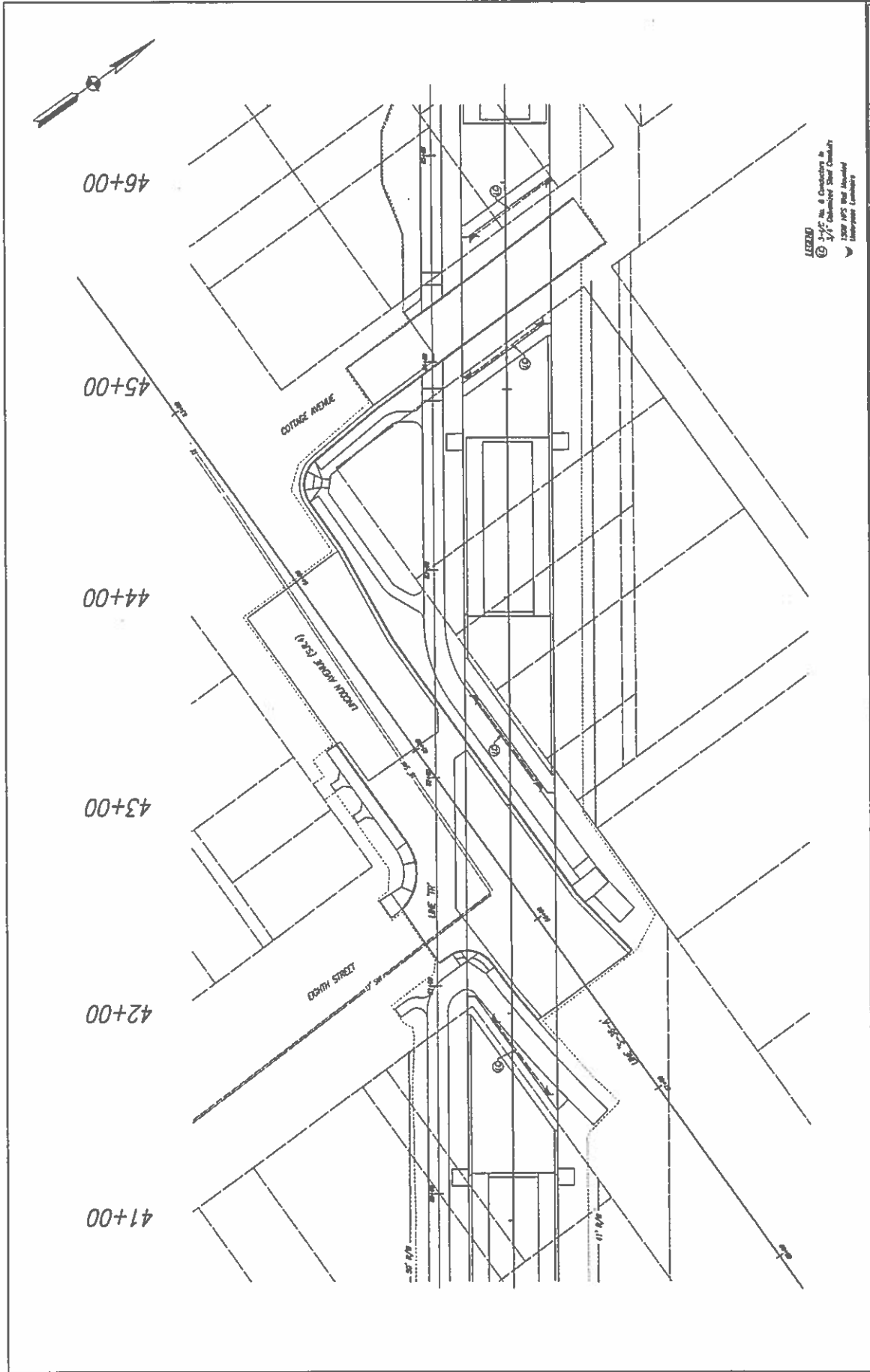
Date: _____

Approved as to Form and Legality:

Curtis T. Hill, Jr. (FOR)
Attorney General of Indiana

Date: _____

EXHIBIT "A"



<p>LEGEND</p> <p>① 1/4" = 1' 0" Centerline to Centerline 1/4" = 1' 0" Outside of Road Centerline 1/4" = 1' 0" Inside of Road Centerline</p>		<p>HORIZONTAL SCALE 1" = 20'</p> <p>VERTICAL SCALE 1" = 20'</p>	<p>DESCRIPTION 8727424</p> <p>SHEET NO. 107 of 204</p> <p>PROJECT 9727474</p>
<p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>LIGHTING PLAN</p>	
<p>RECOMMENDED FOR APPROVAL</p> <p>DESIGN ENGINEER</p> <p>DATE</p>	<p>DATE</p> <p>2/21</p>	<p>DATE</p> <p>2/21</p>	
<p>DESIGNED BY</p> <p>DATE</p>	<p>DATE</p> <p>2/21</p>	<p>DATE</p> <p>2/21</p>	
<p>PROJECT NO.</p> <p>9727424</p>		<p>PROJECT NO.</p> <p>9727474</p>	
<p>PROJECT NAME</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT NAME</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT LOCATION</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT LOCATION</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT DRAWN BY</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT DRAWN BY</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT CHECKED BY</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT CHECKED BY</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT DATE</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT DATE</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT SCALE</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT SCALE</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT SHEET NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT SHEET NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT TOTAL SHEETS</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT TOTAL SHEETS</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT DRAWING NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT DRAWING NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT CONTRACT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT CONTRACT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT PROJECT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT PROJECT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT SHEET NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT SHEET NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT TOTAL SHEETS</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT TOTAL SHEETS</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT DRAWING NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT DRAWING NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT CONTRACT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT CONTRACT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	
<p>PROJECT PROJECT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>		<p>PROJECT PROJECT NO.</p> <p>INDIANA DEPARTMENT OF TRANSPORTATION</p>	

