



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. March 23, 2020

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

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes – None

Changes to Agenda

AWARD BIDS

(1) Award for Lawn Mowing (Windsor)

NEW BUSINESS

(1) Agreement with Stryker Corp. for Power Cot Service Plan (Windsor)

(2) Agreement with Traffic Control Specialists, Inc. for Road Striping (Windsor)

(3) Change Order #4: Main St. Improvements from Madison St. to Pike St. JN:
2016-0038 (Sailor)

(4) Request by WarmSprings.tv for Permission to Film April 12-15 (Scharf)

(5) Approval of Encumbrances from 2019 Budget to 2020 (Weaver)

(6) Notification of Fuel Price Lock-In (Windsor)



DISCUSSION ITEMS

- (1) State Examiner Directive 2020-01 (Scharf)

PRIVILEGE OF THE FLOOR

APPROVAL OF CLAIMS

Adjournment



Keitha Windsor
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March 16, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Award of Lawn Mowing Quote

On March 23, 2020 the Board of Public Works and Safety opened quotes for lawn mowing service. The tabulation for the quotes received:

	Lump Sum per Site for Contract Term	Price per Mowing	Price for Fall Cleanup
Stiver Group Inc.	\$23,900.00	\$895.00	\$1,100.00
Colin Avila d/b/a Yard Shark	\$17,300.00	\$487.00	\$430.00
4 Seasons Landscape	\$16,520.00	\$695.00	\$1,625.00

It is recommended that the Board of Public Works and Safety award their portion of the contract to Colin Avila d/b/a Yardshark as the lowest responsible and responsive quoter.

The total cost for the 2020 Season is a lump sum prices for Sites 1 to 24 for the amount \$17,300.00 plus the price per mowing and fall cleanup on Sites 25 to 44 based on the actual times mowed and the number of sites receiving fall cleanup.

Suggested motion: Move to award the contract to Colin Avila d/b/a Yardshark as the lowest responsible and responsive quoter and to enter into a contract with Colin Avila d/b/a Yardshark to provide lawn mowing services for the 2020 Season for a total contract price at a \$17,300.00 lump sum price for Sites 1 to 24 plus the price per mowing and fall cleanup on Sites 25 to 44 based on the actual times mowed and the number of sites receiving fall cleanup.

CONTRACT

LAWN MOWING

SOLICITATION NO. Q20-02-002

THIS CONTRACT is made and entered into on this ____ day of _____, 2020, by and between the City of Goshen by its Board of Public Works and Safety and Redevelopment Commission, hereinafter referred to as “City,” and Colin Avila d/b/a Yardshark hereinafter referred to as “Contractor.”

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

SCOPE OF SERVICES

The Contractor shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a workmanlike manner the “Lawn Mowing, Q20-02-002” project in accordance with and as described in further detail in this contract and in the Specification Documents the terms of which are incorporated by reference. The individual sites are listed below in the Compensation clause.

Contractor’s mowing service per location includes mowing, trimming, weed removal, bag and remove clippings, remove trash and debris. Trimming will be done on same day of mowing to the same height as rest of area. Contractor shall prepare site for mowing by removing any branches, sticks, trash and debris. Contractor may use own discretion regarding whether to bag clippings or to mulch clippings however, the mowed site shall not have accumulated grass clippings in windrows, clumps or otherwise. Grass clippings shall not be blown onto the street and/or sidewalk. Sufficient care shall be exercised so that no scalping of the mowed area occurs and that trees, shrubs, other plants and/or equipment are not bumped or run into. The mowing and/or trimming shall be performed to the edge of the road. All clippings, trash and debris shall be removed from site and disposed according to all applicable regulations and customs. Removal from site may include, for example, brush and leaf pickup by the City’s Street Department provided all City regulations and requirements are met.

For E. Lincoln Avenue Detention Basin (Site 19):

The bottom of the detention basin shall not be mowed.

Interior side slopes, the east and west exterior side slopes and the south side of the detention basin shall be cut to the ground level, mulched, and left in place to decompose over time either the late fall or the late winter/early spring when the ground is hard in order to avoid the introduction of ruts.

The remaining areas around the top of the detention basin and to the north and west of the detention basin (the turf grass) and shall be routinely mowed.

Additional to lawn mowing service for sites for the entire contract term of the 2019 season (Sites 1 to 22):

Contractor shall mow to no less than 3 inch height and shall repeat mowing with sufficient frequency to ensure that grass or weed height does not exceed 5 inches at any time.

Contractor’s fall cleanup service includes leaf removal and preparation of the leaves for the City’s leaf pickup service. Timing shall be so that most of leaves to fall have fallen and in time for the City’s leaf pickup service, ensuring that there will be minimal leaves on the ground over the winter.

Additional to lawn mowing service for sites contracted per mowing (Sites 23 to 32):

Contractor shall mow to no less than 3 inch height and shall repeat mowing with sufficient frequency to ensure that grass or weed height does not exceed 5 inches at any time.

Contractor's fall cleanup service includes leaf removal and preparation of the leaves for the City's leaf pickup service. Timing shall be so that most of leaves to fall have fallen and in time for the City's leaf pickup service, ensuring that there will be minimal leaves on the ground over the winter.

WEED TREATMENT

Contractor shall provide a program of weed treatment (i.e. - crabgrass and dandelions) for the #15 sites only:

- 3rd Street boulevard from 3rd Street and Pike Street to Main Street and 3rd Street.
- The section of City Property at the south/west corner of Washington and 3rd Street.
- The N/E corner of 3rd Street and Madison Street (south of the gun store and west of the funeral home parking lot).

