



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. June 15, 2020

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

For online streaming navigate to this meeting at <https://goshenindiana.org/calendar>

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes – None

Changes to Agenda

HIRES / PROMOTIONS / RESIGNATIONS

- (1) Promotion of William Miller from Probationary Patrol Officer to Patrol Officer
(Miller)

ANNOUNCEMENTS / PUBLIC NOTICE

- (1) Lincoln Ave. Closure at the Railroad
(Sailor)

AWARD OF BIDS

- (1) Demolition of 217 West Wilden Avenue
(Marks)



OLD BUSINESS

- (1) Agreement Amendment with Aiden Friesen
(Windsor)

- (2) Agreement Amendment with Cummins Crosspoint, LLC
(Windsor)

- (3) Agreement Amendment with Dano's Painting
(Windsor)

- (4) Agreement with Roberts Environmental Services LLC
(Windsor)

NEW BUSINESS

- (1) Agreements for Gift/Donation of Real Estate with Brunk Real Estate, LLC and TDS Properties, Inc.
(Marks)

- (2) Release and Settlement Agreement – Kidder v. City of Goshen
(Barkes)

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: June 15th, 2020

From: Jose' Miller, Chief of Police

Reference: Promotion of William Miller from Probationary Patrol Officer to Patrol Officer

I am requesting the Goshen Board of Public Works and Safety approve the promotion of William Miller from the position of Probationary Patrol Officer, to the rank of Patrol Officer, effective Wednesday June 17th, 2020. As of June 17th, Officer Miller will have completed his twelve (12) month probationary period. Officer Miller has been a dedicated officer to the City of Goshen and will continue to be so in the future.

****William will be present for the promotion.****

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



**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: **LINCOLN AVENUE CLOSURE AT THE RAILROAD**

DATE: June 15, 2020

The Goshen Street Department was notified on Thursday, June 11th that the Lincoln Avenue railroad crossing will be closed from June 15 – June 19 for repairs.

The detour will be as follows:

From the east – Blackport to Monroe to US 33
From the west – 8th Street to Madison to US 33

Requested Motion: No motion is required as this is informational only.



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

June 15, 2020

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Award Quote for Demolition of 217 West Wilden Avenue and Agreement with Jerry Reed Excavating

The City solicited sealed quotes for the demolition of 217 West Wilden Avenue in accordance with 36-1-12-5(b)(1)(A). Below is a summary of the quotes submitted:

- | | |
|---|----------|
| 1. Jerry Reed Excavating, 15401 New Road, Mishawaka, IN 46544 | \$12,600 |
| 2. John Ward Concrete, Inc., 1617 3rd Street, Osceola, IN 46561 | \$13,600 |
| 3. Advanced Excavating, LLC, 24600 County Road 36, Goshen, IN 46526 | \$14,800 |
| 4. B & E Excavating, LLC, 26237 County Road 46, Nappanee, IN 46550 | \$17,250 |

It is recommended that the Board award the quote for this work to Jerry Reed, doing business as Jerry Reed Excavating as the lowest responsible and responsive quoter.

It is also recommended that the Board approve and execute the Agreement with Jerry Reed, doing business as Jerry Reed Excavating for the demolition of 217 West Wilden Avenue. Jerry Reed Excavating will be compensated \$12,600 for all services provided.

AGREEMENT

DEMOLITION OF 217 WEST WILDEN AVENUE, GOSHEN

THIS AGREEMENT is entered into on June _____, 2020, by and between **Jerry Reed** doing business as **Jerry Reed Excavating** (“Contractor”) whose mailing address is 15401 New Road, Mishawaka, Indiana 46544, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

1. Scope of Work.

Contractor shall preform all work for the demolition of 217 West Wilden Avenue, Goshen in accordance with the sections titled General Specifications and Demolition Specifications from the Specification Documents dated May 13, 2020 which are attached as an Addendum to this agreement. The services include Contractor providing all labor, materials, tools, equipment, supplies, cost of insurance and bonds, and other miscellaneous costs necessary to complete the demolition of all structures; removal of any basements, foundations and drives; disposal of all debris; and the filling, leveling, and seeding of the grounds at 217 West Wilden Avenue, Goshen. For the purposes of this agreement, all services shall be referred to as the “Project.”

2. Effective Date; Contract Term.

- (A) The contract shall become effective on the day of execution and approval by the Goshen Board of Public Works and Safety and Contractor.
- (B) Contractor shall begin work on the Project as soon as practical after receiving a written notice to proceed from City.
- (C) The Contractor shall complete the Project by July 31, 2020.

3. Compensation.

- (A) City shall pay Contractor for the performance of the work a lump sum price of Twelve Thousand Six Hundred Dollars (\$12,600).
- (B) The lump sum price covers and include all costs necessary to provide for all supervision, labor, materials, equipment, services, permits and other components required to complete the Project in accordance with the Specification Documents, including any incidentals whether or not specifically called for in the documents.
- (C) The City of Goshen is exempt from federal excise and state sales taxes. The price shall not include any tax for which the City is exempt. A tax exemption certificate will be provided if requested. City will not be responsible for any taxes levied on the Contractor as a result of this contract. However, if it is later determined a tax must be paid by the City of Goshen, the contract price will be adjusted to reflect this liability.

4. Payment.

- (A) City shall pay Contractor for the work under this contract upon Contractor's satisfactory completion of the Project.
- (B) Payment for services rendered shall be upon City's receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Goshen Legal Department
204 E. Jefferson Street
Goshen, IN 46528

- (C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current W9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.
- (E) Any payment made by 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.

5. Inspection.

All products, materials, components, equipment, supplies or workmanship entering into the performance of this contract shall be as specified in the Specification Documents, free of defects, and subject to the City's inspection and testing. The City shall have the right to reject and return at Contractor's expense or to require at Contractor's expense, the correction or replacement of products, materials, components, equipment, supplies or workmanship which are defective or do not conform to the requirements of the Specification Documents.

6. Independent Contractor Status.

Contractor shall be deemed an independent contractor operating as a separate entity from the City of Goshen. 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 and/or the Contractor's agents, employees or subcontractors.

7. Non-Discrimination.

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

8. Employment Eligibility Verification.

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

9. Indemnification.

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

10. Insurance.

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

11. Force Majeure.

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds 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.

12. Default.

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

13. Termination.

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

14. Subcontracting or Assignment of Contract.

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

15. Amendments.

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

16. Waiver of Rights.

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

17. Applicable Laws.

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

18. Miscellaneous.

- (A) Any provision of this contract or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the contract.
- (B) In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (C) These documents shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

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

19. Severability.

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

20. Binding Effect.

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

21. Entire Agreement.

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

22. Authority to Execute.

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

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

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

Jerry Reed Excavating

Jeremy P. Stutsman, Mayor

Jerry Reed, Owner

Michael A. Landis, Member

Date: _____

Mary Nichols, Member

Date: _____

GENERAL SPECIFICATIONS

1. Site Awareness.

Contractors shall make whatever borings, tests and/or examinations necessary to fully acquaint themselves with conditions, so that the quoter may fully understand the conditions, which may affect the cost of the work. Contractor must satisfy himself as to the character of the conditions that may be encountered. Failure to make such borings, tests and/or examinations which do not provide a complete understanding of the conditions encountered shall not relieve the contractor of the responsibility for carrying out all the work to completion as shown on the plans, or as specified.

2. Progression of Work.

Once the contractor mobilizes onto the project, progressive work effort shall be maintained to complete the work on or before the identified contract deadline. Contractor shall not redirect staff and/or essential equipment to other projects nor leave City's contract work idle for a period longer than five (5) workdays without prior written authorization from the City. City recognizes there will be transition periods between scheduled activities, but the City and public should not experience prolonged absences of Project's progress.

3. Work Included.

The work shall include all labor, materials, tools, equipment, supplies, cost of insurance and bonds, other miscellaneous costs, together with all of the work specifically described under each item and other work necessary to complete the Project in accordance with the intent of these Specification Documents.

4. Hours of Work.

Contractor shall perform all work on this Project between the hours of 8:00 am and 5:00 pm. City shall be notified and shall approve in advance if contractor intends to work on a Saturday and/or a Sunday.

5. Inspections.

- (A) City's representative shall at all times have access to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.
- (B) City shall have the right to reject materials and workmanship, which are defective or require correction. If any defects, omissions or nonconformance exist in the work, the contractor agrees to correct the defect, omission or nonconformance after written notice from City. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be removed from the worksite without charge to City. In the event that the contractor fails, refuses or neglects to correct the defect, omission or nonconformance, then City may correct the same and the contractor agrees to pay on demand the cost and expense of making the correction.

6. Project Safety

- (A) It is the contractor's responsibility to enforce compliance with any protective measure indicated in these Specification Documents and as required by local, state and federal rules and regulations. The adequacy of all protective measures shall be the responsibility of the contractor as to methods, strength and stability.

- (B) Contractor shall provide barricades, guardrails, scaffolding, signage and other safety measures as needed in accordance with local, state and federal regulations.

