



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

Regular Meeting Agenda

**2:00 p.m. April 13, 2020**

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

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes - None

Changes to Agenda

### HIRES, PROMOTIONS, RESIGNATIONS

- (1) Promotion of Warren C. O'Neal III to Patrol Officer (Miller)

### NEW BUSINESS

- (1) Award of Well Cleaning and Maintenance, Q20-03-004 (Windsor)
- (2) Access Agreement with Patriot Engineering and Environmental, Inc. (Marks)
- (3) Agreement with Brad Daniels for 909 Westwood Dr. (Barkes)
- (4) Dedication of Public Right-of-Way at SR 119 and Greene Rd. (Marks)
- (5) Labor Standards Administrator Agreement (PN: 2019-0025) WWTP  
Improvement and Rock Run Sewer Improvement Projects (Sailor)
- (6) Road Closure Request: Firethorn Dr. and Sourwood Dr. from April 14-30 (Sailor)

### PRIVILEGE OF THE FLOOR

### APPROVAL OF CLAIMS

*Adjournment*



**Jose' D. Miller**

**Chief of Police**

111 E Jefferson St  
Goshen, Indiana 46528

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

Date: April 13<sup>th</sup>, 2020

From: Jose' Miller, Chief of Police

Reference: Promotion of Warren C. O'Neal III from Probationary Patrol Officer to Patrol Officer

I am requesting the Goshen Board of Public Works and Safety approve the promotion of Warren C. O'Neal III from the position of Probationary Patrol Officer to the rank of Patrol Officer effective April 14<sup>th</sup>, 2020. As of April 14<sup>th</sup> Officer O'Neal III has completed his twelve (12) month probationary period. In addition, Officer O'Neal III has graduated from the Tier I Basic Training Course at the Indiana Law Enforcement Academy.

**\*\*Warren will be present for the promotion because he is still attending the Academy.\*\***

Respectfully,

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

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

**Telephone: (574) 533-8661**

**Hearing Impaired: (574) 533-1826**

**FAX: (574) 533-1826**



**Keitha Windsor**  
**CITY OF GOSHEN Legal Department**  
204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

Phone (574) 537-3816 • Fax (574) 537-3817 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

April 13, 2020

**To:** Board of Public Works and Safety  
**From:** Keitha Windsor  
**Subject:** Award of Well Cleaning & Maintenance, Q20-03-004

On April 6, 2020 the Board of Public Works and Safety opened quotes for Well Cleaning & Maintenance, Q20-03-004. The table below compares the quotes received.

Peerless Midwest, Inc Mishawaka IN	\$50,850.00
North American Pump Company Wakarusa IN	\$56,485.00
Layne Christensen Co. Louisville KY	\$56,897.00
Ortman Drilling & Water Services Kokomo IN	\$59,000.00

Suggested motion: Move to award the contract to Peerless Midwest, Inc. as the lowest responsible and responsive quoter and to enter into a contract with Peerless Midwest, Inc. to provide Well Cleaning & Maintenance at a cost of \$50,850.00, with work to be completed within 60 calendar days from receipt of the notice to proceed.

**CONTRACT**  
**WELL CLEANING & MAINTENANCE**  
**Q20-03-004**

THIS CONTRACT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City,” and Peerless Midwest Inc., hereinafter referred to as “Contractor.”

WITNESSETH, that the City and the Contractor mutually agree as follows:

**SCOPE OF SERVICES**

The Contractor shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a workmanlike manner the “Well Cleaning & Maintenance, Q20-03-004” project in accordance with and as described in further detail in this contract and the Specification Documents, including Exhibits B thru G, the terms of which are incorporated by reference. The scope of work shall include well cleaning and maintenance, well pump and motor overhaul and a well replacement motor.

The City of Goshen’s current “Design Standards and Construction Specifications,” current “Indiana Department of Transportation’s Standard Detail Drawings” and the plans and drawings related to this project are incorporated into this contract by reference. In addition, Indiana Department of Transportation’s Standard Specifications, Sections 200 through Section 926 are incorporated by reference.

In the event there is a conflict between the City of Goshen’s Design Standards and Construction Specifications and the Indiana Department of Transportation’s Standard Detail Drawing or Indiana Department of Transportation’s Standard Specifications, the City of Goshen’s Design Standards and Construction Specifications shall control.

In the event of a conflict between a provision in the Specification Documents and the Contractor’s quote, the Specification Documents shall control unless specifically modified by this contract.

In the event of a conflict between a provision in this contract and a provision in the Contractor’s quote or in the Specification Documents, the provision in this contract shall control

In construing the intent and meaning of the terms and conditions of this contract, the following information and items shall be considered:

1. Contractor’s Itemized Quote;
2. Non Collusion Affidavit;
3. Form No. 96, including additional pages containing requested information;
4. Any addenda or changes to the contract documents and specifications, including properly approved change orders; and
5. Notice to proceed

Contractor shall perform all work in this project between the hours of 7:00 am and 8:00 pm. City shall be notified and shall approve in advance if Contractor intends to work on a Saturday and/or a Sunday.

Contractor shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the work for the City.

Contractor shall warrant all work furnished under this contract for one (1) year after final completion of the project to be free from defect of material and/or workmanship

**EFFECTIVE DATE; CONTRACT TERM**

Contractor acknowledges that time is of the essence and that the timely performance of its work is an important element of this contract. Contractor shall perform all work as expeditiously as is consistent with professional skill and care in the orderly progress of the project.

The contract shall become effective on the day of execution and approval by the City of Goshen Board of Public Works and Safety and the Contractor.

Work on the project shall begin within two (2) weeks from receiving a notice to proceed from the City and shall be completed within sixty (60) calendar days from receipt of the notice to proceed.

**COMPENSATION, BASIS AND METHOD OF PAYMENT**

The City agrees to compensate Contractor for the work performed and equipment provided in this contract in accordance with the Contractor’s quote for the amount of Fifty Thousand Eight Hundred Fifty Dollars (\$50,850.00).

All payment obligations are subject to the appropriation and encumbrance of monies and shall be made in arrears unless specifically stated otherwise in this solicitation. Payment to the Contractor for the work under this contract shall be made upon completion and acceptance of the work. The Contractor shall submit a detailed invoice based on established contract price to City of Goshen for payment. Contractor is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within sixty (60) calendar days of the receipt of a detailed invoice, provided satisfactory performance of the Contractor has been attained. Payment is deemed to be made on the date of mailing the check. Any payment made by the City before final acceptance of the work shall not affect the obligation of the Contractor to repair or replace any defective parts, or otherwise correct any work completed.

**LIQUIDATED DAMAGES**

It is agreed by the parties that time is of essence. In the event completion of this project is not made within the time set forth in this contract, damage will be sustained by the City. The parties further agree that it is and will be impractical and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay. Therefore, it is agreed that the Contractor shall pay to the City of Goshen, as fixed and liquidated damages, and not as a penalty, One Hundred Dollars (\$100.00) per calendar day for each and every calendar day’s delay in project completion in excess of the time specified. It is further agreed that in the event such damages are sustained by the City, the City may deduct the amount of the liquidated damages from any moneys due or that may become due to the Contractor under this contract.

**INDEPENDENT CONTRACTOR STATUS**

The Contractor shall be deemed an independent contractor operating as a separate entity from the City of Goshen. The City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of the Contractor or its agents, employees, or subcontractors of the Contractor.

