



Goshen Common Council

7:00pm February 4, 2020 Regular Meeting

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

Please silence electronic devices and take conversations outside the meeting room

Call to Order by Mayor Jeremy Stutsman

Pledge of Allegiance

Roll Call:	Megan Eichorn (District 4)	Julia King (At-Large)	Jim McKee (District 1)
	Doug Nisley (District 2)	Gilberto Pérez, Jr. (District 5)	Matt Schrock (District 3)
	Council President Brett Weddell (At-Large)	Youth Advisor Zoe Eichorn (Non-voting)	

Approval of Minutes

Approval of Meeting Agenda

Privilege of the Floor

Council Committee, Liaison, Mayoral Reports

I. Notice of Adoption of a Resolution Designating the "Benteler III Economic Revitalization Area" and Notice of Public Hearing

PUBLIC HEARING

II. **Resolution 2020-04:** Confirming the Designation of the Benteler III Economic Revitalization Area to Authorize a Tax Phase-In for Benteler Automotive Corporation

- Staff memo & recommendation (Brinson)
- Financial Analysis from Baker Tilly
- Benteler Application and Scoring
- Ordinance 4736: Tax Phase-In Policy



- III. **Resolution 2020-05:** Project Coordination Contract with the State of Indiana for the College Avenue Auxiliary Lanes Project
- IV. **Resolution 2020-06:** An Emergency Resolution Providing for the Transfer of Funds
 - Staff Memo for Local Road & Street (Sailor)
 - Staff Memo for Public Safety LOIT (Scharf)
- V. **Ordinance 5035:** PUD Major Change for 605 River Race Drive, Co-Housing PUD (1st Reading, 2nd Reading)
 - Staff Memo, Analysis, Public Correspondence (Yoder)
- VI. **Ordinance 5031:** Amend Park Rules and Regulations to Allow for the Possession and Consumption of Alcohol During Rental of Park Pavilions and Facilities (2nd Reading)
 - Ordinance 4699 (Not Adopted)
 - Minutes from public discussion of Ordinance 4699
- VII. **Ordinance 5032:** Rainy Day Fund (1st Reading)
- VIII. **Ordinance 5033:** Threshold for Common Council Approval for the Sale of Real Property (1st Reading)
- IX. **Ordinance 5034:** An ordinance concerning the construction of improvements to the sewage works of the City of Goshen, the issuance of revenue bonds to provide for the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith (1st Reading)

Adjournment

**Notice of Adoption of a Resolution Designating the
“Benteler III Economic Revitalization Area”
and Notice of Public Hearing**

The Goshen Common Council passed Resolution 2020-01 on January 7, 2020 declaring the designation of the Benteler III Economic Revitalization Area at 910 Eisenhower Drive South, Goshen, Indiana for the purpose of phasing-in certain personal property taxes in connection with the installation of new manufacturing equipment by Benteler Automotive Corporation (“Benteler”).

A description and map of the proposed economic revitalization area is available and can be inspected at the Elkhart County Assessor’s Office at 117 North Second Street, Goshen, Indiana. Resolution 2020-01 in its entirety may also be inspected during regular business hours at the Goshen Clerk-Treasurer’s Office at 202 South Fifth Street, Goshen, Indiana.

The Goshen Common Council will hold a public hearing at a meeting on February 4, 2020 at 7 p.m. to receive and hear all remonstrances and objections from interested persons concerning this designation. The hearing will be held in the City Court Room/Council Chambers at the Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana. After considering the evidence, the Common Council will take final action in determining whether the qualifications for an economic revitalization area have been met, and will then confirm, modify and confirm, or rescind the previously adopted resolution.

If the designation of the Benteler III Economic Revitalization Area to authorize a tax phase-in for Benteler is confirmed without modification by the Common Council, the designation shall be limited for a period of five (5) years and expire in 2026. Benteler will be entitled to make application for a deduction from the assessed value of the personal property applicable to the new manufacturing equipment installed for five (5) years in accordance with the approved tax abatement schedule in an amount not to exceed a cost of \$26,064,506.



Department of Community Development
CITY OF GOSHEN
204 East Jefferson Street, Suite 6 • Goshen, IN 46528-3405
Phone (574) 537-3824 • Fax (574) 533-8626
communitydevelop@goshencity.com • www.goshenindiana.org

Memo

To: Goshen City Council
From: Mark Brinson
Subject: Benteler Automotive Tax Phase-in Application
Date: December 27, 2019

Benteler Automotive Overview

Benteler Automotive is an international company that manufactures parts for the automotive industry. The company provides automotive stampings, progressive dies, axles, and tubular steel components, as well as offers chassis components, aluminum forgings, structural safety components, exhaust manifolds, pipes, modules, and systems. Benteler Automotive is headquartered in Salzburg, Austria and operates globally, with 74 manufacturing operations in 24 countries. There are 9 manufacturing facilities in the U.S., most of which are concentrated in northern Indiana (Goshen and Fort Wayne) and Michigan. In total, Benteler Automotive employees 26,000 people. The Goshen facility, located at 910 Eisenhower Drive South, produces components for most of the major automotive manufacturers in North America.

Proposed Project

The proposed project will result in the addition of a new hot line into the Goshen facility. This production technology is used to produce high strength automotive components that are more lightweight. This results in vehicle components that are safer and also help reduce emissions. The hot line manufacturing process is highly automated and requires a significant capital investment. The proposed project will require the installation of press equipment, lasers, weld cells and other related equipment. The total investment in the hot line will be \$26,064,506. The Goshen facility is the only hot line that Benteler operates in the United States.

The hot line project is expected to occur in 2020. No new jobs will be created as a result of the investment. Benteler currently employs 272 people in Goshen, paying an average wage of \$26.07 per hour. The median wage for the 160 production workers at Benteler is \$21.15 per hour, compared to Elkhart County's median wage of \$17.33 per hour.

Previous Benteler Phase-in Approvals

Benteler was awarded two previous phase-ins. The first was a 10-year phase-in in 2005 for an investment of \$33 million in personal property and \$8 million in real property. The second was also for a ten year period, but was for a \$32.2 million investment in personal property only.

Phase-in Policy

As part of a county-wide initiative to create a consistent and uniform phase-in policy, the Goshen Council adopted Ordinance 4736 in 2013. Included in the policy was a limitation of 5 years for personal property phase-ins and a restriction on approving phase-ins in Tax Incremental Finance (TIF) districts. However, the policy includes the following exceptions:

Section 7. Exceptions

- (a) The Common Council may grant specific exceptions to the stated policies above if the Common Council determines a project will do any of the following:
 - 1. *Diversify the current economic base by attracting high technology or knowledge-based jobs which are likely to be resistant to the normal business cycle;*
 - 2. Encourage entrepreneurial activity; or
 - 3. Produce jobs at a time when the Elkhart County unemployment rate exceeds ten percent (10%).
- (b) *In addition, the Common Council must find that the City of Goshen will be best served by granting a variance.*

Abatement Analysis

In a typical abatement, assessed value is phase-in over a period of time, depending on the abatement schedule set forth in the Council resolution. The Council has the flexibility to determine the number of years for the abatement period, as well as the percentage for each year. The standard abatement schedule for five years would be the following percentages: 100%, 80%, 60%, 40% and 20%. However, this schedule sometimes needs to be adjusted to protect the existing assessed value from decreasing, due to complex tax formulas related to depreciation rules. The City's financial advisor, Baker Tilly, was asked to evaluate the impact a five-year abatement would have on the existing assessed value using the standard abatement percentages. As a result of their analysis, Baker Tilly has recommended using a modified abatement schedule using the following abatement percentages: 60%, 50%, 50%, 50% and 45%.

Staff Recommendation

Based on tax phase-in score sheet, the Benteler project would qualify for the maximum 5-year phase in period. Staff recommends that the Council make an exception to the policy and award a 5-year phase in for this project. This recommendation is based on the following:

- 1. The project serves the automotive sector and therefore brings diversification to Goshen's manufacturing base, which is heavily dependent on the recreational vehicle industry. The RV industry has reputation for more pronounced swings in production compared to the automotive industry. For example, for the first 10 months of 2019, RV shipments dropped by 17.4%. During this same time period, the automotive industry remained relatively flat, with a decline of only 1.1%.
- 2. The jobs that are retained pay wages that are significantly higher than the current median wage in Elkhart County.
- 3. The project will result in a significant increase to the property tax base.

RESOLUTION 2020-04

Confirming the Designation of the Benteler III Economic Revitalization Area to Authorize a Tax Phase-In for Benteler Automotive Corporation

WHEREAS Indiana Code § 6-1.1-12.1 et seq. authorizes the establishment of an economic revitalization area (“ERA”) within the corporate limits of a city for the purpose of phasing-in certain property taxes in connection with the redevelopment or rehabilitation of real estate or the installation of new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment within an ERA; and

WHEREAS Goshen City Ordinance 4630, as amended by Ordinance 4736, and Indiana Code § 6-1.1-12.1 et seq. set forth the procedures and standards for the establishment of an ERA; and

WHEREAS Benteler Automotive Corporation (“Benteler”) contacted the City of Goshen’s Community Development Director on or about November 6, 2019 to request that an area be designated as an ERA, and submitted the formal application and completed Statement of Benefits to the City of Goshen requesting the Common Council to allow a deduction in the assessed valuation and determine the number of years that Benteler is entitled to claim a deduction in the assessed valuation for certain personal property taxes in connection with the installation of new manufacturing equipment as defined by Indiana Code § 6-1.1-12.1-1(3), hereinafter referred to as the “Project”.

WHEREAS a notice of adoption that the Goshen Common Council passed Resolution 2020-01 on January 7, 2020 concerning the designation of the “Benteler III Economic Revitalization Area” and notice of public hearing has been given and published; and

WHEREAS copies of the notice and Resolution 2020-01 have been filed with the Elkhart County Assessor; and

WHEREAS copies of the notice and Benteler’s Statement of Benefits have been filed with all affected taxing units; and

WHEREAS the Goshen Common Council has received and heard all remonstrances and objections from interested persons concerning the designation of the “Benteler III Economic Revitalization Area” at a public hearing on February 4, 2020, and has determined that the qualifications for an ERA have been met.

After consideration of the designation application with regards to declaring the designation of an ERA at 910 Eisenhower Drive South, Goshen, Indiana, the Goshen Common Council NOW FINDS and CONFIRMS the following:

- (a) The area is where a facility or group of facilities are technologically, economically, or energy obsolete and such obsolescence may lead to a decline in employment and tax revenues.
- (b) Benteler estimates the cost of the new manufacturing equipment to be Twenty-six Million Sixty-four Thousand Five Hundred Six Dollars (\$26,064,506). The cost estimate is reasonable for equipment of the type proposed to be installed.

- (c) Benteler estimates to retain 272 individuals as a result of the proposed Project. The estimated number of individuals to be retained can be reasonably expected to result from the proposed Project.
 - (d) Benteler estimates the total annual compensation (wages and benefits) to be paid to those individuals to be retained to be Nineteen Million Eight Hundred Thirty-six Thousand One Hundred Ten Dollars (\$19,836,110) as a result of the proposed Project. The estimated total annual compensation to be paid can be reasonably expected to result from the proposed Project.
 - (e) Any benefit to the community upon which the application depends can be reasonably expected to result from the proposed Project.
 - (f) The total benefit is sufficient to justify the tax phase-in.
 - (g) The area will not contain a facility that is primarily used for:
 - (1) Private or commercial golf course.
 - (2) Country club.
 - (3) Massage parlor.
 - (4) Tennis club.
 - (5) Skating facility (including roller skating, skateboarding, or ice skating).
 - (6) Racquet sport facility (including any handball or racquetball court).
 - (7) Hot tub facility.
 - (8) Suntan facility.
 - (9) Racetrack.
 - (10) Any facility the primary purpose of which is:
 - (A) retail food and beverage service;
 - (B) automobile sales or service; or
 - (C) other retail;
unless the facility is located in an economic development target area established under Indiana Code § 6-1.1-12.1-7.
 - (11) Residential, unless:
 - (A) the facility is a multifamily facility that contains at least twenty percent (20%) of the units available for use by low and moderate income individuals;
 - (B) the facility is located in an economic development target area established under Indiana Code § 6-1.1-12.1-7; or
 - (C) the area is designated as a residentially distressed area.
 - (12) A package liquor store that holds a liquor dealer's permit under Indiana Code § 7.1-3-10 or any other entity that is required to operate under a license issued under Indiana Code § 7.1.
- (h) The proposed Project is permitted under the zoning regulations for the area.
- (i) The proposed Project is located in the Southeast Allocation Area, and the granting of the tax phase-in will not negatively impact the financial obligations of the tax increment financing district or the purposes for which the tax increment financing district was created.
- (j) The City of Goshen will be best served by granting a variance to the Tax Phase-In Policy as:
 - (1) The proposed Project serves the automobile industry, and therefore, diversifies Goshen's current manufacturing base which is heavily dependent on the RV industry.
 - (2) The jobs retained by the proposed Project pay wages significantly higher than the current median wage in Elkhart County.

- (3) The proposed Project will result in a significant increase to the property tax base.
- (k) The City of Goshen will impose a fee equal to fifteen percent (15%) of the reduction in property taxes to which Benteler or its successors in interest are entitled to in each year in which Benteler or its successors in interest's property taxes are reduced by a deduction approved by this Common Council. Benteler has consented to the imposition of this fee. The fee imposed shall be distributed to public or nonprofit entities which are established to promote economic development within the City of Goshen. The relative portions of the distribution are designated under the section with the heading Fee Imposed.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Goshen, Indiana CONFIRMS the designation of the Benteler III Economic Revitalization Area to authorize a tax phase-in of certain personal property taxes for Benteler Automotive Corporation as follows:

Approval of Statement of Benefits

Since the property in the Benteler III Economic Revitalization Area is also located in the Southeast Allocation Area, pursuant to Indiana Code § 6-1.1-12.1-2(k), the Common Council approves Benteler's Statement of Benefits for Personal Property.

Description of Economic Revitalization Area

- (a) The Common Council FINDS, CONFIRMS and DESIGNATES the area more commonly known as 910 Eisenhower Drive South, Goshen, Indiana to be an ERA. The ERA is more particularly described as follows:

A part of the Southwest Quarter of Section 22, Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 22; thence North 89°00'00" West (recorded bearing), along the South line of said Southwest Quarter and centerline of County Road #38, a distance of 460.51 feet to the Southwest corner of a 5.949 acre parcel of land described as dedication of public highway known as Eisenhower Drive, in the office of the recorder of Elkhart County, in deed record volume 347, page 663; thence North 01°00'00" East, along the West line of said Eisenhower Drive, a distance of 543.50 feet to the point of beginning of this description; thence North 89°00'00" West parallel with the South line of said Southwest Quarter, a distance of 1,419.46 feet to the East right of way line of the CCC & St. Louis Railroad (the Big Four); thence North 00°01'25" West along said East right of way line, a distance of 481.68 feet to the Southwest corner of a 7.85 acre parcel of land conveyed from Greater Goshen Association, Inc. to Ivy Terrace, Inc., described and recorded in the Elkhart County Recorder's Office in deed record volume 254, page 328; thence South 89°00'00" East along the South line of said Ivy Terrace, Inc. land, a distance of 500.00 feet; thence North 55°00'00" East along the Southeasterly line of said Ivy Terrace, Inc. land, a distance of 210.68 feet to a point on the Southwesterly line of aforesaid Eisenhower Drive (deed record volume 347, page 663) said point being on a curve concave to the Northeast, the radius point of said curve being North 50°54'04" East, a distance of 332.44 feet from said point; thence Southeasterly along the arc of said curve to the left, also being the Southerly line of said Eisenhower Drive, a distance of 289.54 feet to the point of tangency of said curve, thence South 89°00'00" East along the South line of said

Eisenhower Drive, a distance of 503.33 feet; thence South 01°00'00" West along the West line of said Eisenhower Drive, a distance of 487.11 feet to the point of beginning of this description. Containing 16.29 acres, more or less, and subject to all easements, restrictions and public rights of way recorded prior to this description.

Parcel Number 20-11-22-376-001.000-015

- (b) The map attached to this resolution as Exhibit A identifies the ERA.
- (c) The ERA shall be known as the “Benteler III Economic Revitalization Area.”

Type and Duration of Tax Phase-In

- (a) The designation of the Benteler III Economic Revitalization Area shall be limited to a period of **five (5) years**. This designation expires in **2026**.
- (b) The tax phase-in is contingent upon Benteler contributing **fifteen percent (15%)** of its tax savings to the City.
- (c) **Personal Property Taxes.** The deduction within the Benteler III Economic Revitalization Area shall be limited to the following personal property taxes for the installation of the new manufacturing equipment listed in Exhibit B that meets the following definition:

Any tangible personal property the deduction applicant:

(A) installs on or before December 31, 2021 in an area that is declared an economic revitalization area in which a deduction for tangible personal property is allowed;
(B) uses in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property, including but not limited to use to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products;
(C) acquires for use as described in clause (B):

(i) in an arms length transaction from an entity that is not an affiliate of the deduction applicant, if the tangible personal property has been previously used in Indiana before the installation described in clause (A); or
(ii) in any manner, if the tangible personal property has never been previously used in Indiana before the installation described in clause (A); and

(D) has never used for any purpose in Indiana before the installation described in clause (A).

Once the new manufacturing equipment listed in Exhibit B and meeting the above definition has been installed, Benteler is entitled to make application for a deduction from the assessed value of the personal property applicable to the new manufacturing equipment in an amount not to exceed a cost of **Twenty-six Million Sixty-four Thousand Five Hundred Six Dollars (\$26,064,506)** for each year during the period the Benteler III Economic Revitalization Area is in effect. The initial deduction application must be made in the year in which the new manufacturing equipment is installed and will continue for **five (5) consecutive years** following the installation pursuant to the following deduction schedule:

Year of Deduction	Percentage
1st	60%
2nd	50%
3rd	50%
4th	50%
5th	45%

Fee Imposed

Pursuant to Indiana Code § 6-1.1-12.1-14, a fee equal to **fifteen percent (15%)** of the reduction in property taxes resulting from the deduction granted by this process is imposed upon Benteler for each year Benteler's property taxes are reduced. The fee imposed shall be distributed entirely to the City of Goshen for deposit into the Redevelopment Non-Reverting Operating Fund. The amount of the fee shall be calculated in accordance with Indiana Code § 6-1.1-12.1-14(c).

Benteler to File with County

In order to receive a deduction in the assessed valuation, it shall be Benteler's responsibility to file State of Indiana forms prescribed by the Department of Local Government Finance (i.e., Certified Deduction Application, Certified Deduction Schedule, and/or Compliance with Statement of Benefits) with the appropriate Elkhart County Offices as required by Indiana statutes each year during the period the Benteler III Economic Revitalization Area is in effect.

Transfer of Title to or Relocation of Equipment

The tax phase-in granted will terminate upon transfer of title or any interest (excluding security interest) in the new equipment unless the new owner complies with Indiana Code § 6-1.1-12.1-5.4(f). The tax phase-in will terminate if any of the new equipment is moved to another location.

Cessation of Operations

In compliance with Indiana Code § 6-1.1-12.1-12, the Common Council declares that if Benteler ceases operations at the facility for which a deduction is granted or if the Common Council later finds that Benteler obtained the deductions by intentionally providing false information concerning Benteler's plans to continue operations at the facility, Benteler shall pay the amount due under the formula established by Indiana Code § 6-1.1-12.1-12(e) to the Elkhart County Treasurer. This paragraph is intended to incorporate the provisions of Indiana Code § 6-1.1-12.1-12.

Affidavit of Compliance

Each year Benteler shall file with the City of Goshen an annual report for the previous calendar year which includes the following information:

- (a) The number of employees employed at the facility receiving a tax phase-in as reported on the Statement of Benefits form (current number, number retained, and number additional), and the current number, number retained, and number additional as of January 1 and December 31 of the calendar year that the annual report covers.

- (b) The total annual compensation (wages and benefits) of the employees employed at the facility receiving a tax phase-in as reported on the Statement of Benefits form (salaries of current employees, employees retained and additional employees), and the salaries of current employees, employees retained and additional employees as of January 1 and December 31 of the calendar year that the annual report covers.
- (c) A detailed description of the progress made in the completion of the Project, including cost and increased value, for which the tax phase-in was granted during the calendar year that the annual report covers. Also include a description and value of any real property or personal property, as applicable, that was replaced.
- (d) The completed Compliance with Statement of Benefits (State of Indiana form).

The annual report must be filed with the Goshen Community Development Director by February 28 of each year. This information is in addition to the required filings (i.e., State of Indiana forms, including Certified Deduction Application, Certified Deduction Schedule, and/or Compliance with Statement of Benefits) which must be filed with the appropriate Elkhart County Office by Benteler in accordance with Indiana statutes.

PASSED by the Goshen Common Council on February _____, 2020.

Presiding Officer

Attest:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on February _____, 2020 at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on February _____, 2020.

Jeremy P. Stutsman, Mayor

EXHIBIT A

Benteler III Economic Revitalization Area 910 Eisenhower Drive South, Goshen, Indiana



EXHIBIT B

Benteler III Economic Revitalization Area List of New Manufacturing Equipment

Description of Equipment	Description	Estimated Cost
WBS 1-0446-17-206-2-001	Additional CMM Capac	Computer Measurement Machine - QC
WBS 1-0446-18-201-2-001	Forklifts	Forklifts
WBS 1-0446-18-105-2-001	New HFL #9	Hot Form Line w Furnace
WBS 1-0446-19-202-2-001	New HFL-General Inve	Hot Form Line w Furnace
WBS 1-0446-17-101-2-001	STR Ford C482/3 430	Hot Stamp Weld Cells
WBS 1-0446-17-101-2-002	Ford C482/483 HF Par	Hot Stamp Weld Cells
WBS 1-0446-17-102-2-001	STR Ford C483 HF Upp	Hot Stamp Weld Cells
WBS 1-0446-17-102-2-002	Ford C482/483 HF par	Hot Stamp Weld Cells
WBS 1-0446-18-100-2-001	Ford C520 Bumper FG	Hot Stamp Weld Cells
WBS 1-0446-18-101-2-001	Addendum Ford P375 H	Hot Stamp Weld Cells
WBS 1-0446-18-103-2-001	Ford C482/483 HF Las	Hot Stamp Weld Cells
WBS 1-0446-18-103-4-001	Ford C482/483 HF Las	Hot Stamp Weld Cells
WBS 1-0446-18-103-5-001	Ford C482/483 HF Las	Hot Stamp Weld Cells
WBS 1-0446-18-103-6-001	Ford C482/483 HF Las	Hot Stamp Weld Cells
WBS 1-0446-18-103-7-001	Ford C482/483 HF Las	Hot Stamp Weld Cells
WBS 1-0446-18-104-2-001	Ford C482/C483 HF We	Hot Stamp Weld Cells
WBS 1-0446-18-104-2-002	Ford C482/C483 HF Co	Hot Stamp Weld Cells
WBS 1-0446-19-100-2-001	Ford C482 Door Beams	Hot Stamp Weld Cells
WBS 1-0446-19-101-2-001	Ford C483 Door Beams	Hot Stamp Weld Cells
WBS 1-0446-17-100-2-001	Ford P375 HF ST	Hot Stamp Weld Cells
WBS 1-0446-18-105-2-002	Trumpf Laser Cell 16	Laser
WBS 1-0446-18-105-2-003	Trumpf Laser Cell 17	Laser
WBS 1-0446-18-105-2-004	Trumpf Laser Cell 18	Laser
WBS 1-0446-18-105-2-005	Trumpf Laser Cell 19	Laser
WBS 1-0446-18-203-2-001	SPDP Pilot Program	Machinery
WBS 1-0446-19-200-2-001	Nitrogen High Pressu	Nitrogen Production for Hot Stamp
WBS 1-0446-18-205-2-001	VGV (Visually Guided	Robotic Fork Lift
Total Machinery & Equipment		25,915,934
WBS 1-0446-16-104-2-004	G01 CMS Rear - Adden	Tooling
WBS 1-0446-18-101-2-003	Pin Pallets	Tooling
WBS 1-0446-17-100-2-003	Pin Pallets	Tooling
Total Tooling		148,572
Total Investment		26,064,506



December 9, 2019

now joined with
Springsted and Umbaugh

Mr. Mark Brinson, Director of Community Development
City of Goshen
204 East Jefferson Street
Goshen, Indiana 46528

Baker Tilly Municipal Advisors, LLC
8365 Keystone Crossing, Ste 300
Indianapolis, IN 46240
United States of America

Re: Proposed Abatement Analysis - Benteler Automotive Corporation

T: +1 (317) 465 1500
F: +1 (317) 465 1550
bakertilly.com

Dear Mr. Brinson:

Per your request, we have prepared this illustrative personal property assessed value analysis for Benteler Automotive Corporation to assist you in the discussion and consideration of the impact of the investment in personal property. The attached schedule (listed below) presents unaudited and limited information. The use of this schedule should be restricted to this purpose, for internal use only, as the information is subject to future revision and final report.

Pages

Represents current personal property investment information

- | | |
|---|--|
| 2 | Estimated Personal Property Assessed Values |
| 3 | Estimated Personal Property Assessed Values After Abatements |

Assumes \$26 million of personal property is invested for taxes payable 2022

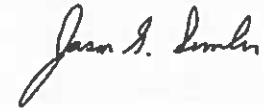
- | | |
|---|---|
| 4 | Estimated Personal Property Assessed Values |
| 5 | Estimated Personal Property Assessed Values After Abatements |
| 6 | <i>Estimated Personal Property Assessed Values - Proposed new investment is shown
independently of existing personal property</i> |
| 7 | Estimated Personal Property Assessed Values |

In the preparation of this schedule, certain assumptions were made as noted regarding certain future events. As is the case with such assumptions regarding future events and transactions, some or all may not occur as expected and the resulting differences could be material. We have not examined the underlying assumptions, nor have we audited or reviewed the historical data. Consequently, we express no opinion thereon nor do we have a responsibility to prepare subsequent reports.

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

Very truly yours,

BAKER TILLY MUNICIPAL ADVISORS, LLC


Jason G. Semler

Jason G. Semler, Partner

CITY OF GOSHEN, INDIANA

Benteler Automotive Corporation

ESTIMATED PERSONAL PROPERTY ASSESSED VALUES

Represents current personal property investment information for taxes payable 2020

<u>Year</u>	<u>Adjusted Cost (1)</u>	<u>Depreciation Percent (2)</u>	<u>True Tax Value</u>
<i>Pool 1</i>			
4	\$23,074	20%	\$4,615
<i>Pool 2</i>			
1	3,253,092	40%	1,301,237
2	465,885	56%	260,896
3	2,622,233	42%	1,101,338
4	1,890,991	32%	605,117
5	86,315	24%	20,716
6	18,031,130	18%	3,245,603
7	<u>44,800,909</u>	15%	<u>6,720,136</u>
Totals	<u>\$71,173,629</u>		<u>\$13,259,658</u>
Total True Tax Value			\$13,259,658
30% of Total Adjusted Cost			<u>21,352,089</u>
Greater of Total True Tax Value and 30% of Adjusted Cost			\$21,352,089
Equipment Not Placed in Service			687,535
Tools, Dies, Jigs, Fixtures, Etc.			<u>194,640</u>
Total True Tax Value of Existing Personal Property			<u>\$22,234,264</u>
Minimum Value Ratio (30% of Adjusted Cost / Total True Tax Value)			<u>1.61030</u>

- (1) Based on the Business Tangible Personal Property Assessment Return completed by Benteler Automotive Corporation for January 1, 2019 taxes payable 2020.
- (2) Represents the true tax value depreciation percentages that are required by the State of Indiana's Business Tangible Personal Property Assessment Return Form 103-Long.