7. Job Site Safety.

None of the specifications, conditions, plans or terms of the contract between City and the contractor shall be construed to impose any responsibility upon the City of Goshen, its employees, inspectors or other agents for the review, determination and/or supervision of job site safety. The construction means, manner and methods remain the sole responsibility of the contractor. City shall not be responsible for the failure of the contractor to provide a safe work place for the employees, employees of other contractors or the general public.

8. Reflective Vests and Hardhats.

The wearing of suitable reflective safety vests and hardhats by all workers on the project shall be mandatory. The contractor shall be ultimately responsible for enforcement of all safety requirements for any work on the project. The requirements shall apply to truck drivers, suppliers, and equipment operators who are outside of their vehicles within the project limits.

9. Cooperation.

Contractor shall cooperate with all other contractors who may be performing work on behalf of City and workers who may be employed by City on any work in the vicinity of the Project and shall so conduct their operations as to interfere the least possible extent with the work of such other contractors or workers. The contractor shall promptly make good at the contractor's own expense any injury or damage that may be sustained by other contractors or employees of City as a result of the contractor's action or inaction. Any difference or conflict which may arise between the contractor and other contractors or between the contractor and the workers of City in regard to their work shall be referred to City for resolution. If the work of the contractor is delayed because of any acts or omissions of any other contractor of City, the contractor shall not have a claim against City on account of the delay other than for an extension of time.

10. Permits.

Contractor shall obtain all permits in accordance with applicable regulations for local ordinances and state laws. Contractor shall assume and pay any applicable fees for such permits. There will be no fee for permits issued by the City of Goshen; however, the applicable permit(s) must still be obtained.

11. Demolition Clearances.

Contractor shall obtain all clearances and file any required documents in accordance with applicable federal and state statutes and regulations for demolition of a building. Contractor shall assume and pay any applicable fees for such clearances.

12. Disposal.

Contractor shall be responsible for the proper removal and disposal of all material, scrap and debris from the sites and shall assume and pay any applicable fees and charges for such disposal. Contractor shall not abandon or dispose of any materials or debris except in accordance with all applicable local, state and federal laws.

13. Utility Locations.

- (A) City shall notify NIPSCO to retire service at the site.

- (B) Contractor shall call Indiana's Utility Location Service at 811 or (800) 382-5544 a minimum of three (3) working days prior to excavating in the vicinity of utility lines for protection of underground utilities. All participating utility members will thus be routinely notified. This does not relieve the contractor of notifying utility owners who may not be part of Indiana's Utility Location Service alert system.
- (C) If the odor of natural gas is detected in a work area at any time during the course of work, the contractor shall immediately notify NIPSCO at 1-800-634-3524. Contractor shall also immediately notify the residents of adjacent property. Contractor shall advise the residents to evacuate their homes immediately if the odor is present within.

14. Utility Shutoffs.

City shall ensure all water and sewer are disconnected at the curb stop. Contractor shall verify that all utilities are properly shut off, disconnected and plugged before demolition. The sewer and water lines are to be terminated at the property's right-of-way and removed from the site.

15. Access to Public Services.

Neither the materials excavated nor the materials used in the construction work shall be so placed as to prevent free access to all fire hydrants, valves, manholes, fire alarm or police call boxes in the vicinity.

16. Piling Materials and Care of Structures.

- (A) All excavated and other material shall be so piled as not to endanger the work and so that free access may be had at any time to all parts of the work and shall be kept neatly piled so as to not inconvenience public travel or adjoining tenants as little as possible.
- (B) Proper provisions shall be made for the handling of materials and for the protection of traffic and public. Reasonable and satisfactory provisions shall be made for travel on sidewalks, crosswalks, streets, roads, railroads, and private ways.

17. Specifications.

The following specifications will be the governing factors for this particular Project.

- (A) The current edition of Utilities, Design Standards and Construction Specifications by the City of Goshen are hereby incorporated into this Specification Documents and shall apply to the Project.
- (B) The current Standard Specification by the Indiana Department of Transportation (INDOT) are hereby incorporated into this Specification Documents. Contractor shall perform each item as specified in this document.
- (C) All other documentation included herein are to be complimentary and essential parts of the contract, a requirement occurring in one is as binding as though occurring in all.
- (D) Copies of these standards are available for inspection at the City of Goshen Engineering Department and the office of the Engineer.

18. Traffic Control & Accessibility.

- (A) Traffic control for this Project shall be performed in accordance with the Indiana Manual on Uniform Traffic Control Devices for streets and highways. Traffic control shall be specific and applicable to the aforementioned Project.
- (B) It should be noted that the contractor shall be totally responsible for the maintenance of and orderly flow of traffic. Construction engineering and any flagmen, signs and barricades needed for the Project shall be furnished by the contractor, and the cost shall be considered incidental to the Project.

19. Public Convenience.

During the progress of the work, the sidewalks and portions of the streets adjoining the work or in its vicinity shall not be obstructed or littered more than may be absolutely necessary and the adjacent sidewalks shall be kept clean. The convenience of the public and of the residents along the street shall be provided.

DEMOLITION SPECIFICATIONS

The work to be performed includes the demolition of all structures; removal of any basements, foundations and drives; disposal of all debris; and the filling, leveling, and seeding of the grounds at 217 West Wilden Avenue, Goshen, Indiana, parcel number 20-11-04-454-002.000-015. A map of the Project site with view of structure(s) is attached as Exhibit A.

This work is being performed pursuant to a Court Order granting the City of Goshen, Indiana the authority to take all necessary action to demolish the unsafe structures at this location. A copy of the Court Order is attached as Exhibit B.

City will ensure all water and sewer are disconnected at the curb stop and will call in the NIPSCO retirements.

All work performed in this Project shall be between the hours of 8:00 am and 5:00 pm and shall be completed on or before July 31, 2020.

The following requirements intend to incorporate the applicable parts of INDOT's Standard Specifications 2014. (<http://www.state.in.us/dot/div/contracts/standards/book/sep13/sep.htm>) The references are INDOT's Standard Specifications 2014.

- (A) **Removal of Buildings.** The buildings and foundations shall be demolished and removed. All accumulated debris in existing basements shall be removed and disposed of. Prior to starting demolition operations, or when directed, all existing utilities shall be terminated and all floor drains shall be sealed in a satisfactory manner. Temporary fence in accordance with 107.14 may be required. Basements or depressions left by demolition shall be backfilled with B borrow and compacted in accordance with 203.23. No additional payment will be made for temporary fence, the cost is to be included in the lump sum price for removal at the location. Temporary fence shall remain the property of the contractor. (See section 202.06)

Demolition shall include complete removal of foundation, concrete slabs or footing from below grade. Contractor shall remove from the excavation, any large pieces of concrete, masonry, stone or rock encountered during the demolition.

- (B) **Proofrolling.** Proofrolling shall be performed with a pneumatic tire roller in accordance with 409.03(d)3. Other approved equipment such as a fully legally loaded tri-axle dump truck may be substituted for the pneumatic tire roller. There shall be one or two complete coverages as directed. Roller marks, irregularities, or failures shall be corrected. (See section 203.26) There shall be a 95% compaction of fill and backfill. Contractor shall perform compacting testing per site and shall provide the City with verification for each site.

- (C) **B Borrow Fill and Backfill.**

- (1) **Description:** This work shall consist of backfilling the excavation and filling up to grade with materials. (See section 211.01)

The depression left by the foundation removal shall be backfilled with B-borrow and compacted in accordance with 2014 INDOT Specification Section 203. The top 6-inches shall consist of topsoil/compost mixture.

- (2) **Materials:** B Borrow - The material used for special filling shall be of acceptable quality, free from large or frozen lumps, wood, or other extraneous matter and shall be known as

B borrow. It shall consist of suitable sand, gravel, crushed stone, ACBF, GBF, or other approved material. The material shall contain no more than 10% passing the No. 200 sieve and shall be otherwise suitably graded. The use of an essentially one-size material will not be permitted unless approved.

The Contractor has the option of either providing B borrow or structure backfill from an established Certified Aggregate Producer Program (CAPP) source, or supplying the material from another source. The Contractor has the following options for supplying B borrow or structure backfill from a local site:

- (a) the establishment of a CAPP Producer Yard at the local site in accordance with 917; or
- (b) use a CAPP Certified Aggregate Technician or a consultant on INDOT's Department list of approved Geotechnical Consultants For Gradation Control Testing.

For material excavated within the project limits, gradation control testing will be performed by City if the contractor is directed to use the material as B borrow or as structure backfill. (See section 211.02)

The frequency of gradation control testing shall be one test per 2000 t (2000 Mg) based on production samples into a stockpile or by over the scales measurement, with a minimum of two tests per contract (one in the beginning and one near the mid-point). The sampling and testing of these materials shall be in accordance with applicable requirements of 904 for fine and coarse aggregates. The Contractor shall advise, in writing, the City's Engineer of the plan to measure the material.

- (3) **Basis of Payment:** B borrow required for backfilling basements or depressions left by demolition will not be paid for separately but will be included in the lump sum price of the Project.