**NON-DISCRIMINATION**

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

**INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the City of Goshen, its agents, officers, and employees from any and all liability, obligations, claims, and suits, including court costs, attorney fees, and other expenses, caused by an act or omission of the Contractor and its agents, officers, and employees or resulting from or related to the Contractor's performance or failure to perform as specified in this contract.

**INSURANCE**

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

The Contractor shall at least include the following types of insurance with the following minimum limits of liability.

- (1) Workers Compensation and Employer's Liability ..... Statutory Limits
- (2) General Liability ..... Combined Bodily Injury and Property Damage  
\$1,000,000 Each Occurrence and \$2,000 000 Aggregate
- (3) Professional Liability ..... Combined Bodily Injury and Property Damage  
\$1,000,000 Each Occurrence and Aggregate
- (4) Automobile Liability..... Combined Bodily Injury and Property Damage  
\$1,000,000 Each Occurrence and Aggregate
- (5) Excess Umbrella Coverage ..... \$1,000,000 Each Occurrence

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

**FORCE MAJEURE**

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

## **DEFAULT**

It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this Contract and the Specification Documents or fails to fulfill any warranty, and Contractor is not able to correct the breach within fifteen (15) calendar days after the City provides written notice to Contractor of such breach, the City may provide or have provided alternative provisions to correct and/or complete the projects. Contractor shall be responsible for any and all costs that are incurred and such costs may be deducted from amounts owed to Contractor expenses to correct the breach or complete the project. If such costs exceed the amounts owed to Contractor, Contractor is liable to reimburse the City for such costs.

If Contractor fails to perform the work and provide the equipment or comply with the provisions of this Contract, then Contractor may be considered in default.

Contractor may also be considered in default by the City if any of the following occur:

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

## **TERMINATION**

The parties may terminate this contract under any of the following conditions:

- (1) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work performed and/or equipment provided and expenses reasonably incurred prior to notice of termination.
- (2) The City may terminate this contract, in whole or in part, in the event of default by Contractor. In such event, the City may issue a written notice of default and provide a period of time in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to

any other rights and remedies provided by law or under this contract.

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents pertaining to the project prepared by Contractor under this contract.

### **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT**

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

### **EMPLOYMENT ELIGIBILITY VERIFICATION**

The Contractor shall enroll in and verify the work eligibility status of all their newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate the contract if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City of a breach.

The Contractor affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien.

### **AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms in this contract including the scope of work, completion of work and compensation, and that no alteration or variation of the conditions of this contract shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the contract shall not be binding unless made in writing and signed by both parties and approved by Board of Public Works and Safety. Any verbal representations or modifications concerning the contract shall be of no force and effect.

### **WAIVER OF RIGHTS**

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

### **NOTICES**

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this contract. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.



Address for notices to the City:

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

Address for notices to Contractor

Peerless Midwest, Inc.  
Attention: James R. Williams  
55860 Russell Industrial Pkwy.  
Mishawaka IN 46545

### **APPLICABLE LAWS**

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

Any provision of this contract or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the contract.

In the event of a conflict between these contract documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern. Any special conditions included with this Contract which varies from these General Terms and Conditions shall have precedence.

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

In the event legal action is brought to enforce or interpret the terms and conditions of this contract, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party including reasonable attorney's fees.

### **CONTRACTING WITH RELATIVES**

Pursuant to IC 36-1-21, if the Contractor is wholly or partially owned by a relative of an elected official of the City of Goshen certifies that Contractor has notified in writing both the elected official of the City of Goshen and the City's legal department prior to entering into this contract that an elected official of the City of Goshen is a relative of an owner of Contractor.

### **SEVERABILITY**

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

### **AUTHORITY TO BIND CONTRACTOR**

Notwithstanding anything in the contract to the contrary, the signatory for the company/business represents that he or she has been duly authorized to execute contracts on behalf of the company/business and has obtained all necessary or applicable approvals to make this contract fully binding upon the company/business when his or her signature is affixed and is not subject to further acceptance

### **BINDING EFFECT**

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

**ENTIRE AGREEMENT**

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

In witness whereof, the parties have executed this Agreement as set forth below.

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

**Peerless Midwest, Inc.**

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

\_\_\_\_\_  
James R. Williams, General Manager

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

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

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

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



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

April 13, 2020

**To:** Board of Public Works and Safety  
**From:** Shannon Marks  
**Subject:** Access Agreement with Patriot Engineering and Environmental, Inc.

Attached is an Access Agreement with Patriot Engineering and Environmental, Inc. that I had executed by Mayor Stutsman. Under this agreement the City is granting Patriot access to the City's public parking lot located north of 211 South Fifth Street in order to perform environmental investigative and remedial activities for the real estate at 211 South Fifth Street. Patriot will use its best efforts to avoid any disruption to the public's access and use of the parking lot while performing work, but there will be occasions in which access to all or some parts of the parking lot will be blocked. Access will be permitted until the earlier of December 31, 2025 or upon Patriot's completion of the work.

It is recommended that the Board ratify the approval and execution of the Access Agreement with Patriot Engineering and Environmental, Inc.

## ACCESS AGREEMENT

This ACCESS AGREEMENT is entered into on April 3, 2020, by and between **Patriot Engineering and Environmental, Inc.**, an Indiana corporation (“Patriot”), and the **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana, by and through its Board of Public Works and Safety (“City”).

### RECITALS

- (1) Patriot is performing environmental assessment and remediation activities of the real estate at 211 South Fifth Street, Goshen (the “Site”). The services being performed by Patriot are required by the Indiana Department of Environmental Management (IDEM) for the Site (State Cleanup Site #000000233) pursuant to an Administrative Agreed Order between IDEM and the Estate of William J. Fiedeke, Isabel Fiedeke, and Steve Fiedeke.
- (2) City owns the public parking lot located north of the Site and south of 118 East Washington Street, 120 East Washington Street, and 203 South Fifth Street, Goshen as depicted on the attached Figure 1 (the “Parking Lot”).
- (3) Patriot desires access to the Parking Lot for the purpose of investigating and remediating subsurface impacts that may be associated with the historic operation of a dry cleaner formerly located at the Site.
- (4) City is willing to grant Patriot access to the Parking Lot for the purpose of performing environmental investigative and remedial activities under the following terms and conditions.

NOW THEREFORE, City and Patriot agree as follows:

- (1) This agreement concerns Patriot’s access to and use of the City’s real estate located north of the Site and south of 118 East Washington Street, 120 East Washington Street, and 203 South Fifth Street, Goshen as depicted on the attached Figure 1, and more particularly described as follows:

LOT NUMBER NINETY-NINE (99) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE ORIGINAL PLAT OF THE TOWN, NOW CITY, OF GOSHEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 1, PAGE 16; LESS AND EXCEPTING THE NORTH TWO (2) FEET OF THAT PART OF LOT NUMBER NINETY-NINE (99).

Parcel Number 20-11-09-415-013.000-015

The above described real estate shall be referred to as the “Parking Lot”.

- (2) City grants Patriot and Patriot’s authorized agents, consultants, contractors and subcontractors the right to enter upon City’s Parking Lot for the sole purpose of performing investigative and remedial activities (the “Work”) for the Site. The Work includes the following tasks:
  - (A) Collecting groundwater samples from existing monitoring wells previously installed in the Parking Lot by others.

