

## AGENDA

**A MEETING OF THE BOARD OF PUBLIC WORKS & SAFETY OF THE CIVIL CITY OF NEW ALBANY, INDIANA, WILL BE HELD IN THE THIRD FLOOR ASSEMBLY ROOM AT THE CITY/COUNTY BUILDING ON TUESDAY, OCTOBER 4, 2016 AT 10:00 A.M.**

### CALL TO ORDER:

### PLEDGE OF ALLEGIANCE:

### NEW BUSINESS:

1. Jim Silliman re: Grant Line West Industrial and Business Park plat approval
2. Blaise Loop re: Alley closure between 810 E. Market St. and 820 E. Market St.

### COMMUNICATIONS – PUBLIC:

### OLD BUSINESS:

1. MS-IL Staffing & Packaging re: Temporary sign on city lot at 3217 Grant Line Rd.

### TABLED ITEMS:

### COMMUNICATIONS - CITY OFFICIALS:

1. Larry Summers re: McDonald Lane Detour
2. Larry Summers re: CSXT Preliminary Engineering Agreement
3. Larry Summers re: Arts Council of Southern Indiana Load Policy.

### APPOINTMENTS:

### BIDS:

### CLAIMS:

### APPROVAL OF MINUTES:

**Regular Meeting Minutes for September 27, 2016**

### ADJOURN:

**A MEETING OF THE BOARD OF PUBLIC WORKS & SAFETY OF THE CIVIL CITY OF NEW ALBANY, INDIANA, WAS HELD IN THE THIRD FLOOR ASSEMBLY ROOM AT THE CITY/COUNTY BUILDING ON TUESDAY, SEPTEMBER 27, 2016 AT 10:00 A.M.**

**PRESENT:** Warren V. Nash, president, Mickey Thompson, member and Cheryl Cotner-Bailey, member

**OTHERS PRESENT:** Police Chief Bailey, Fire Marshal Koehler, Fire Chief Juliot, David Hall, John Rosenbarger, Jessica Campbell, Bryan Slade, Joe Ham, Tonya Fischer, Alicia Meredith, Chris Gardner, Linda Moeller and Vicki Glotzbach

**CALL TO ORDER:**

**Mr. Nash called the meeting to order at 10:00 a.m.**

**PLEDGE OF ALLEGIANCE:**

**NEW BUSINESS:**

**1. Benny Carter re: Food truck outside of Primos during Harvest Homecoming**

**Mr. Benny Carter** stated that he would like to put his food cart in front of his business at 155 E. Main Street during Harvest Homecoming.

**Mr. Nash** asked if it would be on sidewalk.

**Mr. Carter** replied that it would be in the street. He said that if this board approves it then he will get his permits from the health department.

**Mr. Thompson** asked what dates that will be.

**Mr. Carter** replied Friday, October 7<sup>th</sup> and Saturday, October 8<sup>th</sup>.

**Mr. Nash** asked if he had any problems last year.

**Mr. Carter** replied no.

**Mr. Nash** asked what hours he wanted to operate.

**Mr. Carter** replied that he would be there from 11:00 a.m. until 7:00 p.m. on Friday and then from 11:00 a.m. until 10:00 p.m. on Saturday.

**Mr. Thompson** moved to approve, **Mrs. Cotner-Bailey** second, motion carries.

**COMMUNICATIONS – PUBLIC:**

**Ms. Janet Pate** stated that she is requesting a permit for Past Times Bar & Grill on Market Street to allow the band to play until 12:00 a.m. on Saturday, October 1<sup>st</sup>, Friday, October 7<sup>th</sup> and Saturday, October 8<sup>th</sup>.

**Mrs. Cotner-Bailey** asked if the band will be inside.

**Ms. Pate** replied that it will be outside in the beer garden.

**Mrs. Cotner-Bailey** asked if will be on their property.

**Ms. Pate** replied yes.

**Mr. Thompson** stated that the council passed a new noise ordinance and it allows the board of works to give a business three exemptions per year and this request would take two of their exemptions so it would only be allowed one more. He stated that the ordinance also calls for

finer for violations so if the board approves this the cut off would be midnight so if it goes past that and the police are called then they will issue a fine.

**Ms. Pate** stated that she will inform the owner that it has to be cut off by midnight.

**Fire Marshal Koehler** stated that they will also need to get an entertainment permit from the state fire marshal.

**Ms. Pate** stated that she will pass that information on to the owner as well.

**Mr. Thompson** moved to approve subject to the necessary permit from the state fire marshal, **Mrs. Cotner-Bailey** second, motion carries.

**Mr. Derek Misch, Dan Christiani Inc.**, requested alley closures between Beech Grove Avenue and Spring Avenue on October 3-7 and 10-14, parking restrictions on the west side of Franklin Drive on October 3-7, Ealy Street closure from Hildreth Street to State Street on September 30, October 3-5 and E. 10<sup>th</sup> Street closure from Metal Dynamics entrance to flood wall on September 28-30. He also presented maps for the board to review.