(D) **Fertilizer, Seed and Mulch.**

- (1) **Fertilizer:** Fertilizer of 12-12-12 analysis material shall be spread uniformly over the area to be seeded at the rate of 800 lb/ac followed by tilling to obtain a uniform seed bed, working the fertilizer into the soil 2-4 inches deep with a disk or rake operating across the slope.
- (2) **Seed Mixture U:** All permanent seeding shall be applied at the rate of 150 lb/ac consisting of 95 lb/ac of a 4-way blend of turf type tall fescues such as Tribute, Rebel II, Trailblazer or approved equal, 20 lb/ac Jasper Red Fescue or approved equal, and 35 lb/ac certified fine bladed perennial ryegrass such as Regal, Blazer, or approved equal.
- (3) **Mulch:** Mulch shall be applied to cover at least 75% of the soil surface, and shall consist of straw, hay, wood fiber, cellulose, excelsior, etc. The mulching rate shall be 2 tons/ac, and if straw over hay is used, it shall be anchored immediately by crimping, hydro-mulching with short cellulose fibers or applied liquid tackifier.
- (4) Prior to seeding, the Contractor shall provide proof of compliance with the above. Permanent seeding shall be done promptly and progressively as final grading is completed at the Project site in order to allow for the earliest possible achievement of

fully established and stabilized grass for erosion control purposes. The Contractor shall schedule the work so as to take best advantage as possible of the allowable seeding season.

EXHIBIT A

217 West Wilden Avenue, Goshen, Indiana





EXHIBIT B

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART) CAUSE NO. 20D04-1707-PL-165

CITY OF GOSHEN, INDIANA,)
) Petitioner,
))
v.))
))
RICHARD KIDDER and)
PORTFOLIO RECOVERY ASSOCIATES, LLC,)
) Respondents.

ORDER

Cause comes now for hearing on Petitioner’s Motion for Authority to Demolish Unsafe Structure. Petitioner, City of Goshen, Indiana, appears by its counsel, Donald R. Shuler. Respondent Richard Kidder appears in person as a self-represented litigant. No other party or person appears. Evidence presented and arguments heard. The Court, having read and examined Motion, considering statements of counsel and the parties at hearing, and being duly advised in the premises, now finds that Petitioner’s Motion should be GRANTED.

IT IS THEREFORE ORDERED that the City of Goshen, Indiana and its agents are given authority to take all necessary actions to demolish the unsafe structures located upon the subject Real Estate located at 217 W. Wilden Avenue, Goshen, Indiana, consisting of a residential structure with a detached garage, with the costs of such demolition to be assessed as a judgment against the Real Estate.

SO ORDERED this February 24, 2020.

Hutchins J. Lund
Judge, Elkhart Superior Court No. 4





**Legal Department
CITY OF GOSHEN**

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

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

June 15, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement Amendment with Aidan Friesen

The City entered into an Agreement on February 10, 2020 with Aidan Friesen for canopy benefits research. The City had received grant funds from Elkhart County Community Foundation that should have been included in Mr. Friesen's compensation. Additionally, due to the COVID-19 restrictions, aspects of the research were delayed requiring a term extension.

This Agreement Amendment increases the compensation by \$5,000.00 for a total contract amount of \$14,200.00 and the term of the contract is extended to no later than June 26, 2020.

Suggested motion: Move to enter into an Agreement Amendment with Aidan Friesen to provide canopy benefits research at a cost of \$5,000.00 for a total contract amount of \$14,200.00 and to extend the term of the contract to no later than June 26, 2020.

AGREEMENT AMENDMENT
Canopy Benefits Research

THIS AGREEMENT AMENDMENT is entered into on this ____ day of _____, 2020, between Aidan Friesen and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

WHEREAS, the City entered into an Agreement with Mr. Friesen dated February 10, 2020 for Mr. Friesen to analyze the City's current tree inventory, to discover vulnerabilities, and to project tree species which may be valuable to Goshen in the future for an amount not to exceed Nine Thousand Two Hundred Dollars (\$9,200.00).

WHEREAS, the compensation in the February 10, 2020 Agreement should have also included an additional Five Thousand Dollars (\$5,000.00) that the City has received from Elkhart County Community Foundation making the total compensation the amount of Fourteen Thousand Two Hundred Dollars (\$14,200.00).

Additionally, due to the COVID-19 restrictions, aspects of the research were delayed causing a delay to the overall progress of the research requiring a term extension.

NOW THEREFORE, in consideration of the mutual covenants contained in this amendment and the covenants contained in the February 10, 2020 Agreement, the parties agree as follows:

TERM

All services by Mr. Friesen under this Agreement Amendment shall be completed and delivered to the City by June 15, 2020. If, due to mutually agreed to unforeseen variables which may lengthen the work period, completion date shall be extended to June 26, 2020.

COMPENSATION

The City agrees to compensate Mr. Friesen for the services in this Agreement Amendment in accordance with the fee schedule as set forth in the table below the amount of Five Thousand Dollars (\$5,000.00) for a total contract price of Fourteen Thousand Two Hundred Dollars (\$14,200.00).

Prior to April 20	\$520.00
April 20 – May 1	\$1,620.00
May 4 - Ma 15	\$1,620.00
June completion	<u>\$1,240.00</u>
	\$5,000.00

All other terms and conditions of the February 10, 2020 Agreement shall remain the same.

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

City of Goshen

Board of Public Works and Safety

Aidan Friesen

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

Michael Landis, Member

Date: _____

Date: _____



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June 15, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement Amendment with Cummins Crosspoint, LLC

The City entered into an Agreement dated December 21, 2017 with Cummins Crosspoint, LLC to perform inspections and diagnostic testing on twenty-five (25) City of Goshen generators. The Agreement allowed for renewals of 2 additional 2 year terms under the same terms and conditions.

The City wishes to renew the Agreement for an additional 2 year term.

The Agreement Amendment term is for 2 years beginning January 1, 2020 through to December 31, 2020.

Suggested motion: Move to enter into an Agreement Amendment with Cummins Crosspoint, LLC to perform inspections and diagnostic testing on twenty-five (25) City of Goshen generators for an additional 2 year term with all terms and conditions of the December 21, 2017 remaining the same.

AGREEMENT AMENDMENT
Inspection and Diagnostic Testing of City Generators

THIS AGREEMENT AMENDMENT is entered into on this ____ day of _____, 2020, between Cummins Crosspoint, LLC, hereinafter referred to as “Contractor”, and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City”.

WHEREAS, the City entered into an Agreement with Contractor dated December 21, 2017 for Contractor to provide inspections and diagnostic testing on twenty-five (25) City of Goshen generators for a two (2) year term for the amount of Ten Thousand Eight Hundred Ninety-one Dollars and Fifty-four Cents (\$10,891.54) per year for a total contract price of Twenty-one Thousand Seven Hundred Eight-three Dollars and Eight Cents (\$21,783.08).

WHEREAS, the December 21, 2017 Agreement allowed for the Agreement to be renewed for two (2) additional two (2) year terms under the same terms and conditions upon written approval of the contracting parties.

WHEREAS, the City desires to renew the Agreement with Contractor and Contractor agrees to renew the Agreement for an additional two (2) year term.

NOW THEREFORE, in consideration of the mutual covenants contained in this amendment and the covenants contained in the December 21, 2017 Agreement for inspections and diagnostic testing on the City of Goshen generators, the parties agree as follows:

TERM

The term of the Agreement Amendment shall be from January 1, 2020 through December 31, 2021. Work on the project shall begin after January 1st each year and shall be completed by September 1st each year for each of 2020 and 2021. Upon written approval of the contracting parties, the contract may be renewed for one (1) more additional two (2) year term under the same terms and conditions.

All other terms and conditions of the December 21, 2017 Agreement shall remain the same.

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

City of Goshen
Board of Public Works and Safety

Cummins Crosspoint, LLC

Jeremy P. Stutsman, Mayor

Jeffrey Daley, PEM Administration
Manager – PG, Northern US

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____



**Legal Department
CITY OF GOSHEN**

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www.goshenindiana.org

June 15, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement Amendment with Dano's Painting, LLC

The City entered into an Agreement dated December 23, 2019 with Dano's Painting, LLC to construct structures over and around fuel tanks at Violet Cemetery, 2818 Violet Rd, Goshen and at Oakridge Cemetery, 427 N 1st St, Goshen.

Dano's Painting, LLC has requested a term extension of 30 days until July 15, 2020 due to delays caused by the Covid-19 virus.

Suggested motion: Move to enter into an Agreement Amendment with Dano's Painting, LLC allowing for an additional 30 days to perform the work at Violet Cemetery and at Oakridge Cemetery with all work completed by July 15, 2020 and with all terms and conditions of the December 23, 2019 remaining the same.

AGREEMENT AMENDMENT

Construct Structures at Oakridge and Violet Cemetery

THIS AGREEMENT AMENDMENT is entered into on this ____ day of _____, 2020, between Dano's Painting LLC, hereinafter referred to as "Contractor", and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

WHEREAS, the City entered into an Agreement with Contractor dated December 23, 2019 for Contractor to construct structures over and around fuel tanks at Violet Cemetery, 2818 Violet Rd, Goshen and at Oakridge Cemetery, 427 N 1st St, Goshen for the amount of Eleven Thousand Two Hundred Dollars (\$11,200.00).