- (B) Performing geophysical survey(s) of the Parking Lot including, but not limited to, ground penetrating radar (GPR) and/or electromagnetic (EM) surveys.
  - (C) Advancing soil borings and installing monitoring and/or remediation wells.
  - (D) Performing a pilot study to evaluate a proposed remedial technology (air sparging/soil vapor extraction, or AS-SVE) that has been approved by the IDEM. The pilot study will involve injection of air into an injection well using a trailer-mounted air compressor, extraction of air from another well using a skid-mounted blower powered by a trailer-mounted generator, and measurement of induced pressure and vacuum in nearby monitoring and/or observation wells.
  - (E) Installing and operating a full-scale AS-SVE system on a portion of the Parking Lot that will include installing multiple remediation wells, trenching and subgrade piping, repaving of trench areas, placement and operation of a remediation system trailer and electrical power drop, and performing routine system operation and maintenance activities.
- (3) Patriot shall commence the Work on March 16, 2020. The exact completion date of the Work is unknown but is anticipated to be approximately mid- to late-2025. This agreement shall terminate the earlier of December 31, 2025 or upon Patriot's completion of the Work.
  - (4) Patriot will use its best efforts to avoid any disruption to the public's access to and use of the Parking Lot when performing the Work.
  - (5) City acknowledges that Patriot may need to block public access to all or some portions of the Parking Lot during the pilot study, boring/well installation, and remedial system installation to facilitate Patriot's Work.
  - (6) Patriot agrees to provide City a minimum of two (2) weeks written notice prior to Patriot beginning any Work requiring a complete blocking of public access to and use of the Parking Lot (e.g., during remedial system installation). Patriot agrees to provide City a minimum of one (1) week written notice prior to beginning all other Work in which public access to the Parking Lot or more than one (1) parking space at a time is restricted.
- (A) City acknowledges that Patriot installed pilot study wells in the Parking Lot on March 16-17, 2020 as depicted in Figure 2.
  - (B) City agrees to the temporary blockage of approximately four (4) to five (5) parking spaces for two (2) days on the south side of the Parking lot adjacent to the Site during the week of April 6-10, 2020.
  - (C) Patriot will require the complete blockage of public access to and use of the Parking Lot for remedial system installation for approximately five (5) to seven (7) working days. The remedial system installation is anticipated to occur in Summer 2020. Patriot agrees to provide City additional details on the remedial system installation once the pilot study is complete and the full-scale remedial system design is prepared, including the proposed schedule for the blockage and use of the Parking Lot. Patriot shall provide City accurate locations of the as-builts of the AS-SVE system to scale in hard copy and in electronic AutoCAD format.

- (D) Patriot plans to occupy one (1) parking space to place a remediation system trailer on the south side of the Parking Lot adjacent to the Site as depicted in Figure 3. This trailer will occupy the Parking Lot approximately two (2) to three (3) years (until 2022 or 2023).
- (7) Patriot agrees to restore the Parking Lot as close as possible to the same condition as it was prior to performing the Work. Patriot shall video and/or photograph the Parking Lot at the beginning and completion of the Work with a copy and/or copies being provided to City. Restoration shall be performed after each task of the Work performed.
  - (A) During the period that the AS-SVE is active and operating, Patriot shall inspect and repair, if necessary, any pavement patches that may deteriorate.
  - (B) Upon conclusion of all Work, Patriot shall remove all equipment installed, and the piping and any voids associated with such equipment shall be replaced with flowable fill. The final restoration process may include the resurfacing of the Parking Lot.
- (8) Patriot agrees that any reports or data generated as a result of the Work shall be provided to City.
- (9) Patriot agrees to indemnify, defend and hold harmless City from all liability, losses, claims, damages, demands, costs, penalties, fines and expenses arising out of or in any way connected with the activities of Patriot or Patriot's authorized agents, consultants, contractors and subcontractors in the performance of the Work.
- (10) Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

If to Patriot:                    Mr. Douglas B. Zabonick, P.E.  
    Patriot Engineering & Environmental Inc.  
    6150 E. 75<sup>th</sup> Street  
    Indianapolis, IN 46250

If to City:                         City of Goshen, Indiana  
    Attention: Engineering Department  
    204 East Jefferson Street, Suite 1  
    Goshen, IN 46528

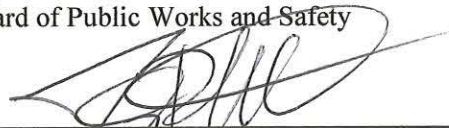
- (11) Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties, and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.
- (12) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

- (13) In the event that legal action is brought to enforce or interpret the terms of and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.
- (14) In the event that any provision of this agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.
- (15) All provisions, covenants, terms and conditions of this agreement apply to and bind the parties and their legal heirs, representatives, successors and assigns.
- (16) This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understanding between City and Patriot.

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

City:

City of Goshen, Indiana  
Board of Public Works and Safety



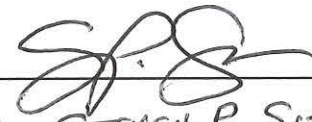
\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

Date: April 6, 2020

Patriot

Patriot Engineering and Environmental, Inc.