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

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

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

1. Contractor's Itemized Quote;
2. Non Collusion Affidavit;
3. Any addenda or changes to the contract documents and specifications, including properly approved change orders; and
4. Notice to proceed

Contractor shall perform all work in this project between the hours of 6:00 am and 8:00 pm. City shall be notified and shall approve in advance if Contractor intends to work on a Saturday and/or a Sunday.

Contractor's work is public and visible and could be viewed by the public as work being performed by City employees, therefore Contractor shall ensure that their attire is acceptable and their conduct is professional.

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

EFFECTIVE DATE; CONTRACT TERM

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

The contract shall become effective on the day of execution and approval by the City of Goshen Board of Public Works and Safety and Redevelopment Commission and the Contractor. The term of this contract shall begin upon execution of the contract and continue until the end of the 2020 grass growing season and after the leaves are all down and removed.

COMPENSATION, BASIS AND METHOD OF PAYMENT

The City agrees to compensate Contractor for the work performed in this contract in accordance with the unit prices for site locations as set forth in Contractor’s itemized quote as shown in the table below and based on the lump sum prices for Sites 1 to 24 for the amount of Seventeen Thousand Three Hundred Dollars (\$17,300.00) plus the price per mowing and fall cleanup on Sites 25 to 44 and the actual times mowed and the number of sites receiving fall cleanup.

Invoicing

The ten (10) properties #15 to #24 shall be billed to City of Goshen Engineering at engineering@goshencity.com.

The remaining thirty-four (34) properties #1 to #14 and #25 to #44 shall be billed to City of Goshen Redevelopment at redevelopment@goshencity.com.

ITEM	SITE LOCATION	LUMP SUM PER SITE FOR TERM OF CONTRACT
1.	405 South 3rd Street	\$250.00
2.	409 South 3rd Street	\$250.00
3.	411 South 3rd Street	\$250.00
4.	417 South 3rd Street	\$250.00
5.	313 North Main Street	\$250.00
6.	315 North Main Street	\$250.00
7.	321 North Main Street	\$250.00
8.	323 North Main Street	\$250.00
9.	208 West Monroe Street	\$250.00
10.	305 East Kercher	\$400.00
11.	102 Olive Street	\$250.00
12.	103 West Wilkinson Street	\$250.00
13.	105 West Wilkinson Street	\$250.00
14.	107 West Wilkinson Street	\$250.00
15.	Kercher Road Retention Pond – approximately 300-400 block of East Kercher Road (Turf areas surrounding the retention pond)	\$1,000.00
16.	602 East Kercher Road	\$250.00

ITEM	SITE LOCATION	LUMP SUM PER SITE FOR TERM OF CONTRACT
17.	A. 3rd Street boulevard from 3rd St. and Pike St. to Main St. and 3rd St. B. The section of City Property at the S/W corner of Washington and 3rd St. C. The N/E corner of 3rd Street and Madison St. (south of the gun store and west of the funeral home parking lot. D. Sites A, B and C include <u>Weed Treatment</u>	\$6,000.00
18.	713 East Lincoln Avenue	\$400.00
19.	East Lincoln Avenue Retention Pond Exhibit B	\$1,000.00
20.	Clover Trails Retention Area <u>Section A</u> per site map in Exhibit A (s/w corner of Lighthouse Land and Plymouth)	\$1,000.00
21.	Annex, 204 E. Jefferson Street	\$1,000.00
22.	Police and Court, 111 E. Jefferson Street	\$1,000.00
23.	City Hall, 202 S. 5th Street	\$1,000.00
24.	Utilities Billing Office, 203 S. 5th Street	\$1,000.00
TOTAL		\$17,300.00

ITEM	SITE LOCATION	PRICE PER MOWING	PRICE FOR FALL CLEANUP
25.	401 South 3 rd Street	\$25.00	\$20.00
26.	621 ½ South 3rd Street	\$15.00	\$20.00
27.	627 South 3 rd Street	0	0
28.	810 North 6th Street	\$40.00	\$25.00
29.	908 North 6th Street	\$50.00	\$30.00
30.	1120 South 11th Street	\$30.00	\$25.00
31.	65693 State Road 15	\$70.00	\$50.00
32.	65706 State Road 15	\$75.00	\$100.00
33.	65736 State Road 15	\$50.00	\$50.00
34.	622 East Lincoln Avenue	\$12.00	\$10.00
35.	624 East Lincoln Avenue	\$12.00	\$10.00
36.	700 East Lincoln Avenue	\$12.00	\$10.00

ITEM	SITE LOCATION	PRICE PER MOWING	PRICE FOR FALL CLEANUP
37.	702 East Lincoln Avenue	\$12.00	\$10.00
38.	704 East Lincoln Avenue	\$12.00	\$10.00
39.	708 East Lincoln Avenue	\$12.00	\$10.00
40.	710 East Lincoln Avenue	\$12.00	\$10.00
41.	714 East Lincoln Avenue	\$12.00	\$10.00
42.	716 East Lincoln Avenue	\$12.00	\$10.00
43.	718 East Lincoln Avenue	\$12.00	\$10.00
44.	800 East Lincoln Avenue	\$12.00	\$10.00
TOTALS		\$487.00	\$430.00

All payment obligations are subject to the appropriation and encumbrance of monies and shall be made in arrears unless specifically stated otherwise in this solicitation. Payment to the Contractor for the work under this contract may be made as the work progresses no more frequent than thirty (30) days and for work satisfactorily completed in accordance with these Specifications Documents. The value of all work satisfactorily performed shall be as agreed upon by the City and the Contractor. Payment(s) to Contractor for work rendered under this contract shall be made by City upon receipt of a detailed invoice from Contractor for work completed provided satisfactory performance of the Contractor has been attained. The detailed invoice based on established contract price shall include the total contract amount, payments to date and remaining contract balance. Contractor is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) calendar days of the receipt of a detailed invoice, provided satisfactory performance of the Contractor has been attained. Payment is deemed to be made on the date of mailing the check.