WHEREAS, the Contractor has requested a term extension due to delays caused by the Covid-19 virus.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement Amendment and the covenants contained in the December 23, 2019 Agreement for Construct Structures at Oakridge and Violet Cemeteries, the parties agree as follows:

TERM

All work by Contractor under this Agreement Amendment shall be completed no later than July 15, 2020.

All other terms and conditions of the December 23, 2019 Agreement shall remain the same.

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

City of Goshen
Board of Public Works and Safety

Dano's Painting LLC

Jeremy P. Stutsman, Mayor

Daniel Glogouski, Owner

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____



**Legal Department
CITY OF GOSHEN**

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June 15, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement with Roberts Environmental Services LLC

Consultant has been providing waste characterization sampling, excavation oversight, and excavation confirmation of sampling at the City's North Water Plant at 308 North 5th Street (State Cleanup ID #0000563).

The City wishes to contract with Roberts Environmental Services LLC to provide the continuation of quarterly ground water sampling for the next 3 quarters and then hopefully the well abandonment after obtaining all of IDEM's approvals.

The services included in this Agreement shall be completed within four (4) weeks after the closure report is approved by IDEM and the total cost for all work shall not exceed \$15,850.00

Suggested motion: Move to enter into an agreement with Roberts Environmental Services LLC to provide ground water sampling, reporting and well abandonment at a cost not to exceed \$15,850.00 with all services to be completed within four (4) after the closure report is approved by IDEM.

AGREEMENT

2020 Quarterly Ground Water Sampling and Well Closure

THIS AGREEMENT is entered into on this ____ day of _____, 2020, between Roberts Environmental Services, 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, Consultant has been providing waste characterization sampling, excavation oversight, and excavation confirmation of sampling at the City’s North Water Plant at 308 North 5th Street (State Cleanup ID #0000563). (June 13, 2017 Agreement, June 12, 2018 Agreement Amendment, June 11, 2019 Agreement Amendment #2)

WHEREAS, the City desires to contract with Consultant, and Consultant agrees to perform, at the City of Goshen’s North Water Plant, 308 N. 5th Street, quarterly ground water sampling and provide closure reporting in accordance with Indiana Department of Environmental Management (IDEM).

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 shall consist of the continuation of quarterly ground water sampling at the City of Goshen’s North Water Plant, 308 N. 5th Street and provide reporting on the data, all in accordance with IDEM’s requirements.

Consultant’s services shall include brief phone calls, emails, submittals of the reports and up to two (2) meetings in Goshen to discuss results.

Consultant shall complete three (3) rounds of groundwater sampling at all six (6) monitoring wells in the City’s current monitoring well network in June, September and December 2020 that shall include:

- Measuring and recording static water levels, the depth to water, in each well with an electronic water level indicator prior to sampling, all in the same day.
- Providing nine (9) quarterly samples by sampling all six (6) wells using low-flow purging/sampling techniques in accordance with IDEM’s current guidance plus one field duplicate, one matrix spike/matrix spike duplicate (MS/MSD) and one trip blank in each sample shipment for quality assurance/quality control (QA/QC) and a Level IV QA/QC for the last sampling event in December 2020.
- Collecting groundwater samples directly into laboratory-supplied containers and immediately placing into ice-fill, insulated coolers.
- Following all appropriate chain-of custody procedures for the selected laboratory.
- Analyzing samples for polynuclear aromatic hydrocarbon (PAH) using SW-846 Method 8270-SIM.

Consultant shall prepare reports updating tables and maps following the completion of each of the first two (2) sampling events in June and September 2020. Consultant’s reporting shall include:

- Documentation of the work performed and the results of the preceding two (2) quarterly sampling events.
- Groundwater, elevation and analytical data presented in tabular and/or graphical form along with historical data and copies of the laboratory results.

- Submission to the City a draft of the report for review and comment within fifteen (15) days following receipt of the groundwater analytical results from each sampling events.
- Incorporate into the report any comments or clarifications requested by the City prior to Consultant's submission to IDEM within 1 week after City's approval.

Following the September 2020 sampling event, Consultant shall submit a request to IDEM that closure of the six wells be granted after the December 2020 sampling event.

Closure Report

Following the December 2020 sampling event, Consultant shall submit a Closure Report to IDEM that shall include:

- Data from the quarterly sampling events;
- Full-color tables;
- Ground water flow maps;
- Contaminant maps;
- Laboratory reports;
- Historical data;
- Text descriptions of the activities that took place over the course of the project.

Consultant shall also include in the Closure Report a draft Environmental Restrictive Covenant ("ERC") evaluating the risks associated with any remaining contamination at the Site.

Consultant shall submit a draft of the Closure Report to the City for review and comment within forty-five (45) days following receipt of ground water analytical results from the December 2020 sampling and shall incorporated the City's comments or clarifications into the final version of the report. Consultant shall provide the City with electronic copies of the Closure Report (draft and final versions).

Consultant shall record the final signed/notarized ERC on the property deed and shall forward a copy of the ERC to IDEM so that IDEM grants the No Further Action ("NFA") status for the Site.

Consultant's closure activities shall include the well abandonments after the closure report is approved by IDEM and shall forward the monitoring well abandonment logs to IDEM and IDNR.

Consultant shall remove three (3) drums of Investigative Derived Waste (one (I) drum per sampling event) after the December 2020 sampling event. Consultant shall be responsible for the proper removal and disposal of all material, scrap and debris from the site and shall assume and pay any applicable fees and charges for such disposal. Consultant shall not abandon or dispose of any materials or debris except in accordance with all applicable local, state and federal laws.

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 three (3) sampling events shall be no later than June 30, 2020 for the 2nd Quarter, no later than September 30, 2020 for the 3rd Quarter, and no later than December 31, 2020 for the 4th Quarter. Well abandonments shall be completed within four (4) weeks after the closure report is approved by IDEM.

COMPENSATION

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's hourly rates and expense fees in Exhibit A and Consultant's fee schedule as set forth in the table below based on hours actually worked for an amount not exceed Fifteen Thousand Eight Hundred Fifty Dollars (\$15,850.00).

Fee Schedule	
Ground Water Sampling	\$7,250.00
Surcharge for Level IV December 2020 Analysis	\$150.00
Disposal Investigative Derived Waste	\$450.00
Closure Report	\$6,500.00
Well Abandonments	<u>\$1,500.00</u>
	<u>\$15,850.00</u>

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. The detailed invoice shall include the total contract amount, payments to date, remaining contract balance, percentage of completed work and employee names and hours worked on specific task(s). 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
Professional Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and 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 work 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

Roberts Environmental Services, LLC
Attention: Jeffrey C. Roberts
2112 Carmen Court
Goshen IN 46526

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**

Roberts Environmental Services, LLC

Jeremy P. Stutsman, Mayor

Jeffrey C. Roberts, President

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____

EXHIBIT A

Consultant's Hourly Rates and Expense Fees

ROBERTS ENVIRONMENTAL SERVICES, LLC
2020 LABOR FEE SCHEDULE

Principal	\$165.00/hour
Sr. Project Geologist/Hydrogeologist/Scientist/Engineer	\$100 - \$135/hour
Project Geologist/Scientist/Engineer	\$88 - \$100/hour
Geologist/Scientist II	\$85 - \$88/hour
Geologist/Scientist I	\$76 - \$85/hour
Sr. Environmental Geologist/Scientist/Technician	\$67 - \$76/hour
Staff Environmental Geologist/Scientist/Technician	\$60 - \$67/hour
Project Administrator/Specialist	\$55 - \$60/hour

ROBERTS ENVIRONMENTAL SERVICES, LLC
2020 GENERAL EQUIPMENT, SUPPLIES, AND EXTERNAL EXPENSES FEE
SCHEDULE

COMMON EQUIPMENT:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Company Vehicle (>50 mi Total)	\$38.00 (Plus Mileage)	Trip
Company Vehicle (<50 mi Total)	\$68.00	Trip
Photo Ionization Detector ("PID")	\$90.00	Day
Dual Phase Interface Probe	\$60.00	Day
Water Level Indicator	\$30.00	Day
Masterflex Peristaltic Pump ("MBP")	\$90.00	Day
Mechanical Bladder Pump	\$90.00	Day
Low Flow Submersible Pump	\$90.00	Day
Air Bladder Pump/Controller	\$220.00	Day
Pressure Washer	\$75.00	Day
Surveying Equipment	\$35.00	Day
Pneumatic Drum Vacuum	\$150.00	Day
Temperature/Conductivity Meter	\$15.00	Day
Optical Dissolved Oxygen Meter	\$50.00	Day
Aqua Troll 600 Multi-Parameter/Low Flow cell	\$140.00	Day
Hand-Auger (Various Sizes)	\$25.00	Day

COMMON SUPPLIES:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Bailers, 0.07 to 1.5-inch O.D. Polyethylene	\$10.00	Each
Concentric Tubing for MBP	\$3.00	Foot
Decontamination Supplies	\$20.00	Day
Reconditioned 55-Gallon Drum	\$65.00	Each
0.5 Micron In-Line Filter	\$22.00	Each
Nitrile Disposable Gloves	\$0.35	Pair

[Other supplies necessary to complete a specific project will be dependent on nature of work being performed. These supplies will be billed in accordance with specific internal fee schedules or as an external expense, which is simply cost +10%]

EXTERNAL EXPENSES:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
<u>External Expenses</u> (such as, travel, lodging, subcontracted services, equipment rental, expendable materials purchased for project, etc.):	Cost+10%	----
<u>Per Diem</u> (includes food allowance plus nominal personal expenses):	\$35.00	Day
<u>Mileage</u> (company-owned or personal vehicle):	\$0.65	Mile



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

June 15, 2020

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Agreements for Gift/Donation of Real Estate with
Brunk Real Estate, LLC and TDS Properties, Inc.