(Subject to the attached letter dated December 9, 2019)
 (Preliminary - Subject to Change)
 (For Internal Use Only)

CITY OF GOSHEN, INDIANA

Benteler Automotive Corporation

ESTIMATED PERSONAL PROPERTY ASSESSED VALUES AFTER ABATEMENTS

Represents current personal property investment information for taxes payable 2020

Year	Adjusted Cost (1)	Depreciation Percent (2)	True Tax Value (4)	Abatement Percent (3)	True Tax Value After Abatement (5)	Minimum Value Ratio	True Tax Value After Abatement
<u>Pool 2</u>							
6	\$16,479,204	18%	\$2,966,257	50%	\$1,483,129	1.6103	\$2,388,282
7	5,871,695	15%	880,754	40%	352,302	1.6103	567,311
8	3,395,667	15%	509,350	30%	152,805	1.6103	246,062
<u>Special Tooling</u>							
6	2,492,600	3%	74,778	50%	37,389	N/A	(4) 37,389
7	<u>282,521</u>	<u>3%</u>	<u>8,476</u>	<u>40%</u>	<u>3,390</u>	<u>N/A</u>	<u>(4) 3,390</u>
Totals	<u>\$28,521,687</u>		<u>\$4,439,615</u>		<u>\$2,029,015</u>		<u>\$3,242,434</u>

- (1) Based on the Business Tangible Personal Property Assessment Return completed by Benteler Automotive Corporation for January 1, 2019 taxes payable 2020.
- (2) Represents the true tax value depreciation percentages that are required by the State of Indiana's Business Tangible Personal Property Assessment Return Form 103-Long.
- (3) Assumes the existing investment receives a traditional 10-year abatement with the following percentages: 100%, 90%, 80%, 70%, 60%, 50%, 40%, 30%, 20%, and 10%.
- (4) The Minimum Value Ratio is not applicable to Special Tooling.

(Subject to the attached letter dated December 9, 2019)

(Preliminary - Subject to Change)

(For Internal Use Only)

CITY OF GOSHEN, INDIANA

Benteler Automotive Corporation

ESTIMATED PERSONAL PROPERTY ASSESSED VALUES

Assumes \$26 million of personal property is invested for taxes payable 2022

<u>Year</u>	<u>Adjusted Cost (1)</u>	<u>Depreciation Percent (2)</u>	<u>True Tax Value</u>
<i><u>Pool 1</u></i>			
6	\$23,074	20%	\$4,615
<i><u>Pool 2</u></i>			
1	26,000,000 (3)	40%	10,400,000
2	0	56%	0
3	3,253,092	42%	1,366,299
4	465,885	32%	149,083
5	2,622,233	24%	629,336
6	1,890,991	18%	340,378
7	<u>62,918,354</u>	15%	<u>9,437,753</u>
Totals	<u>\$97,173,629</u>		<u>\$22,327,464</u>
Total True Tax Value			\$22,327,464
30% of Total Adjusted Cost			<u>29,152,089</u>
Greater of Total True Tax Value and 30% of Adjusted Cost Tools, Dies, Jigs, Fixtures, Etc.			<u>\$29,152,089</u> <u>194,640</u>
Total True Tax Value of Existing Personal Property			<u>\$29,346,729</u>
Minimum Value Ratio (30% of Adjusted Cost / Total True Tax Value)			<u>1.30566</u>

- (1) Based on the Business Tangible Personal Property Assessment Return completed by Benteler Automotive Corporation for January 1, 2019 taxes payable 2020.
- (2) Represents the true tax value depreciation percentages that are required by the State of Indiana's Business Tangible Personal Property Assessment Return Form 103-Long.
- (3) Assumes the proposed \$26,000,000 personal property investment will be assessed January 1, 2021 for taxes payable in 2022.

(Subject to the attached letter dated December 9, 2019)
 (Preliminary - Subject to Change)
 (For Internal Use Only)

CITY OF GOSHEN, INDIANA

*Benteler Automotive Corporation***ESTIMATED PERSONAL PROPERTY ASSESSED VALUES AFTER ABATEMENTS***Represents current personal property investment information*

Year	Adjusted Cost (1)	Depreciation Percent (2)	True Tax Value (3)	Abatement Percent (4)	True Tax Value After Abatement (5)	Minimum Value Ratio	True Tax Value After Abatement
<i><u>Pool 2</u></i>							
1	\$26,000,000	40%	\$10,400,000	100%	\$10,400,000	1.30566	\$13,578,864
8	16,479,204	15%	2,471,881	30%	741,564	1.30566	968,231
9	5,871,695	15%	880,754	20%	176,151	1.30566	229,993
10	3,395,667	15%	509,350	10%	50,935	1.30566	66,504
<i><u>Special Tooling</u></i>							
8	2,492,600	3%	74,778	30%	22,433	N/A	22,433
9	282,521	3%	8,476	20%	1,695	N/A	1,695
Totals	<u>\$54,521,687</u>		<u>\$14,345,239</u>		<u>\$11,392,778</u>		<u>\$14,867,720</u>

- (1) Based on the Business Tangible Personal Property Assessment Return completed by Benteler Automotive Corporation for January 1, 2019 taxes payable 2020.
- (2) Represents the true tax value depreciation percentages that are required by the State of Indiana's Business Tangible Personal Property Assessment Return Form 103-Long.
- (3) Assumes the existing investment receives a traditional 10-year abatement with the following percentages: 100%, 90%, 80%, 70%, 60%, 50%, 40%, 30%, 20%, and 10%.
- (4) Assumes the proposed investment receives a traditional 5-year abatement with the following percentages: 100%, 80%, 60%, 40% and 20%.
- (5) The Minimum Value Ratio is not applicable to Special Tooling.

(Subject to the attached letter dated December 9, 2019)
 (Preliminary - Subject to Change)
 (For Internal Use Only)

CITY OF GOSHEN, INDIANA

Benteler Automotive Corporation

ESTIMATED PERSONAL PROPERTY ASSESSED VALUES

Proposed new investment is shown independently of existing personal property

Taxes Payable Year	Assumes a 5-Year Traditional Personal Property Tax Abatement for the Proposed \$26,000,000 Investment		
	Estimated Assessed Value		
	Total Assessed Value (1)	Abated Assessed Value (2)	Net Assessed Value
2020			
2021			
2022	\$10,400,000	(\$10,400,000)	\$0
2023	14,560,000	(11,648,000)	2,912,000
2024	10,920,000	(6,552,000)	4,368,000
2025	8,320,000	(3,328,000)	4,992,000
2026	7,800,000	(1,560,000)	6,240,000
2027	7,800,000		7,800,000
Totals		<u>(\$33,488,000)</u>	

- (1) Assumes the proposed \$26,000,000 personal property investment will be assessed January 1, 2021 for taxes payable in 2022. Assumes the new investment is considered independent of the existing personal property.
- (2) Assumes the proposed investment receives a traditional 5-year abatement with the following percentages: 100%, 80%, 60%, 40% and 20%.

(Subject to the attached letter dated December 9, 2019)
 (Preliminary - Subject to Change)
 (For Internal Use Only)

CITY OF GOSHEN, INDIANA

Benteler Automotive Corporation

ESTIMATED PERSONAL PROPERTY ASSESSED VALUES

Taxes Payable Year	Current			Assumes a 5-Year Traditional Personal Property Tax Abatement for the Proposed \$26,000,000 Investment				Assumes a 5-Year Modified Personal Property Tax Abatement for the Proposed \$26,000,000 Investment			
	Estimated Assessed Value			Estimated Assessed Value			Net Assessed Value Variance	Estimated Assessed Value			Net Assessed Value Variance
	Total Assessed Value	Abated Assessed Value	Net Assessed Value	Total Assessed Value	Abated Assessed Value	Net Assessed Value		(1) (2)	(3)	(4)	
2020	\$22,234,264	(\$3,242,434)	\$18,991,830	\$22,234,264	(\$3,242,434)	\$18,991,830	\$0	\$22,234,264	(\$3,242,434)	\$18,991,830	\$0
2021	21,546,729	(2,300,442)	19,246,287	21,546,729	(2,300,442)	19,246,287	D	21,546,729	(2,300,442)	19,246,287	0
2022	21,546,729	(1,758,167)	19,788,562	29,346,729	(14,867,720)	14,479,009	(5,309,553)	29,346,729	(9,436,174)	19,910,555	121,993
2023	21,546,729	(1,111,460)	20,435,269	29,346,729	(13,776,163)	15,570,566	(4,864,703)	29,346,729	(8,881,770)	20,484,959	49,590
2024	21,546,729	(487,994)	21,058,735	29,346,729	(9,056,585)	20,290,144	(768,591)	29,346,729	(7,603,232)	21,743,498	684,763
2025	21,546,729		21,546,729	29,346,729	(5,080,858)	24,265,871	2,719,142	29,346,729	(6,351,072)	22,995,657	1,448,928
2026	21,546,729		21,546,729	29,346,729	(2,150,579)	27,196,150	5,649,421	29,346,729	(4,838,802)	24,507,927	2,961,198
2027	21,546,729		21,546,729	29,346,729		29,346,729	7,800,000	29,346,729		29,346,729	7,800,000
Totals		(\$8,900,497)			(\$50,474,781)				(\$42,633,926)		
Additional Abatement					\$41,574,284				\$33,733,429		

(1) Based on the Business Tangible Personal Property Assessment Return completed by Benteler Automotive Corporation for January 1, 2019 taxes payable 2020.

(2) Assumes the proposed \$26,000,000 personal property investment will be assessed January 1, 2021 for taxes payable in 2022.

(3) Assumes the proposed investment receives a traditional 5-year abatement with the following percentages: 100%, 80%, 60%, 40% and 20%.

(4) Assumes the proposed investment receives a modified 5-year abatement with the following percentages: 60%, 50%, 50%, 50% and 45%.

(Subject to the attached letter dated December 9, 2019)

(Preliminary - Subject to Change)

(For Internal Use Only)



This application is to request the designation of an Economic Revitalization Area (ERA) for the purpose of obtaining a property tax phase-in (tax abatement). The application is to be completed and signed by the owner of the property where the real property improvements, the installation of personal property, and/or the occupancy of an eligible vacant building is to occur. The designating body will review this application to determine whether a particular area should be designated as an ERA in accordance with Indiana Code (I.C.) 6-1.1-12.1 and all subsequent amendments made thereafter. The designating body makes no representation as to the effect of a designation granted by it for purposes of any further applications or approvals required under I.C. 6-1.1-12.1 and makes no representation to any applicant concerning the validity of any benefit conferred.

Application is to offset: (check all that apply)

- Real Property Improvements (e.g. new building, addition and/or modification)
 Personal Property (e.g. Equipment for manufacturing; research and development, logistics and distribution; or information technology.)
 Vacant Building

There is a non-refundable filing fee of \$750 for each category. This filing fee is used to defray the costs incurred in processing the application pursuant to I.C. 6-1.1-12.1-2(h). A check payable to Elkhart county must be included with the application.

General Information

Company Name	BENTELER AUTOMOTIVE CORPORATION		
Federal Employer I.D. (FEIN)	31-0985787	NAICS Code	381200
Website		Year Company founded	1980

Company Business (Brief Description)

THE PLANT MANUFACTURES STRUCTURAL COMPONENTS FOR ALMOST ALL MAJOR OEM IN NORTH AMERICA. IT OPERATES EIGHT HOT FORMING LINES. CORE COMPETENCIES AND TECHNOLOGIES ARE FORMING, WELDING, SURFACE COATING, AND INSPECTION TECHNOLOGIES.

Project Contact Person/Representative	SEE ATTACHED	Title	
Address			
Phone		Email	

Senior Company Official	COREY STRINGER	Title	SECRETARY
Address	2850 N OPDYKE ROAD, SUITE B, AUBURN HILLS MI 48326		
Phone	248-377-9999	Email	COREY.STRINGER@BENTELER.COM

Proposed Project Site Information N/A - THIS APPLICATION IS FOR PERSONAL PROPERTY

Property Owner(s)	Benteler Industries, Inc.		
Address	810 Eisenhower Dr. S., Goshen, IN 46526		
Parcel Number(s)	20-11-22-376-001.000-015		

Legal Description of property (attach if necessary)	PT GW1/4 SEC 22 16.08 (TIF 138)
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Does Company currently do business at this site?	Yes	x	No
If no, how is site currently being used?			

What buildings are on the site?	One Industrial Facility		
What is the condition of the buildings?	Average Condition		

Have the buildings at this site been vacant for more than a year?	Yes		No	x
Are the buildings at this site more than 25 years old?	Yes	x	No	
Will the proposed project be used for a national or regional headquarters?	Yes		No	x
Is this a blighted or mitigated Brownfield site?	Yes		No	x

Current assessed value of real estate	Land	504,200	Improvements	6,980,000
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Proposed Project Information					
Description of proposed improvements (Attach additional project details, if needed) Addition of new Hot Line into facility					
Structures:					
Manufacturing equipment:	New Hot Line and related equipment, including press, lasers, weld cell, and other related equipment				
Research and Development equipment:					
Logistics and Distribution equipment:					
Information Technology equipment:					
Proposed start date for project	12/18/2019	Proposed end date for project	12/31/2020		
Proposed start date for operations	12/18/2019				
Has the new equipment associated with this project been used by the owner/taxpayer (or related entity) in the state of Indiana?		Yes		N/A	
		No	x		
If yes, provide details including where the equipment will come from and how it will be acquired:					
Will the new equipment associated with this project be leased?		Yes		N/A	
		No	x		
If yes, provide details including from whom and for what term					
Will this project require approval of rezoning, plat, development plan, vacation, variance, special exemption, or contingent use?		Yes		No	X
If yes, list:					
Proposed Investment					
Calendar Year	2017	2018	2019	2020	Total
Land acquisition					
New building construction					
Existing building improvements					
Manufacturing equipment			20,809,610	5,254,996	26,064,506
Research and Development equipment					
Logistics and Distribution equipment					
Information Technology equipment					
On-site rail infrastructure					
On-site fiber infrastructure					
Grand Total					
Statutory Findings					
Indiana Code 8-1.1-12.1-1 requires that the designating body make specific findings to justify the designation of the property as an Economic Revitalization Area. One finding is that the subject property is either in an area: "Which has become undesirable for, or impossible of, normal development and occupancy because of lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property" or "Where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues."					
Are improvements on project site and/or the surrounding area obsolete?		Yes		No	x
If yes, describe the obsolescence:					
Are buildings at project site substandard for normal use and development?		Yes		No	x
If yes, explain what is substandard so as to prevent normal use and development:					
Has project site and/or surrounding area declined in value in last 10 years?		Yes		No	x
If yes, explain what caused the decline in value:					
Has project site and/or surrounding area failed to develop for last 10 years?		Yes		No	x
If yes, explain what characteristics make this site difficult to develop:					
Are any facilities at project site technologically, economically or energy obsolete?		Yes	X	No	
If yes, describe how the facilities are obsolete:		upgrade efficiency of Hot Line, allowing plant to increase production and be more competitive.			

Community Benefits

This project will help to retain employment at this plant and will upskill these employees. Additionally, these employees will receive a pay increase due to Explain how this proposed project will benefit the community; the training they will be receiving. This project helps to keep the community diversified, because it is in the Automotive Industry and is less cyclical than RV.

Impacts and status

Will any additional public utilities, services or other public infrastructure be required by this project?

Yes	No	x
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If yes, explain the type required and the amount the applicant will be contributing toward the public infrastructure.

Employment

Will all current employees be retained at Project Site as a result of this project?

Yes	X	No
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If no, explain:

Current Full-Time Employment at Project Site

	Number of Jobs	Average Hourly Wage*	Average Annual Wage*	Salary Range*	Median Annual Wage**
Management	14	50.59	106,238.81	84,000 - 142,00	119,000
Professional/Technical	42	31.81	65,753.18	52,000 - 78,00	65,000
Sales	1	47.88	99,546.00	80,000 - 120,000	100,000
Office/Administrative Support	9	21.87	45,498.65	38,000 - 58,000	48,000
Production Supervision	5	37.14	77,254.80	58,000 - 87,000	72,000
Production	160	21.30	44,310.32	36,000 - 52,000	44,000
Maintenance	41	30.02	62,437.44	47,000 - 70,000	59,000
Other					
Total	272				

Full-time Jobs to be created as a result of this project

	Number of Jobs	Average Hourly Wage*	Average Annual Wage*	Salary Range*	Median Annual Wage**
Management	THIS INVESTMENT WILL HELP TO RETAIN EMPLOYMENT. THERE ARE NO NEW JOBS TO BE ADDED AT THIS POINT.				
Professional/Technical					
Sales					
Office/Administrative Support					
Production Supervision					
Production					
Maintenance					
Other					
Total					

*Do NOT include costs of any benefits

** Median Annual Wage: The middle (midpoint) salary of all positions rather than the average (mean) salary

Additional financial compensation (attach additional pages, if needed)

Explain in detail, by job category, any additional financial compensation earned. (Examples may include commission, bonus, overtime, piece rate, attendance, etc.)

Projected Phasing of new jobs

Calendar Year	2018	2019	2020	2021	Total
Management					
Professional/Technical					
Sales					
Office/Administrative Support					
Production Supervision					
Production					
Maintenance					
Other					
Total					

Company Benefits				Comments
		X	X	
Health Insurance	Yes	x	No	
Dental Insurance	Yes	x	No	
Vision Insurance	Yes	x	No	
Life Insurance	Yes	x	No	
Disability Insurance	Yes	x	No	
Sick Leave (Paid)	Yes	x	No	
Vacation (Paid)	Yes	x	No	
Holidays (Paid)	Yes	x	No	
Personal Days (Paid)	Yes		No	x
Employee Training	Yes	x	No	
Tuition Reimbursement	Yes	x	No	
401K/Pension	Yes	x	No	
ESOP/Profit Sharing	Yes		No	x
Uniforms	Yes	x	No	
Other (List)				

Benefits Package:

What percentage of your employee's total compensation package are fringe benefits?

45%

Signature

Indiana Code 6-1.1-12.1-14 provides that the designating body for the tax phase-in requested, may impose a fee not exceeding 15% of the reduction in property taxes to which the undersigned applicant is entitled in each year in which the undersigned applicant's property tax liability is reduced by a deduction approved pursuant to this application.

The undersigned applicant consents to the following:

- Imposition of this fee provided that such fee is not more than fifteen percent (15%) of the reduction of property taxes for any tax year. These fees will be used for future Economic Development efforts.
- The current assessed tax base for this property will not be appealed over the tax phase-in period unless one of the exceptions in the tax phase-in policy applies.
- Filing this application constitutes a request for Economic Revitalization Area designation only and does not constitute an automatic reduction of property taxes. I understand it is the responsibility of property owners to file the appropriate forms on an annual basis with the Elkhart County Auditor and other governing bodies, as required, to receive any reduction of property taxes.
- I certify the information and representations of this application are true and complete.
- I further certify that I am the owner/taxpayer or have the authority of the owner/taxpayer to make this application and to consent to the fee as described above.

Signature	<u>Mark W. Rittenhouse</u>		
Printed	Mark W. Rittenhouse		
Title	Agent	Date	11/6/2019

ATTACHMENTS: Include all relevant Statement of Benefits (SB-1) forms

Benteler Automotive Corporation
910 S Eisenhower Drive, Goshen IN 46526
Listing of Contacts

	Tax Department	Plant Contact	Plant Controller	Tax Agent
Name	Wendy Monty	Noel Bergeron	Tomas Pokas	Mark Rittenhouse
Title	Tax Manager	Plant Operations Manager	Plant Controller	Tax Agent - Baden Tax Management, LLC
Address	2650 N. Opdyke Road, Suite B Auburn Hills, MI 48326	910 S. Eisenhower Goshen, IN 46526	910 S. Eisenhower Goshen, IN 46526	6920 Pointe Inverness Way, Suite 300 Fort Wayne, IN 46804
Phone	248-364-7047	574-537-2851	574-537-2861	260-969-2599
Email	wendy.monty@benteler.com	noel.bergeron@benteler.com	tomas.pokas@benteler.com	mrittenhouse@badentax.com

Benteler Automotive Corporation
 910 S Eisenhower Drive, Goshen IN 46528
 2019 SB-1 Attachment

Description of Equipment	Description	Estimated Cost	Anticipated Capitalization
WBS 1-0446-17-206-2-001 Additional CMM Capac	Computer Measurement Machine - QC	60,000	2019
WBS 1-0446-18-201-2-001 Forklifts	Forklifts	816,581	2019
WBS 1-0446-18-105-2-001 New HFL #9	Hot Form Line w Furnace	7,601,560	2019
WBS 1-0446-18-202-2-001 New HFL-General Inve	Hot Form Line w Furnace	1,356,000	2020
WBS 1-0446-17-101-2-001 STR Ford C482/3 430	Hot Stamp Weld Cells	2,589,795	2019
WBS 1-0446-17-101-2-002 Ford C482/483 HF Par	Hot Stamp Weld Cells	228,364	2020
WBS 1-0446-17-102-2-001 STR Ford C483 HF Upp	Hot Stamp Weld Cells	636,000	2019
WBS 1-0446-17-102-2-002 Ford C482/483 HF par	Hot Stamp Weld Cells	285,736	2020
WBS 1-0446-18-100-2-001 Ford C820 Bumper FG	Hot Stamp Weld Cells	113,000	2019
WBS 1-0446-18-101-2-001 Addendum Ford P375 H	Hot Stamp Weld Cells	431,748	2019
WBS 1-0446-18-103-2-001 Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-4-001 Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-5-001 Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-6-001 Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-7-001 Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-104-2-001 Ford C482/C483 HF We	Hot Stamp Weld Cells	1,087,587	2019
WBS 1-0446-18-104-2-002 Ford C482/C483 HF Co	Hot Stamp Weld Cells	488,850	2019
WBS 1-0446-18-100-2-001 Ford C482 Door Beams	Hot Stamp Weld Cells	240,000	2019
WBS 1-0446-18-101-2-001 Ford C483 Door Beams	Hot Stamp Weld Cells	137,500	2019
WBS 1-0446-17-100-2-001 Ford P375 HF ST	Hot Stamp Weld Cells	2,221,581	2019
WBS 1-0446-18-105-2-002 Trumpf Laser Cell 18	Laser	787,610	2020
WBS 1-0446-18-105-2-003 Trumpf Laser Cell 17	Laser	787,610	2020
WBS 1-0446-18-105-2-004 Trumpf Laser Cell 18	Laser	787,610	2020
WBS 1-0446-18-105-2-005 Trumpf Laser Cell 19	Laser	787,610	2020
WBS 1-0446-18-203-2-001 SPD Pilot Program	Machinery	11,200	2019
WBS 1-0446-18-200-2-001 Nitrogen High Pressu	Nitrogen Production for Hot Stamp	234,456	2020
WBS 1-0446-18-205-2-001 VGV (Visually Guided	Robotic Fork Lift	168,000	2019
Total Machinery & Equipment		25,916,934	
WBS 1-0446-18-104-2-004 G01 CMS Rear - Adden	Tooling	133,000	2019
WBS 1-0446-18-101-2-003 Pin Pallets	Tooling	2,198	2019
WBS 1-0446-17-100-2-003 Pin Pallets	Tooling	13,376	2019
Total Tooling		148,572	
Total Investment		26,064,506	



**STATEMENT OF BENEFITS
PERSONAL PROPERTY**

State Form 61764 (R4 / 11-15)

Prescribed by the Department of Local Government Finance

FORM SB-1 / PP

PRIVACY NOTICE

Any information concerning the cost of the property and specific salaries paid to individual employees by the property owner is confidential per IC 6-1.1-12.1-5.1.

INSTRUCTIONS

- This statement must be submitted to the body designating the Economic Revitalization Area prior to the public hearing if the designating body requires information from the applicant in making its decision about whether to designate an Economic Revitalization Area. Otherwise this statement must be submitted to the designating body BEFORE a person installs new manufacturing equipment and/or research and development equipment, and/or logistical distribution equipment and/or information technology equipment for which the person wishes to claim a deduction.
- The statement of benefits form must be submitted to the designating body and the area designated an economic revitalization area before the installation of qualifying abatible equipment for which the person desires to claim a deduction.
- To obtain a deduction, a person must file a certified deduction schedule with the person's personal property return on a certified deduction schedule (Form 103-ERA) with the township assessor of the township where the property is situated or with the county assessor if there is no township assessor for the township. The 103-ERA must be filed between January 1 and May 15 of the assessment year in which new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment is installed and fully functional, unless a filing extension has been obtained. A person who obtains a filing extension must file the form between January 1 and the extended due date of that year.
- Property owners whose Statement of Benefits was approved, must submit Form CF-1/PP annually to show compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
- For a Form SB-1/PP that is approved after June 30, 2013, the designating body is required to establish an abatement schedule for each deduction allowed. For a Form SB-1/PP that is approved prior to July 1, 2013, the abatement schedule approved by the designating body remains in effect. (IC 6-1.1-12.1-17)

SECTION 1		TAXPAYER INFORMATION					
Name of taxpayer BENTELER AUTOMOTIVE CORPORATION		Name of contact person SEE ATTACHED					
Address of taxpayer (number and street, city, state, and ZIP code) 910 S EISENHOWER DRIVE, GOSHEN IN 46526						Telephone number ()	
SECTION 2 LOCATION AND DESCRIPTION OF PROPOSED PROJECT							
Name of designating body GOSHEN COMMON COUNCIL				Resolution number(s)			
Location of property 910 S EISENHOWER DRIVE, GOSHEN IN 46526			County	ELKHART		DLGF taxing district number 30 GOSHEN 15	
Description of manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment. (Use additional sheets if necessary.) SEE ATTACHED						ESTIMATED	
				Manufacturing Equipment		START DATE 12/18/2019	COMPLETION DATE 12/31/2020
				R & D Equipment			
				Logist Dist Equipment			
				IT Equipment			
SECTION 3 ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT							
Current number 272	Salaries 19,836,110	Number retained 272	Salaries 19,836,110	Number additional 0	Salaries 0		
SECTION 4 ESTIMATED TOTAL COST AND VALUE OF PROPOSED PROJECT							
NOTE: Pursuant to IC 6-1.1-12.1-5.1 (d) (2) the COST of the property is confidential.	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT
	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST
Current values	77,861,827	23,298,488					
Plus estimated values of proposed project	26,064,506	18,245,154					
Less values of any property being replaced							
Net estimated values upon completion of project	103,726,133	41,543,642					
SECTION 5 WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER							
Estimated solid waste converted (pounds)				Estimated hazardous waste converted (pounds)			
Other benefits:							
SECTION 6 TAXPAYER CERTIFICATION							
I hereby certify that the representations in this statement are true.							
Signature of authorized representative <i>Mark W. Rittenhouse</i>						Date signed (month, day, year) <i>11/16/19</i>	
Printed name of authorized representative Mark W. Rittenhouse				Title Agent			

FOR USE OF THE DESIGNATING BODY

We have reviewed our prior actions relating to the designation of this economic revitalization area and find that the applicant meets the general standards adopted in the resolution previously approved by this body. Said resolution, passed under IC 6-1.1-12.1-2.5, provides for the following limitations as authorized under IC 6-1.1-12.1-2.