By: \_\_\_\_\_



Printed: STEVEN P. SITTLER

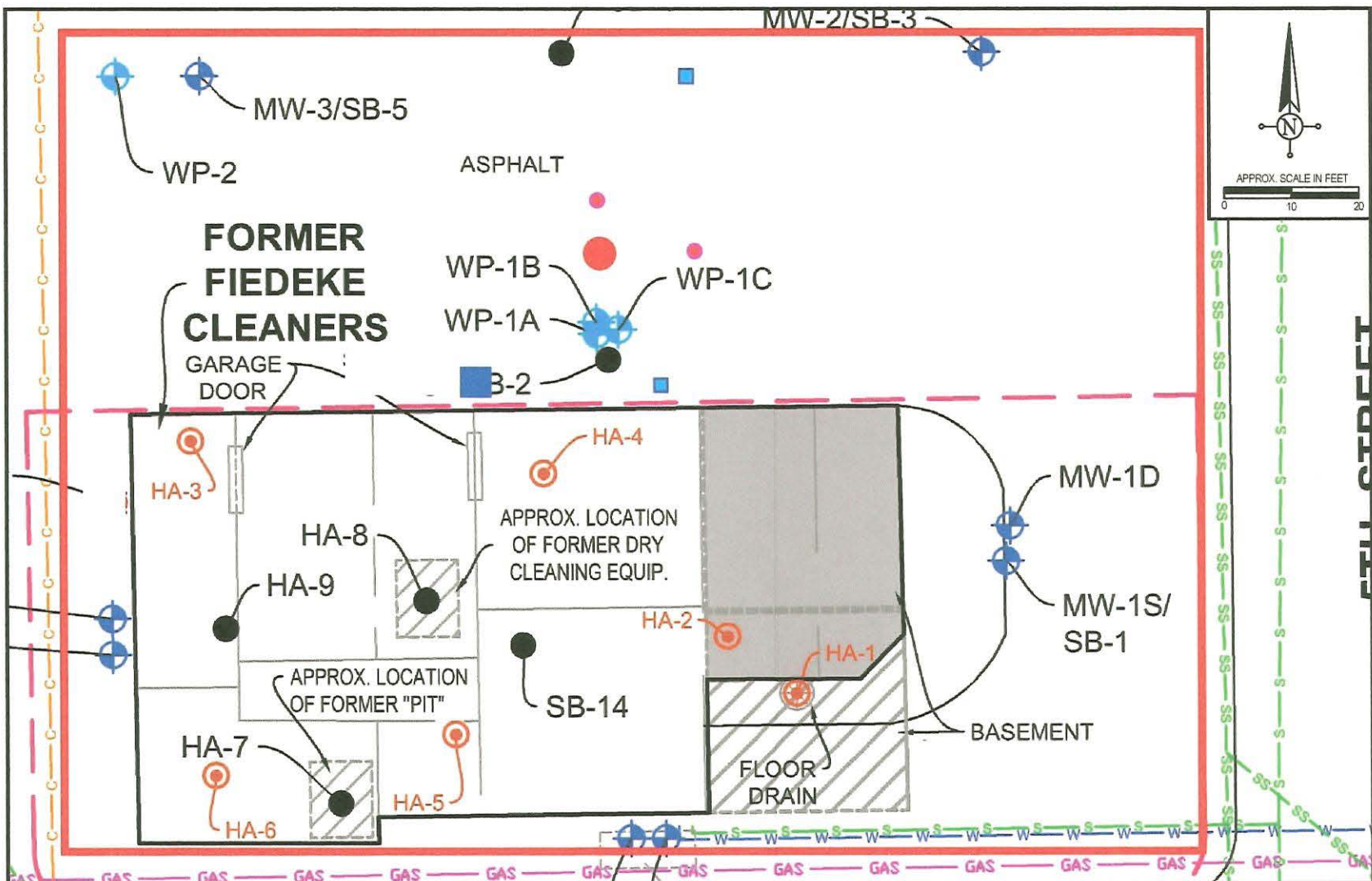
Title: SR. PROJECT MANAGER

Date: April 3, 2020

FIGURE 1







- AS-1 (Injection Well)
- Pressure Mon. Points
- SVE-1 (Extraction Well)
- Vapor Mon. Points

Project: Former Fiedeke Cleaners Property  
 211 South 5th Street  
 Goshen, Indiana

Project Number: p20-0070-01	Drawn By: J. DuMond
Date: January 23, 2020	Approved: S. Sittler
	DWG: details

Figure 2  
 Site Map with  
 Pilot Study Well  
 Locations

FIGURE 3





**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

April 9, 2020

**To:** Board of Public Works and Safety  
**From:** Larry Barkes  
**Subject:** Agreement with Brad Daniels

Attached for the Board's approval and authorization for the Mayor to execute is an agreement for the transfer of the property located at 909 Westwood Drive, Goshen to Brad Daniels

The property is in a receivership. The receiver appointed by the Court has begun to make repairs to the property, but they are not complete. The City has incurred Thirty-Four Thousand Fourteen Dollars and Twenty-Six Cents (\$34,014.26) for the repairs the receiver has made to date and other enforcement expenses.

The property was recently transferred to Brad Daniels by the original owners. Brad Daniels has agreed to complete the remaining repairs and pay the City Thirty-Four Thousand Fourteen Dollars and Twenty-Six Cents (\$34,014.26) for the expenses the City has incurred in the unsafe building enforcement.

It is recommended that the Board of Public Works and Safety make a motion to **approve the agreement with Brad Daniels and authorize the Mayor to execute the agreement.**

## AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of February, 2020, between the City of Goshen, Indiana, by and through its Board of Public Works and Safety, hereinafter referred to as "Goshen"; and Brad Daniels, hereinafter referred to as "Daniels."

### Recitals:

WHEREAS, the property located at 909 Westwood Avenue, Goshen, Indiana (hereinafter the "Property") was found to be an unsafe premise by the City of Goshen Board of Public Works and Safety on October 30, 2017;

WHEREAS, the Property is the subject of an unsafe building enforcement action under, captioned "City of Goshen, Indiana v. Lois A. Tucker, *et al*" in Elkhart Superior Court No. 4 under Cause No. 20D04-1801-PL-004;

WHEREAS, under said enforcement action and cause number, the Elkhart Superior Court No. 4 found the Property to be an unsafe premise under the Indiana Unsafe Building Law on July 3, 2018;

WHEREAS, the Order of the Elkhart Superior Court No. 4 on July 3, 2018 assessed fines against the Property and its owner in the sum of Three Thousand Dollars (\$3,000.00) and entitled Goshen to the appointment of a Receiver for the Property;

WHEREAS, a Receiver was appointed for the Property on July 8, 2019;

WHEREAS, the Receiver's proposed scope of work and cost to rehabilitate the Property was approved by the Court on September 6, 2019;

WHEREAS, since September 6, 2019, the Receiver has completed many repairs to the unsafe premises at the Property and Goshen has paid sums to cover the expenses of said repairs by the Receiver;

WHEREAS, Daniels desires to purchase the Property and complete repairs to the unsafe premises;

WHEREAS, Goshen desires the completion of rehabilitation to the Property to make it no longer unsafe;

NOW, THEREFORE, IT IS AGREED as follows:

Terms:

A. Daniels' Commitments

1. Daniels agrees to pay the sum of Thirty Four Thousand Fourteen Dollars and Twenty-six cents (\$34,014.26) to Goshen within seven (7) days of the complete execution of this Agreement.
2. Daniels agrees to bring the Property and the unsafe premise located thereon into compliance with the minimum housing standards of Goshen City Code § 6.3.1 and to make the Property and its premises habitable for human occupation by June 30, 2020.
3. The parties acknowledge that the following repairs have been completed by the Receiver as of the date of execution of this Agreement (acknowledging that any repairs or systems involving water have not been tested as water has not been turned on yet):
  - a. Repair of the roof;
  - b. Repair of interior ceilings;
  - c. Installation of operable heating, plumbing, and electrical systems;
  - d. Installation of some drywall;
  - e. Installation of new windows;
  - f. Installation of new bathroom tub; and
  - g. Installation of new water heater
4. The parties acknowledge that the following repairs, based on the Court's approved scope of work to repair the Goshen City Code violations at the Property, must still be made:
  - a. Completion of drywall installation;
  - b. Installation of working bathrooms and necessary fixtures;
  - c. Installation of working kitchen and necessary fixtures;
  - d. Installation of floor coverings and/or flooring throughout the residential structure;
  - e. Installation of interior Doors and Trim work throughout the residential structure;
  - f. Completion of interior painting;
  - g. Installation of necessary appliances; and
  - h. Completion of exterior painting.

5. Daniels may make additional repairs and improvements to the Property so long as the above items are completed by July 31, 2020.
6. Daniels agrees to obtain merchantable title to the Real Estate by July 31, 2020.

B. Goshen's Commitments.

1. Upon receipt of payment from Daniels as provided in Section A.1, transfer of title to the Property to Daniels as provided in Section A.6, and completion of the work to bring the Property into compliance as noted in Section A.4, subsections a through h, Goshen agrees to terminate the receivership established in Cause No. 20D04-1801-PL-004 and release the entirety of judgment lien against the Property.
2. Goshen agrees to provide reasonable assistance in removing state tax liens from the Real Estate.