The City's pedestrian/bicycle path that extends easterly from East Lincoln Avenue south of Rock Run Creek was constructed partially upon real estate that is owned by Brunk Real Estate, LLC and TDS Properties, Inc. Both parties are willing to give/donate the real estate that is affected by the pedestrian/bicycle path to the City.

It is recommended that the Board approve and authorize the Mayor to execute the two Agreements for Gift/Donation of Real Estate and accept the transfer of the real estate – one is with Brunk Real Estate, LLC for 0.137 acre of real estate and one is with TDS Properties, Inc. for 0.031 acre of real estate.

AGREEMENT FOR GIFT/DONATION
OF REAL ESTATE

THIS AGREEMENT FOR GIFT/DONATION OF REAL ESTATE, made and entered into this 31st day of May, 2020, by and between BRUNK REAL ESTATE, LLC, a Delaware limited liability company, hereinafter referred to as "Donor," and the CITY OF GOSHEN, a municipal corporation, hereinafter referred to as "Donee."

WITNESSETH:

WHEREAS, Donor is the owner of the following described real estate situate in Elkhart County, State of Indiana, to-wit:

A part of the Southwest Quarter of Section 10, Township 36 North, Range 6 East, Elkhart Township, City of Goshen, Elkhart County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of Lot Number Three Hundred Twenty-three (323) as the said Lot is known and designated on the Plat of Mercer's Addition to the Town, now City, of Goshen, Indiana, said Plat being recorded in the Office of the Recorder of Elkhart County in Deed Record Volume 16, page 216; thence north 00 degrees 31 minutes 00 seconds west along the northerly extension of the east line of Ninth Street, a distance of 21.00 feet to an iron pipe marking the northwest corner of a parcel of land conveyed to Teocalli Leasing, LLC as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2017-04784; thence continuing north 00 degrees 31 minutes 00 seconds west along the last described line, a distance of 78.00 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence south 89 degrees 37 minutes 00 seconds west, a distance of 20.69 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence north 30 degrees 49 minutes 00 seconds east along the southeasterly line of East Lincoln Avenue, a distance of 123.04 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041 marking the most westerly corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2002-23132; thence north 48 degrees 41 minutes 28 seconds east along the southeasterly line of the City of Goshen parcel, a distance of 33.02 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence southeasterly along the southerly line of a parcel of land conveyed to TDS Properties, Inc. as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 0099-23047, being on the arc of a 768.62 foot radius curve to the left, concave to the northeast, a distance of 197.05 feet (chord bearing south 57 degrees 57 minutes 42 seconds east, chord distance 196.51 feet) to a 5/8 inch rebar with cap stamped Brads-Ko 0041 to the end of said curve; thence southeasterly along the southerly line of said TDS Properties, Inc. parcel, being on the arc of a 764.67 foot radius curve to the left, concave to the northeast, a distance of 315.46 feet (chord bearing south 77 degrees 09 minutes 59 seconds east, chord distance 313.23 feet) of a 5/8 inch rebar with cap stamped Abonmarche Firm #0050

marking the point of tangency of said curve; thence south 88 degrees 59 minutes 05 seconds east along the south line of said TDS Properties, Inc. parcel, a distance of 121.97 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the southeast corner of said TDS Properties, Inc. parcel; thence north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 97.47 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of beginning of this description; thence continuing north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 16.97 feet to the southwest corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2002-23133; thence along the next seven (7) courses being along the south line of said City of Goshen parcel; thence south 84 degrees 41 minutes 17 seconds east, a distance of 62.70 feet; thence south 80 degrees 27 minutes 20 seconds east, a distance of 142.22 feet; thence south 82 degrees 03 minutes 15 seconds east, a distance of 79.75 feet; thence south 87 degrees 24 minutes 21 seconds east, a distance of 99.00 feet; thence north 88 degrees 39 minutes 21 seconds east, a distance of 56.52 feet; thence south 77 degrees 07 minutes 59 seconds east, a distance of 43.30 feet; thence south 67 degrees 38 minutes 01 second east, a distance of 44.82 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050; thence north 84 degrees 09 minutes 00 seconds west, a distance of 522.96 feet to the point of beginning of this description, containing 5,969 square feet or 0.137 of an acre, more or less, being subject to all easements, restrictions and public rights of way of record.

(Hereinafter referred to as the "Real Estate");

WHEREAS, Donee needs and desires such Real Estate for purposes of a pedestrian and bicycle path;

WHEREAS, Donee has heretofore acquired other real property, and has constructed its desired pedestrian and bicycle path, but Donee has determined that such pedestrian and bicycle path, and improvements associated with such, impact the Real Estate aforescribed, and that the ownership of the Real Estate by Donee is necessary and appropriate for the public purposes of Donee;

WHEREAS, Donor is willing to give/donate the Real Estate to Donee for such desirable public purposes and uses, and provide Donee with ownership of the Real Estate consistent with its already established pedestrian and bicycle path;

NOW, THEREFORE, upon the mutual promises and commitments of Donor and Donee to be performed, the parties stipulate and agree as follows:

1. Commitment to Convey. Donor herewith promises, commits, and agrees to convey the Real Estate to Donee. Such conveyance shall be by Quit-Claim Deed in the form and substance of that attached hereto, labeled Exhibit A, and made a part hereof.

2. Acceptance. Donee herewith agrees to accept the conveyance of the Real Estate by such Quit-Claim Deed, and Donee herewith commits to perpetuate its use and development of such Real Estate, and other real property immediately adjacent thereto, as part such pedestrian and bicycle pathway.

3. Closing and Change of Possession. Closing, to include execution and delivery of the Quit-Claim Deed, shall occur simultaneous with execution of this Agreement by Donee. Change of possession is acknowledged by Donor and Donee to have occurred years ago, when the pedestrian and bicycle path was initially developed by Donee.

4. Condition of Real Estate. Donor makes no warranties or representations as to the condition or prior usage of the aforescribed Real Estate, or its use or fitness for any particular purpose, or any other type of representation, warranty, or covenant as and to the Real Estate, other than the duty and responsibility of Donor to convey its interest in the Real Estate via the Quit-Claim Deed aforescribed. Donee agrees to accept the Real Estate in "as is" condition, free of any warranty, claim, promises, or commitment of Donor. No title evidence is being provided, and Donee acknowledges that Donee has undertaken Donee's own title search as and to the Real Estate, or accepts the Real Estate absent any title search.

5. Real Estate Taxes. Any current but unpaid real estate taxes pertaining to the Real Estate shall be and remain the responsibility of Donor. It is contemplated by the parties that after conveyance of title, the Real Estate, in the name of Donee, shall be exempt from subsequent real estate taxes.

6. Environmental Matters; Indemnification. Donor makes no warranties or representations as to environmental matters pertaining to the Real Estate. Donee, effective as of Closing, shall and hereby does release, discharge, and acquit Donor, its agents, representatives, officers, members, and employees, as well as its successors, beneficiaries, and assigns thereof, from any and all claims, causes of action, lawsuits, damages, or entitlements claimed or alleged by Donee or its successors in interest as and to the Real Estate.

Additionally, Donee shall indemnify, defend, and hold harmless Donor from and against any and all claims, suits for damages, liability, loss, expenses, causes of action and judgments

(including, but not limited to, attorneys' fees and legal expenses in connection with defending against any such action, suit or claim) (collectively, "Claims") arising out of or relating to the use, occupancy, or condition of the Real Estate, including any and all Claims arising or accruing prior to and after Closing, regardless of whether Donor owned the Real Estate at such time. Donee specifically acknowledges that Donee has possessed and controlled the Real Estate for in excess of fifteen (15) years and that Donor has never possessed or used the Real Estate, as Donor was not formed until 2015. The rights and obligations provided for in this Section 6 shall survive Closing.

7. Bartow Minor Subdivision Plat. Donor and Donee stipulate and acknowledge that this Agreement, and the Quit-Claim Deed contemplated hereby, have been developed and agreed upon by Donor and Donee, at the request of Donee, and as part of the platting, as required by Donee, of Bartow Minor Subdivision, as to which certain additional real property of Donor, Teocalli Leasing, LLC ("Teocalli"), TDS Properties, Inc. ("TDS"), and Ideal Lawnmower Properties, LLC ("Ideal") has been approved in both preliminary and secondary, and/or final form by Donee, or boards or entities of Donee, at the request of Teocalli, Ideal, and TDS, and with the concurrence of Donor herein.