A. The designated area has been limited to a period of time not to exceed _____ calendar years * (see below). The date this designation expires is _____ . *NOTE: This question addresses whether the resolution contains an expiration date for the designated area.*

B. The type of deduction that is allowed in the designated area is limited to:

- 1. Installation of new manufacturing equipment; Yes No Enhanced Abatement per IC 6-1.1-12.1-18
Check box if an enhanced abatement was approved for one or more of these types.
- 2. Installation of new research and development equipment; Yes No
- 3. Installation of new logistical distribution equipment. Yes No
- 4. Installation of new information technology equipment; Yes No

C. The amount of deduction applicable to new manufacturing equipment is limited to \$ _____ cost with an assessed value of \$ _____. *(One or both lines may be filled out to establish a limit, if desired.)*

D. The amount of deduction applicable to new research and development equipment is limited to \$ _____ cost with an assessed value of \$ _____. *(One or both lines may be filled out to establish a limit, if desired.)*

E. The amount of deduction applicable to new logistical distribution equipment is limited to \$ _____ cost with an assessed value of \$ _____. *(One or both lines may be filled out to establish a limit, if desired.)*

F. The amount of deduction applicable to new information technology equipment is limited to \$ _____ cost with an assessed value of \$ _____. *(One or both lines may be filled out to establish a limit, if desired.)*

G. Other limitations or conditions (specify) _____

H. The deduction for new manufacturing equipment and/or new research and development equipment and/or new logistical distribution equipment and/or new information technology equipment installed and first claimed eligible for deduction is allowed for:

- | | | | | | |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|----------------------------------|---|
| <input type="checkbox"/> Year 1 | <input type="checkbox"/> Year 2 | <input type="checkbox"/> Year 3 | <input type="checkbox"/> Year 4 | <input type="checkbox"/> Year 5 | <input type="checkbox"/> Enhanced Abatement per IC 6-1.1-12.1-18 |
| <input type="checkbox"/> Year 6 | <input type="checkbox"/> Year 7 | <input type="checkbox"/> Year 8 | <input type="checkbox"/> Year 9 | <input type="checkbox"/> Year 10 | Number of years approved:
<i>(Enter one to twenty (1-20) years; may not exceed twenty (20) years.)</i> |

I. For a Statement of Benefits approved after June 30, 2013, did this designating body adopt an abatement schedule per IC 6-1.1-12.1-17? Yes No
If yes, attach a copy of the abatement schedule to this form.
If no, the designating body is required to establish an abatement schedule before the deduction can be determined.

Also we have reviewed the information contained in the statement of benefits and find that the estimates and expectations are reasonable and have determined that the totality of benefits is sufficient to justify the deduction described above.

Approved by: (signature and title of authorized member of designating body)	Telephone number ()	Date signed (month, day, year)
Printed name of authorized member of designating body	Name of designating body	
Attested by: (signature and title of attester)	Printed name of attester	

* If the designating body limits the time period during which an area is an economic revitalization area, that limitation does not limit the length of time a taxpayer is entitled to receive a deduction to a number of years that is less than the number of years designated under IC 6-1.1-12.1-17.

IC 6-1.1-12.1-17

Abatement schedules

Sec. 17. (a) A designating body may provide to a business that is established in or relocated to a revitalization area and that receives a deduction under section 4 or 4.5 of this chapter an abatement schedule based on the following factors:

(1) The total amount of the taxpayer's investment in real and personal property.

(2) The number of new full-time equivalent jobs created.

(3) The average wage of the new employees compared to the state minimum wage.

(4) The infrastructure requirements for the taxpayer's investment.

(b) This subsection applies to a statement of benefits approved after June 30, 2013. A designating body shall establish an abatement schedule for each deduction allowed under this chapter. An abatement schedule must specify the percentage amount of the deduction for each year of the deduction. An abatement schedule may not exceed ten (10) years.

(c) An abatement schedule approved for a particular taxpayer before July 1, 2013, remains in effect until the abatement schedule expires under the terms of the resolution approving the taxpayer's statement of benefits.

Benteler Automotive Corporation
910 S Eisenhower Drive, Goshen IN 46526
Listing of Contacts

	Tax Department	Plant Contact	Plant Controller	Tax Agent
Name	Wendy Monty	Noel Bergeron	Tomas Pokas	Mark Rittenhouse
Title	Tax Manager	Plant Operations Manager	Plant Controller	Tax Agent - Baden Tax Management, LLC
Address	2650 N. Opdyke Road, Suite B Auburn Hills, MI 48326	910 S. Eisenhower Goshen, IN 46526	910 S. Eisenhower Goshen, IN 46526	6920 Pointe Inverness Way, Suite 300 Fort Wayne, IN 46804
Phone	248-364-7047	574-537-2851	574-537-2861	260-969-2599
Email	wendy.monty@benteler.com	noel.bergeron@benteler.com	tomas.pokas@benteler.com	mrittenhouse@badentax.com

Benteler Automotive Corporation
 910 S Eisenhower Drive, Goshen IN 46526
 2019 SB-1 Attachment

Description of Equipment	Description	Estimated Cost	Anticipated Capitalization	
WBS 1-0446-17-206-2-001	Additional CMM Capac	Computer Measurement Machine - QC	60,000	2019
WBS 1-0446-18-101-2-001	Forklifts	Forklifts	815,561	2019
WBS 1-0446-18-105-2-001	New HFL #8	Hot Form Line w Furnace	7,601,560	2019
WBS 1-0446-18-202-2-001	New HFL-General Inve	Hot Form Line w Furnace	1,356,000	2020
WBS 1-0446-17-101-2-001	STR Ford C482/3 430	Hot Stamp Weld Cells	2,569,795	2019
WBS 1-0446-17-101-2-002	Ford C482/483 HF Par	Hot Stamp Weld Cells	228,364	2020
WBS 1-0446-17-102-2-001	STR Ford C483 HF Upp	Hot Stamp Weld Cells	636,000	2019
WBS 1-0446-17-102-2-002	Ford C482/483 HF par	Hot Stamp Weld Cells	285,736	2020
WBS 1-0446-18-100-2-001	Ford C520 Bumper FG	Hot Stamp Weld Cells	113,000	2018
WBS 1-0446-18-101-2-001	Addendum Ford P375 H	Hot Stamp Weld Cells	431,749	2018
WBS 1-0446-18-103-2-001	Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-4-001	Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-5-001	Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-6-001	Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-103-7-001	Ford C482/483 HF Las	Hot Stamp Weld Cells	816,151	2019
WBS 1-0446-18-104-2-001	Ford C482/C483 HF We	Hot Stamp Weld Cells	1,087,587	2019
WBS 1-0446-18-104-2-002	Ford C482/C483 HF Co	Hot Stamp Weld Cells	488,650	2019
WBS 1-0446-18-100-2-001	Ford C482 Door Beams	Hot Stamp Weld Cells	240,000	2019
WBS 1-0446-19-101-2-001	Ford C483 Door Beams	Hot Stamp Weld Cells	137,500	2019
WBS 1-0446-17-100-2-001	Ford P375 HF ST	Hot Stamp Weld Cells	2,221,581	2019
WBS 1-0446-18-105-2-002	Trumpf Laser Cell 16	Laser	787,610	2020
WBS 1-0446-18-105-2-003	Trumpf Laser Cell 17	Laser	787,610	2020
WBS 1-0446-18-105-2-004	Trumpf Laser Cell 18	Laser	787,610	2020
WBS 1-0446-18-105-2-005	Trumpf Laser Cell 19	Laser	787,610	2020
WBS 1-0446-18-203-2-001	SPDP Pilot Program	Machinery	11,200	2018
WBS 1-0446-19-200-2-001	Nitrogen High Pressu	Nitrogen Production for Hot Stamp	234,456	2020
WBS 1-0446-18-205-2-001	VGV (Visually Guided	Robotic Fork Lift	168,000	2019
Total Machinery & Equipment		25,915,834		
WBS 1-0446-18-104-2-004	G01 CMS Rear - Adden	Tooling	133,000	2019
WBS 1-0446-18-101-2-003	Pin Pallets	Tooling	2,196	2019
WBS 1-0446-17-100-2-003	Pin Pallets	Tooling	13,376	2019
Total Toolinn		148,572		
Total Investment		26,064,506		

ORDINANCE 4736

Tax Phase-In Policy

WHEREAS the designating bodies of the governmental entities in Elkhart County, Indiana have adopted various policies, procedures, and standards for the establishment of economic revitalization areas and the approval of economic development projects for property tax deductions, known as "property tax abatements," pursuant to Indiana Code § 6-1.1-12.1, hereinafter referred to as "tax phase-ins;"

WHEREAS the Elkhart County Intergovernmental Forum has recommended that the designating bodies of the governmental entities in Elkhart County, Indiana establish certain uniform policies governing the approval of property tax phase-ins or tax abatements so as to facilitate the process for site selectors and enhance the marketability of available economic development sites in Elkhart County, Indiana; and

WHEREAS it is anticipated that Elkhart County and the cities and towns in Elkhart County will adopt substantially similar policies for approving and administering tax phase-ins within their respective jurisdictions.

NOW THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

Section 1. Application Fees

All property tax phase-in applicants shall pay a non-refundable filing fee of Seven Hundred Fifty Dollars (\$750) for each real property, personal property, or vacant building tax phase-in application filed.

Section 2. Application Form

Each applicant shall file the uniform tax phase-in application used by Elkhart County governmental entities to receive, process, review, and approve property tax phase-ins. Depending on the nature of the requested tax phase-in, additional information may be required of the applicant by the Goshen city staff member(s) who evaluates the tax phase-in applications.

Section 3. Wages

Property tax phase-ins will not be approved nor found to be in substantial compliance with a Statement of Benefits approved after June 1, 2013 unless at least seventy percent (70%) of the new jobs created by the economic development project are above the Elkhart County median wage benchmarked for Total, All Occupations from the most current Indiana Department of Workforce Development Occupational Employment Statistics and assuming an annual salary based upon two thousand eighty (2,080) working hours per year to compute an hourly rate. The median wage shall be computed without considering any other employment benefits, including, but not limited to health, dental, vision, life or disability insurance or pension or profit sharing contributions.

Section 4. Equipment

Property tax phase-ins will not be approved for equipment with a deduction schedule greater than five (5) years.

Section 5. TIF Districts

Property tax phase-ins will not be approved in an established Tax Incremental Finance (TIF) District, unless such a district has been specifically targeted for redevelopment due to the presence of brownfield sites, obsolete buildings, or other significant barriers to development.

Section 6. Assessment Appeals

Each property tax phase-in applicant is required to agree for itself and its successors and assigns to forego appealing any property tax assessment during the time periods for which property tax phase-ins are received unless:

- 1) the original assessment for the economic development project is in excess of the economic development project cost;
- 2) the original assessment of real estate is in excess of the purchase price paid for the real estate provided the purchase was an arm's length transaction; or
- 3) a trending assessment or a reassessment increases the assessment for the economic development project more than fifteen percent (15%) for any year-to-year change or more than an average of ten percent (10%) per year over two (2) or more years.

Section 7. Exceptions

(a) The Common Council may grant specific exceptions to the stated policies above if the Common Council determines a project will do any of the following:

- 1) Diversify the current economic base by attracting high technology or knowledge based jobs which are likely to be resistant to the normal business cycle;
- 2) Encourage entrepreneurial activity; or
- 3) Produce jobs at a time when the Elkhart County unemployment rate exceeds ten percent (10%).

(b) In addition, the Common Council must find that the City of Goshen will be best served by granting a variance.

Section 8. Economic Incentive Rebate

Each property tax phase-in applicant is required to enter into an agreement for itself and its successors and assigns committing to rebate each year to the City of Goshen Redevelopment Commission an amount equal to fifteen percent (15%) of the property tax savings generated by the property tax deductions approved for the economic development project.

Section 9. **Repeal**

This ordinance does not repeal Ordinance 4630 except Section Four, paragraph C or to the extent that Ordinance 4630 is otherwise specifically in conflict with this ordinance.

PASSED by the Goshen Common Council on May 21, 2013.

Allan Kauffman

Allan Kauffman, Presiding Officer

Attest:

Tina M. Bontrager

Tina M. Bontrager, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May 22, 2013 at 11:00 a.m./p.m.

Tina M. Bontrager

Tina M. Bontrager, Clerk-Treasurer

APPROVED and ADOPTED on May 23, 2013.

Allan Kauffman

Allan Kauffman, Mayor

RESOLUTION 2020-05

Project Coordination Contract with the State of Indiana for the College Avenue Auxiliary Lanes Project

WHEREAS the City of Goshen wishes to make improvements to College Avenue by constructing two-way left turn lanes from US 33 to the Norfolk-Southern Railroad (hereinafter referred to as the “Project”).

WHEREAS the total estimated cost of the Project, including design, right-of-way acquisition, construction and inspection is \$5,452,150.

WHEREAS the City has applied, and the Indiana Department of Transportation (InDOT) has approved the City’s application for federal funds for the Project.

WHEREAS federal funds will be made available to City by InDOT to pay eighty percent (80%) of eligible Project costs. The maximum amount of federal aid funds allocated to the project is dependent upon the Metropolitan Planning Organization’s current Transportation Improvement Program (TIP) allocation. As of January 10, 2020, the maximum amount in federal aid funds allocated is \$985,600 according to the TIP dated May 1, 2019.

WHEREAS the Goshen Redevelopment Commission agrees to fund the City’s share of cost for this Project, including any cost in excess of the City’s twenty percent (20%) of eligible Project costs which are not covered by federal funds. Given the current level of federal aid funds allocated, City’s share of cost for this Project is \$4,466,550 if the Project is completed at the estimated cost of \$5,452,150.

WHEREAS all aspects for the completion of the Project will be coordinated between the City and InDOT pursuant to the terms and conditions of the contract attached to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the terms and conditions of the Project Coordination Contract with the State of Indiana for the College Avenue Auxiliary Lanes Project attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that the Goshen Common Council irrevocably agrees to fund the City’s share of the Project costs, including any cost in excess of twenty percent (20%) of eligible Project costs which are not covered by federal funds, and authorizes payment to InDOT for the City’s share of the Project costs in accordance with the terms of Attachment D of the Project Coordination Contract.

PASSED by the Goshen Common Council on _____, 2020.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2020, at
_____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2020.

Jeremy P. Stutsman, Mayor

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT

EDS #: A249-20-L200015

Des. No.: 1900739

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the City of Goshen, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955-LPA
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Fort Wayne District Office
5333 Hatfield Road
Fort Wayne, Indiana 46808

- C. Notices to the LPA shall be sent to:

City of Goshen
202 South Fifth Street, Suite 1
Goshen, Indiana 46528

RECITALS

WHEREAS, the LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, the LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to PARTIES" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I PROJECT DESCRIPTION. INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

SECTION II LPA RESPONSIBILITIES. The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III INDOT RESPONSIBILITIES. INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV PROJECT FUNDS. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between July 1, 2024 and June 30, 2025, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.

- B. In the event that federal funds for the Project are not obligated during the time listed in section V.A, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between July 1, 2025 and June 30, 2027, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.
- C. In the event that federal funds for the Project are not obligated during the period listed in section V.A. or section V.B, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- D. If the Program shown on Attachment A is Group I or Group II, Sections V.A, V.B and V.C do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation or within the agreed upon use of the MPO's prior year balances.

SECTION VI GENERAL PROVISIONS

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State. The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public account and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

D. **Authority to Bind LPA.** The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.

E. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

F. **Compliance with Laws.**

1. The LPA 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 or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.

2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA 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 LPA 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 LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the LPA is not familiar with these ethical requirements, the LPA 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 LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
5. The LPA warrants that the LPA and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
6. As required by IC §5-22-3-7:
 - (1) The LPA and any principals of the LPA certify that:
 - (A) the LPA, 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 LPA 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.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) 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.

G. Debarment and Suspension.

1. The LPA 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 LPA.
2. The LPA certifies that it will verify 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 LPA 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.

H. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

I. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10)

working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
 5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.
- J. **Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA 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 the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the LPA 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 LPA'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 LPA'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 (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (3)(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 (1) through (5) above.

K. Employment Eligibility Verification.

The LPA affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The LPA further agrees that:

1. The LPA shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and do not employ any employees.
2. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.
3. The LPA shall require its contractors, who perform work under this Contract, to certify to the LPA that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

L. Force Majeure. In the event that any 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 or as soon as reasonably possible under the circumstances 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.

M. Funding Cancellation Clause. As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

N. 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.

O. **Indemnification.** The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

P. **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, in any manner, except by written agreement signed by all necessary PARTIES.

Q. **Non-Discrimination.**

1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA 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"). The LPA 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 covenant may be regarded as a material breach of this Contract, but nothing in this covenant

shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors 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.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran).

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. **Compliance with Regulations:** The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the **Regulations**), which are herein incorporated by reference and made a part of this Contract.
 - b. **Nondiscrimination:** The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the **Regulations**.
 - c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the **Regulations** relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

- d. **Information and Reports:** The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- R. **Payment.** All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.
- S. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- T. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:

- 1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- U. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- V. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA 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, Indiana 46204-2249

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. **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 Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA: City of Goshen

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

LPA DUNS # _____

Attest

Auditor or Clerk Treasurer Signature and Date

This instrument prepared by:

Autumn Castro
January 10, 2020

STATE OF INDIANA
Department of Transportation

Recommended for approval by:

Steven Duncan, Director
Contract Administration Division

Date: _____

Executed by:

Joseph McGuinness, Commissioner
(FOR)

Date: _____

Department of Administration

Lesley A. Crane, Commissioner

Date: _____

State Budget Agency

Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

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

Date: _____

ATTACHMENT A

PROJECT DESCRIPTION

Des. No.: 1900739

Program: Group II

Type of Project: Auxiliary Lanes, Two-way Left Turn Lanes

Location: College Ave from US 33 to NS Railroad Line (East Entrance of parking lot)

A general scope/description of the Project is as follows:

Auxiliary lanes, two-way left Turn lanes on College Ave from US 33 to NS Railroad Line (East Entrance of parking lot) in the City of Goshen, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).

2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be in accordance with INDOT's consultant selection procedure.

3. REQUIREMENTS FOR ADDITIONAL CONTRACTS

- A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:

1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm> and is incorporated by reference; or
2. use a form of agreement that has been reviewed and approved by INDOT.

4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.

5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.

6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:
The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or
 - B. If project inspection will be provided by the LPA's consultant:
INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.F.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
 - d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
 - e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

- A. This contract is just for the one (1) phase checked below:

Preliminary Engineering or
 Right-of-Way or
 Construction;

Otherwise, this contract covers all phases.

- B. If the Program shown on Attachment A is receiving Group II federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay 80 % of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, January 10, 2020, the maximum amount according to the TIP dated May 1, 2019 is \$ 985,600.00. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

- C. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ _____.
- D. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.
- E. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.
- F. If the Program shown on Attachment A is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.
- G. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.
- II. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.

**RESOLUTION 2020-06:
AN EMERGENCY RESOLUTION PROVIDING FOR THE
TRANSFER OF FUNDS**

AS PER REQUEST BY A DEPARTMENT HEAD OF THE CIVIL CITY OF GOSHEN, INDIANA, FOR THE YEAR 2017, AND FORWARD TO THE COMMON COUNCIL FOR THEIR ACTION AND PASSAGE.

Whereas certain extraordinary conditions have developed since the adoption of the existing annual budget for the year 2020 and it is now necessary to transfer the appropriated money into different categories than was appropriated in the annual budget for the various functions of the several departments to meet emergencies.

SECTION 1. BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF GOSHEN, INDIANA, that for the expenses of the City Government the following sums of money are hereby transferred and set apart out of the funds hereinafter named for the purpose specified, subject to the laws governing the same, such sums herein transferred unless otherwise expressly stipulated by law.

SECTION 2. WHEREAS, it has been shown that certain existing appropriations have unobligated balances that will be available for transferring for such emergencies, it is therefore further resolved by the aforesaid Common Council that such extra appropriations are now reduced and transferred as follows:

PUBLIC SAFETY LOIT - 249

FROM: PD Gas/Diesel 422.0211
TO: Fire Bldg Repair 436.0600\$117,661.51

LOCAL ROAD & STREET - 202

FROM: Equipment 445.0401
TO: Contract Services 431.0501.....\$240,000.00

SECTION 3. PASSED AND ADOPTED BY THE COMMON COUNCIL
On the 4th day of February, 2020

Jeremy P. Stutsman, Presiding Officer

ATTEST: _____
Adam C. Scharf, Clerk-Treasurer

Presented by me to the Mayor of the City of Goshen, Indiana, on the _____ day of February 2020

Adam C. Scharf, Clerk-Treasurer

This resolution approved and signed by me on the _____ day of February 2020

Jeremy P. Stutsman, Mayor



**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

January 13, 2020

The City of Goshen Common Council

Dear Council Members:

The Goshen Engineering Department asks that \$240,000.00 of funds be transferred from LR&S Equipment line (202-530-00-445.0401) into the LR&S Contract Services line (202-530-00-431.0501). Street Commissioner David Gibbs authorized this transfer as the funds were put into the wrong line. This will be used for paving projects.

Thank you,

Dustin S. Sailor 1/13/20

Dustin Sailor, P.E., CPESC
Director of Public Works

TRANSFER BETWEEN CATEGORIES

TO: CITY CLERK-TREASURER

FROM: Dustin Sailor OF Engineering Department of the

City of Goshen, Indiana, find it necessary to request permission for a transfer between Categories which requires approval and passage of ordinance by the Common Council of the City of Goshen, and to be filed with the Department of Local Government Finance, the reasons listed below:

NAME OF FUND AND LINE 202-Local Road & Street Equipment MV

LINE NUMBER TRANSFERRED FROM: 202-530-00-445.0401

AMOUNT OF THE TRANSFER: \$240,000.00

NAME OF FUND AND LINE 202-Local Road & Street /Service Contract

LINE NUMBER TRANSFERRED TO: 202-530-00-431.0501

REASON FOR TRANSFER Paving projects. Money placed in wrong line.

SIGNED:

Adam Schaefer

TITLE: Clerk-Treasurer

DATED: 30 January 2020

FOR COUNCIL MEETING OF: 4 FEB 2020



City Clerk-Treasurer
CITY OF GOSHEN
202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714
Phone (574) 533-8625 • Fax (574) 533-9740
clerktreasurer@goshencity.com • www.goshenindiana.org

30 January 2020

To: Mayor Stutsman

Council President Weddell and Common Council Members

Re: Two-step Funding Request to Facilitate Goshen Fire Station repairs/improvement

Fire Chief Dan Sink has requested re-appropriation of the unused portion of the \$150,000.00 the Council appropriated October 1, 2019 for the ongoing repairs and renovations to Central Fire Station, as well as some work at College Avenue Station. The unused portion that reverted to the General Fund at year-end was \$117,661.51.

Indiana fiscal officers were recently informed by the State Board of Accounts that the SBOA is revamping their request/approval process for additional appropriations by local units. The new electronic process is expected to be online by February 28th. Under normal circumstances additional appropriation requests would not be expected this early in a budget year, which is why the SBOA chose this time of year to revamp.

While emergency additional appropriation requests can still be submitted via the old process, I am recommending the following two-step scenario both to keep the Central Station project moving forward unimpeded and also to fit into the SBOA's new and preferred additional appropriations process:

February 4th Council Meeting:

Transfer \$117,661.51
FROM: (249-520-00-422.0211 PS LOIT/PD GAS/DIESEL, \$240,000 budgeted)
TO: (249-520-00-436.0600 PS LOIT/FIRE BLDG REPAIR, \$0.00 budgeted)

March 3rd Council Meeting (or earliest meeting at which new SBOA process is in place):

Appropriate \$117,661.51
TO: (249-520-00-422.0211 PS LOIT/PD GAS/DIESEL)

Respectfully,

A handwritten signature in black ink that reads "Adam C. Scharf".

Adam C. Scharf, Clerk-Treasurer

TRANSFER BETWEEN CATEGORIES

TO: CITY CLERK-TREASURER

FROM: Adam C. Scharf OF Finance Department of the

City of Goshen, Indiana, find it necessary to request permission for a transfer between Categories which requires approval and passage of ordinance by the Common Council of the City of Goshen, and to be filed with the Department of Local Government Finance, the reasons listed below:

NAME OF FUND AND LINE 249-PUBLIC SAFETY LOIT: PS LOIT/PD GAS/
DIESEL

LINE NUMBER TRANSFERRED FROM: 249-520-00-422.0211

AMOUNT OF THE TRANSFER: \$117,661.51

NAME OF FUND AND LINE 249-PUBLIC SAFETY LOIT: FIRE BLDG REPAIR

LINE NUMBER TRANSFERRED TO: 249-520-00-436.0600

REASON FOR TRANSFER Re-establish reverted funding
(1 Oct '19) for fire station repairs & improvements.
Anticipate add'l appropriation for PD fuel w/ new
SROA process.

SIGNED: Adam C. Scharf

TITLE: Clerk-Treasurer

DATED: 30 January 2020

FOR COUNCIL MEETING OF: 4 FEB 2020



Rhonda L. Yoder, AICP
PLANNING & ZONING DEPARTMENT, CITY OF GOSHEN
204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 537-3815 • Fax (574) 533-8626 • TDD (574) 534-3185
rhondayoder@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Common Council
FROM: Rhonda L. Yoder, City Planner
DATE: February 4, 2020
RE: Ordinance 5035

The Goshen Plan Commission met on January 21, 2020, in regular session and considered a request for a PUD major change to allow one on-site parking space (attached one-car garage), where two parking spaces are required, for the single unit dwelling on Lot 9 of Co-Housing on the Goshen Millrace R-2 PUD, generally located at 605 River Race Drive and zoned Residential R-2PUD (Planned Unit Development), with the following outcome:

Forwarded to the Goshen City Council with a favorable recommendation by a vote of 7-1.

Approval of the PUD major change would amend the Co-Housing on the Goshen Millrace R-2 PUD for Lot 9 only, as stated on the PUD site plan submitted with the PUD major change application: "Amendment to the Planned Unit Development to allow Lot Number Nine (9) to have one (1) parking space located within the garage."

Ordinance 5035

An Ordinance to Amend Ordinance 4794 of the Co-Housing on the Goshen Millrace PUD (Planned Unit Development)

WHEREAS Mary Lehman Yoder and Abonmarche Consultants submitted an application on the 16th day of December 2019, to approve PUD major change to allow one on-site parking space (attached one-car garage), where two parking spaces are required, for the single unit dwelling on Lot 9 of Co-Housing on the Goshen Millrace R-2 PUD, and the Goshen City Plan Commission did after proper legal notice conduct a hearing on said Petition as provided by the Law on the 21st day of January 2020 and recommended the adoption of a PUD major change and this Ordinance by a vote of 7-1.

NOW, THEREFORE be it ordained by the Common Council of the City of Goshen, Indiana, that:

Ordinance 4794 be amended as follows:

1. In addition to requirements established by Ordinance 4794, additional requirements are established by this Ordinance.
2. That the Goshen Plan Commission did after a public hearing determine the amendment to be a Major Change.
3. The PUD major change is approved for Lot 9 only, and amends the Co-Housing on the Goshen Millrace PUD and PUD site plan for Lot 9 as follows: "Amendment to the Planned Unit Development to allow Lot Number Nine (9) to have one (1) parking space located within the garage."
4. The amended PUD site plan for Lot 9 only is *Final P.U.D. Site Plan Support Drawing*, dated 12/02/19, prepared by Abonmarche.