LIQUIDATED DAMAGES

It is agreed by the parties that time is of essence and in the event completion of this work is not made within the time set forth in this solicitation, damage will be sustained by the City. The parties further agree that it is and will be impractical and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay. Therefore, it is agreed that the Contractor shall pay to the City of Goshen, as fixed and liquidated damages, and not as a penalty, a dollar amount per week equal to ten percent (10%) of the dollar amount quoted for the applicable site for each and every week's delay in excess of the time and/or requirements specified in this solicitation. It is further agreed that in the event such damages are sustained by the City, the City shall deduct the amount of the liquidated damages from any moneys due or that may become due to the Contractor under this contract.

INDEPENDENT CONTRACTOR STATUS

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

NON-DISCRIMINATION

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

INDEMNIFICATION

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

INSURANCE

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

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

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

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

FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence such as natural disaster 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, but shall do everything possible to resume performance. The notification shall

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

DEFAULT

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

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

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

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

TERMINATION

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

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

SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

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

EMPLOYMENT ELIGIBILITY VERIFICATION

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

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

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

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

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

AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms in this contract including the scope of work, completion of work, and that no alteration or variation of the conditions of this contract shall be binding unless specifically agreed to in writing by the parties and approved by Board of Public Works and Safety and Redevelopment Commission. 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.

WAIVER OF RIGHTS

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

NOTICES

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

Address for notices to the City:

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

Address for notices to Contractor:

Yardshark
ATT: Colin Avila
PO Box 2101
Michigan City, IN 46361

APPLICABLE LAWS

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

MISCELLANEOUS

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

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

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

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

CONTRACTING WITH RELATIVES

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

SEVERABILITY

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

AUTHORITY TO BIND CONTRACTOR

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

City of Goshen
Board of Public Works and Safety

Colin Avila d/b/a Yardshark

Jeremy P. Stutsman, Mayor

Colin Avila, Owner

Mary Nichols, Member

Date: _____

Michael Landis, Member

City of Goshen
Redevelopment Commission

Mark Brinson
Community Development Director

Date: _____

EXHIBIT A

Site 20 - Clover Trails Retention Pond

Sections B

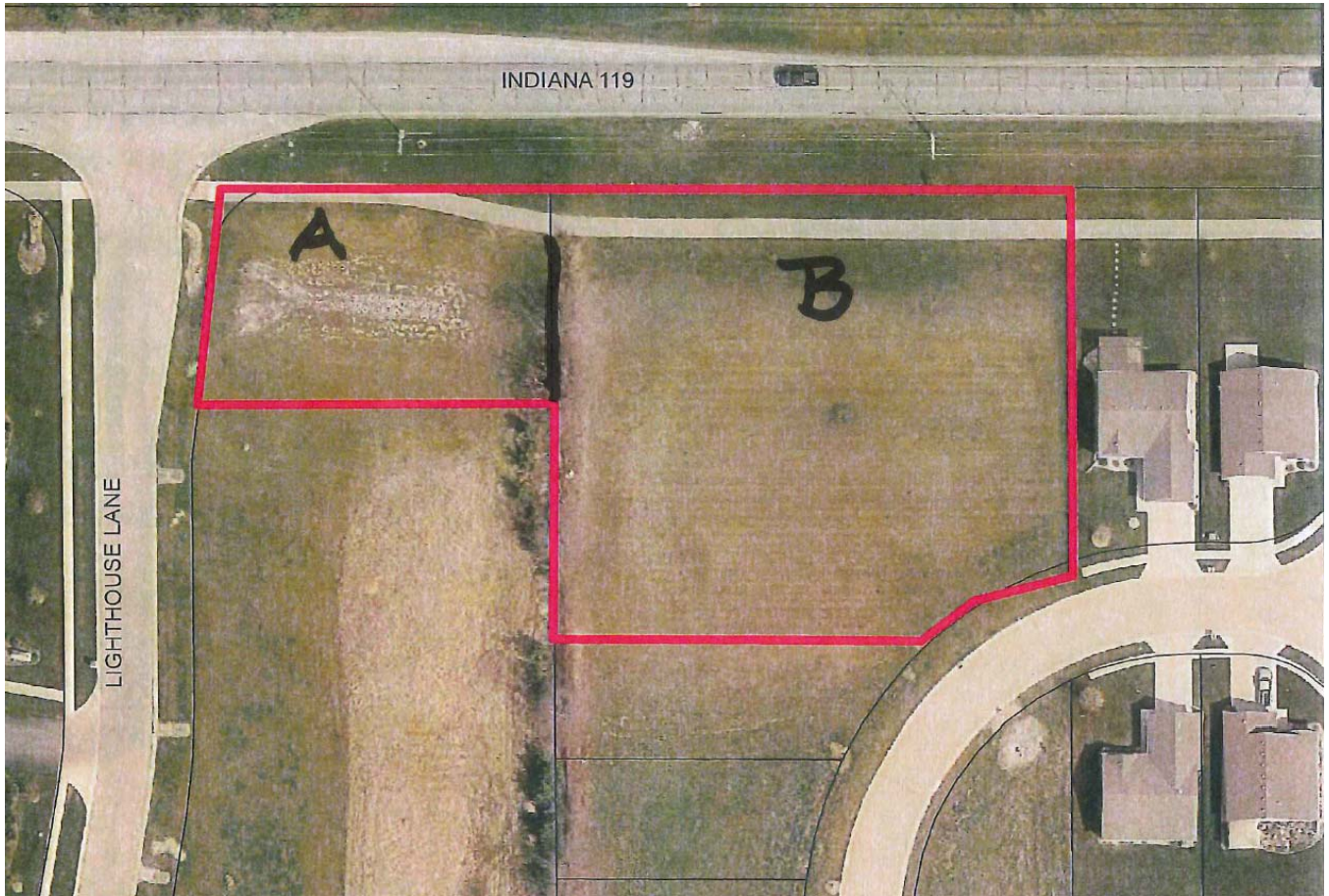
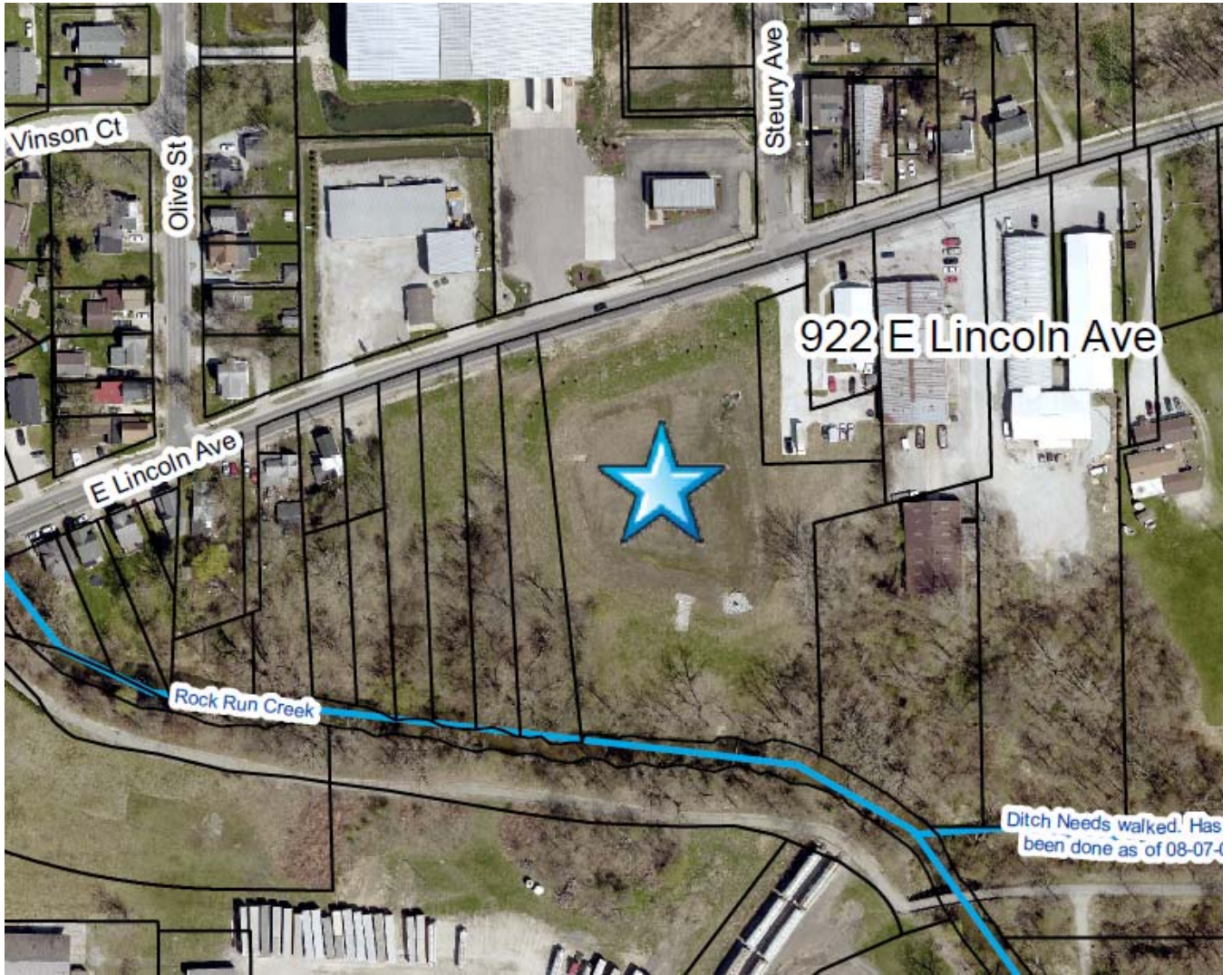


EXHIBIT B

Site 19 - Lincoln Avenue Detention Basin





**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

March 23, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement with Stryker Corporation

The City purchased four (4) power cots from Stryker in November 2019 that have a one year warranty and now wish to purchase a preventative maintenance service plan for the power cots from Stryker Corporation that will provide annual maintenance checks on the equipment and parts, including labor, service and repair calls.

The 6 year plan begins after the 1 year warranty, on January 1, 2021 and continues through to December 31, 2026 for a total contract amount of \$19,075.41

Suggested motion: Move to enter into a 6 year preventative maintenance service plan agreement with Stryker Corporation through to December 31, 2026 for a contract price of \$19,075.41.

CONTRACT

Maintenance Service for Power Cots

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

WHEREAS, the City purchased four (4) power cots from Stryker in November 2019 that have a one year warranty.

WHEREAS, the City desires to contract with Stryker Corporation, and Stryker Corporation agrees to provide preventative maintenance service for the Power Cots.

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

CITY'S RESPONSIBILITIES

City shall perform routine maintenance of the equipment per the instructions provided by Stryker Maintenance Manual, Operating Instructions, and accompanying labels.