8. Authority. The undersigned persons executing this Agreement for Gift/Donation of Real Estate for and on behalf of Donor and Donee respectively certify that they are duly authorized and empowered by the governing boards of Donor and Donee to execute the same for and on behalf thereof.

9. Binding Effect. This Agreement for Gift/Donation of Real Estate shall be binding upon and inure to the benefit of the parties hereto and the respective successors and assigns thereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for Gift/Donation of Real Estate effective the date and year first above written.

[Signatures on separate sheet]

DONOR:

BRUNK REAL ESTATE, LLC

By Larry Berkowski
Larry Berkowski, Authorized Signatory

DONEE:

CITY OF GOSHEN

By _____
Signature

Printed Name

Title: _____

QUIT-CLAIM DEED

This indenture witnesseth that BRUNK REAL ESTATE, LLC, a Delaware limited liability company (“Grantor”), of Elkhart County in the State of Indiana, as and to the real estate hereinafter described, **grants, releases and quit-claims** to CITY OF GOSHEN (“Grantee”), of Elkhart County in the State of Indiana, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the following described real estate located in Elkhart County, State of Indiana, to-wit:

A part of the Southwest Quarter of Section 10, Township 36 North, Range 6 East, Elkhart Township, City of Goshen, Elkhart County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of Lot Number Three Hundred Twenty-three (323) as the said Lot is known and designated on the Plat of Mercer’s Addition to the Town, now City, of Goshen, Indiana, said Plat being recorded in the Office of the Recorder of Elkhart County in Deed Record Volume 16, page 216; thence north 00 degrees 31 minutes 00 seconds west along the northerly extension of the east line of Ninth Street, a distance of 21.00 feet to an iron pipe marking the northwest corner of a parcel of land conveyed to Teocalli Leasing, LLC as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2017-04784; thence continuing north 00 degrees 31 minutes 00 seconds west along the last described line, a distance of 78.00 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence south 89 degrees 37 minutes 00 seconds west, a distance of 20.69 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence north 30 degrees 49 minutes 00 seconds east along the southeasterly line of East Lincoln Avenue, a distance of 123.04 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041 marking the most westerly corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded

in the Office of the Recorder of Elkhart County in Instrument Number 2002-23132; thence north 48 degrees 41 minutes 28 seconds east along the southeasterly line of the City of Goshen parcel, a distance of 33.02 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence southeasterly along the southerly line of a parcel of land conveyed to TDS Properties, Inc. as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 0099-23047, being on the arc of a 768.62 foot radius curve to the left, concave to the northeast, a distance of 197.05 feet (chord bearing south 57 degrees 57 minutes 42 seconds east, chord distance 196.51 feet) to a 5/8 inch rebar with cap stamped Brads-Ko 0041 to the end of said curve; thence southeasterly along the southerly line of said TDS Properties, Inc. parcel, being on the arc of a 764.67 foot radius curve to the left, concave to the northeast, a distance of 315.46 feet (chord bearing south 77 degrees 09 minutes 59 seconds east, chord distance 313.23 feet) of a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of tangency of said curve; thence south 88 degrees 59 minutes 05 seconds east along the south line of said TDS Properties, Inc. parcel, a distance of 121.97 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the southeast corner of said TDS Properties, Inc. parcel; thence north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 97.47 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of beginning of this description; thence continuing north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 16.97 feet to the southwest corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2002-23133; thence along the next seven (7) courses being along the south line of said City of Goshen parcel; thence south 84 degrees 41 minutes 17 seconds east, a distance of 62.70 feet; thence south 80 degrees 27 minutes 20 seconds east, a distance of 142.22 feet; thence south 82 degrees 03 minutes 15 seconds east, a distance of 79.75 feet; thence south 87 degrees 24 minutes 21 seconds east, a distance of 99.00 feet; thence north 88 degrees 39 minutes 21 seconds east, a distance of 56.52 feet; thence south 77 degrees 07 minutes 59 seconds east, a distance of 43.30 feet; thence south 67 degrees 38 minutes 01 second east, a distance of 44.82 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050; thence north 84 degrees 09 minutes

00 seconds west, a distance of 522.96 feet to the point of beginning of this description, containing 5,969 square feet or 0.137 of an acre, more or less

Subject to all public rights of way, easements, current usage arrangements, and restrictions of record.

(The "Real Estate.")

Being a portion of tax code numbers 20-11-10-327-008.000-015 and 20-11-10-327-010.000-015.

The Real Estate aforescribed was acquired by Grantor in a series of conveyances and transactions finalized in 2015, it being acknowledged by Grantor and Grantee that Grantor herein had no prior ownership, usage, possession, or other rights, entitlements, or activities associated with the Real Estate prior to 2015.

The undersigned person, to-wit: Larry Berkowski, executing this Quit-Claim Deed for and on behalf of Grantor, hereby certifies that he is duly authorized and empowered by the Articles of Organization, Operating Agreement, and Manager of said limited liability company to execute and deliver this Quit-Claim Deed for and on behalf thereof.

IN WITNESS WHEREOF, the Grantor has executed this Quit-Claim Deed this 4 day of June, 2020.

BRUNK REAL ESTATE, LLC

By Larry Berkowski
Larry Berkowski, Authorized Signatory

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, this 4th day of June, 2020, personally appeared Larry Berkowski, as Authorized Signatory of Brunk Real Estate, a Delaware limited liability company, and acknowledged that as such he executed the foregoing Quit-Claim Deed for and on behalf and in the name of said limited liability company, for the uses and purposes therein mentioned, and that he was authorized so to do.

WITNESS my hand and notarial seal.

Theresa L. Ganger
Theresa L. Ganger, Notary Public
Residing in Elkhart County, Indiana
Commission No. NP0 697086

My Commission Expires:
02-23-2025



THERESA L. GANGER
NOTARY PUBLIC
State of Indiana, Kosciusko County
My commission expires Feb. 23, 2025
Commission Number 697086

**Grantee's mailing address is
and send tax statements to:**

202 South Fifth Street
Goshen, IN 46528

ACCEPTANCE

The City of Goshen, Elkhart County, Indiana, hereby accepts the gift and conveyance of this Quit-Claim Deed from Brunk Real Estate, LLC, this ____ day of _____, 2020.

Jeremy Stutsman, Mayor

Prepared by Gordon Lord, Yoder, Ainlay, Ulmer & Buckingham, LLP
130 N. Main St., Goshen, IN 46526

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Gordon Lord, 130 N. Main St., Goshen, IN 46526

Return Deed to: Gordon Lord, 130 North Main Street, Goshen, IN 46526

**AGREEMENT FOR GIFT/DONATION
OF REAL ESTATE**

THIS AGREEMENT FOR GIFT/DONATION OF REAL ESTATE, made and entered into this ____ day of _____, 2020, by and between TDS PROPERTIES, INC., an Indiana corporation, hereinafter referred to as "Donor," and the CITY OF GOSHEN, a municipal corporation, hereinafter referred to as "Donee."

WITNESSETH:

WHEREAS, Donor is the owner of the following described real estate situate in Elkhart County, State of Indiana, to-wit:

A part of the Southwest Quarter of Section 10, Township 36 North, Range 6 East, Elkhart Township, City of Goshen, Elkhart County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of Lot Number Three Hundred Twenty-three (323) as the said Lot is known and designated on the Plat of Mercer's Addition to the Town, now City, of Goshen, Indiana, said Plat being recorded in the Office of the Recorder of Elkhart County in Deed Record Volume 16, page 216; thence north 00 degrees 31 minutes 00 seconds west along the northerly extension of the east line of Ninth Street, a distance of 21.00 feet to an iron pipe marking the northwest corner of a parcel of land conveyed to Teocalli Leasing, LLC as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2017-04784; thence continuing north 00 degrees 31 minutes 00 seconds west along the last described line, a distance of 78.00 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence south 89 degrees 37 minutes 00 seconds west, a distance of 20.69 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence north 30 degrees 49 minutes 00 seconds east along the southeasterly line of East Lincoln Avenue, a distance of 123.04 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the most westerly corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2002-23132; thence north 48 degrees 41 minutes 28 seconds east along the southeasterly line of the City of Goshen parcel, a distance of 33.02 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence southeasterly along the southerly line of a parcel of land conveyed to TDS Properties, Inc. as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 0099-23047, being on the arc of a 768.62 foot radius curve to the left, concave to the northeast, a distance of 197.05 feet (chord bearing south 57 degrees 57 minutes 42 seconds east, chord distance 196.51 feet) to a 5/8 inch rebar with cap stamped Brads-Ko 0041 to the end of said curve; thence southeasterly along the southerly line of said TDS Properties, Inc. parcel, being on the arc of a 764.67 foot radius curve to the left, concave to the northeast, a distance of 315.46 feet (chord bearing south 77 degrees 09 minutes 59 seconds east, chord distance 313.23 feet) of a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of tangency of said curve; thence south 88 degrees 59 minutes 05 seconds east along the south line of said TDS Properties, Inc. parcel, a distance of 121.97 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the southeast corner of said TDS Properties, Inc. parcel; thence north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 97.47 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of beginning of this description; thence north 76 degrees 58 minutes 25 seconds west, a distance of 243.62 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 on the north line of said TDS Properties, Inc. parcel, also being the south lien of aforesaid City of Goshen parcel; thence along the next four (4) courses being along the south line of said City of Goshen parcel: thence south 80 degrees 45 minutes 53 seconds east, a distance of 52.67 feet; thence south 75 degrees 52 minutes 27 seconds east, a distance of 76.44 feet; thence south 84 degrees 15 minutes 21 seconds east, a distance of 72.17 feet; thence south 84 degrees 41 minutes 28 seconds east, a distance of 39.10 feet; thence south 01 degree 40 minutes 07 seconds east, a distance of 16.97 feet to the point of

beginning of this description, containing 1,343 square feet or 0.031 of an acre, more or less.