PASSED by the Common Council of the City of Goshen on _____, 2020.

Presiding Officer

Attest:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2020 at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED AND ADOPTED by the Mayor of the City of Goshen on _____, 2020.

Jeremy P. Stutsman, Mayor

To: Goshen City Plan Commission/Goshen Common Council
From: Rhonda L. Yoder, Planning & Zoning Administrator
Subject: 20-01MA, PUD Major Change
605 River Race Drive, Co-Housing on the Goshen Millrace PUD
Date: January 21, 2020

ANALYSIS

Mary Lehman Yoder and Abonmarche Consultants request a PUD major change to allow one on-site parking space (attached one-car garage), where two parking spaces are required, for the single unit dwelling on Lot 9 of Co-Housing on the Goshen Millrace R-2 PUD. The subject property is generally located at 605 River Race Drive and is zoned Residential R-2PUD (Planned Unit Development).

When a PUD is developed, it contains specific use and developmental requirements that are in addition to, or in place of, the underlying zoning district requirements. A PUD is always tied to a site plan, with a PUD preliminary site plan adopted when a PUD is established or modified, and a detailed PUD final site plan reviewed as development occurs. Changes to a PUD are defined by the Zoning Ordinance, and may be minor or major. Major changes include those that change use, character or intensity of the development, and those that increase traffic or utility issues, reduce parking, or encroach into required setbacks. Changing stated conditions of a PUD are also typically major changes. PUD major changes require review as a public hearing at Plan Commission, with final approval by Council. As a PUD develops, the original PUD conditions remain in place unless specifically changed, so major changes typically add to or modify the original requirements. A PUD is intended to provide unified development, streamline the review process, and provide flexibility based on specific site conditions.

The Co-Housing on the Goshen Millrace PUD (Co-Housing PUD) was established in July 2014 by Ordinance 4794, with PUD final site plan approval granted by the Plan Commission in May 2015, and a 15-lot subdivision approved in July 2015. The Co-Housing PUD allows detached and attached single family dwellings, and was established with multiple developmental variances.

The Co-Housing PUD did not relax the on-site parking requirements for the nine (9) lots with frontage on River Race Drive, and the PUD site plan stated that two (2) parking spaces would be provided for each of these lots. The Zoning Ordinance requires two (2) on-site parking spaces for each single family dwelling, and does not permit open parking spaces in the front yard setback. Based on the Zoning Ordinance standards, a driveway within the front yard setback cannot be counted to meet required on-site parking.

The subject property, Lot 9, is a corner lot located along River Race Drive and South 2nd Street. The Planning office signed a zoning clearance form in August 2018 for a single family house with a one-car attached garage and one open parking space located behind the front yard setback, meeting the requirement for two parking spaces. A copy of the site plan approved in August 2018 is attached. Also attached are several email exchanges between Planning and the Builder from the review process, one outlining that reducing the parking was a PUD major change, and another indicating the builder had discussed the PUD major change requirement with the owner, and the owner had decided to provide the two required spaces, with the second space being an open space not in the front yard setback. This space is shown on the approved site plan.

At the time the zoning clearance form was signed, the Planning office notified the builder that a Planning inspection was required to confirm the completion of all site improvements and landscaping before a Certificate of Occupancy was issued. In late August 2019, site inspection photos were provided to the Planning office from Stormwater which showed the portion of the driveway leading to the garage had been installed, but the complete driveway and open parking space had not been installed per the approved site plan. The Planning office notified the builder in an email on August 26, 2019, that the complete driveway and open parking space per the approved site plan needed to be installed before Planning could release the inspection.

Beginning in late August 2019, the Planning office was contacted by Councilwoman Julia Gautsche on behalf of the property owner, asking for details about parking requirements, inspection process, and approval process to proceed with the partial driveway and one-car garage. In mid-October 2019, the Planning office was contacted by a Co-Housing representative asking about alternatives, such as adding a parking space in the north common area. The Planning office provided preliminary comments related to potential site impacts and new review requirements for an added parking space, including drainage review, setbacks not met, and landscaping displaced.

At the beginning of November 2019, the Planning office was contacted by Abonmarche, asking for details on parking requirements, options to address parking requirements, and approval process to proceed with the partial driveway and one-car garage. An application for the PUD major change was then received on December 16, 2019.

Because a site plan was submitted and approved demonstrating the property is able to comply with the requirement for two parking spaces meeting the Zoning Ordinance requirements, there is no basis for Staff to support the request to allow one parking space.

RECOMMENDATIONS

Staff makes no recommendation to Plan Commission and Goshen Common Council for the PUD major change to allow one on-site parking space (attached one-car garage), where two parking spaces are required, for the single unit dwelling on Lot 9 of Co-Housing on the Goshen Millrace R-2 PUD, generally located at 605 River Race Drive and zoned Residential R-2PUD (Planned Unit Development).

Approval of the PUD major change would amend the Co-Housing on the Goshen Millrace R-2 PUD for Lot 9 only, as stated on the PUD site plan submitted with the PUD major change application: "Amendment to the Planned Unit Development to allow Lot Number Nine (9) to have one (1) parking space located within the garage."



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.

605 River Race Dr

2019 Aerial
Printed December 30, 2019



Feet

0 25 50 100

1 inch = 100 feet

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-8626

Timeline for garage and parking issues for 605 River Race

April 2016 - I presented a first plan for our house to my neighbors in the cohousing. Our plan included a basement with ample storage space, and since my husband was no longer driving we saw no reason for a 2 car garage. The proximity of the cohousing to many things made us committed to more walking and less driving. Our Millrace Community project coordinator and developer Richard Miller was present at the meeting. I don't recall anyone expressing hesitation about our 1 car garage or suggesting that it was not possible. I assumed that the drawings on the plan were only examples; since between the street side and the race side we already had considerable variation in garages and parking, I didn't give it a second thought. I had no knowledge of PUD, or city parking expectations, or setbacks. In retrospect I was very naive, as were my fellow cohousers. I proceeded on with developing our plan, eventually working with Gordon Prieb and Jeff Hoover of Hope Builders Group (as Richard Miller was less able to manage matters).

Winter/Spring 2018 – When Hope applied for my building permit I learned that I would need a second parking space, one that was not in the city setback. I learned that my neighbors provided for the second space in their two-car garages. Hope Builders had considerable conversation with the city, exploring alternatives and possible locations to get a second parking space far back enough from the road. When Gordon Prieb finally came up with an acceptable plan, a city staff person told him, “I doubt she'll ever use it, but it meets the letter of the law,” and the permit was issued on **May 11, 2018**. I still did not understand that two car garages were part of the initial PUD and could not be changed without an amendment from the Plan Commission and the City Council. I thought, even as I accepted the drawing in order to move ahead, “Surely this can't be the only option. This is ridiculous! It takes up so much of my yard, essentially eliminates the possibility of a privacy fence outside my bedroom window, and I'm never going to use it. How will it add contribute to the attractive quality of the neighborhood, not to mention future resale? Doing this in concrete? Surely not.”

The **August 6, 2018** cohousing minutes document this dilemma, including the delay that it caused in starting my house, and the fact that the city board of works staff person would not recommend a variance. (I was told that “if the Planning & Zoning Administrator doesn't recommend a variance the board hardly ever goes against that,” so I saw no reason to even try for a variance.)

I observed that the common parking places at the south end were rarely if ever full, and I knew that there would be a couple parking spaces in the north common space in addition to the carport. We proceeded with building the house, and as it neared completion I kept hoping some other option would magically appear. I was more than willing to widen my drive with either concrete or “green pavers” as I saw in other homes in the city limits, but of course those were in the city setback and unacceptable.

August 2019 – I was delighted when my house passed inspection, but of course I could not receive of C of O since I did not have a second parking place. I contacted my city council representative Julia Gautsche. My being able to move in seemed particularly pressing since I had been out of my home in Gorham Woods for 18 months and was relying on the hospitality of others. In conversation with Julia, the city staff person graciously consented to allow me to move in without a C of O, with the understanding that the parking space would be addressed.

As no other acceptable solution appeared I solicited a bid for the “green pavers” required to make my parking space. I tried to imagine landscape possibilities with the pavers. The cost of privacy fencing with an expanded gate would be very high, but there didn't seem to be any other way. The bid I received on September 26 for installation of pavers and sowing grass seed was \$22,000.00. I was

stunned. That seemed impossible. I was already paying the additional cost of the retaining wall required by the city, though the landscaper was quite certain the grade issues could have been managed with landscaping only. In my disbelief I again contacted my city council representative. Julia Gautsche was helpful, and she reminded me of her responsibility to consider the common good and not only the individual. Nevertheless, given all the realities of the situation, she encouraged me to seek a variance. This was the first I fully understand what that meant – not just the Board of Works, but the Plan Commission *and* the City Council.

Two additional variables in this story -

1. At one point a meeting was held with the staff person from the Board of Works suggesting that there might actually be adequate parking places at the south end – IF no other homeowners would build a one car garage. Later when I wanted confirmation of this I was still told that I would need a variance no matter what. On **October 16, 2019** our cohousing group took official action to support my request for a variance and declared that no other homes on the River Race Drive side would be built with one car garages.
2. My builder Jeff Hoover suggested that perhaps my “second” parking place could be across from the front of my house on the northwest corner of the common space. There were already two parking places there + two car port spaces as per the original drawing. It appeared there would be space to add one more paved place. Perhaps this could solve the problem? The city staff person said that would also need a complete redrawing and that there might be water run-off issues. It would also require a variance.

By this point it seemed evident I would need to seek a variance (actually an *amendment* to the PUD is the correct term I have since learned). I inquired of the city staff person whether she would recommend one or the other of the two options, parking place on the NW common space or no second parking place for my house at all. She said she would not recommend either one, but that she would not speak against either one. She urged me to go for the option I preferred, clearly, *no additional parking space for my home*.

Grass seed has been sown in my “back yard,” but I have not taken any other action in regard to fencing or landscaping until this matter is settled.

Thank you for considering my request.

Mary Lehman Yoder 12.14.19

Yoder, Rhonda

From: Yoder, Rhonda
Sent: Monday, July 16, 2018 5:51 PM
To: 'Gordon Prieb'
Cc: Jeff Hoover; Lori Lipscomb
Subject: RE: Lot 9 Mill Race Co-housing
Attachments: Parking - Dwelling Units.pdf; 5110.3 Parking Design Standards.pdf; 4250.9 Changes to the Approved Plan.pdf; 2018 PC-BZA packet-fillable.pdf

Gordon,

The requirement for two parking spaces is a Zoning Ordinance (ZO) requirement that applies to all single family dwellings (see attached ZO Table of Parking Requirements), and open parking spaces are not permitted within the front yard setback per ZO Section 5110.3.A.1. The Co-Housing PUD did not relax either of these requirements for Lot 9.

Per ZO Section 4250.9 (copy attached), a PUD major change would be required for the one-car garage with the open parking space in the front yard setback for Lot 9, as this is an encroachment into the required setback. A PUD major change is a public hearing at the Plan Commission and a final decision by Council. The Plan Commission schedule and filing information is attached.

Thanks,
Rhonda Yoder, AICP
Planning & Zoning Administrator

Goshen City Planning
204 E Jefferson, Suite 4
Goshen, IN 46528
574-537-3815

From: Gordon Prieb [<mailto:gordon@hbgmail.com>]
Sent: Monday, July 16, 2018 2:14 PM
To: Yoder, Rhonda
Cc: Jeff Hoover
Subject: Lot 9 Mill Race Co-housing

July 13, 2018

Ms. Rhonda Yoder
Planning and Zoning Administrator
City of Goshen
204 East Jefferson Street, Suite 4
Goshen, IN 46528

Dear Ms. Yoder,

Thank you for your help with documents regarding the MILLRACE P.U.D.. They proved helpful for understanding the background of the project.

The intention of this letter is to request a zoning clearance for the plans pertaining to our client Mary Lehman Yoder (Lot 9). These plans (see attachment) are the same as those we reviewed together at your office on July 11. They still show a single garage.

During our meeting I was surprised to learn about the two car garage requirement. Though the P.U.D. drawing shows a double garage for the homes along River Race Drive we understood that to be a generic representation of a possibility, not a requirement. We, Hope Builders, inherited the single car garage design. Our subsequent tweaking of the design has been based on understandings that we've learned from Richard Miller, the Co-housing leadership and our client. While we knew we needed to provide an extra off street parking space a requirement for a two car garage had never come up.

In an effort to gain a deeper understanding of requirements I read through all the P.U.D. documents that I am aware of and it appears that there is language which supports alternatives to the two car garage approach. I quote those paragraphs below.

I will wait to apply for the actual building permit until I hear from you regarding this issue since the design implications are extensive.

I have attached a copy of this letter, the zoning clearance form and the current drawings. I can also drop off hard copies any time.

Language that supports variations other than a two car garage design:

FINAL P.U.D. SITE PLAN SUPPORT DRAWING

LAND USE

"PROPOSED STRUCTURES SHOWN ON THIS PLAN ARE FOR INFORMATIONAL PURPOSES ONLY, THE SIZE AND CONFIGURATION MAY BE CHANGED BY DEVELOPERS OR OWNERS NEEDS OR DESIRES, BUT WILL CONFORM AND MEET THE REQUIREMENTS AND STANDARDS AS SET FORTH THE [sic] THE APPROVED PLANNED UNIT DEVELOPMENT."

INTENTION FOR OWNERSHIP

"LOTS NUMBER ONE (1) THROUGH NINE (9) WILL CONTAIN SINGLE FAMILY RESIDENCES WITH THE OPORTUNITY FOR ATTACHED GARAGES THAT FRONT AND HAVE ACCESS TO RIVER RACE DRIVE."

PARKING

"LOTS NUMBER ONE (1) THROUGH NINE (9) WILL HAVE ATTACHED GARAGES OR PARKING SPACES FOR TWO (2) CARS PER LOT FOR EIGHTEEN (18) PARKING SPACES."

ORDIANCE NO. 4794

"5. Developmental variances will be allowed to be applied with some flexibility to the final lot and building layout, provided the minimums listed to not change and the number of properties to which the variance applies does not increase."

Sincerely,

Gordon Prieb, Designer
Jeff Hoover, Owner
Hope Builders
574-293-5524

Yoder, Rhonda

From: Gordon Prieb <gordon@hbmail.com>
Sent: Wednesday, August 01, 2018 9:12 AM
To: Yoder, Rhonda
Subject: Re: 605 River Race Drive - Lehman Yoder follow up

Rhonda,

I spoke with Mary Lehman Yoder this morning. With the possibility of meeting the 2nd parking space requirement as an open space on the East side of the house, as we've discussed, she has agreed to suspend pursuit of the variance.

Thank you very much for your help with all the questions that I have had. It was a great help.

Thanks,

Gordon

On Tue, Jul 31, 2018 at 1:31 PM, Yoder, Rhonda <rhondayoder@goshencity.com> wrote:

Hello Gordon,

I spoke with Leslie, and she has approved the maneuvering, and the open space meets the technical requirements of the Zoning Ordinance, so no variance is required.

Per Leslie, the proposed driveway surface (pavers) requires approval by the Board of Works, and submittal instructions were provided to Jeff Hoover, but are also attached here.

The Board of Works' approval needs to be in place before the driveway permit is issued (by Engineering) and before the zoning clearance form is signed by Planning.

Thanks,

Rhonda Yoder, AICP

Planning & Zoning Administrator

Goshen City Planning

204 E Jefferson, Suite 4

Goshen, IN 46528

From: Gordon Prieb [mailto:gordon@hbgmail.com]

Sent: Tuesday, July 31, 2018 11:50 AM

To: Yoder, Rhonda

Subject: Lehman Yoder follow up

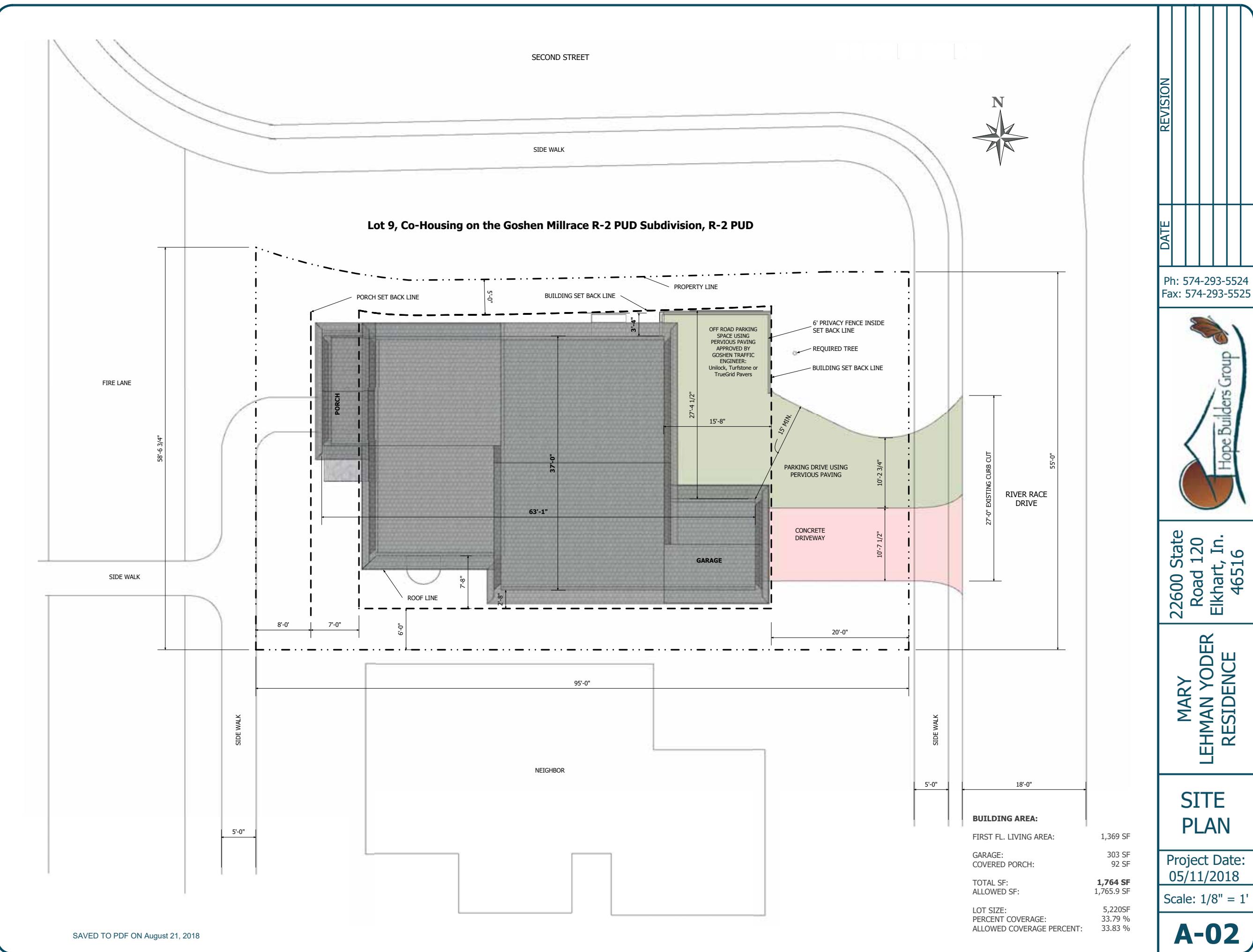
Rhonda,

Attached is an edited layout of the pavement for the proposed 2nd parking space we have been talking about. I took the liberty to ask Leslie Biek in Engineering for guidelines for vehicle maneuvering so she is already somewhat familiar with what we're trying to do.

We're still hoping we can avoid the variance application entirely but I know the deadline is tomorrow afternoon. Is there a chance you can do your check with Engineering soon enough that, if approved, we can avoid submitting the application?

Thanks,

Gordon



FINAL P.U.D. SITE PLAN SUPPORT DRAWING

AMENDMENT TO THE CO-HOUSING ON THE GOSHEN MILLRACE R-2 PUD

A PLANNED UNIT DEVELOPMENT

LOT NUMBER TWO (2) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF RIVER RACE SUBDIVISION, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 35, PAGE 20; BEING SITUATE IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, CITY OF GOSHEN, ELKHART COUNTY, INDIANA.

GENERAL NOTES

LAND USE
TOTAL = 14.855 S.F. OR .3285 ACRES
AREA IN LOTS = 14.855 S.F. OR .3285 ACRES
COMMON SPACE = 40.404 S.F. OR .0098 ACRES

SMALLEST LOT SIZE = 2,955 S.F.
LARGEST LOT = 8,730 S.F.

CO-HOUSING ON THE GOSHEN MILLRACE R-2 PUD IS WITHIN THE CORPORATE LIMIT OF THE CITY OF GOSHEN, INDIANA AND IS CURRENTLY ZONED R-5 PUD. THE CURRENT USE OF THE PROPERTY IS VACANT, ADJACENT ZONING TO THE NORTH IS B-2 PUD, A-1 WEST, AND R-1 EAST AND SOUTH.

THIS PROJECT IS FOR THE DEVELOPMENT OF LOT 2 RIVER RACE SUBDIVISION (PLAT BOOK 35, PAGE 20) AS A FIFTEEN (15) LOT RESIDENTIAL PLANNED UNIT DEVELOPMENT, MAJOR SUBDIVISION. THE SUBJECT PROPERTY IS LOCATED IN THE CITY OF GOSHEN, INDIANA, TOWNSHIP NO. 36, SECTION 16, RANGE 6, TOWNSHIP 36 NORTH, SECTION 16, RANGE 6 EAST, ELKHART TOWNSHIP, CITY OF GOSHEN, ELKHART COUNTY, INDIANA.

THE LOT CONFIGURATIONS SHOWN ON THIS PLAN ARE APPROXIMATE ONLY AND MAY BE CHANGED WITH THE SUBMITTAL SECONDARY PLAT.

PROPOSED STRUCTURES SHOWN ON THIS PLAN ARE FOR INFORMATIONAL PURPOSES ONLY, THE SIZE AND CONFIGURATION MAY BE CHANGED BY DEVELOPERS OR OWNERS NEEDS OR DESIRES, BUT WILL CONFORM AND MEET THE REQUIREMENTS AND STANDARDS AS SET FORTH IN THE APPROVED PLANNED UNIT DEVELOPMENT.

INTENTION FOR OWNERSHIP

THE CO-HOUSING ON THE GOSHEN MILLRACE R-2 PUD IS A TYPE OF COLLABORATIVE HOUSING IN WHICH RESIDENTS ACTIVELY PARTICIPATE IN THE DESIGN AND OPERATION OF THEIR OWN NEIGHBORHOOD. CO-HOUSING RESIDENTS ARE CONSCIOUSLY COMMITTED TO LIVING AS A COMMUNITY. THE CO-HOUSING IS A COLLECTIVE HOME OWNERSHIP THAT FEATURES THE FEATURES OF CONVENTIONAL HOMES, BUT RESIDENTS ALSO HAVE ACCESS TO COMMON FACILITIES SUCH AS OPEN SPACES, COMMUNITY PLAZAS, ORGANIZATIONAL AND VEGETABLE PRODUCING GARDENS, AND A COMMON HOUSE WHICH IS THE SOCIAL CENTER OF THE COMMUNITY. COMMON HOUSE CONTAINS KITCHEN, LOUNGE, RECREATIONAL FACILITIES, CHILDREN SPACES, ARTS AND CRAFTS WORKSHOP, LIBRARY, EXERCISE ROOM, ETC.

THIS TYPE OF CO-HOUSING COMMUNITY IS PLANNED, OWNED AND MANAGED BY THE RESIDENTS WHO SHARE IN ACTIVITIES THAT MAY INCLUDE COOKING, DINING, CHILD CARE, GARDENING AND THE GOVERNING OF THEIR INDIVIDUAL COMMUNITY. CO-HOUSING FACILITATES INTERACTIONS AMONG NEIGHBORS FOR SOCIAL AND PRACTICAL BENEFITS, ECONOMIC AND ENVIRONMENTAL BENEFITS.

THIS CO-HOUSING COMMUNITY PROJECT IS PROPOSING UP TO FIFTEEN (15) LOTS FOR INDIVIDUAL OWNERSHIP BY THE RESIDENTS ALONG WITH A PRIVATE COMMON AREA WHICH IS OWNED BY THE COMMUNITY. THIS COMMUNITY HOUSE WILL BE A COMMON SPACE OF THE PROJECT AND WILL BE OWNED BY MILLRACE NEIGHBORHOOD, LLC.

LOTS NUMBER ONE (1) THROUGH NINE (9) WILL CONTAIN SINGLE FAMILY RESIDENCES WITH THE OPPORTUNITY FOR ATTACHED GARAGES THAT FRONT AND HAVE ACCESS TO RIVER RACE DRIVE. A THIRTY (30') FOOT RIGHT OF WAY AS DESIGNATED ON THE PLAT OF RIVER RACE SUBDIVISION (PLAT BOOK 35, PAGE 20). THE NORTH FACE OF THE PROPOSED RESIDENCE ON THESE LOTS WILL BE LOCATED ALONG THE NORTH SIDE OF THE INDIVIDUAL LOT WITH A FIVE (5') FOOT SIDE MAINTENANCE AND USE EASEMENT LOCATED ON THE SOUTH SIDE OF THE NORTH ADDING LOT OR COMMON SPACE. THIS EASEMENT IS TO PROVIDE THE OWNER OF THE LOT ACCESS TO MAINTAIN, SERVICE AND PERFORM UPGRADE AND REPAIRS ON THEIR RESIDENCE WITH THE ADDING LAND OWNER RETAINING THE BENEFIT OF THE USE OF THIS SPACE.

LOTS NUMBERS TEN (10) THROUGH FIFTEEN (15) WILL HAVE NO DIRECT ACCESS TO THE PUBLIC RIGHT OF WAY BUT WILL BE ACCESSED THROUGH THE DESIGNATED COMMON SPACE.

LOTS NUMBER TEN (10) AND LOT NUMBER ELEVEN (11) ARE PROPOSED TO BE A SINGLE FAMILY ATTACHED RESIDENCE. THESE TWO (2) LOTS WILL HAVE INDIVIDUAL AND PRIVATE OWNERSHIP AND WILL SHARE A COMMON WALL BETWEEN THE TWO UNITS.

LOTS NUMBER TWELVE (12), FOURTEEN (14), AND FIFTEEN (15) ARE PROPOSED TO BE SINGLE FAMILY RESIDENCE IN THE MORE TRADITIONAL SENSE AS THEY WILL HAVE SIX (6') FOOT SIDE SETBACKS ON EACH SIDE OF THE RESIDENCE.

LOTS NUMBER THIRTEEN (13) IS PROPOSED TO BE A COMMON HOUSE WHICH IS THE SOCIAL CENTER OF THE COMMUNITY AND WILL HAVE SIX (6') FOOT SIDE SETBACKS ON EACH SIDE OF THE COMMON HOUSE.

SEWER DISCHARGE

THE PROJECT WILL CONNECT TO THE CITY OF GOSHEN MUNICIPAL SANITARY SEWER SYSTEM BY THE EXISTING 8" SANITARY SEWER MAIN RUNNING LOCATED WITHIN THE NORTH-SOUTH PORTION OF THE COMMON SPACE TO THE EXISTING SANITARY MANHOLE AT SOUTH SECOND STREET. THIS SANITARY SEWER WILL BE LOCATED WITHIN A FIFTEEN (15') FOOT WIDE EASEMENT AND WILL BE DEDICATED TO THE CITY OF GOSHEN, INDIANA BY THE END OF THE CONSTRUCTION PROCESS. SANITARY SERVICE CONNECTION FOR THE LOTS WILL BE MADE BY SIX (6') INCH PVC SD035 SEWER LATERAL SERVICE CONNECTION FROM THE INDIVIDUAL RESIDENCE TO THE EXISTING 8" INCH SANITARY SEWER CLEAROUTS.