C. Miscellaneous Provisions.

1. The parties acknowledge that full and sufficient consideration exists for their execution of this Agreement, and the parties waive any defense that they may have or claim for lack, failure, want, or inadequacy of consideration.
2. The parties hereby represent that each party relies upon such party's own judgment and discretion and the advice of such party's attorney in entering this Agreement; and that no party relies upon any representation or advice from the other party other than the representations in this Agreement, or any other persons or representatives acting for or on behalf of such other party.
3. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and shall be binding upon all parties executing the same, and all of which, when taken together, will be deemed to constitute one and the same agreement.
4. The parties agree that either Goshen or Daniels may enforce the provisions of this Agreement via legal action. The parties agree that proper venue for any such action is a court of competent jurisdiction located in Elkhart County, Indiana.
5. This Agreement is to be interpreted under the laws of the State of Indiana.

6. If any term, covenant, paragraph, clause, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby, and this Agreement shall be construed as if such invalid, void, or unenforceable provisions were omitted.
7. No delay or omission to exercise any right, power, or remedy accruing to any Party, upon any breach or default under this Agreement shall impair any such right, power, or remedy of such Party or be construed to be a waiver or any such breach or default, or acquiescence in the breach or default, or any similar breach or default thereafter occurring; now shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.
8. This Agreement constitutes the entire agreement and understanding between the parties related to this subject matter and, except as expressly provided herein, supersedes all prior proposals, understandings, agreements, correspondence, arrangements, and contemporaneous oral representations, discussions, negotiations, and agreements relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective on the date first written above.

CITY OF GOSHEN, INDIANA

BRAD DANIELS

By: \_\_\_\_\_  
Jeremy Stutsman, Mayor

By:  \_\_\_\_\_  
Brad Daniels

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the City of Goshen, Indiana by Jeremy Stutsman, Mayor, and acknowledged the execution of the foregoing Agreement on March \_\_\_\_\_, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Resident of Elkhart County, Indiana  
My Commission Expires: \_\_\_\_\_

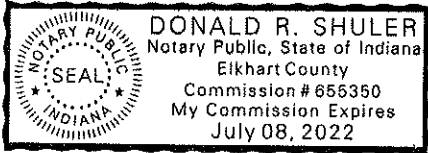
STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Brad Daniels, and acknowledged the execution of the foregoing Agreement on ~~March~~ April 1, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal.

*Donald R. Shuler*

Donald R. Shuler  
Notary Public  
Resident of Elkhart County, Indiana  
My Commission Expires: July 8, 2022







**CITY OF GOSHEN LEGAL DEPARTMENT**

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April 13, 2020

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

**From:** Shannon Marks

**Subject:** Dedication of Public Right-of-Way at State Road 119 and Greene Road

It is recommended that the Board accept the dedication of public right-of-way as described and depicted on the attached Exhibits from Richard B. Essig, Thomas J. Essig, and Larry R. Essig, and authorize the Mayor to execute the Acceptance on the Deeds of Dedication. This right-of-way is for the construction of a turn lane located at the northeast corner of State Road 119 and Greene Road.

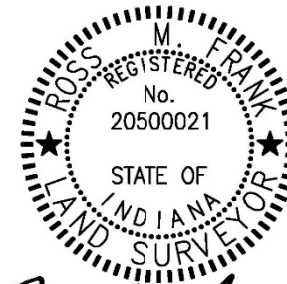
# Exhibit "A"

## Right-of-Way Description

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, AS SHOWN ON A RIGHT-OF-WAY EXHIBIT COMPLETED BY BERTSCH-FRANK & ASSOCIATES, AND CERTIFIED BY ROSS M. FRANK (P.S.#2050021) ON OCTOBER 2, 2019 AS JOB NUMBER 18187.200; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A HARRISON MARKER MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 89 DEGREES 40 MINUTES 23 SECONDS EAST (NAD83 INDIANA STATE PLANE, ZONE EAST GRID AND BASIS OF BEARINGS TO FOLLOW), 146.10 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER AND WITHIN THE RIGHT-OF-WAY OF STATE ROAD 119 TO THE WEST LINE LOT NUMBER 1 OF THE ESSIG SOUTH SUBDIVISION RECORDED IN PLAT BOOK 14, PAGE 65 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; THENCE NORTH 00 DEGREES 15 MINUTES 23 SECONDS WEST, 25.00 FEET ALONG SAID WEST LINE TO THE EXISTING NORTH RIGHT-OF-WAY LINE OF STATE ROAD 119, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 89 DEGREES 40 MINUTES 23 SECONDS WEST, 85.39 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE NORTHEASTERLY LINE OF A 0.05 ACRE TRACT CONVEYED TO ELKHART COUNTY PER DOCUMENT NUMBER 96-016433 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; THENCE NORTH 45 DEGREES 30 MINUTES 18 SECONDS WEST, 41.83 FEET (40.55 FEET RECORD) ALONG SAID NORTHEASTERLY LINE TO THE EAST LINE OF SAID 0.05 ACRE TRACT; THENCE NORTH 00 DEGREES 15 MINUTES 29 SECONDS WEST, 65.00 FEET ALONG SAID EAST LINE; THENCE SOUTH 32 DEGREES 04 MINUTES 51 SECONDS EAST, 83.00 FEET; THENCE SOUTH 82 DEGREES 26 MINUTES 05 SECONDS EAST, 72.00 FEET TO THE WEST LINE OF LOT NUMBER 1 OF SAID ESSIG SOUTH SUBDIVISION WHERE IT MEETS THE EXISTING NORTH 40 FOOT RIGHT-OF-WAY LINE OF SAID STATE ROAD 119; THENCE SOUTH 00 DEGREES 15 MINUTES 23 SECONDS EAST, 15.00 FEET ALONG THE WEST LINE OF SAID LOT NUMBER 1 TO THE POINT OF BEGINNING, CONTAINING 0.081 ACRES MORE OR LESS. SUBJECT EASEMENTS OF RECORD.