(Hereinafter referred to as the "Real Estate");

WHEREAS, Donee needs and desires such Real Estate for purposes of a pedestrian and bicycle path;

WHEREAS, Donee has heretofore acquired other real property (to include acquisition from Donor), and has constructed its desired pedestrian and bicycle path, but Donee has determined that such pedestrian and bicycle path, and improvements associated with such, impact the Real Estate aforescribed, and that the ownership of the Real Estate by Donee is necessary and appropriate for the public purposes of Donee;

WHEREAS, Donor is willing to give/donate the Real Estate to Donee for such desirable public purposes and uses, and provide Donee with ownership of the Real Estate consistent with its already established pedestrian and bicycle path;

NOW, THEREFORE, upon the mutual promises and commitments of Donor and Donee to be performed, the parties stipulate and agree as follows:

1. Commitment to Convey. Donor herewith promises, commits, and agrees to convey the Real Estate to Donee. Such conveyance shall be by Quit-Claim Deed in the form and substance of that attached hereto, labeled Exhibit A, and made a part hereof.

2. Acceptance. Donee herewith agrees to accept the conveyance of the Real Estate by such Quit-Claim Deed, and Donee herewith commits to perpetuate its use and development of such Real Estate, and other real property immediately adjacent thereto, as part such pedestrian and bicycle pathway.

3. Closing and Change of Possession. Closing, to include execution and delivery of the Quit-Claim Deed, shall occur simultaneous with execution of this Agreement by Donee. Change of possession is acknowledged by Donor and Donee to have occurred years ago, when the pedestrian and bicycle path was initially developed by Donee.

4. Condition of Real Estate. Donor makes no warranties or representations as to the condition or prior usage of the aforescribed Real Estate, or its use or fitness for any particular purpose, or any other type of representation, warranty, or covenant as and to the Real Estate, other than the duty and responsibility of Donor to convey its interest in the Real Estate via the Quit-Claim Deed aforescribed. Donee agrees to accept the Real Estate in "as is" condition, free of any warranty, claim, promises, or commitment of Donor. No title evidence is being provided, and Donee acknowledges that Donee has undertaken Donee's own title search as and to the Real Estate, or accepts the Real Estate absent any title search.

5. Real Estate Taxes. Any current but unpaid real estate taxes pertaining to the Real Estate shall be and remain the responsibility of Donor. It is contemplated by the parties that after conveyance of title, the Real Estate, in the name of Donee, shall be exempt from subsequent real estate taxes.

6. Environmental Matters. Donor makes no warranties or representations as to environmental matters pertaining to the Real Estate. Donee, effective as of Closing, shall and hereby does release, discharge, and acquit Donor, its agents, representatives, officers, members, and employees, as well as its successors, beneficiaries, and assigns thereof, from any and all claims, causes of action, lawsuits, damages, or entitlements claimed or alleged by Donee or its successors in interest as and to the Real Estate. Donor specifically acknowledges that Donor has possessed and controlled the Real Estate for in excess of fifteen (15) years to the exclusion of Donor.

7. Bartow Minor Subdivision Plat. Donor and Donee stipulate and acknowledge that this Agreement, and the Quit-Claim Deed contemplated hereby, have been developed and agreed upon by Donor and Donee, at the request of Donee, and as part of the platting, as required by Donee, of Bartow Minor Subdivision, as to which certain additional real property of Donor, Teocalli Leasing, LLC ("Teocalli"), Brunk Real Estate, LLC ("Brunk RE"), and Ideal Lawnmower Properties, LLC ("Ideal") has been approved in both preliminary and secondary and/or final form by Donee, or boards or entities of Donee, at the request of Teocalli, Ideal, and Brunk RE, and with the concurrence of Donor herein.

8. Authority. The undersigned persons executing this Agreement for Gift/Donation of Real Estate for and on behalf of Donor and Donee respectively certify that they are duly authorized and empowered by the governing boards of Donor and Donee to execute the same for and on behalf thereof.

9. Binding Effect. This Agreement for Gift/Donation of Real Estate shall be binding upon and inure to the benefit of the parties hereto and the respective successors and assigns thereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for Gift/Donation of Real Estate effective the date and year first above written.

[Signatures on separate sheet]

DONOR: TDS PROPERTIES, INC.

By  Steve Bartow, Authorized
Signatory

DONEE: CITY OF GOSHEN

By _____ Signature

_____ Printed Name

Title: _____

QUIT-CLAIM DEED

This indenture witnesseth that TDS PROPERTIES, INC., an Indiana corporation ("Grantor"), of Elkhart County in the State of Indiana, as and to the real estate hereinafter described, **grants, releases and quit-claims** to CITY OF GOSHEN ("Grantee"), of Elkhart County in the State of Indiana, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the following described real estate located in Elkhart County, State of Indiana, to-wit:

A part of the Southwest Quarter of Section 10, Township 36 North, Range 6 East, Elkhart Township, City of Goshen, Elkhart County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of Lot Number Three Hundred Twenty-three (323) as the said Lot is known and designated on the Plat of Mercer's Addition to the Town, now City, of Goshen, Indiana, said Plat being recorded in the Office of the Recorder of Elkhart County in Deed Record Volume 16, page 216; thence north 00 degrees 31 minutes 00 seconds west along the northerly extension of the east line of Ninth Street, a distance of 21.00 feet to an iron pipe marking the northwest corner of a parcel of land conveyed to Teocalli Leasing, LLC as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2017-04784; thence continuing north 00 degrees 31 minutes 00 seconds west along the last described line, a distance of 78.00 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence south 89 degrees 37 minutes 00 seconds west, a distance of 20.69 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence north 30 degrees 49 minutes 00 seconds east along the southeasterly line of East Lincoln Avenue, a distance of 123.04 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the most westerly corner of a parcel of land conveyed to the City of Goshen, Indiana as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 2002-23132; thence north 48 degrees 41 minutes 28 seconds east along the southeasterly line of the City of Goshen parcel, a distance of 33.02 feet to a 5/8 inch rebar with cap stamped Brads-Ko 0041; thence southeasterly along the southerly line of a parcel of land conveyed to TDS Properties, Inc. as described and recorded in the Office of the Recorder of Elkhart County in Instrument Number 0099-23047, being on the arc of a 768.62 foot radius curve to the left, concave to the northeast, a distance of 197.05 feet (chord bearing south 57 degrees 57 minutes 42 seconds east, chord distance 196.51 feet) to a 5/8 inch rebar with cap stamped Brads-Ko 0041 to the end of said curve; thence southeasterly along the southerly line of said TDS Properties, Inc. parcel, being on the arc of a 764.67 foot radius curve to the left, concave to the northeast, a distance of 315.46 feet (chord bearing south 77 degrees 09 minutes 59 seconds east, chord distance 313.23 feet) of a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of tangency of said curve; thence south 88 degrees 59 minutes 05 seconds east along the south line of said TDS Properties, Inc. parcel, a distance of 121.97 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the southeast corner of said TDS Properties, Inc. parcel; thence north 01 degree 40 minutes 07 seconds west along the east line of said TDS Properties, Inc. parcel, a distance of 97.47 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 marking the point of beginning of this description; thence north 76 degrees 58 minutes 25 seconds west, a distance of 243.62 feet to a 5/8 inch rebar with cap stamped Abonmarche Firm #0050 on the north line of said TDS Properties, Inc. parcel, also being the south lien of aforesaid City of Goshen parcel; thence along the next four (4) courses being along the south line of said City of Goshen parcel: thence south 80

degrees 45 minutes 53 seconds east, a distance of 52.67 feet; thence south 75 degrees 52 minutes 27 seconds east, a distance of 76.44 feet; thence south 84 degrees 15 minutes 21 seconds east, a distance of 72.17 feet; thence south 84 degrees 41 minutes 28 seconds east, a distance of 39.10 feet; thence south 01 degree 40 minutes 07 seconds east, a distance of 16.97 feet to the point of beginning of this description, containing 1,343 square feet or 0.031 of an acre, more or less.

Subject to all public rights of way, easements, current usage arrangements, and restrictions of record.

(The "Real Estate.")