EXHIBIT "B"

**INDIANA DEPARTMENT OF TRANSPORTATION
CHANGE TO HIGHWAY LIGHTING CONTRACT EXHIBIT "A"**

CONTRACT: _____

ORIGINAL DATE APPROVED: _____

Effective the _____ day of _____ (month), 20____, the following locations shall be added to / deleted from (circle one) Exhibit "A" of the above named Contract, which provides for installation and maintenance of lighting at locations in the City of Goshen, Elkhart County, Indiana.

LOCATION	DESCRIPTION

COMMENTS:

STATE OF INDIANA
INDIANA DEPARTMENT OF TRANSPORTATION

CITY OF GOSHEN

RECOMMENDED: _____
DISTRICT TRAFFIC ENGINEER

BY: _____

TITLE: _____

APPROVED: _____
DISTRICT DEPUTY COMMISSIONER

ADDRESS: _____

DATE: _____

DATE: _____



**Legal Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185
www.goshenindiana.org

June 6, 2017

To: Goshen Common Council
From: Shannon Marks, Legal Compliance Administrator
Subject: Tax Phase-In Determination of Compliance with Statement of Benefits

Attached to this memo is a Compliance with Statement of Benefits form (CF-1) submitted by Lippert Components Manufacturing, Inc. related to a previously approved tax phase-in. In 2013, the Common Council designated the real estate at 2703 College Avenue, 1701 Century Drive, and 2475 Kercher Road as the "Lippert II Economic Revitalization Area" by Resolutions 2013-16 and 2013-19. The designation is limited to a period seven years expiring in 2024. The tax phase-in is limited to personal property taxes for certain new manufacturing equipment not exceeding a cost of \$10,000,000 installed within the Lippert II Economic Revitalization Area. (Please note that the cost of the project on the CF-1 has been redacted as that information is confidential.)

The Common Council is asked to make a finding for the CF-1, based on the information that is presented to the Council, whether the property owner has substantially complied with the Statement of Benefits and the commitments made to the City to receive the tax phase-in. The Council's options for findings are the following:

- (1) The property owner is in substantial compliance with the Statement of Benefits.
- (2) The property owner has made reasonable efforts to substantially comply with the Statement of Benefits, and the property owner's failure to substantially comply was caused by factors beyond the control of the property owner. Therefore, the property owner is to be treated as if in substantial compliance with the Statement of Benefits.
- (3) The property owner has not made reasonable efforts to substantially comply with the Statement of Benefits and the failure to substantially comply was not caused by factors beyond the control of the property owner. Therefore, the property owner IS NOT considered to be in substantial compliance with the Statement of Benefits.

If the Council determines that the property owner is in substantial compliance with the Statement of Benefits under options (1) or (2), the property owner is entitled to apply for the deduction in assessed valuation of the property and no further action is required by the Common Council.

If the Council determines that the property owner IS NOT considered to be in substantial compliance with the Statement of Benefits under option (3), the property owner will be given notice of a hearing before the Common Council. At the hearing, the property owner and other interested parties may present testimony and other evidence on the issues of whether the property owner is in substantial compliance with the Statement of Benefits and whether any failure to be in substantial compliance was caused by factors outside the control of the property owner. If, after the hearing, the Council determines that the property owner has not made reasonable efforts to comply with the Statement of Benefits, the Council may adopt a resolution to terminate the property owner's tax phase-in.



**COMPLIANCE WITH STATEMENT OF BENEFITS
PERSONAL PROPERTY**

State Form 51785 (R4 / 11-16)
Prescribed by the Department of Local Government Finance

FORM CF-1 / PP

PRIVACY NOTICE
This form contains information confidential pursuant to IC 6-1.1-35-9 and IC 6-1.1-12.1-5.6.

- INSTRUCTIONS:**
1. Property owners whose Statement of Benefits was approved must file this form with the local Designating Body to show the extent to which there has been compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
 2. This form must be filed with the Form 103-ERA Schedule of Deduction from Assessed Value between January 1 and May 15 of each year, unless a filing extension under IC 6-1.1-3.7 has been granted. A person who obtains a filing extension must file between January 1 and the extended due date of each year.
 3. With the approval of the designating body, compliance information for multiple projects may be consolidated on one (1) compliance (CF-1).