WATER SUPPLY

THIS PROJECT WILL CONNECT TO THE CITY OF GOSHEN MUNICIPAL WATER SYSTEM BY ONE (1) INCH COPPER WATER LATERAL SERVICE FROM THE INDIVIDUAL RESIDENCE (FOR LOTS 1-9) AND ONE AND A HALF (1 1/2) INCH COPPER WATER LATERAL SERVICE FROM THE INDIVIDUAL RESIDENCE (FOR LOTS 10-15) TO THE EXISTING EIGHT (8) INCH MUNICIPAL WATER MAIN LOCATED WITHIN THE RIGHT OF WAY OF RIVER RACE DRIVE BETWEEN DOUGLAS STREET AND SECOND STREET (PURL STREET).

SITE

THIS SITE IS MAINED AS URBAN LAND-BAINTER COMPLEX 0 TO 1% SLOPES (UsdA) SERIES. PERMEABILITY FROM 0 INCHES TO 54 INCHES IS 2.00 INCHES PER HOUR AND 50 INCHES TO 90 INCHES IS 20.00 TO 20.00 INCHES PER HOUR WITH A DEPTH TO SEASONAL HIGH WATER TABLE OF GREATER THAN 30 INCHES. SOILS ARE CLAY, SILT, AND SILT. LIMITATIONS FOR ROADS AND STREETS ARE MODERATE DUE TO FROST ACTION. THIS INFORMATION IS FROM THE SOIL SURVEY OF ELKHART COUNTY, INDIANA.

WELLHEAD PROTECTION AREA

PROJECT SITE IS NOT WITHIN THE CITY OF GOSHEN WELLHEAD PROTECTION AREA.

STREET ALIGNMENT

THIS PROJECT IS PROPOSING THREE (3) PRIVATE ACCESS DRIVEWAY ENTRANCES: THE PARKING LOT ON THE SOUTH SIDE OF THE PROJECT WILL HAVE ONE (1) DRIVEWAY ENTERING AND EXITING THE PUBLIC RIGHT OF WAY OF DOUGLAS STREET AND ONE (1) DRIVEWAY ENTERING AND EXITING THE PUBLIC RIGHT OF WAY OF RIVER RACE DRIVE ON THE NORTH SIDE OF THE PROJECT. THE PARKING LOT WILL HAVE ONE (1) DRIVEWAY ENTERING AND EXITING THE PUBLIC RIGHT OF WAY OF SOUTH SECOND STREET. THESE LOCATIONS ARE FIXED ON THIS PLAN. LOTS NUMBER ONE (1) THROUGH NINE (9) WILL UTILIZE DIRECT ACCESS TO THE PUBLIC RIGHT OF WAY OF RIVER RACE DRIVE.

PARKING

LOTS NUMBER ONE (1) THROUGH EIGHT (8) WILL HAVE ATTACHED GARAGES OR PARKING SPACES FOR TWO (2) CARS PER LOT FOR EIGHTEEN (18) PARKING SPACES.

LOTS NUMBER TEN (10) THROUGH FIFTEEN (15) WILL HAVE NO PARKING SPACES PROVIDED ON EACH INDIVIDUAL LOT. TWENTY-ONE (21) REGULAR PARKING SPACES ARE PROVIDED AND PROVIDED CRATE FOR PARKING FOR LOTS NUMBER TEN (10) THROUGH FIFTEEN (15) THROUGH EIGHTEEN (18) FROM THIS DEVELOPMENT.

AMENDMENT TO THE PLANNED UNIT DEVELOPMENT? TO ALLOW LOT NUMBER NINE (9) TO HAVE ONE (1) PARKING SPACE LOCATED WITHIN THE GARAGE.

TRASH DISPOSAL

LOTS NUMBER ONE (1) THROUGH NINE (9) WILL UTILIZE THE PUBLIC RIGHT OF WAY OF RIVER RACE DRIVE FOR TRASH COLLECTION. LOTS NUMBER ONE (1) THROUGH FIFTEEN (15) WILL UTILIZE A LOCALIZED TRASH COLLECTION AREA LOCATED AT THE DOUGLAS STREET ENTRANCE/EXIT DRIVEWAY IN THE SOUTH PARKING AREA.

SEEDING LINE

THE SPEED LIMIT FOR WEST DOUGLAS STREET, SOUTH SECOND STREET, AND RIVER RACE DRIVE IS UNPOSTED. UNPOSTED SPEED LIMIT WITHIN AN URBAN AREA IS 30 MPH PER IAC 9-2-1-2.

DRILLS

THIS PROJECT WILL UTILIZE NO PROPOSED CLASS V INJECTIONS WELLS.

ELOCA

THIS SITE IS NOT WITHIN THE SPECIAL FLOOD HAZARD AREA (100 YEAR FLOOD PLAIN) PER FIRM MAP PANEL #6039020240, EFFECTIVE MAP DATE: AUGUST 2, 2011.

SIGNAGE

THIS PROJECT PROPOSES A SIGN FOR IDENTIFICATION OF THE COMMUNITY NAME. IT WILL BE A FREESTANDING MONUMENT TYPE SIGN LESS THAN EIGHT (8) FEET IN HEIGHT, HAVE A MAXIMUM AREA OF LESS THAN THIRTY-TWO (32) SQUARE FEET AND PROVIDE THE LANDSCAPING AS REQUIRED IN THE CITY OF GOSHEN ZONING ORDINANCE.

BENCHMARK

FOUND MAG NAIL LOCATED IN WEST DOUGLAS STREET AT 217 FEET WEST OF THE CENTERLINE OF SOUTH THIRD STREET, ELEVATION 798.34 FEET NGVD 1929. THIS MAG NAIL IS LOCATED AS C.P. 157 ON THE CITY OF GOSHEN RIVER RACE DRIVE CONSTRUCTION PLANS (SHEET X-2369-05).

CONTURS

ALL CONTURS OR ELEVATIONS ARE TO U.S.G.S. DATUM OF NGVD 1929.

DRAINAGE AREA SUMMARY

THE CO-HOUSING ON THE GOSHEN MILLRACE PROJECT CURRENTLY VACANT. IN THE PAST, THIS SITE CONTAINED BUILDINGS AND IMPROVEMENTS THAT HAVE BEEN REMOVED. THE SITE IS RELATIVELY FLAT WITH AN ELEVATION OF APPROXIMATELY 798.0 FEET AT THE SOUTHEAST CORNER FLOWING TO THE NORTH AND WEST TO AN ELEVATION OF APPROXIMATELY 793.0 FEET (5'-2" SLOPES).

IT IS BOUNDED ON THE WEST BY THE GOSHEN HYDRAULIC CANAL WITH AN APPROXIMATE WATER ELEVATION OF 792 FEET. BOUNDED ON THE EAST SIDE BY RIVER RACE DRIVE A RECENTLY CONSTRUCTED STREET WITH A THIRTY (30') FOOT CREST OF ROAD AND AN EIGHTEEN (18) FOOT WIDE ROADWAY WITH TWO (2) FOOT CONCRETE CURB GUARDS. NEW STORM SEWER DRAINAGE INFRASTRUCTURE WAS PROVIDED WITHIN RIVER RACE DRIVE, BOUNDED ON THE NORTH LINE BY SOUTH SECOND STREET A RECENTLY CONSTRUCTED STREET WITH NEW PAVEMENT AND CURB GUARDS. NEW STORM SEWER DRAINAGE INFRASTRUCTURE WAS PROVIDED WITHIN SOUTH SECOND STREET, BOUNDED ON THE SOUTH BY EXISTING ROADWAY, CURB, SIDEWALK AND STORM SEWER INFRASTRUCTURE WITHIN DOUGLAS STREET. THE CITY OF GOSHEN CURRENTLY PROPOSES NO IMPROVEMENTS TO THIS PORTION OF THE ROADWAY.

DRAINAGE AREA NO. 1

THE STORM RUNOFF FOR THE PARKING LOTS AND THE WEST HALF OF THE RESIDENTIAL STRUCTURES AND REAR YARDS OF LOT 1 THROUGH LOT 9, INCLUSIVE, THE EAST HALF OF THE RESIDENTIAL STRUCTURES, FRONT YARDS OF LOT 10 TO THROUGH LOT 15, INCLUSIVE, THE COMMON AREAS AND THE PARKING AREAS WITHIN THE PROJECT AREAS, THE SOUTH SIDE OF THE STREET FROM THE CENTERLINE TO SIX (6') METERS FROM THE CENTERLINE, THE SIDEWALK, SIDEWALK STONE GUARDS AND TO THE Curb, PARKING LOCATED IN THE COMMON AREA BETWEEN THE TWO RESIDENTIAL STRUCTURES THERE WILL BE AN EQUALIZER PIPE BETWEEN THE TWO PARKING AREAS AND A VERTICAL OVER FLOW PIPE RUNNING FROM THE SOUTH RAFFLE GARDEN SOUTH TO THE HYDRAULIC CANAL. DIFFERENCE BETWEEN PRE-CONSTRUCTION AND POST CONSTRUCTION CREATED WITHIN DRAINAGE AREA NO. 1 AREAS 4,359 CUBIC FEET OR 0.100 ACRE-FEET. STORM WATER STORAGE VOLUME PROVIDED 6,812 CUBIC FEET OR 0.158 ACRE-FEET.

DRAINAGE AREA NO. 2

THE DRIVEWAYS AND FRONT YARD AREAS ALONG THE EAST SIDE OF LOT 1 THROUGH LOT 9 ALONG THE NORTH SIDE OF LOT 9 AND ALONG THE NORTH SIDE OF LOT 9 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE PUBLIC RIGHT OF WAY AND MUNICIPAL STORM SEWER INFRASTRUCTURE STREET IN RIVER RACE DRIVE AND SOUTH SECOND STREET. 1,803 CUBIC FEET OR 0.041 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 2. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 3

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 3. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 4

THE DRIVEWAYS AND FRONT YARD AREAS ALONG THE EAST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE PUBLIC RIGHT OF WAY AND MUNICIPAL STORM SEWER INFRASTRUCTURE STREET IN RIVER RACE DRIVE AND SOUTH SECOND STREET. 1,803 CUBIC FEET OR 0.041 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 4. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 5

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 5. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 6

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 6. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 7

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 7. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 8

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 8. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 9

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 9. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 10

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 10. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 11

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 11. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 12

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 12. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 13

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 10 THROUGH LOT 15 ALONG THE NORTH SIDE OF LOT 10 AND ALONG THE NORTH SIDE OF LOT 15 WILL BE GRADED AND SLOPED AWAY FROM THE STRUCTURES TO ENSURE PROPER DRAINAGE TO THE HYDRAULIC CANAL. 1,008 CUBIC FEET OR 0.023 ACRE/FEET IS CREATED WITHIN DRAINAGE AREA NO. 13. (SEE SHEET 2 OF 4 OF CONSTRUCTION PLANS)

DRAINAGE AREA NO. 14

THE REAR YARD AREAS ALONG THE WEST SIDE OF LOT 1

January 13, 2020

621 River Race Dr.

Goshen, IN 46525

Rcvd 1/15/20

To: Members of Goshen City Plan Commission

Re: Lot 9 of Co-Housing on the Goshen Millrace R-2 PUD

Mary Lehman Yoder of 605 River Race Drive is requesting a PUD change to allow one on-site parking space where two are generally required. An exception in this case is merited. We support her request. It will not negatively impact the neighborhood. Future Millrace Cohousing lot owners (only 4 more with garages on River Race Drive possible) will follow the original PUD requirements.

Respectfully,


Leroy and Joan Wiilems

To: Members of Goshen City Plan Commission

Rcvd 1/15/20

Re: Request for PUD change

Date: Jan. 11, 2020

We understand that Mary Lehman Yoder of 605 River Race Drive is requesting a PUD change to allow one on-site parking space where two are generally required. We believe an exception in this case is warranted and ask you to grant it. It will not negatively impact the neighborhood. We anticipate all future Millrace Cohousing lot owners (only 4 more with garages on River Race Drive possible) will abide by the original PUD requirements.

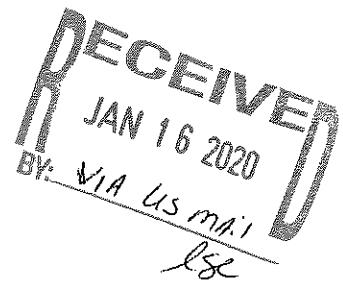
Thank you for the opportunity to respond to this request.



Ned & Ann Kauffman, 611 River Race Drive, Goshen, IN 46526

625 River Race Drive
Goshen, IN. 46526
January 14, 2020

Goshen City Plan Commission
204 Jefferson St, Suite 4
Goshen, IN 46528



Dear Goshen City Plan Commission,

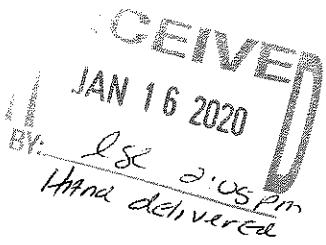
We are writing in regards to Mary Lehman Yoder's request for a PUD change to allow one on-site parking space where 2 are required at 605 River Race Drive for the hearing to be held on January 21.

We are fully supportive of this one-time exception in the planned development. At this point adding a second parking space on that property would detract from the appeal of our new neighborhood. So we are asking your commission to approve this variance.

Sincerely,

Robert T. Smith
Margaret Richer Smith

To: Members of Goshen City Plan Commission
Re: Request for PUD change
Date: January 15, 2020



I understand that Mary Lehman Yoder of 605 River Race Drive is requesting a PUD change to allow one on-site parking space where two are generally required. As a member of Millrace Cohousing and soon-to-be neighbor of Mary, I am in full support of this request. I believe it is warranted and will not negatively impact our cohousing community or the surrounding neighborhood. As Chair of the Millrace Cohousing Association I can report that members have agreed future home owners will not seek variances for one on-site parking space and will follow the original PUD requirement.

Thank you for the opportunity to respond to this request. I regret that I'm unable to be present at the meeting on January 21, 2020 to voice my support.



Nancy L Loewen
Millrace Cohousing Association, Chair
419 S 7th St
Goshen, IN 46526

Yoder, Rhonda

From: Deegan, Rossa
Sent: Thursday, January 16, 2020 3:45 PM
To: Yoder, Rhonda
Cc: Lipscomb, Lori
Subject: 605 River Race

Rhonda,

Merrit Lehman (574-340-9852) called to offer his support for the parking request at 605 River Race. He and his wife both support the request and live at 629 River Race.r

Rossa Deegan
Assistant Planning & Zoning Administrator
City of Goshen
204 E Jefferson St, Suite 4
Goshen, IN 46528
rossadeegan@goshencity.com
574-534-3505

Yoder, Rhonda

From: Lipscomb, Lori
Sent: Tuesday, January 21, 2020 10:47 AM
To: Yoder, Rhonda
Subject: 605 River Race

Rhonda,

Nancy Kauffman will be building a home at 613 River Race Drive and called to speak in support of Mary Lehman Yoder's request to allow one parking space at 605 River Race. She called because she's not sure she can get to the meeting this afternoon.

Lori Lipscomb



ACCESS THE CITY OF GOSHEN WEBSITE AT:

<http://goshenindiana.org/>

ACCESS THE CITY OF GOSHEN FACEBOOK PAGE AT:

<https://www.facebook.com/CityOfGoshen>

Yoder, Rhonda

From: Merritt Lehman <merrittdierra@gmail.com>
Sent: Thursday, January 23, 2020 11:31 PM
To: Yoder, Rhonda
Subject: PUD change request for Mary Lehman Yoder's Lot

Rhonda:

I want to express support from both Dierra and myself for the change that will permit only one parking spot for Mary Lehman Yoder. I will just be returning from California on the date of the meeting and will not be able to attend the City Council meeting ratifying the Planning Commission's vote to recommend.

This is something the co-housing group has discussed and agreed to support in a co-housing business meeting a couple of months ago.

Merritt

ORDINANCE 5031

Amend Park Rules and Regulations To Allow for the Possession and Consumption of Alcohol During Rentals of Park Pavilions and Facilities

WHEREAS, the Goshen Common Council passed Ordinance 4294 to establish the rules and regulations for parks and other recreational areas in the City of Goshen. Ordinance 4294 is codified in the Goshen City Code at Title 7, Article 1, Chapter 1.

WHEREAS, the Goshen Parks and Recreation Board from time to time finds it necessary to amend the park rules and regulations, and did recommend the adoption of amendment to the City Code by a vote of 4-0.

WHEREAS, the proposed amendment furthers the purposes of the Goshen Parks and Recreation system.

WHEREAS, the proposed amendment is intended to allow for the possession and consumption of alcohol during rentals of park pavilions and facilities.

NOW THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

SECTION 1. Possession and Consumption of Alcoholic Beverages

Goshen City Code Title 7, Article 1, Chapter 1, Section 10 shall be amended to read as follows:

7.1.1.10 Possession and Consumption of Alcoholic Beverages

A person may only possess and consume any alcoholic beverage within a park pavilion or facility pursuant to the rental of said pavilion or facility from the Goshen Parks and Recreation Department and in compliance with the Goshen Parks and Recreation's Department Facility Usage Policy, as amended. Such possession and consumption are strictly limited to the premises or footprint of the pavilion or facility rented, unless otherwise noted in the rental agreement for said pavilion or facility. Otherwise, no

person shall possess or consume any alcoholic beverage in any park or other recreational area. All persons must comply with all State of Indiana Alcohol & Tobacco Commission rules and regulations. The term "alcoholic beverage" means a liquid or solid that is, or contains, one-half percent (0.5%) or more alcohol by volume; is fit for human consumption; and is reasonably likely, or intended, to be used as a beverage.

SECTION 2. Effective Date

This ordinance shall be in full force and effect from and after its passage, approval, and adoption according to the laws of the State of Indiana.

PASSED by the Goshen Common Council on _____, 2020.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2020,
at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2020.

Jeremy P. Stutsman, Mayor

ORDINANCE 4699

An Amendment to City of Goshen Ordinance 4294 to Allow for the Possession and Consumption of Alcohol During Rentals of Park Pavilions and Facilities

WHEREAS the City of Goshen Parks and Recreation Board from time to time finds it necessary to request an amendment of City of Goshen Ordinance No. 4294, and did recommend the adoption of an amendment to City of Goshen Ordinance No. 4294;

WHEREAS the proposed amendment furthers the purposes of the Goshen Parks and Recreation system;

WHEREAS the proposed amendment is intended to allow for the possession and consumption of alcohol during rentals of park pavilions and facilities.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Goshen, Indiana, that the current text of Ordinance 4294, Section Ten and Goshen City Code Section 7.1.1.10 shall be repealed and replaced in its entirety as follows:

Possession and Consumption of Alcoholic Beverages

A person may only possess and consume alcoholic beverages within a park pavilion or facility pursuant to the rental of said pavilion or facility from the Goshen Parks and Recreation Department and in compliance with the rules and regulations of the Goshen Parks and Recreation Department and its facility usage policy. Such possession and consumption is strictly limited to the premises of the pavilion or facility rented. Otherwise, no person shall possess or consume any alcoholic beverage in any park or other recreational area. All persons must comply with all State of Indiana Alcohol & Tobacco Commission rules and regulations. The term "alcoholic beverage" means a liquid or solid that is, or contains, one-half percent (0.5%) or more alcohol by volume; is fit for human consumption; and is reasonably likely, or intended to be used as a beverage.

Councilman Thomas asked to which meeting the Mayor would like this postponed. Mayor Kauffman responded it would be when they look at the budget the first meeting in October, which would be the 9th. Councilman Thomas then asked if the Mayor *didn't* want a first reading tonight. Mayor Kauffman responded that he certainly did not want to defeat the Ordinance tonight so that they couldn't go forward. He said if the Council was prepared to vote for it on a first reading that was fine but he did not feel that was the case. Councilman Thomas then made a motion to postpone, not table, this to October 9th which was seconded by Council President Stump.

By a 7-0 unanimous vote of the Council the Ordinance was postponed to October 9th.

ORDINANCE NUMBER 4699

Council President Stump introduced Ordinance Number 4699 entitled "AN AMENDMENT TO CITY OF GOSHEN ORDINANCE 4294 TO ALLOW FOR THE POSESSION AND CONSUMPTION OF ALCOHOL DURING RENTALS OF PARK PAVILIONS AND FACILLITIES."

Council President Stump asked the Clerk-Treasurer to read the Ordinance by title only for its first reading and moved its passage. Motion seconded by Councilman Thomas.

Mayor Kauffman started the discussion by saying this was driven by the same needs as the Solid Waste User Fee proposal, although on a much smaller scale than a user fee. He opened discussion to the audience, clarifying this was restricted to closed pavilions with the alcohol staying inside the pavilion.

Lyman Hug, 404 Maple Court, asked a couple of questions. First, he questioned if this was supposed to raise revenue for the City. Mayor Kauffman responded that is the intention. Mr. Hug asked how it would help. Mayor Kauffman responded the hope was that more people would rent pavilions if they were allowed to bring alcohol. Mr. Hug stated he feels the City can get along without that funding because he feels the parks we have in this City shouldn't be open to alcohol. You're going to have kids around the alcohol whether it is a close permit or not. There will be parties and there will be people driving after those parties. What kind of enforcement are we going to have? Every bar in town has a sign on the door saying you must be 21 to be admitted. If you change that and let kids into things like that, they're going to get in trouble. They're going to drink alcohol and there will be fights. Also, and this isn't something the City can do anything about, they're talking about opening up the parks to allow packing guns. Mr. Hug thinks it's a dangerous situation that is only going to create problems down the road and he doesn't think we need it. He feels it is something we can do without. If you want to drink at your parties, you don't need to come to a City park that's public for children. He would not send young children to the parks if there was drinking going on. When you have alcohol in a public situation like that you're asking for trouble. There has got to be other ways to make money for the City. Mr. Hug thought the City could benefit from Red Light Cams. He thinks it would pay for the trash. Mayor Kauffman said this cannot be done without special permission from the State and they won't give it to Warsaw. Mr. Hug feels we should at least try for it. All it's going to catch is violators, those who already aren't doing what they should be doing. Anything that can be made off of those the City should be open to.

Manley Rohn, 614 S 6th St stated he was appalled at this idea of letting alcohol into the parks. He stated he is 67 years old and was born and raised in the City and just doesn't understand what is happening to it. He doesn't understand it. He thinks we are just asking for a can of worms. Alcohol shouldn't be allowed in parks. What do you do when people leave the parties drunk? It will happen, no matter how hard we try to oversee it.

Glenn Null, 319 Dewey Ave, stated he sees an enforcement issue more than anything. He sees people going outside for a smoke, taking their can of beer with them. Individuals in the park itself see that and think, well, if they have a can of beer, why can't I? Plus, the Fair Board has promoted drinking in some of their pavilions and that has led to drive by shootings, violence, things like that. He doesn't feel we need this in our parks. How many other Cities allow it in their parks? Some big cities don't even let you smoke in their parks. He is not in favor of this at all. He thinks there is a time and place for alcohol and this is not it.

Joe Dervin, 1701 Woodward Place, asked if this was going to be timed. Would there be a trial period and if it didn't work out it would be yanked? Mayor Kauffman responded that he was sure if it was approved and there started to be problems, the Park board would decide to change it.

Wilma Harder, 119 Canal, stated she has worked in 3 different park departments over the last many years and Elkhart City parks allows alcohol in their closed pavilions and sometimes her job was to go in and clean up after these parties. Sometimes they were spotless and other times completely trashed. Her concern would be, is there something in the budget for overtime required to clean up after these parties. She also wondered how many people *don't* rent because they can't have alcohol. She stated it doesn't stop people. She pulls bottles of alcohol and wine out of the trash in Middlebury parks all the time. Also, park staff can't police constantly. She is ambivalent about this Ordinance.

Mayor Kauffman stated discussion at the Park board had been that if rules were violated, renters would lose their deposit and currently they lose their deposit if they don't clean up after themselves. They have to obey all the laws of the State of Indiana or they can be arrested, and if they don't obey the rules of the Park, they can lose their deposit.

Paul Scott, 417 Hackett Road, questioned who would watch over this and he anticipates needing someone there to ensure those under 21 don't have access to the alcohol. Mayor Kauffman responded currently we have Park staff checking back from time to time but we don't have someone actually sitting there "babysitting" the renters. He doesn't anticipate Police staff cruising through the park more frequently.

Ed Bradford, 1816 Woodgate Drive, has mixed emotions on alcohol in parks, but stated he would rather pick up empty beer cans behind his property than dirty diapers, referencing concerns voiced earlier with the Solid Waste User Fee.

Fred Buttle, 825 Wilden stated he is adamantly opposed to this Ordinance. He stated there are other venues in the City for that kind of activity. He feels the parks are a wholesome place for families without that kind of activity interfering. The newspaper is full everyday of people arrested for DUIs. He doesn't think it is a good idea to allow alcohol in the parks and can see it

causing all kinds of problems. He stated he can't believe the City of Goshen is *this* desperate for revenues.

Doug Nisley, 1929 W. Lincoln, asked what liability the City would have with this Ordinance. For example, if someone is drunk and drowns in a pond or pool. City Attorney Larry Barkes responded permitting alcohol in City parks would not increase liability and would only pose a problem if the City had been made aware of situations and did not react. Such as the City being made aware there was a fight among drunken people and took no action.

Darren Bickel, 711 8th St, stated he feels the revenues from trash pickup would be meeting the problem head on, but something like this is just a quick grab for revenue. He feels you're just asking for difficulty with this. We're trying to build a high-quality infrastructure piece through the heart of the City and when you introduce alcohol into the parks in that area you change the nature of what people are looking to go to those venues for. He feels that any fees generated from this will get eaten up with enforcements from Police calls and additional patrols in the area. He thinks keeping alcohol out of the parks is just a small part of the fabric that makes Goshen great. He is opposed to this Ordinance.

Barb Swartley, 119 Canal, is on the Park Board and voted to pass this along to the Council. She has lived in Milwaukee and it is perfectly fine there, and a normal part of life, to be able to take your can of beer into a City park. She doesn't feel family values in Milwaukee are any less than family values here in Goshen. She doesn't have a strong opinion on this but feels we cannot reject any possibility for revenue. She doesn't feel it would necessarily change who we are as a City.

Mark Huser, 315 Gorham Drive, stated he cannot support this and feels it will not enhance the City whatsoever. He feels we have incredibly gorgeous parks and there are plenty of other places people can rent where they can have alcohol. He stated there are not any of us, in our adult years that have not attended a party where alcohol was served and someone got intoxicated. What makes the parks and pavilions more desirable than other rental places? The atmosphere? If people consume alcohol are they just going to stand there or is the park part of the ambiance of being there? Are they going to venture out for pictures somewhere? Are there going to be wedding parties taking fun pictures at Tommy's Kids Castle? Or the Pool? He again stated he is very much against this Ordinance. He doesn't feel it will generate the revenues the City is looking for. He doesn't feel there will be a huge increase in rentals if this is allowed.