PART OF TAX PARCEL: 11-17-151-007-014

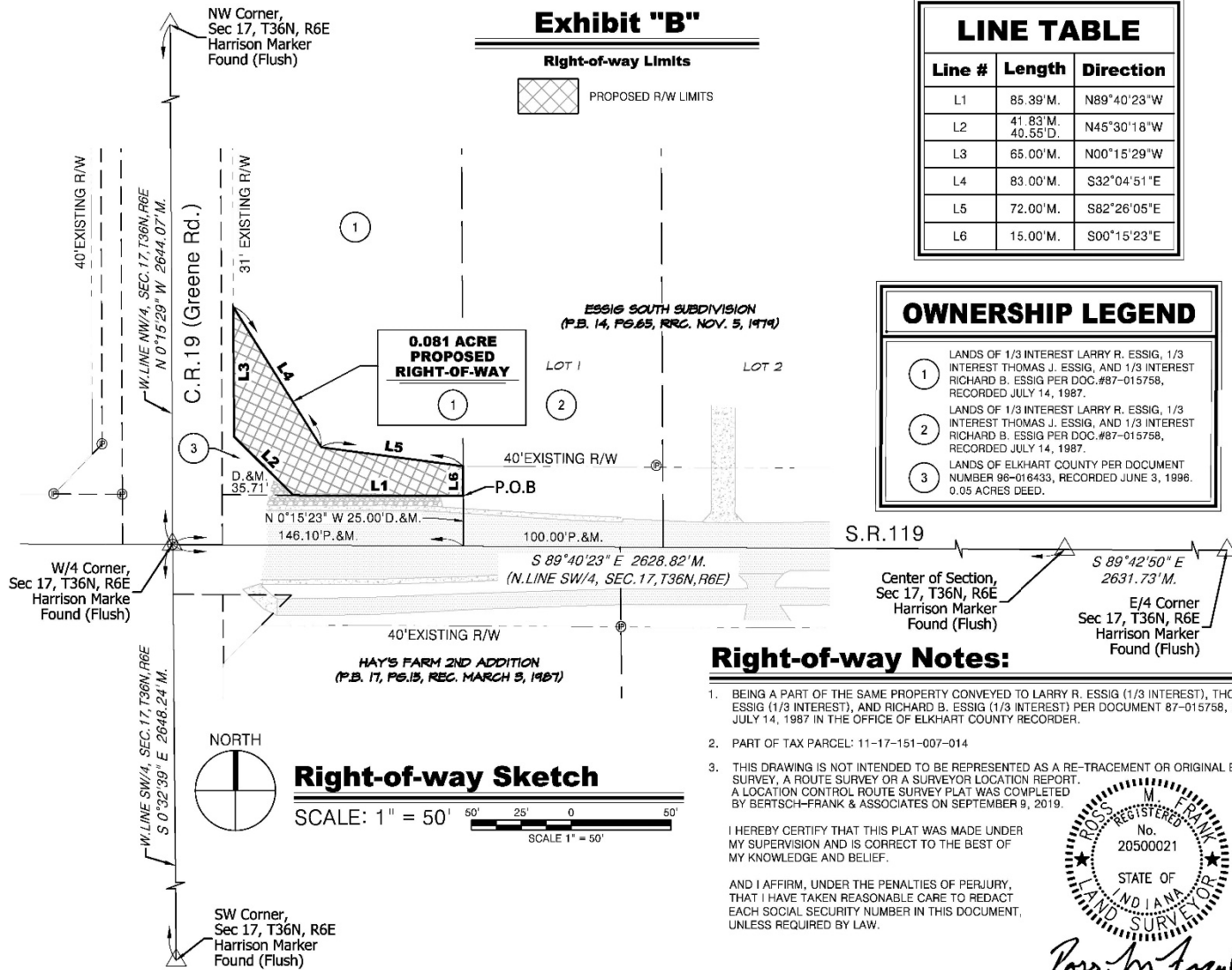


*Ross M. Frank*

THIS DESCRIPTION WAS PREPARED FOR GOSHEN COMMUNITY SCHOOLS BY BERTSCH-FRANK & ASSOCIATES, LLC. AND CERTIFIED BY ROSS M. FRANK, P.L.S. INDIANA REGISTERED LAND SURVEYOR NO. 20500021.

ROSS M. FRANK, P.L.S.  
INDIANA REGISTERED LAND SURVEYOR NO. 20200087

 <p style="font-size: small;">LAND PLANNING 811 LAWRENCE DRIVE FORT WAYNE, IN 46804</p> <p style="font-size: small;">LAND SURVEYING TELEPHONE: (260) 459-9393 FACSIMILE: (260) 459-9303</p>	<p><b>Goshen Intermediate School</b> <b>Right-of-way Exhibit "A"</b> <b>S.R.119 / C.R.19</b> <b>Goshen, Indiana</b></p>	<p><b>REVISIONS</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="font-size: x-small;">MARK</th> <th style="font-size: x-small;">DATE</th> <th style="font-size: x-small;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	MARK	DATE	DESCRIPTION																<p>CAD FILE: 18187.2_RW.dwg</p> <p>DRAWN BY: ZLS</p> <p>CHECKED BY: RMF</p> <p>DATE: 10/02/2019</p> <p>PRJCT. NO.: 18187.200</p>
MARK	DATE	DESCRIPTION																			



### Exhibit "B"

Right-of-way Limits



LINE TABLE		
Line #	Length	Direction
L1	85.39'M.	N89°40'23"W
L2	41.83'M. 40.55'D.	N45°30'18"W
L3	65.00'M.	N00°15'29"W
L4	83.00'M.	S32°04'51"E
L5	72.00'M.	S82°26'05"E
L6	15.00'M.	S00°15'23"E

OWNERSHIP LEGEND	
1	LANDS OF 1/3 INTEREST LARRY R. ESSIG, 1/3 INTEREST THOMAS J. ESSIG, AND 1/3 INTEREST RICHARD B. ESSIG PER DOC.#87-015758, RECORDED JULY 14, 1987.
2	LANDS OF 1/3 INTEREST LARRY R. ESSIG, 1/3 INTEREST THOMAS J. ESSIG, AND 1/3 INTEREST RICHARD B. ESSIG PER DOC.#87-015758, RECORDED JULY 14, 1987.
3	LANDS OF ELKHART COUNTY PER DOCUMENT NUMBER 96-016433, RECORDED JUNE 3, 1996. 0.05 ACRES DEED.

### Right-of-way Notes:

1. BEING A PART OF THE SAME PROPERTY CONVEYED TO LARRY R. ESSIG (1/3 INTEREST), THOMAS J. ESSIG (1/3 INTEREST), AND RICHARD B. ESSIG (1/3 INTEREST) PER DOCUMENT 87-015758, RECORDED JULY 14, 1987 IN THE OFFICE OF ELKHART COUNTY RECORDER.
2. PART OF TAX PARCEL: 11-17-151-007-014
3. THIS DRAWING IS NOT INTENDED TO BE REPRESENTED AS A RE-TRACEMENT OR ORIGINAL BOUNDARY SURVEY, A ROUTE SURVEY OR A SURVEYOR LOCATION REPORT. A LOCATION CONTROL ROUTE SURVEY PLAT WAS COMPLETED BY BERTSCH-FRANK & ASSOCIATES ON SEPTEMBER 9, 2019.

I HEREBY CERTIFY THAT THIS PLAT WAS MADE UNDER MY SUPERVISION AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

AND I AFFIRM, UNDER THE PENALTIES OF PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW.



*Ross M. Frank*

ROSS M. FRANK, P.L.S.  
INDIANA REGISTERED LAND SURVEYOR NO. 20500021

**BERTSCH-FRANK & ASSOCIATES**  
LAND SURVEYING & CONSULTING

**BFA**

LAND SURVEYING  
TELEPHONE: (260) 459-6200  
FACSIMILE: (260) 459-6803

LAND PLANNING  
811 LAWRENCE DRIVE  
FORT WAYNE, IN 46804

---

**Goshen Intermediate School  
Right-of-way Exhibit "B"  
S.R.119 / C.R.19  
Goshen, Indiana**

---

REVISIONS		
MARK	DATE	DESCRIPTION

---

CAD FILE: 18187.2.RW.dwg  
DRAWN BY: ZLS  
CHECKED BY: RMF  
DATE: 10/02/2019  
PRJCT. NO.: 18187.200



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **LABOR STANDARDS ADMINISTRATOR AGREEMENT (PN: 2019-0025)  
WWTP IMPROVEMENT AND ROCK SEWER IMPROVEMENT PROJECTS**

DATE: April 13, 2020

---

Attached is an agreement with Mendenhall & Associates, LLC to act as the Labor Standards Administrator for the WWTP Improvements and Rock Run Sewer Interceptor Phase I Improvement Projects. In accordance with the Indiana Finance Authority (IFA) State Revolving Fund (SRF) Load Program requirements, the City must comply with the Federal Davis Bacon Act throughout the course of projects. The Act requires collection and retention of weekly payrolls and statements of compliance, verification of required on-site federal postings, and verification of wage rate compliance through on-site interviews of project laborers throughout the entirety of the project construction. At the conclusion of the project, the City must submit a Final Federal Labor Standards Report to IFA. The Engineering Department recommends that Mendenhall & Associates, LLC complete this work on behalf of the City as the Labor Standards Administrator for these projects.