SCOPE OF SERVICES

Stryker Corporation shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a workmanlike manner a maintenance service plan that will maintain the following equipment in good working condition during the term of the Contract:

(4) Power Cots

1. Model 6506 Serial Number 1906003500191
2. Model 6506 Serial Number 1906003500192
3. Model 6506 Serial Number 1906003500815
4. Model 6506 Serial Number 1904003500431

Stryker Corporation's maintenance service plan shall include parts, labor, travel, one (1) annual preventative maintenance inspection and response service calls from the City where Stryker Corporation agrees to have the equipment repaired and back in service within seventy-two (72) hours. Replacement parts do not include mattresses, batteries, and other disposable or expendable parts.

The equipment and equipment components repaired or replaced under this maintenance service plan continue to be warranted during the Service Plan term. When the equipment or component is replaced, the item provided in replacement will be the customer's property and the replaced item will be Stryker's property.

Service inspections will be scheduled in advance at a mutually agreed upon time for such period of time as is reasonably necessary to complete the service.

The maintenance service plan does not include repairs or other services made necessary due to:

- Abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker Maintenance Manual or Operating Instructions
- Accidents
- Catastrophe
- Acts of God

- Malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel
- Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or
- Equipment that has been repaired with any unauthorized or non-Stryker components.

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

All services included in this Contract shall be after the one (1) year purchase warranty and shall be from January 1, 2021 through December 31, 2026.

COMPENSATION

The City agrees to compensate Stryker Corporation for the services in this agreement in accordance with Stryker Corporation's quoted fee of Nineteen Thousand Seventy-five Dollars and Forty-one Cents (\$19,075.41).

Payment(s) to Stryker Corporation for services rendered under this agreement shall be made by the City upon receipt of a detailed invoice from Stryker Corporation. Stryker Corporation 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 Stryker Corporation. Payment is deemed to be made on the date of mailing the check.

INDEPENDENT CONTRACTOR

Stryker Corporation 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 Stryker Corporation.

NON-DISCRIMINATION

Stryker Corporation agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Stryker Corporation agrees that Stryker Corporation or any subcontractors, or any other person acting on behalf of Stryker Corporation 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

Stryker Corporation 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 Stryker Corporation 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, Stryker Corporation 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. Stryker Corporation shall specifically include the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability coverage.

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

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

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

FORCE MAJEURE

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

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

BREACH

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

amounts owed to Stryker Corporation, Stryker Corporation is liable to reimburse the City for such costs.

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

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

- (1) There is a substantive breach by Stryker Corporation of any obligation or duty owed under the provisions of this Agreement.
- (2) Stryker Corporation is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Stryker Corporation becomes insolvent or in an unsound financial condition so as to endanger performance under the Agreement.
- (4) Stryker Corporation 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 Stryker Corporation or any of Stryker Corporation's property.
- (6) Stryker Corporation is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Stryker Corporation unable to perform the work under the Agreement.
- (7) The Agreement or any right, monies or claims are assigned by Stryker Corporation 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. Stryker Corporation 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 Stryker Corporation. In such event, the City may issue a written notice of default and provide a period of time in which Stryker Corporation shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Stryker Corporation 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.

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:

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

Address for notices to Stryker:

Stryker Corporation
Attention: Jon Stuut
3800 E. Centre Ave.
Portage MI 49009

APPLICABLE LAWS

Stryker Corporation 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

Stryker Corporation 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.

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

Stryker Corporation shall require their subcontractors, who perform work under this contract, to certify to Stryker Corporation 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. Stryker Corporation agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

Stryker Corporation 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 Stryker Corporation is wholly or partially owned by a relative of an elected official of the City of Goshen Stryker Corporation certifies that Stryker Corporation 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 Stryker Corporation.

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 Stryker Corporation.

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

City of Goshen
Board of Public Works and Safety

Stryker Corporation

Jeremy P. Stutsman, Mayor

Pierce Szubelak, Sales Account Manager

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____



**Legal Department
CITY OF GOSHEN**

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

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

March 23, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement with Traffic Control Specialists, Inc.

The City wishes to contract with Traffic Control Specialists, Inc. to provide road striping including center, fog and divider line striping on multiple City of Goshen streets.

Work on the project shall be completed by August 28, 2020 and the total cost for all work shall not exceed \$44,420.79.

Suggested motion: Move to enter into an agreement with Traffic Control Specialists, Inc. to provide road striping of certain City streets at a cost not to exceed \$44,420.79 with all work to be completed by August 28, 2020.

AGREEMENT

2020 City of Goshen Road Striping

THIS AGREEMENT is entered into on this ____ day of _____, 2020, between Traffic Control Specialists, Inc., 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 desires to contract with Contractor, and Contractor agrees to provide road striping including center, fog and divider line striping on multiple City of Goshen streets.

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

SCOPE OF SERVICES

Contractor shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a workmanlike manner road striping per INDOT Specifications using 15 Mil fast dry latex single coat application with 8 Lbs of Type 1 glass beads per gallon for the four (4”) center, fog and divider line striping on multiple City of Goshen streets as listed below.