Jessica Whitaker, 808 Middlebury, stated she also does not have an opinion for or against the Ordinance but instead questioned if this was a way to attract more rentals, to which Mayor Kauffman responded it was the intention. Ms. Whitaker then asked if they would be charged the same rental fee, or if there would be an additional fee for those who wanted alcohol. Mayor Kauffman responded it would be up to the Park board what fee was assessed for rentals with alcohol. Sheri Howland, Superintendant of Parks spoke saying the Board had decided they would review it after it had been presented to Council but if she remembered right, they were not in favor of imposing any additional fee. Ms. Whitaker asked if they rented to any group, or would there be a situation in which they wouldn't rent to a specific group. Sheri answered if they paid the fee and submitted the waiver they would rent to the group. They don't discriminate.

Angie McKee, 2359 Redspire (wife of Councilman McKee and co-owner of Boscoe's Place) stated what sets her place aside from what the parks is asking for, or even the Spohn building, or any place holding a liquor license, we control how much they consume and they must show a photo id.

Councilman McKee stated all his people have been trained and that he has the experience of 14 years handling and serving alcohol. Any time alcohol is around, sooner or later you're going to have a problem. Personal problems arise and before you know it you've consumed too much. There will be problems, you can't escape it. He doesn't feel the City will raise the money they are hoping to. Even if they added extra security they will still have problems. He still feels there could be a big expense of possible litigation.

Councilman Ahlersmeyer feels security would be a big concern. If we have a standard fee now, would those not serving alcohol still be mandated to pay the fee someone serving alcohol would have to pay. We should mandate security to make sure there is no illegal drinking. We should increase our fee to provide an officer. At what point would these fee increases make our parks less desirable. Mayor Kauffman stated he didn't think it was the Park Board's suggestion that security be required. Councilman Ahlersmeyer stated *he* would require it as part of passing the Ordinance.

Councilman Thomas agreed. He could only support the Ordinance if there was a requirement that a vendor or caterer accepted the responsibility for the amount of consumption, checked IDs, and also accepted liability. He stated he couldn't support it without that kind of third part assurance.

Councilman Stutsman stated as we're going through the budgets here and trying to find money to make sure we can continue our services that we have all been accustomed to, he really appreciates the fact that Mayor Kauffman is always looking for efficiencies. He went on to say he's gotten to know the Mayor well over the past 5 years and he really respects and applauds him for looking outside the box and bringing this Ordinance to the Council. He has received a lot of phone calls about this Ordinance and is one of the families that are always at Tommy's Kids Castle and although the phone calls have not been overly negative, this would still be a tough Ordinance for him to support. He told the Council he would listen to all their comments before he made a decision.

Councilwoman Robinson has had people come up to her at church, at the grocery store, and even on the street to voice their opinions on this Ordinance. Just before she came to the meeting she had someone stop her on the golf course. All of the comments have been that we don't need alcohol in our parks. She feels that the parks belong to our citizens and it seems pretty clear that they aren't in favor of this Ordinance. She feels we need to listen to them.

Councilwoman Gautsche stated it has also been pretty tough for her as she realizes the City needs to find new avenues of revenue. However, she doesn't feel that for the small amount of money this would raise there will be many more problems. In particular because Shanklin Park Pavilion will be the most likely rental and it is so close to Tommy's Kids Castle it does not seem like the best thing to raise money. She stated she will be voting no.

Councilman Stutsman stated the Park Board had voted unanimously for this Ordinance.

Mayor Kauffman responded the Council should not “shoot” Sheri, as this was not her idea. He stated he was the one that went to Sheri and asked her to take it to the Park Board again. She had taken it to the Park Board several years ago and they voted no on it at that time. There was no mention that it had been the Mayors idea. She ran it through as if it were her idea. As this is not entirely dissimilar from the proposed trash Ordinance, and a possible source of additional revenues, he stated he asked Sheri if she would once again present it to the Park Board. The Park Board didn’t take this lightly and with some reservation decided to vote it on to the City Council. So, yes, despite their own reservations the Park Board did vote unanimously to pass it on to Council, leaving the ultimate decision up to them.

Councilwoman Gautsche stated that like Councilman Stutsman, she appreciated that it is the Mayor’s nature to look for any place to raise revenue.

By a 0-7 unanimous vote of the Council the Ordinance failed.

PRIVILEGE OF FLOOR

Ed Bradford, 1816 Woodgate Dr, asked about the Board of Works’ recent decision to give a \$3000 at 3% loan to downtown merchants to fix sidewalk issues. He applauds that decision but is very upset with a 12% default charge. These businesses are for-profit. They are not a non-profit group. Why would the City tell a profit group if they default you’re going to charge them 12%, when we let LaCasa at 3.5% or 1% the Redevelopment Commission does. They don’t pay taxes. Why aren’t you supporting City business? Don’t you want them?

Mayor Kauffman stated there is always default language in these types of agreements and called on City Attorney Larry Barkes to explain. Attorney Barkes explained that with the sidewalk program it is a one-time program and originally the interest rate was 8% with 12% default as interest rates were lowered, no one every changed the default rate so when they put this loan together, they kept it at the 3%/12%.

Mr. Bradford responded he considered that explanation “political speak”. His question is why they would consider charging a 12% default to a City business that pays taxes, hires employees, and does all these wonderful things when organizations like LaCasa have none. He said it is just wrong. He went on to say he sent a letter to Goshen News just this week and is not satisfied with the response Mayor Kauffman sent him, again calling it “political speak”. He stated he was questioning the oversight of the Redevelopment Commission. Mr. Bradford said Mayor Kauffman said Mr. Bradford was questioning Mayor Kauffman’s appointments to the Redevelopment Commission. Mr. Bradford said the Mayor appointed Council President Stump and Councilman Stutsman to the Commission. Mr. Bradford questions why Mayor Kauffman didn’t tell us he also appointed three other people to that Board. Mayor Kauffman responded he appoints three and the Council appoints three. Mr. Bradford said the Mayor did not say that in his letter. Mr. Bradford said this made him feel Mayor Kauffman must think he is dumb. Mr. Bradford questioned why the Mayor wasn’t clearer about how the appointments work. He also questioned Mayor Kauffman’s comment the Council is the oversight for the Redevelopment Commission. Mr. Bradford stated he had called past and present Council members and they were

ORDINANCE 5032

RAINY DAY FUND

WHEREAS Indiana Code § 36-1-8-5.1 authorizes a City to establish a rainy day fund.

WHEREAS the Goshen Common Council established a Rainy Day Fund by Ordinance 4025 which has been amended from time to time due to changes in state statutes by Ordinances 4203, 4345 and 4645.

WHEREAS due to additional statutory changes, it is necessary for the Common Council to amend the sources of funding and clarify the process to transfer money to or from the Rainy Day Fund.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

Section 1. Fund Continued

The Rainy Day Fund established by the Goshen Common Council under the provisions of Indiana Code § 36-1-8-5.1 is continued.

Section 2. Purposes of Fund

The Rainy Day Fund may be used to provide funding for capital improvements, purchase of equipment, payment of any operating expenses when existing operating balances are insufficient, and payment of any unforeseen expenses.

Section 3. Sources of Funding

The sources of funding for the Rainy Day Fund include:

- (A) Unused and unencumbered funds identified in Indiana Code § 36-1-8-5 (funds raised by a general or special tax levy on all taxable property and the purposes of the tax levy have been fulfilled, and a statute does not require the remaining balance to be transferred otherwise). The Common Council may, at any time, authorize and identify the amount of the transfer by resolution.
- (B) Unused and unencumbered funds under Indiana Code § 6-3.6-9-15 (funds from the local income tax supplemental distribution). The Common Council may, at any time, authorize and identify the amount of the transfer by resolution.

- (C) Unobligated cash balances from any fiscal year not otherwise identified under paragraphs (A) or (B). The Common Council may, at any time, authorize and identify the amount of the transfer by resolution. The amount of the transfer shall not be more than ten percent (10%) of the City's total annual budget adopted under Indiana Code § 6-1.1-17 for that fiscal year, shall not be made from a debt service fund, and shall not otherwise be prohibited by law.

Section 4. Appropriation; Transfers from Rainy Day Fund

- (A) The Rainy Day Fund is subject to the same appropriation process as other funds that receive tax money.
- (B) The Common Council may, at any time during the year, authorize by resolution the transfer of money deposited in the Rainy Day Fund to the General Fund or any other appropriated City fund.

Section 5. Other Ordinances

All ordinances and parts of ordinances inconsistent or in conflict with the terms of this ordinance are repealed to the extent of the inconsistency or conflict.

PASSED by the Goshen Common Council on _____, 2020.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2020, at _____
a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2020.

Jeremy P. Stutsman, Mayor

ORDINANCE 5033

Threshold for Common Council Approval for Sale of Real Property

WHEREAS disposal of real property under Indiana Code § 36-1-11-3 requires the approval of the Mayor of the City after a public hearing is held with the notice required by Indiana Code § 5-3-1.

WHEREAS the sale of real property under Indiana Code § 36-1-11-3 also requires the approval of the Common Council if the appraised value of the real property is Fifty Thousand Dollars (\$50,000) or more.

WHEREAS the Common Council is given the authority to adopt an ordinance to increase the threshold that requires the approval of the Common Council to an amount greater than Fifty Thousand Dollars (\$50,000).

WHEREAS it is requested that the Common Council establish the threshold under Indiana Code § 36-1-11-3(c)(1) requiring Council approval to the amount of One Hundred Fifty Thousand Dollars (\$150,000) or more.

NOW THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

- (1) The threshold requiring Common Council approval for the sale of real property under Indiana Code § 36-1-11-3(c)(1) is established at the appraised value of One Hundred Fifty Thousand Dollars (\$150,000) or more.
- (2) In accordance with the provisions of Indiana Code § 36-1-11-3, the requirement of Common Council approval does not apply to the disposal of real estate under the following Indiana Code sections:
 - (a) Indiana Code § 36-1-11-5, Sale of real property to abutting landowner or property previously part of public right-of-way
 - (b) Indiana Code § 36-1-11-5.5, Sale or a transfer of real property by school corporations
 - (c) Indiana Code § 36-1-11-5.9, Sale of property acquired by tax default to abutting landowner
 - (d) Indiana Code § 36-1-11-8, Exchange of property with governmental entity

PASSED by the Goshen Common Council on _____, 2020.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2020 at
_____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2020.

Jeremy P. Stutsman, Mayor

ORDINANCE NO. 5034

An ordinance concerning the construction of improvements to the sewage works of the City of Goshen, the issuance of revenue bonds to provide for the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the City of Goshen, Indiana ("City") has heretofore established, constructed and financed its sewage works, and now owns and operates said sewage works pursuant to IC 36-9-23, as in effect on the issue date of the bonds authorized herein ("Act"); and

WHEREAS, the Common Council of the City ("Common Council") finds that certain additions, improvements and extensions to said works are necessary; that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions (as more fully set forth in Exhibit A hereto and made a part hereof) ("Project"); which plans, specifications and estimates have been or will be submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management ("Department"), and have been or will be approved by the aforesaid governmental authorities and are incorporated herein by reference and open for inspection at the office of the Clerk-Treasurer as required by law; and

WHEREAS, the City has or will advertise for and receive bids for the construction of the Project; said bids are subject to the City's determination to construct the Project and subject to the City obtaining funds to pay for the Project; that on the basis of said bids and the engineer's estimates, the cost of the Project, as defined in IC 36-9-1-8, including estimated incidental expenses, is an estimated amount not to exceed Twenty-six Million Two Hundred Thousand Dollars (\$26,200,000); and

WHEREAS, the Common Council finds that the costs of the Project will be financed by the issuance of sewage works revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$26,200,000 and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, in one or more series, and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City may enter into a Financial Assistance Agreement with the Indiana Finance Authority ("Authority") as part of its wastewater loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 ("SRF Program"), pertaining to the Project and the financing of the Project ("Financial Assistance Agreement") if the bonds are sold to the SRF Program; and

WHEREAS, the City may accept other forms of financial assistance, as and if available from the SRF Program; and

WHEREAS, the City has heretofore issued certain "Sewage Works Revenue Bonds of 2009, Series A, now outstanding in the amount of \$24,851,000, and maturing semiannually over a period ending January 1, 2031 ("2009A Bonds"), which 2009A Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the sewage works; and

WHEREAS, the City has heretofore issued certain "Taxable Sewage Works Revenue Bonds of 2010, Series B, now outstanding in the amount of \$313,000, and maturing semiannually over a period ending January 1, 2030 ("2010B Bonds"), which 2010B Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2009A Bonds; and

WHEREAS, the City has heretofore issued certain "Sewage Works Revenue Bonds of 2010, Series C, now outstanding in the amount of \$509,000, and maturing semiannually over a

period ending January 1, 2031 ("2010C Bonds"), which 2010C Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2009A Bonds and the 2010B Bonds; and

WHEREAS, the 2009A Bonds, the 2010B Bonds and the 2010C Bonds are hereinafter referred to as the "Outstanding Bonds;" and

WHEREAS, the ordinances authorizing the issuance of the Outstanding Bonds permit the issuance of additional bonds ranking on a parity with the Outstanding Bonds provided that certain conditions can be met, and the City finds that the finances of the sewage works will enable the City to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall constitute a first charge on the Net Revenues of the sewage works, on a parity with the Outstanding Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GOSHEN, INDIANA, THAT:

Section 1. Authorization of Project. The City shall proceed with the construction of the Project in accordance with the plans, specifications and cost estimates heretofore prepared and filed by consulting engineers employed by the City, which plans, specifications and cost

estimates are now on file or will be subsequently placed on file in the office of the Clerk-Treasurer of the City for public inspection pursuant to IC 36-1-5-4, and are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. The estimated cost of the Project is expected not to exceed \$26,200,000, plus investment earnings on the BAN and bond proceeds. The terms "sewage works," "sewage works system," "works," "system," and similar terms where used in this ordinance shall be construed to mean the Treatment Works, as defined in the Financial Assistance Agreement, and includes the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which Project is hereby approved. The Project shall be constructed and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. Issuance of BANs and Bonds; Registrar and Paying Agent; Book-Entry Provisions. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the cost of the Project. The City may issue its BANs, in one or more series, in an aggregate principal amount not to exceed Twenty-six Million Two Hundred Thousand Dollars (\$26,200,000) to be designated "[Taxable] Sewage Works Bond Anticipation Notes of ____" (to be completed with the year in which issued and the appropriate series designation, if any). The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in any multiples of One Thousand Dollars (\$1,000) as set forth in the hereinafter defined Purchase Agreement for the BANs or in

denominations of One Dollar (\$1) each or integral multiples thereof, if sold to the Authority as part of its SRF Program, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 4.0% per annum (the exact rate or rates to be determined through negotiation with the purchaser of the BANs) payable upon maturity or redemption. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 4.0% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

Notwithstanding anything in this ordinance to the contrary, any series of BANs issued hereunder, may bear interest that is taxable and included in the gross income of the owners thereof. If any such BANs are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

The BANs shall be issued pursuant to IC 5-1.2-1 through IC 5-1.2-4 and 5-1.2-10 if sold to the Authority, IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The City shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as the gross revenues, inclusive of System Development Charges (as hereafter defined), of the sewage works of the City remaining after the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTS")) of the sewage works of the City, whether now or hereafter constructed or acquired, on a parity with the Outstanding Bonds.

For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance; provided, however, that any System Development Charges that are enacted under IC 36-9-23-29, shall be considered as Net Revenues of the sewage works.

(b) The City shall issue its sewage works revenue bonds, in one or more series, in the aggregate principal amount not to exceed \$26,200,000 to be designated "[Taxable] Sewage Works Revenue Bonds of ___, " to be completed with the year in which issued and series designation, if any ("Bonds"), for the purpose of procuring funds to apply on the cost of the Project, refunding the BANs, if issued, and issuance costs.

The Bonds shall be issued and sold at a price not less than their par value if sold to the Authority as part of its SRF Program or not less than 98% of their par value if sold to any other purchaser, shall be issued in fully registered form in denominations of One Dollar (\$1) each or integral multiples thereof, if sold to the Authority as part of its SRF Program and in denominations of \$5,000 each or integral multiples thereof if sold to any other purchaser, numbered consecutively from 1 up, originally dated as of the date of delivery and shall bear interest at a rate or rates not exceeding 4.0% per annum (the exact rate or rates to be determined through negotiation with the Authority, through its SRF Program or as determined by bidding). Interest on the Bonds is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 after the date of issuance of the Bonds, as determined by the Clerk-Treasurer, with the advice of the City's municipal advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall mature semiannually on January 1 and July 1, or be

subject to mandatory sinking fund redemption, over a period ending no later than January 1, 2050, and in such amounts that will either (i) produce as level annual debt service as practicable taking into account the annual debt service on the Outstanding Bonds and all series of Bonds issued hereunder, or (ii) if the Bonds are sold to the Authority as part of its SRF Program, allow the City to meet the coverage and/or amortization requirements of the SRF Program. If the Bonds are sold to the Authority as part of its SRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on January 1 and July 1 on the dates as determined by the purchaser thereof, but in no event later than the final serial maturity date of the Bonds as determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

Each series of Bonds issued hereunder shall rank on a parity with each other, including the pledge of Net Revenues under this ordinance.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Notwithstanding anything in this ordinance to the contrary, any series of Bonds issued hereunder, may bear interest that is taxable and included in the gross income of the owners

thereof. If any such Bonds are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the SRF Program (including without limitation any forgivable loans, grants or other assistance) whether available as an alternative to any Bond or BAN related provision otherwise provided for herein or as a supplement or addition thereto. If required by the SRF Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be provided in the Financial Assistance Agreement and the Bonds of each series of Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bonds otherwise contained herein).

(c) The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds, which Registrar is hereby charged with the responsibility of authenticating the Bonds ("Registrar" or "Paying Agent"). The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Clerk-Treasurer is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid

from the Sewage Works Sinking Fund continued hereunder to pay the principal of and interest on the Bonds and fiscal agency charges.

As to the BANs and as to the Bonds, if sold to the Authority as part of its SRF Program or any other purchaser that does not object to such designation, the Clerk-Treasurer may serve as Registrar and Paying Agent and in that case is hereby charged with the duties of a Registrar and Paying Agent.

If the Bonds or BANs are sold to the Authority as part of its SRF Program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority as part of its SRF Program is the owner of the Bonds or BANs, such Bonds and BANs shall be presented for payment as directed by the Authority.

If such Bonds and BANs are not sold to the Authority as part of its SRF Program or if wire transfer payment is not required, the principal and interest on the BANs and the principal of the Bonds shall be payable at the principal office of the Paying Agent and all payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof, as of the fifteenth day of the month preceding each payment ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be

instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City. The City and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in

which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 13 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on Bonds sold to the Authority as part of its SRF Program shall be paid from the date or dates of payments made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

(d) The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance of the book-entry Bonds, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying

Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable

and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

Section 3. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without any premium.

(b) For any Bonds sold to the Authority as part of its SRF Program, such Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery, and thereafter on any date, on sixty (60) days' notice, in whole or in part, in inverse order of maturity, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided however if the Bonds are sold to the SRF Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums shall be established by the Clerk-Treasurer, with the advice of the City's municipal advisor, prior to the sale of the Bonds.

For any Bonds not sold to the Authority as part of its SRF Program, the Bonds are redeemable at the option of the City on any date no sooner than eight (8) years after their date of delivery, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, together with a premium no greater than 2%, plus in each case accrued interest to the date fixed for redemption. The exact redemption features shall be determined by the Clerk-Treasurer, with the advice of the City's municipal advisor prior to the sale of the Bonds.

(c) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be

credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each authorized denomination shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(d) Notice of redemption shall be given not less than sixty (60) days, if the Bonds are sold to the Authority as part of its SRF Program, and thirty (30) days, if the Bonds are sold to another purchaser, prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days if the Bonds are sold to the Authority as part of its SRF Program, and forty-five (45) days if the Bonds are sold to another purchaser, prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so

called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 4. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds. The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk-Treasurer, who shall affix the seal of the City to each of the BANs and Bonds manually or shall have the seal imprinted or impressed thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the BANs and Bonds. The Bonds must be authenticated by an authorized officer of the Registrar.

The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the sewage works of the City on a parity with the Outstanding Bonds. The City shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of said works, and the Bonds shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Section 5. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Goshen, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ELKHART

CITY OF GOSHEN

[TAXABLE] SEWAGE WORKS REVENUE BOND OF _____[, SERIES ____]

<u>[INTEREST RATE]</u>	<u>[MATURITY DATE]</u>	<u>ORIGINAL DATE</u>	<u>AUTHENTICATION DATE</u>	<u>[CUSIP]</u>
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REGISTERED OWNER:

PRINCIPAL SUM:

The City of Goshen ("City"), in Elkhart County, State of Indiana, for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above[, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this Bond, or its assigns,] on [the Maturity Date set forth above] **OR** [January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the rate per annum specified above from [the dates of payment made on this Bond,] **OR** [the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before _____ 15, ____, in which case it shall bear interest from the Original Date,] which interest is payable semiannually on January 1 and July 1 of each year, beginning on _____ 1, 20_____. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this Bond is payable at the principal office of _____ ("Registrar" or "Paying Agent"), in the _____ of _____, _____.] All payments of [principal and] interest on this Bond shall be paid by [check mailed one business day prior to the interest payment date] **OR** [wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority ("Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by [_____ ("Registrar" or "Paying Agent") in the _____ of _____, _____.] **OR** [the Registrar] or at such other address as is provided to the Paying Agent in writing by the registered owner. [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial

institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana, and the City shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the Net Revenues (as hereinafter defined).

This Bond is [the only] one of an authorized issue of Bonds of the City, [[to be] [issued in series] of like date, tenor and effect, [except as to rates of interest], series designation,] and dates of maturity]], in the total amount of _____ Dollars (\$_____) ("Bonds"), numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of the construction of improvements to the sewage works of the City[, to refund interim notes issued in anticipation of the Bonds] and to pay issuance expenses, as authorized by an Ordinance adopted by the Common Council of the City on the ____ day of _____, 2020, entitled "An ordinance concerning the construction of improvements to the sewage works of the City of Goshen, the issuance of revenue bonds to provide the cost thereof, the collection, segregation and distribution of the revenues of said works, the safeguarding of the interests of the owners of said revenue bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in strict compliance with the provisions of IC 36-9-23, as in effect on the issue date of the Bonds ("Act").

[Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the City and the Indiana Finance Authority ("Authority") concerning certain terms and covenants pertaining to the sewage works project and the purchase of this Bond as part of the wastewater loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.]

Pursuant to the provisions of the Act and the Ordinance, the principal and interest of this Bond and all other Bonds of said issue[, including the [Taxable] Sewage Works Revenue Bonds of _____, Series ____ ("Series ____ Bonds")]] and any bonds hereafter issued on a parity therewith, are payable solely from the Sewage Works Sinking Fund (continued by the Ordinance) to be provided from the Net Revenues (herein defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), of the sewage works of the City remaining after the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTS")) of the sewage works of the City. The Bonds rank on a parity with the Outstanding Bonds (as defined in the Ordinance).

The City irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the

Series _____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of [Operation and Maintenance (as defined in the Financial Assistance Agreement)] **OR** [operation, repair and maintenance] of said works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers of the City shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

[The Bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this Bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund a sufficient amount of the Net Revenues of said works to meet: (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due; (b) the necessary fiscal agency charges for paying the bonds and interest; (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due; and (d) an additional amount to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series _____ Bonds].

The Bonds of this issue maturing on January 1, 20____, and thereafter, are redeemable at the option of the City on _____ 1, 20____, or any date thereafter, on [sixty (60)] **OR** [thirty (30)] days' notice, in whole or in part, [in the order of maturity as determined by the City] **OR** [in inverse order of maturity] and by lot within a maturity, at face value together with the following premiums:

___% if redeemed on _____ 1, 20____ or thereafter
on or before _____ 1, 20____;
___% if redeemed on _____ 1, 20____ or thereafter
on or before _____ 1, 20____;
___% if redeemed on _____ 1, 20____, or thereafter
prior to maturity;

plus in each case accrued interest to the date fixed for redemption[; provided however if the Bonds are registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority.

[The Bonds maturing on _____ 1, 20____ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

<u>Date</u>	<u>Term Bond</u>	<u>Amount</u>
-------------	------------------	---------------

*

*Final Maturity]

Each [One Dollar (\$1)] **OR** [Five Thousand Dollar (\$5,000)] principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. [If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [sixty-five (65)] **OR** [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] **OR** [thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank, an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This Bond is transferable or exchangeable only upon the books of the City kept for that purpose at [the] **OR** [a principal corporate trust] office of the Registrar, by the registered owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. The City, the Registrar and any paying agent for this Bond may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This Bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the Bonds as provided in the Ordinance.

The Bonds maturing in any one year are issuable only in fully registered form in the denomination of **[\$1] OR [\$5,000]** or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and complete execution, issuance and delivery of this Bond have been done and performed in regular and due form as provided by law.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Goshen, in Elkhart County, Indiana, has caused this Bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

CITY OF GOSHEN, INDIANA

[SEAL]

By: _____
Mayor

Attest:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

It is hereby certified that this Bond is one of the Bonds described in the Ordinance.

as Registrar

By: _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within Bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A

[To be completed on a separate page]]

[End of Bond Form]

Section 6. Preparation and Sale of BANs and Bonds. The Clerk-Treasurer is hereby authorized and directed to have the BANs and Bonds prepared, and the Mayor and Clerk-Treasurer are hereby authorized and directed to execute the BANs and Bonds in the form and manner herein provided. The Clerk-Treasurer is hereby authorized and directed to deliver the BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of the delivery the Clerk-Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs, not less than the par value of the Bonds if sold to the Authority as part of its SRF Program and not less than 98% of the par value of the Bonds if sold to any other purchaser. The City may receive payment for the Bonds and the BANs in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the City's sewage works to be set aside into the Sinking Fund as herein provided, on a parity with the Outstanding Bonds. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to draw all proper and necessary warrants,

and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Section 7. Sale of Bonds; Award of Bonds. If any series of Bonds are sold at a competitive sale, prior to the sale of any series of Bonds, the Clerk-Treasurer shall cause to be published either: (i) a notice of bond sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale; or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the bid form. The notice may provide, among other things, that the successful bidder shall be required to submit a certified or cashier's check in an amount equal to 1% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in

the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8), one-twentieth (1/20) or one-hundredth (1/100) of one percent (1%). No conditional bid or bid for less than 98% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Clerk-Treasurer may negotiate the sale of the Bonds to the Authority as part of its SRF Program. The Mayor and the Clerk-Treasurer are hereby authorized to (i) submit an application to the Authority as part of its SRF Program, (ii) execute a Financial Assistance Agreement with the Authority with terms conforming to this ordinance and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk Treasurer consistent with the terms of this ordinance. The substantially final form of Financial Assistance

Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by the Common Council, and the Mayor and Clerk-Treasurer are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, such approval to be conclusively evidenced by its execution.

Section 8. Financial Records and Accounts. (a) The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said sewage works and all disbursements made therefrom and all transactions relating to said sewage works. Copies of all such statements and reports, including audits prepared by the State Board of Accounts, shall be kept on file in the office of the Clerk-Treasurer.