**Requested Motion: Approve the agreement with Mendenhall & Associates, LLC to act as the Labor Standards Administrator on behalf of the City for the duration of the WWTP Improvements and Rock Run Sewer Interceptor Phase I Improvement Projects for a cost of \$15,000.**

# **AGREEMENT**

## **Labor Standards Administration for WWTP Improvement and Rock Run Sewer Improvement Projects(JN: 2019-0025)**

THIS AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, between Mendenhall and Associates, LLC, hereinafter referred to as “Consultant”, and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City”.

WHEREAS, the City’s improvement projects to its Wastewater Treatment Plant (WWTP) and to the Rock Run Sewer are being funded through the Indiana Finance Authority’s (IFA) State Revolving Fund (SRF) Loan Program.

WHEREAS, the City desires to contract with Consultant, and Consultant agrees to provide labor standards administration services to ensure compliance with the Federal Davis Bacon Act requirements

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

### **SCOPE OF SERVICES**

Consultant’s services under this Agreement consists of providing labor standards administration services to ensure compliance with the Federal Davis Bacon Act requirements the City’s improvement projects to its Wastewater Treatment Plant (WWTP) and to the Rock Run Sewer that are being funded through the Indiana Finance Authority’s (IFA) State Revolving Fund (SRF) Loan Program. Consultant’s verification of wage requirements shall be in compliance with the Federal Davis Bacon Act Guidance document from IFA included as Exhibit A.

Consultant’s services shall include:

- Determine / review type of wage decision.
- Review of the current wage decision issued.
- Request conformance rates from US Department of Labor, when applicable.
- Assist with the pre-construction conference.
- Obtain all forms related to Davis Bacon and help contractors and subcontractors to stay in compliance.
- Obtain and review all necessary State and Federal Forms from the Prime Contractor and all Subcontractors throughout the project.
- Distribute applicable job site posters to the prime contractor (Davis-Bacon poster, EEO poster, IOSHA poster, etc.).
- Validate all prime/sub-contractors through [www.Sams.gov](http://www.Sams.gov) to confirm that they are eligible to work on federally funded projects.
- Verify fringe benefit funds of all contractors.
- Collect certified payrolls weekly from the general contractor
- Monitor weekly Contractor and Sub-Contractor Payrolls.
- Resolve unsatisfactory payroll findings and immediately report, simultaneously to the City and to the SRF Compliance Officer, potential violation of the Davis Bacon prevailing wage requirements.
- Verify all apprentices on jobsite.
- Conduct periodic on-site confidential employee interviews with at least 10% of each worker classification from each contractor/subcontractor to verify

contractor/subcontractor is complying with requirements and paying the appropriate wage rates.

- Maintain a file of all labor standards records and regularly provide digital (PDF) copies to the City.
- Attend any audits/inspections performed by State or Federal Agencies that may benefit from our attendance.
- Provide any documents requested through the Freedom of Information Act if requested by City or funding agency.

Consultant's internal controls with the Clerk Treasure shall take place throughout the project. All resources will be supplied 100% by Consultant and the City will not be required to supply any material or resources to complete labor standards.

At project completion, Consultant shall prepare, certify, and submit copies of the Final Federal Labor Standards Compliance Certification and Report to both IFA and the City. All compiled labor standards records shall be turned over to the City at the conclusion of the project.

Consultant shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the services for the City.

### **TERM OF THE AGREEMENT**

This Agreement shall become effective on the date of execution and approval by both parties. Consultant acknowledges that time is of the essence and that the timely performance of its services is an important element of this Agreement. Consultant shall perform all services as expeditiously as is consistent with professional skill and care in the orderly progress of the project.

Consultant's services shall begin as soon as practical after receiving a notice to proceed from the City and shall be completed with submission of Final Federal Labor Standards Compliance Certification and Report to IFA and all deliverables to the City no later than January 21, 2022.

### **COMPENSATION**

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's quoted lump sum fee of Fifteen Thousand Dollars (\$15,000.00).

Payment(s) to Consultant for services rendered under this agreement shall be made by the City upon receipt of a detailed invoice from Consultant for services completed provided satisfactory performance of Consultant has been attained. Consultant is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Consultant. Payment is deemed to be made on the date of mailing the check.

### **INDEPENDENT CONTRACTOR**

Consultant shall be deemed an independent contractor operating as a separate entity from the City of Goshen. The City shall not be responsible for injury, including death, to any persons or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of Consultant.

### **NON-DISCRIMINATION**

Consultant agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Consultant agrees that Consultant or any subcontractors,

or any other person acting on behalf of Consultant or their subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of a contract with respect to said employee's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of contract.

**INDEMNIFICATION**

Consultant agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Consultant or any of their officers, agents, officials, and employees, during the performance of services under this Agreement with the City of Goshen. Such indemnity shall include attorney's fees and all costs and other expenses incurred by the City, and shall not be limited to insurance required under the provisions of this Agreement.

**INSURANCE**

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

Consultant shall at least include the following types of insurance with the following minimum limits of liability:

Workers Compensation & Employer's Liability .....	Statutory Limits
General Liability .....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and \$2,000,000 Aggregate
Automobile Liability.....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and Aggregate

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

**FORCE MAJEURE**

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

## **BREACH**

It shall be mutually agreed that if Consultant fails to provide the services or comply with the provisions of this Agreement and Consultant is not able to correct the breach within fifteen (15) calendar days after the City provides written notice to Consultant of such breach, the City may provide or have provided alternative provisions to correct and/or complete the projects. Consultant shall be responsible for any and all costs that are incurred and such costs may be deducted from amounts owed to Consultant expenses to correct the breach or complete the project. If such costs exceed the amounts owed to Consultant, Consultant is liable to reimburse the City for such costs.

If Consultant fails to perform the work or comply with the provisions of this Agreement, then Consultant may be considered in default.

Consultant may also be considered in default by the City if any of the following occur:

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

## **TERMINATION**

The parties may terminate this Agreement under any of the following conditions:

- (1) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Consultant shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- (2) The City may terminate this contract, in whole or in part, in the event of default by Consultant. In such event, the City may issue a written notice of default and provide a period of time in which Consultant shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may secure similar services in any manner deemed proper by the City, and Consultant shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents pertaining to the project prepared by Consultant under this Agreement.



**OWNERSHIP OF DOCUMENTS**

The City acknowledges Consultant’s documents, plans, drawings, specifications, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this Agreement shall become the property of the City upon completion of the services and payment in full of all monies due to Consultant.

**ASSIGNMENT**

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

**MODIFICATIONS**

It is mutually understood and agreed that no alteration or variation of the terms in this Agreement including the scope of services, completion of services and compensation, and that no alteration or variation of the conditions of this Agreement shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the Agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the Agreement shall be of no force and effect.

**NOTICES**

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in the Agreement. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

Address for notices to Consultant:

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

Mendenhall & Associates  
Attention: Tina Henderson  
P.O. Box 428  
Arcadia, IN 46030

**and**

City of Goshen  
Attention: Engineering Department  
204 East Jefferson St.  
Goshen, IN 46528

**APPLICABLE LAWS**

Consultant agrees to comply with all applicable federal, state and local laws, rules, regulations, or ordinances as the same shall be in full force and effect during the term of this Agreement.