ROAD NAME	COMPLETION DATE	STRIPING LIMITS	Lin Ft. YELLOW	Lin Ft. WHITE
Midway Rd.	8/28/2020	US33 to CR113	7582	600
Ferndale Rd.	8/28/2020	US33 to Willows Way	6600	1276
County Home Rd.	8/28/2020	Midway to Ferndale	1873	200
Reith Blvd	8/28/2020	US33 to CR17	5250	1017
Peddler’s Village Rd.	8/28/2020	US33 to CR17	5330	10031
Wilden Ave.	8/28/2020	Main St. to Wakefield Dr.	19993	24100
Bashor Rd.	8/28/2020	Chicago Ave. to Old CR17	5717	5577
Chicago Ave.	8/28/2020	Bashor Rd. to Lincoln Ave.	7233	945
Beaver Lane	8/28/2020	Wilden Ave. to Bashor Rd.	942	877
Indiana Ave.	8/28/2020	SR119 to CR36	5834	5834
Clinton St.	8/28/2020	Old CR17 to Indiana Ave.	12732	12225
Washington St.	7/17/2020	2 nd St. to 6 th St.	2624	0
2 nd St.	7/17/2020	Washington St. to Wilkinson St.	2188	0
Jefferson St.	7/17/2020	3 rd St. to 6 th St.	2200	0
Madison St.	7/17/2020	Main St. to US33	6000	600
Middlebury St.	8/28/2020	Main St. to Zollinger Rd.	4675	0
Blackport Dr.	7/17/2020	Lincoln Ave. to Monroe St.	4670	7110
Monroe St.	7/17/2020	US33 to Fairgrounds Gate5	3782	7454
South 8 th St.	7/17/2020	Madison St. to College Ave.	12000	175

<u>ROAD NAME</u>	<u>COMPLETION DATE</u>	<u>STRIPING LIMITS</u>	<u>Lin Ft. YELLOW</u>	<u>Lin Ft. WHITE</u>
South 15 th St.	8/28/2020	College Ave. to Eisenhower Dr	600	6250
Plymouth Ave.	8/28/2020	Main St. to US33	7626	7094
College Ave.	8/28/2020	Main St. to RR E of Century Dr	17361	16390
Century Dr.	8/28/2020	College Ave. to Kercher Rd.	16005	347
Eisenhower Dr.	8/28/2020	Dierdorff Dr to Century Dr.	10000	7000
Dierdorff Dr.	8/28/2020	College Ave. to Waterford Mills Pkwy. CR42 to 90' curve North side of	10600	21200
Cr27	8/28/2020	Airport	6000	6900
Cr42	8/28/2020	US33 to CR27	9450	20567
Kercher Rd.	8/28/2020	US33 to CR31	8500	7400
Regent St.	8/28/2020	Dierdorff Dr. to CR40	14126	0
Weymouth Blvd. Waterford mills	8/28/2020	Kercher Rd. to Regent St.	3729	0
Pkwy.	8/28/2020	Main St. to Dierdorff Dr.	6500	12000
			227722	183169

NOTE: Numbers in bold are estimates

Highlighted streets have an earlier completion date

Contractor shall cone off all markings for protection from damage during the curing process. Follow trucks shall be equipped with arrowboards and wet paint signs to warn the public.

Contractor shall document per road the installation and shall turn documentation into the City for verification.

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

Contractor shall warrant all workmanship and materials for ninety (90) days.

Once the Contactor 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 the City's contract work idle for a period longer than 5 workdays without prior written authorization from the City. The City recognizes there will be transition periods between scheduled activities, but the City and public should not experience prolonged absences of project's progress.

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

TRAFFIC CONTROL & ACCESSIBILITY

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.

It should be noted that 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.

Contractor may, at his own expense, close one or more lanes of traffic or close a street and detour traffic during construction provided the following conditions are met:

- (1) If the street is not closed, adequate driving lanes shall be left open to allow traffic passage around the construction.
- (2) If the street is closed and traffic detoured, notification shall be given to affected residents and businesses at least 24 hours prior to closing.
- (3) Sufficient flagmen, flashers, barricades, warning devices, or other equipment shall be provided to insure safety to the traveling public.
- (4) The restricted traffic lanes or closed street shall be reopened, if feasible, when painting is not taking place.
- (5) Prior approval from the Street Department of proposed lane closings, street closings, and detour routes shall be obtained, and the Contractor shall give proper notification of such to the police and fire communication center (533-4151).
- (6) Contractor shall be responsible for any damage to pavement, curb, or structures caused by the Contractor, Contractor's agents, or by traffic which was diverted during the painting.

TERM OF THE AGREEMENT

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

Contractor's work on the project shall begin as soon as practical after receiving a notice to proceed from the City. The highlighted streets shall be completed by July 17, 2020 and the remaining streets shall be completed by August 28, 2020.

COMPENSATION

The City agrees to compensate Contractor for the services in this agreement in accordance with Contractor's unit prices for labor and materials as set forth in the table below based on the quantities actually used on the project for an amount not exceed Forty-four Thousand Four Hundred Twenty Dollars and Seventy-nine Cents (\$44,420.79).

Quantity	Description	Unit Price	Total
1	Mobilization	LSUM	\$1,500.00
183,169 FT	White	\$0.11	\$20,148.59
227,722 FT	Yellow	\$0.10	\$22,772.20
			\$44,420.79

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

INDEPENDENT CONTRACTOR

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

NON-DISCRIMINATION

Contractor agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Contractor agrees that Contractor or any subcontractors, or any other person acting on behalf of Contractor or their subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of a contract with respect to 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

Contractor 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 Contractor or any of their officers, agents, officials, and employees, during the performance of work 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 work, Contractor 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. Contractor shall specifically include the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability coverage.

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

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

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

FORCE MAJEURE

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

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

BREACH

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

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

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

- (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this Agreement.
- (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 Agreement.
- (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 under the Agreement.
- (7) The Agreement or any right, monies or claims are assigned by Contractor 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. Contractor 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 Contractor. In such event, the City may issue a written notice of default and provide a period of time in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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 work, completion of work 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:

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

Address for notices to Contractor:

Traffic Control Specialists, Inc.
Attention: Tracey Triska
1810 West Pacific Ave.
Knox, IN 46534

APPLICABLE LAWS

Contractor 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

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

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

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

The 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 the City of a breach.