SECTION 1		TAXPAYER INFORMATION						
Name of taxpayer	Lippert Components Manufacturing, Inc.		County Elkhart					
Address of taxpayer (number and street, city, state, and ZIP code)	PO Box 2888 Elkhart, IN 46515		DLGF taxing district number 015-002-03984					
Name of contact person	Troy Wuthrich		Telephone number (574) 312-6055					
SECTION 2		LOCATION AND DESCRIPTION OF PROPERTY						
Name of designating body	Resolution number	Estimated start date (month, day, year)						
Goshen Common Council	2013-16 + 2013-19	04/01/2013						
Location of property	Actual start date (month, day, year)							
2475 E Kercher Road, 1701 Century Dr. Goshen, IN 46526	2703 College Ave		04/01/2013					
Description of new manufacturing equipment, or new research and development equipment, or new information technology equipment, or new logistical distribution equipment to be acquired.	Estimated completion date (month, day, year)							
Equipment is primarily painting equipment, ovens and dust collectors	12/31/2016							
	Actual completion date (month, day, year)							
	12/31/2016							
SECTION 3		EMPLOYEES AND SALARIES						
EMPLOYEES AND SALARIES		AS ESTIMATED ON SB-1	ACTUAL					
Current number of employees		1,078	838					
Salaries		35,315,000	41,855,717					
Number of employees retained		1,078	838					
Salaries		35,315,000	35,315,000					
Number of additional employees		376						
Salaries		10,208,144	6,540,717					
SECTION 4		COST AND VALUES						
AS ESTIMATED ON SB-1	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project		7,205,803						
Plus: Values of proposed project		10,000,000						
Less: Values of any property being replaced								
Net values upon completion of project		17,205,803						
ACTUAL	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project		7,205,803						
Plus: Values of proposed project		8,946,523						
Less: Values of any property being replaced								
Net values upon completion of project		16,152,326						
NOTE: The COST of the property is confidential pursuant to IC 6-1.1-12.1-5.6(c).								
SECTION 5		WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER						
WASTE CONVERTED AND OTHER BENEFITS		AS ESTIMATED ON SB-1	ACTUAL					
Amount of solid waste converted								
Amount of hazardous waste converted								
Other benefits:								
SECTION 6		TAXPAYER CERTIFICATION						
I hereby certify that the representations in this statement are true.								
Signature of authorized representative	Title	Date signed (month, day, year)						
<i>[Signature]</i>	Controller	5/21/11						

**OPTIONAL: FOR USE BY A DESIGNATING BODY WHO ELECTS TO REVIEW THE COMPLIANCE WITH STATEMENT OF BENEFITS (FORM CF-1)
THAT WAS APPROVED AFTER JUNE 30, 1991.**

INSTRUCTIONS: (IC 6-1.1-12.1-5.9)

1. This page does not apply to a Statement of Benefits filed before July 1, 1991, that deduction may not be terminated for a failure to comply with the Statement of Benefits.
2. Within forty-five (45) days after receipt of this form, the designating body may determine whether or not the property owner has substantially complied with the Statement of Benefits.
3. If the property owner is found NOT to be in substantial compliance, the designating body shall send the property owner written notice. The notice must include the reasons for the determination and the date, time and place of a hearing to be conducted by the designating body. If a notice is mailed to a property owner, a copy of the written notice will be sent to the County Assessor and the County Auditor.
4. Based on the information presented at the hearing, the designating body shall determine whether or not the property owner has made reasonable effort to substantially comply with the Statement of Benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner.
5. If the designating body determines that the property owner has NOT made reasonable effort to comply, then the designating body shall adopt a resolution terminating the deduction. The designating body shall immediately mail a certified copy of the resolution to: (1) the property owner, (2) the County Auditor, and (3) the County Assessor.

We have reviewed the CF-1 and find that:			
<input type="checkbox"/> the property owner IS in substantial compliance <input type="checkbox"/> the property owner IS NOT in substantial compliance <input type="checkbox"/> other (specify) _____			
Reasons for the determination (attach additional sheets if necessary)			
Signature of authorized member			Date signed (month, day, year)
Attested by:		Designating body	
If the property owner is found not to be in substantial compliance, the property owner shall receive the opportunity for a hearing. The following date and time has been set aside for the purpose of considering compliance.			
Time of hearing	<input type="checkbox"/> AM <input type="checkbox"/> PM	Date of hearing (month, day, year)	Location of hearing
HEARING RESULTS (to be completed after the hearing)			
<input type="checkbox"/> Approved		<input type="checkbox"/> Denied (see instruction 5 above)	
Reasons for the determination (attach additional sheets if necessary)			
Signature of authorized member			Date signed (month, day, year)
Attested by:		Designating body	
APPEAL RIGHTS [IC 6-1.1-12.1-5.9(e)]			
A property owner whose deduction is denied by the designating body may appeal the designating body's decision by filing a complaint in the office of the clerk of Circuit or Superior Court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner.			