**MISCELLANEOUS**

A. Any provision of this Agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the Agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent requirements shall govern.

- B. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- C. In the event legal action is brought to enforce or interpret the terms and conditions of this Agreement, the non-prevailing party will pay all costs incurred by the prevailing party including reasonable attorney's fees.

**EMPLOYMENT ELIGIBILITY VERIFICATION**

Consultant shall enroll in and verify the work eligibility status of all their newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3.

Consultant shall not knowingly employ or contract with an unauthorized alien. Consultant shall not retain an employee or continue to contract with a person that the Consultant subsequently learns is an unauthorized alien.

Consultant shall require their subcontractors, who perform work under this contract, to certify to Consultant that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Consultant agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate the contract if Consultant fails to cure a breach of this provision no later than thirty (30) days after being notified by the City of a breach.

Consultant affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien.

**CONTRACTING WITH RELATIVES**

Pursuant to IC 36-1-21, if Consultant is wholly or partially owned by a relative of an elected official of the City of Goshen Consultant certifies that Consultant has notified in writing both the elected official of the City of Goshen and the City's legal department prior to entering into this contract that an elected official of the City of Goshen is a relative of an owner of Consultant.

**SEVERABILITY**

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

**BINDING EFFECT**

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

**ENTIRE AGREEMENT**

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

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

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

**Mendenhall and Associates, LLC**

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

\_\_\_\_\_  
Tina M Henderson, Grant Administrator

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

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

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

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

# **EXHIBIT A**

## **Federal Davis Bacon Act Guidance**

## Federal Davis Bacon Act Guidance

1. Bid process – include wage rates and contract conditions as outlined in SRF Front End documents.

Federal Wage Determinations online: <http://beta.sam.gov>

2. During Construction the Loan Recipient will be responsible for the following:

- a. OBTAIN WEEKLY PAYROLL AND STATEMENT OF COMPLIANCE.

Certified payrolls are to be submitted weekly by the prime contractor. The prime contractor is responsible to collect and submit the subcontractor payrolls and statement of compliance weekly to the Loan Recipient.

Prior to submitting a disbursement request to the IFA for construction costs, the Loan Recipient should have all certified payrolls from the prime contractor and subcontractors and conduct payroll verification and employee interviews as described in this section to ensure compliance with state and federal requirements. Recommended forms are provided with Front-End Document Addenda ([WH-347](#)).

- b. VERIFY JOB SITE POSTINGS ARE IN PLACE.

The prime contractor is responsible to post the following at the construction site: “Notice to All Employees” poster the required federal Poster ([WH 1321](#)).

- c. VERIFY COMPLIANCE WITH PREVAILING WAGE REQUIREMENTS.

The Loan Recipient or their representative must periodically conduct spot checks of a representative sample of weekly payrolls, verify fringe benefits, and conduct employee interviews to ensure that the contractor/subcontractor is complying with requirements and paying the appropriate wage rates.

Establish and follow a payroll review and employee interview schedule based on an assessment of the risks of noncompliance & length of contract. Conduct more frequent spot checks if risks are higher or if contractor/subcontractor noncompliance.

Conduct immediate interviews in response to an alleged violation of the prevailing wage requirements.

Conduct employee interviews in confidence. [Form SF1445](#) or equivalent document for the interviews is required to memorialize interviews.

Verify evidence of fringe benefit plans and payments of these plans by contractors and subcontractors who claim credit for fringe benefit contributions. Fringe benefits must be paid for each hour worked, including any overtime hours. The ½ time premium is not paid for fringe benefits. Fringe benefits must be bona fide, and if not paid in cash, must be paid to a third party plan.

Periodically review contractors and subcontractors use of apprentices and trainees. Verify registration and certification of apprentices and trainees with respect to apprenticeship and training programs approved by USDOL or a state program; that contractors and subcontractors are not using a disproportionate number of laborers, trainees and apprentices. Conduct these reviews in accordance with the payroll and employee interviews.

Maintain all labor standards records, including information on any restitutions (underpayments to laborers), on file. NOTE: Employees home address and social security number should not be on the certified payrolls.

Loan Recipients must immediately report potential violations of the DB prevailing wage requirements to the [SRF Compliance Officer](#). If the issue cannot be resolved through restitution, the SRF Program will submit the issue to federal authorities as required.

3. Project Completion

- a. Submit a FINAL FEDERAL LABOR STANDARDS REPORT to IFA at project completion. The form can be found on the IFA website [here](#).

- b. Maintain labor standards records (certified payrolls, employee interviews, records of wage incidents, correspondence, debarment, search results, etc.) with the project files at the Loan Recipient’s office for a period of three years after construction completion. Such records shall be available on request of the IFA or EPA.

## Helpful Information

**IDENTIFY FEDERAL WORKER CLASSIFICATION.** Payrolls must clearly identify the work classification for each employee. If a classification is missing from the State or Federal wage determinations contact the appropriate agency to secure the classification required.

Federal Request for Additional Classification and Rate US DOL

Submit the [SF1444](#) form to the SRF Compliance Officer for review and submission to US DOL.

**Please have an internal review of the form completed prior to submittal. Do not have Prime contractors or subcontractors submit this form directly.**

**STATEMENT OF COMPLIANCE.** A Statement of Compliance is required with each weekly payroll submittal.

**TRACKING FORMS** can aid in efficient payroll review and compliance monitoring. It is suggested that the labor standards officer prepare a matrix which identifies all project job classifications which are expected to be utilized during construction and compares each classification under the Federal and State wage decisions referenced in the Notice of Contract Award. Such a matrix will help demonstrate that the highest wage rate was paid for the classification being reviewed. Maintain tracking sheets and matrixes in your labor standards compliance files.

**LABOR STANDARDS RECORDS.** All prevailing wage records (certified payrolls, correspondence, employee interviews, debarment search results, etc.) will need to be on file and maintained by the Loan Recipient at project conclusion.



**Engineering Department  
CITY OF GOSHEN**

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

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

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Dustin Sailor, P.E., Director of Public Works

RE: **KERCHER ROAD RECONSTRUCTION – DIERDORFF RD TO US HWY 33  
(JN: 2004-0021)**

DATE: April 8, 2020

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Rieth-Riley Construction continues to work on Kercher Road, Phase 2. Current construction activity has them working on the south side of Kercher Road. Rieth-Riley Construction is requesting the closure of Firethorne Drive and Sourwood Drive, at Kercher Road, starting on April 14, 2020, until April 30, 2020.

As part of their request, they noted that traffic in and out of the industrial area is substantially reduced because of the COVID-19 event.

**Requested Motion:** Move to approve the closure of Firethorne Drive and Sourwood Drive starting April 14, 2020, until April 30, 2020.

**City of Goshen**  
**Board of Works & Safety**

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

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

\_\_\_\_\_  
Mike Landis, Board Member

Location Services is off

Search for a place or address



Dierdorff Rd

County Road 27

Caragana Ct

Lambardy Dr

Lincorhway E

Kercher Rd

Kercher Rd

Road Closed

Synergy RV Transport Inc

Linden Dr

Road Closed

Maple City Dr

Davis Dr

Sourwood Dr

Elder Dr

Firehorn Dr

Hackberry Dr

33

Bentwood Dr

Skyview Rd

Sunflower A

Daisy Ave

64°

AQI 25

Corrie