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

SEVERABILITY

In the event that any provision of 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 Contractor.

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

City of Goshen
Board of Public Works and Safety

Traffic Control Specialists, Inc.

Jeremy P. Stutsman, Mayor

Tracey Triska, Owner/President

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

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

RE: **MAIN STREET IMPROVEMENTS FROM MADISON ST. TO PIKE ST.
CHANGE ORDER NO. 4 (JN: 2016-0038)**

DATE: March 23, 2020

Please find attached a Change Order No. 4 for \$1,650.00

The original project quantity of 12 INDOT castings was reduced by (3) three castings. Three existing storm structures required a different casting style. Niblock Excavating, Inc. had purchased all 12 INDOT castings at the beginning of the project with the understanding the City would pay for all the castings even if not used. The casting style is not commonly used. The City has agreed to purchase the (3) three INDOT castings for \$550.00 each. The castings will be stored and used when an existing casting is damaged.

Please approve Change Order No. 4 for \$1,650.00 with Niblock Excavating, Inc., which will increase the project cost from \$989,657.60 to \$998,780.40. The total project increase to date is 0.92%.

Requested Motion: Approve Change Order No. 4 for \$1,650.00 to purchase three INDOT castings at \$550.00 each. The castings will be used to replace damaged castings in the future.

**CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528**

OWNER: City of Goshen
PROJECT NAME: Main St. Improvements from Madison St. to Pike St.
PROJECT NUMBER: 2016-0038
CONTRACTOR: Niblock Excavating, Inc.

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

The below item is in addition to the original contract. CO4.1 The City agreed to purchase three extra INDOT storm castings from Niblock Excavating, Inc. The three castings were not used per the original plan but had already been purchased by the contractor.

CO4.1 INDOT Storm Castings 3 EA @ \$550.00 \$1,650.00

Subtotal - \$1,650.00

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract		\$989,657.60
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers	1 to <u>3</u>	\$7,472.80
3. Amount of Contract, not including this supplement		\$997,130.40
4. Addition/ Reduction to Contract due to this supplement		\$1,650.00
5. Amount of Contract, including this supplemental		\$998,780.40
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)		\$9,122.80
7. Total percent of change in the original contract price Includes Change Order No.	1 to <u>4</u>	0.92%
(Line 6 divided by Line 1)		

III. CONTRACT SUPPLEMENT CONDITIONS

1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby extended/~~reduced~~ by 0 calendar days, making the final completion date.
2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as _____, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.
3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.
4. The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnish to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by twenty (20) percent.

RECOMMENDED FOR ACCEPTANCE

Dustin Sailor, P.E.

ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

ACCEPTED: CONTRACTOR

Niblock Excavating, Inc.

BY: _____
Signature of authorized representative of Contractor



City Clerk-Treasurer
CITY OF GOSHEN

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

clerktreasurer@goshencity.com • www.goshenindiana.org

Memorandum

23 March 2020

To: Board of Public Works & Safety

Re: Filming permission for 2-3 handheld cameras, one drone for April 12-15

WarmSprings.tv video production company, Missoula, MT, requests permission to film "b-roll" of factories and other areas of the city for RV industry promotional materials on April 12-15.

Airport Manager Randy Sharkey has been advised of this request and provides the following:

- *Drone operations shall not exceed 400' above the ground unless prior permission has been given by the local airport manager or its representative.*
- *Drone operations shall not operate closer than 4 statute miles from the center of an airport.*

If they are filming the downtown area I am fine with it as long as they remain under the 400' ceiling. If they want to fly closer than 1 mile from the airport please have them contact me so I can get precise times and altitudes so it doesn't interfere with the local air traffic.

Clerk's Note: The status of this request in light of Covid-19 situation has not been confirmed within the last several days with the requesting party. **Advice of the Board is requested.**

-ACS



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Memorandum

23 March 2020

To: Board of Public Works & Safety

Re: Encumbrances from 2019 Budget to 2020

Attached is the departmental summary sheet for encumbrances from the 2019 budget into 2020. These have been reviewed thoroughly by Finance Department staff. Some adjustments to original departmental requests were required; those have been communicated to department personnel. A tracking system is in place. The full set of encumbrance requests and documentation are available for review upon request.

Requested Motion: Approve \$4,635,950.12 in encumbrances from the 2019 Budget into 2020.

-JLW

ENCUMBRANCES FROM 2019 BUDGET TO 2020

101-510-01	CRC	\$	7,700.00
101-510-04	CLERK-TREASURER	\$	-
101-510-05	LEGAL	\$	6,156.90
101-510-07	BOW	\$	28,341.08
101-510-09	CEMETERY	\$	16,560.01
101-510-10	ENGINEERING	\$	3,918.36
101-510-15	BUILDING	\$	780.00
101-510-18	CENTRAL GARAGE	\$	463.46
101-520-11	POLICE	\$	137,841.81
101-520-12	FIRE	\$	<u>414,642.54</u>
	TOTAL FOR GENERAL FUND	\$	616,404.16
201-530-00	MVH	\$	3,712.10
202-530-00	LR & S	\$	385,113.49
204-550-00	PARK/RECREATION	\$	54,865.42
206-530-00	AVIATION	\$	-
218-560-00	EDIT SERVICES CONTRACTUAL	\$	1,661,728.18
249-520-00	PS LOIT/EQUIPMENT	\$	292,239.30
257-510-00	LOIT SPECIAL DISTRIBUTION	\$	329,044.66
402-570-00	CUM CAP DEVELOPMENT	\$	42,836.63
405-560-00	REDEVELOPMENT	\$	-
433-510-00	CUM CAP FIRE	\$	28,423.00
439-530-00	STORMWATER	\$	96,884.77
473-560-00	SE E.D. TIF	\$	580,316.98
480-560-00	RIVER RACE TIF	\$	<u>544,381.43</u>
	DEPARTMENT TOTALS	\$	4,019,545.96
	GRAND TOTAL	\$	<u>4,635,950.12</u>



**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
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March 23, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Notification of Fuel Price Lock in

The City entered into a contract with Ceres Solutions (formerly North Central Co-op) on August 2, 2017 for the purchase of fuel for City Vehicles. The contract term is until October 31, 2021.