(b) If the BANs or Bonds are sold to the Authority as part of its SRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the sewage works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 9. Use of Proceeds. At the time of the delivery of the Bonds, any premium shall be deposited in the Sewage Works Sinking Fund continued in Section 13. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Goshen, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or Construction Account shall be deposited, held, secured or

invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the services of Ice Miller LLP, the City Attorney and Baker Tilly Municipal Advisors, LLC, shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sewage Works Sinking Fund and used solely for the purposes of the Sewage Works Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any Bonds sold to the Authority as part of its SRF Program, to the extent that (a) the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Department and the Authority), the City shall reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve the annual debt service as described in Section 2(b) subject to and upon the terms set forth in the Financial Assistance Agreement.

Section 10. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity

therewith, shall constitute a first charge on all the Net Revenues, on a parity with the Outstanding Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 11. Revenue Fund. All revenues derived from the operation of the sewage works and from the collection of sewage rates and charges (including any System Development Charges that are not considered Net Revenues) shall be deposited in the Sewage Works Revenue Fund ("Revenue Fund"), hereby continued, and segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded, and the costs of replacements, extensions, additions and improvements to the works and any PILOTs shall be paid. Except as permitted hereunder, no moneys derived from the revenues of the sewage works shall be transferred to the General Fund of the City or be used for any purpose not connected with the sewage works, other than to pay PILOTs, so long as any obligations payable from the Net Revenues of the sewage works are outstanding.

Section 12. Operation and Maintenance Fund. There is hereby continued a fund known as the Operation and Maintenance Fund ("O&M Fund"). There shall be transferred from the Revenue Fund and credited to the O&M Fund on the last day of each calendar month, a sufficient amount of the revenues of the sewage works so that the balance in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two (2) calendar months. The moneys credited to the O&M Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in the O&M Fund shall be used for PILOTs,

depreciation, replacements, improvements, extensions or additions. Any balance in said Fund in excess of the expected expense of operation, repair and maintenance for the next succeeding month may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

Section 13. Sewage Works Sinking Fund. (a) A special fund designated "Sewage Works Sinking Fund" ("Sinking Fund") is hereby continued for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of the bonds and interest. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works (including any System Development Charges that are considered Net Revenues) to meet the requirements of the Bond and Interest Account and Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account, described below, equal the principal of and interest on all of the then outstanding bonds.

(b) Bond and Interest Account. The Bond and Interest Account is hereby continued. There shall be credited on the last day of each calendar month from the Revenue Fund to the Bond and Interest Account an amount of Net Revenues equal to the sum of at least one-sixth (1/6) of the interest on all the then outstanding bonds payable on the then next succeeding interest payment date and at least one-sixth (1/6) of the principal of all the then outstanding bonds payable on the then next succeeding principal payment date until the amount of interest and principal payable on the then next succeeding interest and principal payment dates shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay

the bank fiscal agency charges for paying interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account ("Reserve Account"). On the date of delivery of the Bonds, funds on hand of the sewage works, Bond proceeds or a combination thereof may be deposited into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the Outstanding Bonds, the Bonds and any bonds issued in the future by the City which are payable from Net Revenues of the sewage works and which rank on a parity with the Bonds ("Parity Bonds"); (ii) 125% of average annual debt service on the Outstanding Bonds, the Bonds and any Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the Outstanding Bonds, the Bonds and any Parity Bonds ("Reserve Requirement"); provided, however, that if the Authority purchases the Bonds as part of its SRF Program, so long as the Bonds are outstanding and owned by the Authority, the Reserve Requirement shall not be less than the maximum annual debt service on the Outstanding Bonds, the Bonds and any Parity Bonds. The monthly deposits of Net Revenues shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the Outstanding Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and

interest on the Outstanding Bonds, the Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal or interest on the Outstanding Bonds, the Bonds or any Parity Bonds, then such depletion shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be used for the redemption of then outstanding bonds or shall be transferred to the Improvement Fund.

(d) Accounts to be held in Trust. The Sinking Fund, containing the Bond and Interest Account and the Reserve Account, and the Construction Account, may be held by a financial institution acceptable to the Authority as part of its SRF Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 13, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for the Bonds. If the Construction Account is so held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this ordinance and the Financial Assistance Agreement. The Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the

Construction Account in the form of trust agreement as approved by the Mayor and the Clerk-Treasurer, consistent with the terms and provisions of this ordinance.

Section 14. Sewage Works Improvement Fund. Any excess revenues may be transferred or credited from the Revenue Fund to the Sewage Works Improvement Fund ("Improvement Fund"), hereby continued, after meeting the requirements of the O&M Fund and the Sinking Fund, and the Improvement Fund shall be used for improvements, replacements, additions and extensions of the sewage works and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually on January 1 and July 1 in accordance with the Act, and only if all required transfers have been made to the O&M Fund and the Sinking Fund and the accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall it be payable from the O&M Fund or the Sinking Fund. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Section 15. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate banking account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single banking account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts.

All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance. Nothing in this Section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts continued by this ordinance except that (a) the Sinking Fund and Construction Account shall be maintained as a separate bank account from the other Funds and Accounts of the sewage works and (b) the other Funds and Accounts of the sewage works shall be maintained as a separate bank account from the other funds and accounts of the City.

Section 16. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates and charges for the use of and the service rendered by the sewage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works, or that in any way uses or is served by the sewage works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City), provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient so long as the Bonds are outstanding and owned by the Authority as part of its SRF Program, to provide for the proper and reasonable expenses of operation, repair and maintenance or Operation and Maintenance (as defined in the Financial Assistance Agreement) if the Bonds are sold to the Authority as part of its SRF Program, of the sewage works to comply

with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement, and to pay all obligations of the sewage works and of the City with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance, or Operation and Maintenance, as the case may be, of the sewage works and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of such works by and service rendered to the City, and shall be paid by the City as the charges accrue.

Section 17. Defeasance of Bonds. If, when any of the Bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof and coupons then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's sewage works.

Section 18. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City also reserves the right to authorize and issue additional Parity Bonds, payable out of the Net Revenues of its

sewage works, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions, extensions and improvements to the sewage works or to refund obligations of the sewage works, subject to the following conditions:

(a) All required payments into the Sinking Fund and the accounts thereof shall have been made to date in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid in accordance with their terms. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of delivery of the additional Parity Bonds or over a five year or shorter period, in a manner which is commensurate with the requirements set forth in Section 13(c) of this ordinance.

(b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of such Parity Bonds, the sewage rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said period equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued to the final maturity of the then outstanding bonds.

For purposes of this subsection, the records of the sewage works shall be analyzed and all showings shall be prepared by a certified public accountant retained by the City for that purpose. In addition, for purposes of this subsection with respect to any Parity Bonds hereafter issued, while the Bonds remain outstanding and owned by the Authority as part of its SRF Program, Net

Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (b).

(c) The interest on the additional Parity Bonds shall be payable semiannually on the first days of January and July, and the principal on, or mandatory sinking fund redemption dates for the additional Parity Bonds shall be payable semiannually on January 1 and July 1.

(d) If the Authority purchases the Bonds as part of its SRF Program, so long as the Bonds are outstanding and owned by the Authority, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 19. Further Covenants of the City; Maintenance, Insurance, Pledge Not to Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employer's liability and

public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the Common Council. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) The City shall at all times maintain its sewage works in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Outstanding Bonds or the Bonds or BANs herein authorized are outstanding, the City shall acquire and maintain insurance coverage, including fidelity bonds, to protect the sewage works and its operations. If the Authority purchases the Bonds as part of its SRF Program, so long as the Bonds are outstanding and owned by the Authority, such insurance shall be acceptable to the Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. All insurance proceeds and condemnation awards shall be used either in replacing or restoring the property destroyed, damaged or taken; alternatively, they may be applied as Net Revenues of the works, but only with the consent of the Authority, if the Bonds or BANs have been sold to the Authority.

(e) So long as any of the Outstanding Bonds, BANs or Bonds are outstanding, the City shall not mortgage, pledge, sell, transfer, lease or otherwise encumber the sewage works, or any portion thereof, or any interest therein, except only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility, provided that, if the Authority purchases the Bonds as part of its SRF Program, so long as

the Bonds are outstanding and owned by the Authority, the City shall obtain the prior written consent of the Authority.

(f) If the Authority purchases the Bonds as part of its SRF Program and so long as the Outstanding Bonds and the Bonds are outstanding and owned by the Authority, the City shall not without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the sewage works other than for normal operating expenditures or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the sewage works.

(g) Except as hereinbefore provided in Section 18 hereof, so long as any of the Outstanding Bonds and Bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, executed, or issued by the City except such as shall be made subordinate and junior in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed, retired or defeased pursuant to Section 17 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The City shall take all action or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The City shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(i) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will

adversely affect the rights of the owners of the Bonds or BANs nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of the Bonds, BANs or the interest thereon remain unpaid. Except for the changes set forth in Section 22(a)-(g), this ordinance may be amended, however, without the consent of BAN or Bond owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds; provided, however, that if the BANs or Bonds are sold to the Authority as part of its SRF Program the City shall obtain the prior written consent of the Authority.

(j) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer said sewage works, in the event the City shall fail or refuse to fix and collect sufficient rates and charges, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

(k) For purpose this Section 19, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic

payments made from the revenues of the sewage works, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 20. Investment of Funds. (a) The Clerk-Treasurer is hereby authorized to invest money pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Clerk-Treasurer shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Clerk-Treasurer is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Clerk-Treasurer may pay any fees as operation expenses of the sewage works.

Section 21. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or

business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the City enters into a management contract for the sewage works, the terms of the contract shall comply with IRS Revenue Procedure 2017-13 so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall be not an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

(i) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code. If required by the Authority, in connection with the SRF Program, the City is authorized to execute and deliver a form of Rebate Agreement in a form provided by the SRF Program. The Mayor and the Clerk-Treasurer, together or individually, are authorized to complete and execute the Rebate Agreement on behalf of the City in connection with any series of Bonds sold to the Authority as part of the SRF Program.

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 19(i), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the Authority as part of its SRF Program, the City shall obtain the prior written consent of the Authority; and provided, further, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or

- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement; or
- (g) The extension of mandatory sinking fund redemption dates, if any.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk-Treasurer of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in

any respect with the consent of the City and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

Section 23. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the Authority as part of its SRF Program, the Financial Assistance Agreement shall serve as the Purchase Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute a Purchase Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. Rates and Charges. The estimates of the rates and charges of the sewage works are set forth in Ordinance No. 4940 adopted on March 20, 2018. Such ordinance is incorporated herein by reference.

Section 25. Tax Exemption. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Sections are unnecessary to preserve the Tax Exemption.

Section 26. Ordinance Constitutes Resolution under IC 36-9-23. For purposes of Sections 10 and 12 of IC 36-9-23, this ordinance shall constitute and be deemed as the "resolution" as such term is used under Sections 10 and 12 of IC 36-9-23.

Section 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided, however, that this ordinance shall not be construed as modifying, amending or repealing the ordinances authorizing the Outstanding Bonds or as adversely affecting the rights of the holders of the Outstanding Bonds.

Section 28. Effective Date. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Passed and adopted by the Common Council of the City of Goshen, Indiana on the _____ day of January, 2020.

COMMON COUNCIL OF THE CITY OF
GOSHEN, INDIANA

Presiding Officer

ATTEST:

Clerk-Treasurer

Presented by me to the Mayor of the City of Goshen, Indiana on the ____ day of January, 2020, at the hour of __:___.m.

Clerk-Treasurer

This ordinance approved and signed by me, the Mayor of the City of Goshen, Indiana, on the ____ day of January, 2020, at the hour of __:___.m.

Mayor

EXHIBIT A

Project Description

The Project is composed of three (3) projects that are to be bid as separate projects including the Wastewater Treatment Plant Improvements – Project A, the Lift Station Improvements – Project B, and Rock Run Sewer Improvements – Project C.

The WWTP Improvements Project consists of upgrades to the existing facilities to improve preliminary treatment, primary treatment, secondary treatment, and sludge handling processes as well as general site improvements. The upgrades generally consist of the following:

- Improvements to the preliminary treatment process include replacement of four (4) raw sewage pumps with four (4) new dry pit submersible pumps and VFDs including new intake and discharge piping and valves, replacement of the two (2) existing grit chamber mechanisms with stacked modular tray grit removal units, replacement of three (3) grit pumps, and replacement of two (2) grit concentrators plus construction of a new vacuum-truck unloading facility.
- Improvements to the primary treatment process include replacement of all the existing sludge removal mechanism equipment, rotating scum troughs, baffles, weirs, and effluent troughs plus rehabilitation of the existing clarifier concrete walls for six (6) primary clarifiers.
- Improvements to the secondary treatment process include replacement of two (2) existing aeration blowers with high-speed turbo blowers; construction of a fifth aeration basin; conversion of the existing first stage aerobic selector zones to anaerobic zones with hyperbolic mixers; installation of an automated DO control system in all aeration basins that includes new air piping to each drop pipe along with air flow meters, actuated air flow control valves and DO sensors; and construction of a new aeration effluent lift station with four (4) submersible pumps.
- Improvements to the bio-solids handling process include replacement of the two (2) existing sludge digester boilers along with new digester gas feed piping to the boilers, construction of a new Sludge Dewatering Building with two (2) screw presses and two (2) polymer feed systems to condition the sludge before dewatering, and two (2) new sludge transfer pumps located in the Digester Building.
- General site improvements include expansion of the existing Maintenance Building as a bid alternate; replacement of deteriorated railing, grating, and stairs throughout the plant; upgrades to the existing SCADA system; removal of a motor control center susceptible to flooding; installation of a flood protection levee with a storm water pumping station around the existing electrical substation; and installation of additional site lighting.
- Closure and placing of fill in the existing sludge storage lagoon.

The Lift Station Improvements project consists of upgrades to 25 of the existing lift stations throughout the City wastewater collection system. Lift station upgrades are categorized as Category 1, Category 2, and Category 3 upgrades. A summary of the upgrades is as follows:

- Ten (10) of the lift stations will receive a Category 1 upgrade, which consists of new PLCs, radio telemetry equipment, motor starters, phase monitoring, manual transfer switch to a generator, hand switches, pilot lights, electrical service disconnects, and conduits.
- Seven (7) of the lift stations will receive a Category 2 upgrade, which consists of new PLCs, radio telemetry equipment, motor starters, phase monitoring, a manual transfer switch to a generator, hand switches, and pilot lights.
- Four (4) of the lift stations will receive a Category 3 upgrade, which consists of new PLCs and radio telemetry equipment.
- One (1) lift station will receive a new cellular modem.
- Two (2) lift stations will be replaced entirely and the pumps, piping, and HVAC of a third lift station will be replaced in an existing structure that is to remain. These three (3) lift stations will also receiving a Category 1 telemetry and controls upgrade.

The Rock Run Sewer Improvements project consists mainly of installing approximately 1,300 feet of 42-inch sewer generally parallel to the existing Rock Run Sewer, redirecting flow to the new sewer, and abandoning the existing sewer. Portions of the sewer alignment will pass through contaminated soils which have previously been encapsulated and special soil disposal and backfill procedures must be used.

Other work for the Rock Run Sewer Improvements will include installing approximately 600 feet of 24-inch sewer; boring and jacking approximately 120 feet of a 54-inch steel casing pipe with a 42-inch carrier pipe; installing three (3) siphon pipes each approximately 260 feet in length with nominal 8-inch, 16-inch and 24-inch diameter siphon piping; construction of inlet and outlet siphon pipe structures; construction of eight (8) new sanitary manholes ranging in size from 48 inches to 96 inches in diameter; abandoning and grout filling approximately 2,300 feet of existing sewer; removing approximately 125 feet of existing sewer; removal of two (2) existing manholes; abandonment of nine (9) existing manholes; removal of an existing inlet chamber, outlet chamber and diversion structure; various storm sewer modifications; traffic maintenance; erosion control; and site restoration. Also included are curb and gutter, sidewalk, and pavement improvements along Main Street between the Rock Run Creek Bridge and approximately 500 feet to the north.

EXHIBIT B

Form of Financial Assistance Agreement

(Attached)

STATE OF INDIANA
WASTEWATER REVOLVING LOAN PROGRAM

FINANCIAL ASSISTANCE AGREEMENT made as of this ____ day of _____ 20____ by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Goshen (the “Participant”), a political subdivision as defined in I.C. 5-1.2-2-57 and existing under I.C. 36-4, witnesseth:

WHEREAS, the State’s Wastewater Revolving Loan Program (the “Wastewater SRF Program”) has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 5-1.2-10 (the “Wastewater SRF Act”), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the “Wastewater SRF Fund”); and

WHEREAS, pursuant to the Wastewater SRF Act, the State was authorized to fund the Wastewater SRF Program with federal capitalization grants, together with required state matching funds therefor, and to operate the Wastewater SRF Program, and prior to May 15, 2005 so funded and operated the Wastewater SRF Program; and

WHEREAS, pursuant to Public Law 235 - 2005, by operation of law and effective May 15, 2005, the Finance Authority has become the successor to the State in all matters related to the Wastewater SRF Program (including use and acceptance of federal capitalization grants and required state matching funds and operation of the Wastewater SRF Program); and

WHEREAS, the Participant is a duly existing political subdivision of the State, lawfully empowered to undertake all transactions and execute all documents mentioned or contemplated herein; and

WHEREAS, the Participant has determined to undertake a wastewater treatment system project (as more fully described herein, the “Project”) and to borrow money from the Wastewater SRF Program to construct and acquire the Project; and

WHEREAS, the Participant has previously entered into (i) two Financial Assistance Agreements with the Finance Authority, dated as of October 15, 2009 and June 30, 2016 to borrow money from the Drinking Water SRF Program, to construct and acquire separate projects as described and defined therein (the “Prior Drinking Water Agreements”), and (ii) two Financial Assistance Agreements with the Finance Authority, dated as of October 15, 2009 and March 1, 2010 to borrow money from the Wastewater SRF Programs, to construct and acquire separate projects as described and defined therein (the “Prior Wastewater Agreements” and, together with the Prior Drinking Water Agreements, collectively, the “Prior Agreements”); and

WHEREAS, the Finance Authority and the Participant desire to set forth the terms of such financial assistance as hereinafter provided.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Finance

Authority and the Participant agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall, for all purposes of this Agreement, have the following meaning:

“Agency” shall mean the United States Environmental Protection Agency or its successor.

“Asset Management Program” means programs, plans and documentation (including a Fiscal Sustainability Plan) that demonstrates that the Participant has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works and which is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

“Authorizing Instrument(s)” shall mean the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant pursuant to which the Bonds are issued in accordance with State law.

“Authorized Representative” shall mean the Clerk-Treasurer of the Participant or such other officer, official, or representative of the Participant duly authorized to act for and on behalf of the Participant as provided for herein.

“Bond” or **“Bonds”** shall mean the instrument(s) which evidence(s) the Loan, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

“Bond Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument from which payment of the principal of and interest on the Bonds is required to be made by the Participant.

“Business Day” shall mean any day other than a Saturday, Sunday or State legal holiday or any other day on which financial institutions in the State are authorized by law to close and to remain closed.

“Clean Water Act” shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, and other laws, regulations and guidance supplemental thereto (including the 2014 Appropriations Act and the Water Resources Reform and Development Act of 2014), as amended and supplemented from time to time.

“Code” shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, together with the regulations related thereto.

“Construction Fund” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument to receive proceeds of the

Bonds and from which Eligible Costs of the Project may be paid by the Participant.

Credit Instrument means a letter of credit, surety bond, liquidity facility, insurance policy or comparable instrument furnished by a Credit Provider that is used by the Participant to meet all or a portion of any debt service reserve requirement securing the Bonds or any other bonds payable from the revenues of the Treatment Works, which bonds are on a parity with the Bonds.

Credit Provider means a bank, insurance company, financial institution or other entity providing a Credit Instrument.

Department shall mean the Indiana Department of Environmental Management created under I.C. 13-13-1-1 or its successor.

Deposit Agreement shall mean an agreement between the Participant and the Deposit Agreement Counterparty in such form as from time to time determined by the Finance Authority pursuant to which (a) the Participant's Bond Fund (including any reserve account established and created by the Participant pursuant to the Authorizing Instrument related thereto) shall be held by such Deposit Agreement Counterparty and available for payment of the Bonds and any other similar obligations of the Participant that are payable from the Bond Fund regardless whether they are on a parity basis, (b) such Deposit Agreement Counterparty serves as the paying agent for the Bonds and any other such similar obligations of the Participant that are payable from the Bond Fund, and (c) the Participant's Construction Fund may be held by such Deposit Agreement Counterparty upon any Loan disbursement by the Finance Authority to it from time to time.

Deposit Agreement Counterparty shall mean the financial institution that enters into a Deposit Agreement with the Participant, which financial institution shall be approved by the Finance Authority and may be replaced by the Finance Authority from time to time.

Director of Environmental Programs shall mean the person designated by the Finance Authority as authorized to act as the Director of Environmental Programs (which designation includes such Director's assumption of the duties previously assigned to the Wastewater SRF Program Representative and the Wastewater SRF Program Director) and where not limited, such person's designee.

Disbursement Agent shall mean the party disbursing the Loan to or for the benefit of the Participant, which shall be the Trustee unless amounts are held in the Construction Fund, in which case the Disbursement Agent shall thereafter be the Deposit Agreement Counterparty as the party disbursing amounts that are held in the Construction Fund unless otherwise agreed by the Finance Authority.

Disbursement Request shall mean a request for a disbursement of the Loan made by an Authorized Representative in such form as the Finance Authority may from time to time prescribe.

Eligible Cost shall mean and include, whether incurred before or after the date of this Agreement, all costs which have been incurred and qualify for Financial Assistance, including

engineering, financing and legal costs related thereto.

“Finance Authority” shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality of the State.

“Finance Authority Bonds” shall mean any Finance Authority State Revolving Fund Program Bonds or other similar obligations of the Finance Authority issued as a part of the Wastewater SRF Program within the meaning of the Wastewater SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Clean Water Act, including the Loan.

“Fiscal Sustainability Plan” means in connection with a project that provides for the repair, replacement, or expansion of an existing Treatment Works, a plan that is consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act and includes (a) an inventory of critical assets that are a part of the Treatment Works, (b) an evaluation of the condition and performance of inventoried assets or asset groupings; (b) a certification that the Participant has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (d) a plan for maintaining, repairing, and, as necessary, replacing the Treatment Works and a plan for funding such activities.

“Loan” shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, constructing, renovating, improving and expanding of the Participant’s Treatment Works or refinance an existing debt obligation where such debt was incurred and building of such systems began after March 7, 1985, but does not mean the provision of other Financial Assistance.

“Loan Reduction Payment” shall mean in any circumstances where there is a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund, any action causing such balance to be applied to a reduction in the maximum aggregate amount of the Loan outstanding other than pursuant to regularly scheduled principal payments or optional redemptions applicable to the Bonds. A Loan Reduction Payment shall not be applicable unless Loan amounts are held in the Construction Fund.

“Non-Use Close-out Date” shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis (which shall also be deemed to have occurred when and if such amounts have been deposited in the Participant’s Construction Fund) or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

“Non-Use Fee” shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Wastewater SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur. A Non-Use Fee shall not be

applicable if the full amount of the Loan has been disbursed and deposited in the Participant's Construction Fund by the Non-Use Assessment Date.

"Non-Use Assessment Date" shall mean [_____ 1, 20___] and the first day of each sixth (6th) calendar month thereafter unless and until the Non-Use Close-out Date occurs in advance of any such Non-Use Assessment Date.

"Operation and Maintenance" shall mean the activities required to assure the continuing dependable and economic function of the Treatment Works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Treatment Works, including financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning and operating activities.

(2) Maintenance shall mean the preservation of the functional integrity and efficiency of equipment and structures by implementing and maintaining systems of preventive and corrective maintenance, including replacements.

"Plans and Specifications" shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

"Preliminary Engineering Report" shall mean the information submitted by the Participant that is necessary for the Finance Authority to determine the technical, economic and environmental adequacy of the proposed Project.

"Project" shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

"Purchase Account" shall mean the account by that name created by the Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

"SRF Policy Guidelines" shall mean guidance of general applicability (as from time to time published, amended and supplemented by the Finance Authority) pertaining to participants utilizing financial assistance in connection with their projects funded in whole or in part through the Wastewater SRF Program.

"State" shall mean the State of Indiana.

"Substantial Completion of Construction" shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable

of functioning as designed.

“System Development Charges” shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges applicable to the Treatment Works that are available for deposit under the Authorizing Instrument.

“Treatment Works” shall mean any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

“Trustee” shall mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, in its capacity as trustee or its successor under the Wastewater SRF Indenture.

“2014 Appropriations Act” shall mean the Consolidated Appropriations Act, 2014 (also known as H.R. 3457), and other laws, regulations and guidance supplemental thereto (including the Clean Water Act), as amended and supplemented from time to time.

“Wastewater SRF Fund” shall mean the wastewater revolving loan fund as established by I.C. 5-1.2-10-2.

“Wastewater SRF Indenture” shall mean the Seventh Amended and Restated Wastewater SRF Trust Indenture, dated as of September 1, 2019 between the Finance Authority (as successor by operation of law to the State in all matters related to the Wastewater SRF Program) and the Trustee, as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed [] Dollars (\$[]) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report (“Planning”), (b) eligible design services for the production of Plans and Specifications (“Design”) and (c) eligible construction costs, including financing and legal costs (“Construction”). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Accounts or from other sources that the Finance Authority may, in its sole discretion, designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: The Bank of New York, ABA 021 000 018, For Credit to 610026840C, Account Name: City of Goshen Sewage Works, Attn: Derick Rush. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) Until paid, the Bonds will bear interest at the per annum rate of [] percent ([]%). Such interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months, and be as provided in I.C. 5-1.2-10-15 and -20. Interest, if any, on the Bonds will be payable on January 1 and July 1 of each year, commencing [] 1, 20[]. The Bonds will be in the aggregate principal amount of [] Dollars (\$[]). Subject to Section 2.05 and 2.06 herein, the Bonds will mature on January 1 and July 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in the schedule contained in the attached Exhibit B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is thirty-five (35) years after the date of this Agreement. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on such date.

(b) The Bonds will be subject to redemption by the Participant as provided in the Authorizing Instrument; provided however that in no event shall the Participant exercise any provision contained in the Authorizing Instrument or the Bonds permitting a redemption of the Bonds at the option of the Participant unless and until such has been consented by the Authority. The Loan, and the Bonds evidencing it, will be subject to payment by the Participant as provided in this Agreement.

(c) The form and other terms of the Bonds will be in conformity with the Authorizing Instrument.

(d) The additional terms contained in the attached Exhibit D are applicable to this Loan (as and to the extent set forth in Exhibit D) to the same effect as if such were set forth in this section.

Section 2.03. Disbursement Conditions. Each of the following shall be a condition precedent to the disbursement of the Loan or any portion thereof (including from the Construction Fund):

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. Additionally costs related Planning and Design shall only be Eligible Costs upon compliance with paragraph A of the attached Exhibit D. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

(b) No representation, warranty or covenant of the Participant contained in this Agreement or in any paper executed and delivered in connection with the transactions contemplated by this Agreement shall be false or inaccurate in any material respect.

(c) The Participant shall undertake and faithfully perform each of its obligations, agreements and covenants contained in this Agreement, the Authorizing Instrument and the Bonds.

(d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account or from other sources that the Finance Authority may, in its sole discretion, designate; provided however, once Loan proceeds have been deposited in the Construction Fund, such condition shall be deemed satisfied.