Being a portion of tax code number 20-11-10-306-004.000-015.

The Real Estate aforescribed was acquired by Grantor by Warranty Deed from Goshen Iron & Metal, Inc. recorded July 13, 1999 as Instrument No. 99-23047, Office of the Recorder of Elkhart County, Indiana.

The undersigned person, to-wit: Steven B. Bartow, executing this Quit-Claim Deed for and on behalf of Grantor, hereby certifies that he is duly authorized and empowered by the Articles of Incorporation, Bylaws, and Board of Directors of said corporation to execute and deliver this Quit-Claim Deed for and on behalf thereof.

IN WITNESS WHEREOF, the Grantor has executed this Quit-Claim Deed this 14th day of JUNE, 2020.

TDS PROPERTIES, INC.

By Steven B. Bartow Steven B. Bartow, President and Authorized Signatory

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, this 14th day of JUNE, 2020, personally appeared Steven B. Bartow, as President and Authorized Signatory of TDS Properties, Inc., an Indiana corporation, and acknowledged that as such he executed the foregoing Quit-Claim Deed for and on behalf and in the name of said limited liability company, for the uses and purposes therein mentioned, and that he was authorized so to do.

WITNESS my hand and notarial seal.

Theresa L. Ganger
Theresa L. Ganger, Notary Public
Residing in Kosciusko County, IN
Commission No. NP0 697086



Theresa L. GANGER
NOTARY PUBLIC
State of Indiana, Kosciusko County
My commission expires Feb. 23, 2025
Commission Number 697086

My Commission Expires: 03/23/2025

Grantee's mailing address is 202 South Fifth Street
and send tax statements to: Goshen, IN 46528

ACCEPTANCE

The City of Goshen, Elkhart County, Indiana, hereby accepts the gift and conveyance of this Quit-Claim Deed from TDS Properties, Inc., this ____ day of _____, 2020.

Jeremy Stutsman, Mayor

Prepared by Gordon Lord, Yoder, Ainlay, Ulmer & Buckingham, LLP
130 N. Main St., Goshen, IN 46526

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Gordon Lord, 130 N. Main St., Goshen, IN 46526

Return Deed to: Gordon Lord, 130 North Main Street, Goshen, IN 46526



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

June 15, 2020

To: Goshen Board of Public Works and Safety
From: Larry Barkes
Subject: Release and Settlement Agreement - Kidder v City of Goshen

It is recommended that the Board of Public Works and Safety accept and authorize the Mayor to execute the attached Release and Settlement Agreement which settles the suit filed by Michelle Kidder. The City of Goshen will be responsible for payment of the \$10,000 deductible under the City's insurance policy.

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

ELKHART SUPERIOR COURT NO. 1

CAUSE NO. 20D01-1903-CT-000059

MICHELLE KIDDER,)
 Plaintiff)
v.)
)
CITY OF GOSHEN, INDIANA)
 Defendant)
_____)

Release and Settlement Agreement

This Release and Settlement Agreement (this “Agreement”) is between: (1) Michelle Kidder, Plaintiff in the above-captioned lawsuit, and her successors, executors, administrators, personal representatives, agents, and assigns (“Kidder”); and (2) City of Goshen, Indiana, Defendant in the above-captioned lawsuit, and its representatives, successors, insurers, agents, assigns, and employees (collectively “City of Goshen”). Kidder and City of Goshen are collectively referred to as “Parties.”

Parties to this Agreement agree as follows:

1. **General release.** For and in consideration of the amount of Forty Thousand Dollars (\$40,000.00), Kidder releases, acquits and forever discharges the City of Goshen from any and all losses, costs, damages, dues, debts, claims, interest, demands, claims for attorney fees, liens, subrogation claims, or causes of action, at law or in equity, known as well as unknown, past, present and future, which Kidder has had, now has, or may hereafter have against the City of Goshen in any manner caused by, due to, or arising out of:

a. The claims raised and allegations made in Kidder’s Complaint in the case of *Michelle Kidder v. City of Goshen* Elkhart Superior Court No. 1, Cause No. 20D01-1903-CT-000059 (the “Lawsuit”);

b. Any and all claims arising out of: Kidder’s fall on July 18, 2017 at her residence located at 521 E. Washington Street, Goshen, Indiana (the “Incident”).

c. Any and all other claims which could have been raised by Kidder in the Lawsuit against the City of Goshen and arising from the claims asserted therein and the Incident.

2. Kidder's authority to enter into this Agreement and no acceptance of future assignments. Kidder represents that: (1) she has authority to enter into this Agreement, and (2) she has not previously assigned any of her claims against the City of Goshen to any other individual or entity.

3. Settlement payment. The City of Goshen will pay the settlement amount described in Paragraph 1 by check made payable jointly to Michelle Kidder and Pfeifer Morgan & Stesiak in the amount of \$40,000.00. The Parties agree that the City of Goshen is not withholding any portion of this check for taxation purposes; the City of Goshen will report the settlement payments by use of Form 1099 for tax purposes. The City of Goshen has not provided any tax advice to Kidder in connection with the proceeds payable under this Agreement. Kidder agrees to be solely and exclusively responsible to report any income and for payment of any taxes due and to indemnify and hold the City of Goshen harmless for any taxes due or penalties related to this payment.

4. All amounts that could be paid including costs, interest, and fees. The sum paid is for all amounts that could be claimed by Kidder for all damages related in any way to the claims raised by Kidder in the Lawsuit or the Incident against the City of Goshen and claims which could have been raised by Kidder in the Lawsuit against the City of Goshen, including costs, interest and attorney's fees.

5. Not a prevailing party for purposes of attorney's fees or otherwise. The amount paid to Kidder does not render Kidder a prevailing party for any purpose, including, but not limited to, an award of attorney's fees under any statute or otherwise.

6. Dismissal with prejudice. All of Kidder's claims raised in the Lawsuit against the City of Goshen and claims which could have been raised by Kidder in the Lawsuit against the City of Goshen will be dismissed with prejudice. Kidder specifically directs and authorizes her attorney to dismiss the Lawsuit with prejudice.

7. Bear own costs and fees. Kidder and the City of Goshen will bear their own costs and attorney fees.

8. Mediator fees. The Parties agree to share equally the mediator fees incurred for the Mediation that occurred between the Parties on March 23, 2020.

9. Denial of liability. This Agreement is taken by way of compromise, and the payment by the City of Goshen is not an admission of liability. The City of

Goshen denies liability, and its payment is in the nature of a settlement and compromise of a disputed claim or claims.

10. Entire agreement. This Agreement is the entire agreement between the Parties regarding any damages sustained by Kidder, and it supersedes all prior understandings, representations, negotiations, promises, and conditions in connection therewith. No representation, promise or condition not in this Agreement is binding on Parties. In making this settlement, it is the intention of the undersigned that this Agreement is complete and is not subject to any claim of mistake of fact, that it expresses a full and complete settlement of the liability claimed and denied, and regardless of the adequacy or inadequacy of the amount paid, it is intended to avoid litigation and to be final and complete.

11. Free and voluntary act. Kidder has employed Kidder's undersigned attorney to advise and counsel with Kidder in the settlement negotiations that resulted in this Agreement and in the review and signing of this Agreement. The terms and conditions of this Agreement have been explained to Kidder, and signing below is Kidder's voluntary act.

12. Representation regarding Medicare liens. Kidder represents that she: (1) is not currently entitled to Medicare; (2) received no treatment related to the allegations in the Lawsuit submitted to or paid for by Medicare; and (3) does not anticipate that any treatment related to his allegations will be submitted to or paid for by Medicare.

13. Liens. Kidder acknowledges that all subrogation and lien claims arising out of contract or under state or federal law, including any subrogation or lien claims of Kidder's health care providers, insurance carriers, and any federal agency, or programs such as Medicare, Medicaid, or Social Security, are the sole and separate obligation of Kidder which Kidder agrees to pay or otherwise resolve. Kidder further covenants to defend, indemnify, and hold harmless the City of Goshen and its insurance providers against all such lien and subrogation claims.

14. Counterparts and signatures. This Agreement may be executed in one or more counterparts. Faxes, PDF's, or photocopied signatures are sufficient to bind Parties and to enforce this Agreement.

15. No assignability of this Agreement. Parties will not assign or transfer their rights or obligations arising from this Agreement without the prior written consent of the other Parties.

The undersigned have executed this Agreement on the dates shown.

Michelle Kidder
Michelle Kidder *by Daniel Pfeifer per*

Date: 4/9/20

Attorney for Plaintiff, Michelle Kidder

Daniel Pfeifer
Daniel H. Pfeifer
PFEIFER MORGAN & STESIAK
53600 North Ironwood Drive
South Bend, IN 46635
574-272-2870
dpfeifer@pilawyers.com

Date: 4/9/20

City of Goshen, Indiana

By: _____

Date: _____

Title: _____

Attorneys for Defendant, City of Goshen

Michael F. DeBoni, 12434-20
Yoder, Ainlay, Ulmer & Buckingham, LLP
130 N. Main Street
Goshen, Indiana 46526
574-533-1171
mdeboni@yaub.com

Date: _____