The City is currently locked in to November 30, 2020 at the following rates:

	Dec 2019–Mar 2020	Apr 2020-Aug 2020	Sept 2020-Nov 2020
Unleaded gasoline	\$2.201	\$2.260	\$2.200
	Dec 2019- Nov 2020		
#2 Diesel fuel	\$2.770		
#2 Off road diesel fuel	\$2.273 (delivered \$2.423)		

The City wishes to lock in the fuel rate from December 1, 2020 to September 30, 2021 at the following rates:

	Dec 2020–June 2021	July 2021–Sept 2021
Unleaded gasoline	\$1.94	\$2.027
	Dec 2020–March 2021	April 2021–Sept 2021
#2 Diesel fuel	\$2.307	\$2.50
	Dec 2020 – March 2021	April 2021–Sept 2021
#2 Off road diesel fuel	\$1.810	\$2.203
#2 Off road diesel fuel (delivered)	Dec 2020 – Sept 2021	
	\$2.203	

Permission is requested for the Mayor to sign the Fuel Confirmation.



2021 FUEL CONFIRMATION

To: City of Goshen
Attn: Carl Gaines
Date: March 13, 2020

This is to confirm the following fixed fuel prices for period Dec. 1, 2020 – Sept. 30, 2021

EP 24 STATION

87E-10+ Gasoline

56,000 gal. +/-	Dec. 2020 – June 2021	1.640 base + 0.30 taxes/fees = \$ 1.940
24,000 gal. +/-	July 2021 – Sept. 2021	1.727 base + 0.30 taxes/fees = \$ 2.027

PDX-4 On Road Diesel

10,000 gal. +/-	Dec. 2020 – Mar. 2021	1.807 base + .50 taxes/fees = \$ 2.307
15,000 gal. +/-	Apr. 2021 – Sept. 2021	2.000 base + .50 taxes/fees = \$ 2.500

PDX-4 Off Road Diesel

10,000 gal. +/-	Dec. 2020 – Mar. 2021	1.810 base + .00 taxes/fees = \$ 1.810
15,000 gal. +/-	Apr. 2021 – Sept. 2021	2.003 base + .00 taxes/fees = \$ 2.003

TANK WAGON DELIVERY

1,500 gal. +/-	Dec. 2020 – Sept. 2021	\$ 2.203 base + .00 taxes/fees = \$ 2.203
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At your convenience, please sign as confirmation of this agreement and return to Ceres Solutions.
Thank you for your business.

Bruce Richman

Price Risk Manager
Ceres Solutions
800-720-0550 ext. 219
brichman@ceres.coop

Jeremy P. Stutsman
Mayor
City of Goshen

jeremystutsman@goshencity.com



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Memorandum

23 March 2020

To: Board of Public Works & Safety

Re: State Examiner Directive 2020-01

State of Indiana Examiner Paul Joyce's office has issued Directive 2020-01 (attached) which provides guidance regarding management of deposits and payment of claims during the Covid-19 public health emergency.

It is respectfully submitted to the Board for discussion.

-ACS



STATE EXAMINER DIRECTIVE 2020-1

Date: March 19, 2020
Subject: Timely Deposits and the Claims Process
Authority: IC 5-11
Application: This Directive applies to all local governmental units
From: Paul D. Joyce, CPA, State Examiner

State Examiner Memorandums titled Policy Regarding Corona Virus dated March 12, 2020, and Corona Virus Items to Consider dated March 16, 2020, are hereby incorporated by reference into this Directive.

During the time of this Public Health Emergency, local governmental units may need to adjust normal procedures for the timely deposit of funds and the approval of claims. The State Board of Accounts will not take audit exception to the following alternative procedures for the timely deposit of funds or the approval of claims.

Timely Deposit of Funds. Indiana Code 5-13-6-1 governs the procedure for the deposit of public funds and is still in effect during this time of emergency. However, the State Board of Accounts will not take audit exception if the governing body approves the frequency for deposit of public funds to be limited to two times per week. The approval of the governing body must state that the deposits will be made on Tuesday and Thursday and require the public funds to be secured on those days when a deposit is not made. As always, proper internal controls must be in place to safeguard the assets of the unit.

Approval of Claims. Indiana Code 5-11-10 governs the claim approval process and is still in effect during this time of emergency. However, the State Board of Accounts will not take audit exception if the governing body uses the following procedures:

1. The governing body may designate one of its members to approve claims for payment in advance of board allowance. The board must allow those claims at its first meeting after the Public Health Emergency has ended.
2. For those units of government which have statutory authority to adopt an ordinance for the preapproved payment of claims, the board may provide written approval to the fiscal officer to pay certain claims during the Public Health Emergency. The board must allow those claims at its first meeting after the Emergency has ended.

This Directive will be rescinded upon Declaration by the Governor that the Public Health Emergency has ended.

Sincerely,

Paul D. Joyce, CPA
State Examiner