(e) The Participant shall have undertaken all actions necessary to comply with and satisfy the conditions and requirements for a Loan secured with money made available from the Wastewater SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 5-1.2-10, SRF Policy Guidelines, the Clean Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Wastewater SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, (i) reduce the aggregate amount of the Loan to the amount then disbursed and

outstanding under this Agreement and (ii) if any amounts are held in the Construction Fund, require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds. Upon giving notice to the Participant of such action, no further Loan disbursement (including from the Construction Fund) may be made under this Agreement unless consented to by the Finance Authority.

(g) In the event the Bonds are payable from rates and charges of the Treatment Works and if requested by the Finance Authority, the Participant shall provide evidence satisfactory to the Finance Authority demonstrating that such rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (including the Bonds).

Section 2.04. Disbursement Procedures. Loan proceeds (including any held from time to time in the Construction Fund) shall be disbursed to the Participant by the Disbursement Agent for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. The Finance Authority may, in its discretion, cause Loan disbursements to be made from time to time, in whole or in part, to the Participant's Construction Fund for disbursement consistent with this Agreement. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Disbursement Agent for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. The deposit of Loan proceeds in the Construction Fund shall be deemed to be a purchase of the Bonds. Interest on the Loan commences on disbursement of the Loan to or for the benefit of the Participant (including any amounts disbursed to the Construction Fund) by the Finance Authority and the Bonds shall be deemed to be purchased in the full amount thereof. Each disbursement (including any amounts disbursed from the Construction Fund) shall be made pursuant to a Disbursement Request. In the event any Loan disbursement (including any amounts disbursed from the Construction Fund) shall be made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Disbursement Agent (and if made from any amounts held in the Construction

Fund, shall be immediately deposited by the Participant into such Construction Fund) and thereafter may, subject to the terms and conditions set forth in this Agreement, be applied thereafter to pay Eligible Costs of the Project by the Participant.

Section 2.06. Acknowledgment of Amount of Loan; Final Disbursement. (a) Within 30 days after any request by the Finance Authority from time to time, the Participant shall execute and deliver to the Finance Authority an acknowledgment in the form prescribed by the Finance Authority which acknowledges the outstanding principal of and interest on the Bonds. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after Substantial Completion of Construction. After Substantial Completion of Construction, upon the request of the Finance Authority, the Participant shall replace, at its expense, the Bonds with substitutes issued pursuant to the Authorizing Instrument to evidence the outstanding principal under the Loan.

(b) In the event there remains a balance (inclusive of Loan proceeds and any earnings) in the Construction Fund on the date that is the earlier of (i) one year after Substantial Completion of Construction or (ii) three (3) years after the dated date of the Bonds (or in either such circumstance, such later date as the Finance Authority may approve in its discretion), the Participant agrees to make a Loan Reduction Payment, to the Finance Authority within 10 days after any Finance Authority written demand. Any Loan Reduction Payment shall be applied to pay principal in such amounts and with such maturities as achieves as level debt service as practicable consistent with methodology prescribed in the Authorizing Instrument and as originally applied to the Bonds, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to the Loan Reduction Payment shall be unaffected by such payment. If the Participant fails to make such Loan Reduction Payment by such date, the Finance Authority and Deposit Agreement Counterparty are authorized to cause any balance held in the Construction Fund to be so applied without further direction and authorization from the Participant. Notwithstanding the foregoing, if requested by the Finance Authority, in lieu of the Participant making a Loan Reduction Payment, the Finance Authority may in its discretion require the Participant to hold any remaining balance (inclusive of Loan proceeds and any earnings) in the Construction Fund until such amounts may be applied on the first optional redemption date applicable to the Bonds, and upon any such request, the Participant agrees to cause such amounts to be so held and applied on such date.

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 3.01. Planning, Design and Construction Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

- (a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.
- (b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.
- (c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted on regular reporting cycles consistent with SRF Policy Guidelines commencing after such agreement or subagreement is awarded.)
- (d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Treatment Works.
- (e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority of the Preliminary Engineering Report.
- (f) Obtain the property rights necessary to construct the Treatment Works and, in procuring any such rights comply with federal and State law.
- (g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.
- (h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 (“Pre-award Compliance Review Report for Wastewater Treatment Construction Grants”) and such other forms as may be required by the Clean Water Act or SRF Policy Guidelines.
- (i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority of Project change orders, (2) obtaining approval from the Director of Environmental Programs of any Project change order which significantly

changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Treatment Works and (3) the books and other financial records of the Treatment Works, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant's contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

(m) Upon Substantial Completion of Construction and when requested by the Finance Authority, provide audited reports to the Finance Authority to permit the Finance Authority to determine that the Loan proceeds have been used in compliance with this Agreement.

(n) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, consistent with SRF Policy Guidelines, certify to the Finance Authority that the Project meets performance standards, or if not met, (1) submit to the Finance Authority (or if directed by the Finance Authority, to the Department) a corrective action plan and (2) promptly and diligently undertake any corrective action necessary to bring the Project into compliance with such standards.

(o) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, provide as-built plans for the Project to the Finance Authority (or if directed by the Finance Authority, to the Department).

Section 3.02. General Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Comply with all applicable federal, State and local statutes, rules and regulations relating to Operation and Maintenance.

(b) (1) Own, operate and maintain the Project and the Treatment Works for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Treatment Works in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Treatment Works or any portion thereof or any interest therein without the prior written consent of the Finance Authority.

(c) Obtain and maintain the property rights necessary to operate and maintain the Treatment Works, and in procuring any such rights, comply with federal and State law.

(d) Acquire and maintain insurance coverage acceptable to the Finance Authority, including fidelity bonds, to protect the Treatment Works and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under State law. Insurance proceeds and condemnation awards shall be used to replace or repair the Treatment Works unless the Finance Authority consents to a different use of such proceeds or awards.

(e) Establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) in accordance with (1) generally accepted governmental accounting principles, as promulgated by the Government Accounting Standards Board (including GASB No. 34 standards relating to the reporting of infrastructure) and (2) the rules, regulations and guidance of the State Board of Accounts.

(f) Provide to the Finance Authority such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) such other information requested or required of the Finance Authority or the Participant by the Agency.

(g) Provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Treatment Works, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Loan has been repaid), which audit (i) shall have been performed by the Indiana State Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

(h) Develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) of the Participant that meets SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act. The Participant acknowledges that its agreement to develop, certify, implement and maintain an Asset Management Program (including a Fiscal Sustainability Plan) as provided in this subsection was a condition of the Loan. Unless the Participant's Asset Management Program (including a Fiscal Sustainability Plan) was certified prior to the date of this Agreement, the Participant agrees to submit a certification (on and in a form as provided

by the Finance Authority) related to the Participant's Asset Management Program (including a Fiscal Sustainability Plan) prior to submitting its request for a final Loan disbursement related to the Project. Over the term of the Loan, the Participant further agrees to continue to update, implement and maintain the Participant's Asset Management Program (including a Fiscal Sustainability Plan) to assure it has the financial, managerial, technical, and legal capability to operate and maintain its Treatment Works consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

(i) Provide notice to the Finance Authority under the circumstances contemplated, and undertake inspections as required, by SRF Policy Guidelines.

(j) (1) Establish and maintain just and equitable rates and charges for the use of and the service rendered by the Treatment Works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Treatment Works, or that in any way uses or is served by the Treatment Works, (2) establish, adjust and maintain rates and charges at a level adequate to produce and maintain sufficient revenue (when determined including user and other charges, fees, income or revenues available to the Participant, provided that to the extent permitted by law System Development Charges shall be excluded when determining if such are sufficient) to provide for the proper Operation and Maintenance of the Treatment Works, to comply with and satisfy all covenants contained herein and to pay all obligations of the Treatment Works and of the Participant with respect thereto, and (3) if and to the extent Bonds are payable from property taxes, levy each year a special ad valorem tax upon all property located in the boundaries of the Participant, to pay all obligations of the Participant with respect thereto.

(k) If the Bonds are payable from the revenues of the Treatment Works, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Treatment Works without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Treatment Works; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Treatment Works, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Treatment Works, or to refund obligations of the Treatment Works, subject to the conditions, if any, in the Authorizing Instrument.

(l) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et seq., the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders 11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

(m) Undertake all actions necessary to investigate all potential, material claims which the Participant may have against other persons with respect to the Treatment Works and the Project and take whatever action is necessary or appropriate to (1) recover on any

actionable, material claims related to the Project or the Planning, Design or Construction thereof, (2) meet applicable Project performance standards and (3) otherwise operate the Treatment Works in accordance with applicable federal, State and local law.

(n) Not modify, alter, amend, add to or rescind any provision of the Authorizing Instrument without the prior written consent of the Finance Authority.

(o) In the event the Participant adopts an ordinance or resolution to refund the Bonds, within 5 days of the adoption of the ordinance or resolution, provide written notice to the Finance Authority of the refunding. Any refunding of the Bonds shall only be undertaken by the Participant with the prior written consent of the Finance Authority.

(p) In any year in which total expenditures of Federal financial assistance received from all sources exceeds \$750,000 the Participant shall comply with the Federal Single Audit Act (SAA) of 1984, as amended by the Federal Single Audit Act Amendments of 1996 (see 2 CFR 200 Subpart F) and have an audit of their use of Federal financial assistance. The Participant agrees to provide the Finance Authority with a copy of the SAA audit within 9 months of the audit period.

(q) Inform the Finance Authority of any findings and recommendations pertaining to the SRF program contained in an audit of 2 CFR 200 Subpart F (a/k/a "Super Circular") matters in which SRF Federal financial assistance was less than \$750,000.

(r) Initiate within 6 months of the audit period corrective actions for those audit reports with findings and recommendations that impact the SRF financial assistance.

(s) Notwithstanding anything in the Authorizing Instrument related to the Bonds (or in any authorizing instrument related to any other outstanding bonds payable from the revenues of the Treatment Works which are on a parity with the Bonds) to the contrary, in the event any Credit Provider that has provided a Credit Instrument fails to be rated on a long term basis at least "A-/A3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors (such Credit Instrument, a "Disqualified Instrument"), within 12 months of such failure (or pursuant to such other schedule as may be approved by the Finance Authority), the Participant shall cause cash (or a replacement Credit Instrument from a Credit Provider that is rated on a long term basis at least "AA-/Aa3" by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, and Moody's Investors Service, Inc., and their successors)(or some combination thereof) in an aggregate amount equal to the stated credit available under the Disqualified Instrument(s) to be deposited in the related reserve account(s) in lieu of such Disqualified Instrument(s). No Disqualified Instrument shall be included as part of the reserve balance which satisfies any such reserve requirement under any such authorizing instrument. Nothing in this subsection shall waive or modify additional requirements contained in any such authorizing instrument (including the Authorizing Instrument related to the Bonds); the provisions of this subsection and any such authorizing instrument (including the Authorizing Instrument related to the Bonds) shall both be required to be met. Unless and until notice shall be given by the Finance

Authority to the Participant, a surety policy issued by MBIA Insurance Corporation or Financial Guaranty Insurance Company that has been reinsured by National Public Finance Guarantee Corporation (formerly known as MBIA Insurance Corp. of Illinois) shall not be treated as a Disqualified Instrument.

(t) (i) comply with Title 40 CFR Part 34 (New Restrictions on Lobbying) and the Byrd Anti-Lobbying Amendment ("Lobbying Restrictions"); (ii) provide certifications and disclosures related to Lobbying Restrictions in a form and manner as may from time to time be required by SRF Policy Guidelines or the Clean Water Act including without limitation the Lobbying Restrictions; and (iii) pay any applicable civil penalty required by the Lobbying Restrictions as may be applicable to making a prohibited expenditure under Title 40 CFR Part 34, or failure to file any required certification or lobbying disclosures. The Participant understands and acknowledges that pursuant to such Lobbying Restrictions, the making of any such prohibited expenditure, or any such failure to file or disclose, is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

(u) Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

(v) Comply with all record keeping and reporting requirements under the Clean Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

(w) Whenever from time to time requested by the Finance Authority, submit evidence satisfactory to the Finance Authority demonstrating that the Participant's rates and charges are at a level adequate to produce and maintain sufficient net revenue after providing for the proper Operation and Maintenance of the Treatment Works, on a proforma basis consistent with SRF Policy Guidelines, to provide 1.25x coverage on all obligations of the Treatment Works (including the Bonds) and, in the event the Participant's rates and charges are insufficient to demonstrate such coverage, then to the extent permitted by law annually enact an increase in its rates and charges reasonably designed to be consistent with SRF Policy Guidelines regarding such coverage.

(x) Notwithstanding any provision of the Authorization Instrument to the contrary,

not make any payment in lieu of property taxes from any account of the Treatment Works (i) if the Finance Authority provides notice to the Participant that the Finance Authority has determined in its reasonable discretion that such a transfer adversely affects the Finance Authority and (ii) more frequently than semiannually if the Authority provides notice to the Participant so requiring such a limitation on frequency.

(y) Comply with all requirements of this Agreement applicable to the Loan (including those imposed by the attached Exhibit D).

Section 3.03. Representations and Warranties of the Participant. After due investigation and inquiry, the Participant hereby represents and warrants to the Finance Authority that:

(a) The Participant is duly organized and existing under State law, and constitutes a “political subdivision” within the meaning of I.C. 5-1.2-2-57) and a “participant” within the meaning of I.C. 5-1.2-2-54. The Project and the Treatment Works are subject to I.C. 36-9-23.

(b) The Participant has full power and authority to adopt the Authorizing Instrument, enter into this Agreement and issue the Bonds and perform its obligations hereunder and thereunder.

(c) By all required action, the Participant has duly adopted the Authorizing Instrument and authorized the execution and delivery of this Agreement, the Bonds and all other papers delivered in connection herewith.

(d) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(e) There is no litigation pending or, to the knowledge of the Participant, upon investigation, threatened that (1) challenges or questions the validity or binding effect of this Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(f) The Participant has not at any time failed to pay when due interest or principal on, and it is not now in default under, any warrant or other evidence of obligation or indebtedness of the Participant.

(g) All information furnished by the Participant to the Finance Authority or any of the persons representing the Finance Authority in connection with the Loan or the Project is accurate and complete in all material respects including compliance with the obligations, requirements and undertakings imposed upon the Participant pursuant to this Agreement.

(h) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement.

(i) For any outstanding bonds payable from the revenues of the Treatment Works which are on a parity with the Bonds, each Credit Provider, if any, that has provided a Credit Instrument is at least rated on a long term basis "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc., and their successors, except as represented and set forth in Exhibit C attached thereto (and with respect to which true, accurate and complete copies of each such Credit Instrument have been delivered to the Finance Authority).

Each of the foregoing representations and warranties will be deemed to have been made by the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds (including from the Construction Fund). Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

Section 3.04. Covenants Regarding Assignment. The Participant acknowledges that the Finance Authority may pledge, sell or assign the Bonds or cause the Bonds to be pledged, sold or assigned, and certain of its rights related thereto, as permitted pursuant to Section 5.02 herein. The Participant covenants and agrees to cooperate with and assist in, at its expense, any such assignment. Within 30 days following a request by the Finance Authority, the Participant covenants and agrees with the Finance Authority that the Participant will, at its expense, furnish any information, financial or otherwise, with respect to the Participant, this Agreement, the Authorizing Instrument and the Bonds and the Treatment Works as the Finance Authority reasonably requests in writing to facilitate the sale or assignment of the Bonds.

Section 3.05. Nature of Information. All information furnished by the Participant to the Finance Authority or any person representing the Finance Authority in connection with the Loan or the Project may be furnished to any other person the Finance Authority, in its judgment, deems necessary or desirable in its operation and administration of the Wastewater SRF Program.

Section 3.06. Tax Covenants. The Participant hereby covenants that it will not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause to permit to be taken by it or by any party under its control, any action that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Code. The Participant further covenants that it will not do any act or thing that would cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code or "arbitrage bonds" within the meaning of Section 148 of the Code. In furtherance and not in limitation of the foregoing, the Participant shall take all action necessary and appropriate to comply with the arbitrage rebate requirements under Section 148 of the Code to the extent

applicable to the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

Section 3.07. Non-Discrimination Covenant. Pursuant to and with the force and effect set forth in I.C. 22-9-1-10, the Participant hereby covenants that the Participant, and its contractor and subcontractor for the Project, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

(End of Article III)

ARTICLE IV

DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may (x) require a Loan Reduction Payment pursuant to Section 2.06 herein as if it were a date that was three (3) years after the dated date of the Bonds, (y) in the event a Deposit Agreement has not previously been entered into related to the Participant's Bond Fund (including any related reserve), require the Participant to enter into a Deposit Agreement (or to modify any such previously entered Deposit Agreement) and the Participant shall enter into (or modify) such an agreement within 5 days after any such demand and (z) without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

Section 4.02. Effect of Default. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Participant or relieve the Participant from paying any Bond or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Participant may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. The obligations of the Finance Authority hereunder do not create a debt or a liability of the Finance Authority or the State under the constitution of the State or a pledge of the faith or credit of the Finance Authority or the State and do not directly, indirectly or contingently, obligate the Finance Authority or the State to levy any form of taxation for the payment thereof or to make any appropriation for their payment. Neither the Finance Authority or the State, nor any agent, attorney, member or employee of the Finance Authority or the State shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

Section 4.03. Defaults under Prior Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreements shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreements and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

Section 5.01. Citations. Any reference to a part, provision, section or other reference description of a federal or State statute, rule or regulation contained herein shall include any amendments, replacements or supplements to such statutes, rules or regulation as may be made effective from time to time. Any reference to a Loan disbursement shall include any disbursement from the Construction Fund. Any use of the term “including” herein shall not be a limitation as to any provision herein contained but shall mean and include, without limitation, the specific matters so referenced.

Section 5.02. Assignment. Neither this Agreement, nor the Loan or the proceeds thereof may be assigned by the Participant without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void. The Finance Authority may at its option sell or assign all or a portion of its rights and obligations under this Agreement, the Authorizing Instrument, and the Bonds to an agency of the State or to a separate body corporate and politic of the State or to a trustee under trust instrument to which the Finance Authority, the State or any assignee is a beneficiary or party. The Finance Authority may at its option pledge or assign all or a portion of its rights under this Agreement, the Authorizing Instrument, and the Bonds to any person. The Participant hereby consents to any such pledge or assignment by the Finance Authority. This Agreement shall be binding upon and inure to the benefit of any permitted secured party, successor and assign.

Section 5.03. No Waiver. Neither the failure of the Finance Authority nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise of any other right, power or privilege.

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under any of the Prior Agreements except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the

Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

Section 5.07. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Agreement on the part of the Finance Authority or the Participant to be performed shall be deemed by a court of competent jurisdiction to be contrary to law or cause the Bonds to be invalid as determined by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements and waived and shall in no way affect the validity of the other provisions of this Agreement.

Section 5.08. Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally or sent or transmitted to the appropriate destination as set forth below in the manner provided for herein. Notice to the Finance Authority shall be addressed to:

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275
Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

or at such other address(es) or number(s) and to the attention of such other person(s) as the Finance Authority may designate by notice to the Participant. Notices to the Participant shall be addressed to:

City of Goshen, Indiana
111 E. Jefferson Street
Goshen, Indiana 46528-3784
Attention: Clerk-Treasurer

or at such other address(es) or number(s) and to the attention of such other person(s) as the Participant may designate by notice to the Finance Authority. Any notice hereunder shall be deemed to have been served or given as of (a) the date such notice is personally delivered, (b) three (3) Business Days after it is mailed U.S. mail, First Class postage prepaid, (c) one (1) Business Day after it is sent on such terms by Federal Express or similar next-day courier, or (d) the same day as it is sent by facsimile transmission with telephonic confirmation of receipt by the person to whom it is sent.

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (4) for so long as the Finance Authority is the registered owner of the Bonds, at the direction of the Finance Authority, the interest rate on the Bonds may be adjusted to lower the interest rate on the Bonds, and the difference between the amount payable as the original rate on the Bonds and the lower rate shall be deemed an additional administrative fee in connection with the Wastewater SRF Program; and (5) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to \$10,000, which may be paid from a Loan disbursement.

Section 5.10. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

Section 5.11. Term. This Agreement shall terminate at such time as the Participant has fully met and discharged all of its obligations hereunder, which term may extend beyond the final payment of the Bonds or provision for the payment of the Bonds pursuant to the Authorizing Instrument.

Section 5.12. Non-Collusion. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Participant, that he/she has not, nor has any other officer or representative of the Participant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Participant related to customary services rendered in connection with the Loan.

Section 5.13. Federal Award Information. The CFDA Number for the Finance Authority's Wastewater SRF Program (also known as the Clean Water SRF Loan Program) is 66.458 and the Federal Agency & Program Name is "US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds."

(End of Article V)

[THE REMAINDER OF THIS PAGE HAS
BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

CITY OF GOSHEN, INDIANA

“Participant”

By: _____

Printed: _____

Title: _____

INDIANA FINANCE AUTHORITY

“Finance Authority”

By: _____

James P. McGoff
Director of Environmental Programs

Attested by Finance Authority Staff:

Attest: _____

By: _____

EXHIBIT A
Project Description

The Project consists of the following improvements to the Participant's Treatment Works:

- [To come from PER]
-
-
-

[The Project contains components that are GPR Projects, which GPR Projects Expenditures have been determined and are expected as of the date of this Agreement to be in the amount as set forth in the Participant's business case or categorical exclusion which is posted at www.srf.in.gov.]

The Project is more fully described in, and shall be in accordance with, the Preliminary Engineering Report and the Plans and Specifications approved by the Finance Authority (or if designated by the Finance Authority, the Department).

[End of Exhibit A]

EXHIBIT B
Principal Payment Schedule for the Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Principal Amount</u>
7/1/2020	\$	1/1/2038	\$
1/1/2021		7/1/2038	
7/1/2021		1/1/2039	
1/1/2022		7/1/2039	
7/1/2022		1/1/2040	
1/1/2023		7/1/2040	
7/1/2023		1/1/2041	
1/1/2024		7/1/2041	
7/1/2024		1/1/2042	
1/1/2025		7/1/2042	
7/1/2025		1/1/2043	
1/1/2026		7/1/2043	
7/1/2026		1/1/2044	
1/1/2027		7/1/2044	
7/1/2027		1/1/2045	
1/1/2028		7/1/2045	
7/1/2028		1/1/2046	
1/1/2029		7/1/2046	
7/1/2029		1/1/2047	
1/1/2030		7/1/2047	
7/1/2030		1/1/2048	
1/1/2031		7/1/2048	
7/1/2031		1/1/2049	
1/1/2032		7/1/2049	
7/1/2032		1/1/2050	
1/1/2033		7/1/2050	
7/1/2033		1/1/2051	
1/1/2034		7/1/2051	
7/1/2034		1/1/2052	
1/1/2035		7/1/2052	
7/1/2035		1/1/2053	
1/1/2036		7/1/2053	
7/1/2036		1/1/2054	
1/1/2037		7/1/2054	
7/1/2037		1/1/2055	
		TOTAL	\$

[End of Exhibit B]

EXHIBIT C
Credit Instrument

Credit Providers rated on a long term basis lower than "A-/A3" long term by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies and Moody's Investors Service, Inc. are:

- None.

[End of Exhibit C]

Exhibit D
Additional Terms

- A. *The following additional terms in this Paragraph A (related to costs of Planning or Design being treated as Eligible Costs under this Agreement and the related defined terms) are [NOT] applicable to the Loan:*

“Equivalency Project” shall mean a project designated by the Finance Authority as an “equivalency project” under the Clean Water Act related to the “US Environmental Protection Agency Capitalization Grant for Clean Water State Revolving Funds” for the federal fiscal year ending September 30, 2019 (or such later federal fiscal year as the Finance Authority may otherwise designate).

“A/E Services” shall mean professional services related to the Planning or Design of the Project including for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services.

The Participant understands and acknowledges that the Project has been designated as an Equivalency Project and is required to meet the related applicable requirements of the Clean Water Act which among other requirements requires that for costs of Planning or Design (including costs for A/E Services) to be treated as Eligible Costs under this Agreement, such services (and the related contract) are required to be negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended). In connection with any request for disbursement of the Loan that is submitted by the Participant to the Finance Authority to provide for the payment of any costs of Planning or Design (including costs for A/E Services), the Participant represents and warrants that such costs relate only to services provided under a contract negotiated in the same manner as a contract for architectural and engineering services as negotiated under chapter 11 of title 40, United States Code (as amended).

- B. *The following additional terms in this Paragraph B (related to GPR Projects and the related defined terms) are [NOT] applicable to the Loan.*

“GPR Projects” shall mean Project components that meet the requirement of the “Green Project Reserve (GPR) Sustainability Incentive Program” consistent with SRF Policy Guidelines including applicable requirements of the Wastewater SRF Act.

“GPR Projects Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Wastewater SRF Program’s interest rate policies and practices using the final, actual GPR Projects Expenditures (rather than the GPR Projects Business Case

Amount), all as determined by the Finance Authority.

“GPR Projects Business Case Amount” shall mean the amount referenced in the Participant’s business case related to GPR Projects as was set in the Participant’s Preliminary Engineering Report (or categorical exclusion) posted at www.srf.in.gov, uses of funds information submitted to the Finance Authority after the Project was bid or some other submitted information that was used by the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds.

“GPR Projects Expenditures” shall mean those costs and expenses incurred by the Participant that are part of the Project which are GPR Projects in nature (within the meaning of the Wastewater SRF Act) as determined by the Finance Authority, in order for the Bonds to receive special interest rate treatment under the Wastewater SRF Program’s interest rate policies and practices.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a GPR Projects project. In the event GPR Projects Expenditures are hereafter determined by the Finance Authority to be less than the GPR Projects Business Case Amount, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a GPR Projects Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its GPR Projects Expenditures when and as required by SRF Policy Guidelines. The Participant understands and acknowledges that it is required to submit a business case or categorical exclusion documenting the GPR Projects and the GPR Projects Business Case Amount prior to loan closing or if a request is made pursuant to Section 3.02(f) of this Agreement.

- C. *The following additional terms in this Paragraph C (related to Non-point Source Projects and the related defined terms) are [NOT] applicable to the Loan:*

“Non-point Source Adjustment Fee” shall mean an amount which would equal the gross additional interest that would have accrued on the Bonds from the date of this Agreement through their scheduled final maturity, had such Bonds been issued at an interest rate determined under the Wastewater SRF Program’s interest rate policies and practices using the final, actual Non-point Source Expenditures (rather than the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority), all as determined by the Finance Authority.

“Non-point Source Expenditures” shall mean those costs and expenses incurred by the Participant that are Non-point Source Projects in order for the Bonds to receive special interest rate treatment under the Wastewater SRF Program’s interest rate policies and practices.

“Non-point Source Projects Amount” shall mean the amount referenced in the Participant’s post-bid and other documents submitted to the Finance Authority prior to the date of this Agreement to set a special interest rate under the Wastewater SRF Program’s interest rate policies and practices applicable to the Bonds

“Non-point Source Projects” shall mean Project components that meet the requirement of SRF Policy Guidelines and the Wastewater SRF Act to be non-point source in nature as determined by the Finance Authority.

The Participant understands and acknowledges that a special interest rate has been applied to the Bonds as a result of a portion of the Project having been identified by the Participant as being a non-point source project. In the event Non-point Source Expenditures are hereafter determined by the Finance Authority to be less than the Non-point Source Projects Amount, then the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-point Source Adjustment Fee in connection with the Loan. The Participant shall certify to the Finance Authority those Loan disbursements it represents to be its Non-point Source Expenditures when and as requested by SRF Policy Guidelines.

[End of Exhibit D]