**Mrs. Cotner-Bailey** moved to approve the above closure requests, **Mr. Thompson** second, motion carries.

**Mr. Jim Silliman** stated that he wanted to update the board on the closure on Bono Road. He explained that placement of stone was delayed some yesterday because of rain but the contractor is back putting the stone down so as planned the road will be opened back up to local traffic only today.

**Mr. Nash** asked what the schedule is for the future.

**Mr. Silliman** stated that the schedule for paving would be early October and they are working on the sidewalks and curb ramps to get those ADA accessible. He also stated that they are still looking at mid-November for total completion date.

**Mr. Nash** asked if that is from Green Valley Road to E. Cottom Avenue.

**Mr. Silliman** stated that is correct.

**Mr. Wes Christmas** stated that final paving work is being completed today on the Spring Street and Silver Street project and they are paving the remaining approaches so will probably finish the sealing of the joints today or tomorrow. He said that permanent striping is scheduled for the week of October 10<sup>th</sup> so the contractor is looking at putting down temporary markings by the end of this week to allow for all of the lane restrictions to be removed. He said that it is an interim thing and the configuration will be temporarily back to what it was prior to the project until the permanent lane configurations of the project can be put in.

**Mr. Nash** asked about the signal.

**Mr. Christmas** stated that they are waiting for INDOT to finalize the processing of a change order in some of the loop detection so as soon as that is processed that work will be scheduled. He said he would like to say that it will happen in the next two weeks but that has not been confirmed.

**Mr. Nash** asked about the pavement project.

**Mr. Christmas** explained that they plan to have four roadways for certain that will be able to fit within the existing budget and milling and paving of those roads will take place over the next two weeks. He said that the roadways are Woodrow Avenue, Silver Slate Drive, Camp Avenue and Sunset Drive. He also said that milling operations are supposed to start on Thursday. He added that if funds allow then they may be able to do some additional work.

**Mr. Nash** asked if he could check the status on striping on Academy Drive.

**Mr. Christmas** explained that the same subcontractor that is doing the striping on Spring Street and Silver Street project will also be doing the striping on the city wide paving project and is scheduled to be here the week of October 10<sup>th</sup> and will stripe any roadways that were a part of the paving project that have not been striped yet.

**Mr. Nash** stated that Academy Drive was one of the first ones that was paved and a lot of the others have been striped and it hasn't.

**Mr. Christmas** stated that they did one round of striping early in the project on completed roadways which were primarily in the Charlestown Crossing area. He said that if Academy Drive had been completed at that time then it would've been striped.

**Ms. Paige Thomas** stated that there is a main leak at Alice Avenue and Adams Street and they will need to make an 8'X8' cut in the street. She also stated that there is a service leak at 2026 Oak Street and they will need to make a 6'X6' asphalt cut but the water meter pit is right next to the curb so they are hoping to be able to stay out of the curb but there is a possibility that they may get into that and she will let the board know.

**Mr. Thompson** asked about the emergency repair on Grant Line Road.

**Ms. Thomas** stated that there was an emergency repair done on Saturday at 2631 Grant Line Road which required a cut in the street and asked Mr. Thompson if he knew what size it was.

**Mr. Thompson** stated that it was pretty good size because there was one in both lanes and he got a call because the patch is pretty rough. He asked if she had any idea when they would do restoration.

**Ms. Thomas** said she thinks it should be this week but she will follow up with Neil's Concrete because they are the subcontractor for the water company and do all of the restoration.

**Mr. Nash** asked if a sign could be put up there because it is pretty rough.

**Ms. Thomas** said that a sign could be put up.

**Mr. Thompson** asked her to put a sign in each direction.

**Ms. Thomas** said she would.

**Mr. Thompson moved to approve the above cut requests, Mrs. Cotner-Bailey second, motion carries.**

**Mr. Curt Peterson** stated that he lives at 522 E. Market Street and was present to voice his concerns about the changes being made to the streets. He asked where he should send his letter of concern since he wasn't able to make the public hearing.

**Mr. Rosenbarger** stated that he could give him contact information.

**Mr. Peterson** stated that Spring Street, Market Street and Elm Street are principally entrances or exits to the interstates and it seems to him that it will make some huge problems because the two-ways aren't going past State Street so when you hit State Street from Elm Street you will be facing one-way traffic. He said that he read the study and they even confessed that there may be more accidents because of all of the left turns that will have to be made when the streets change. He suggested more enforcement to control speed because a lot of the problems could be solved if people would slow down. He said that they also compared us to Kokomo which turned all of their streets two-way but Kokomo doesn't have an interstate passing through the town dumping people into the downtown. He added that Kokomo has the Highway 31 Bypass that goes completely around them. He said he wishes that this conversion could be looked at in more depth before any changes are made.

**Ms. Michelle Ray, 147 E. Main Street, Main Street Pub,** passed out a drawing for the board to review and requested to put a 20'X30' canopy tent out back during Harvest Homecoming. She stated that they will be checking IDs at the front and rear entrances of the pub but the tent will not be to serve food or alcohol but will have seating if people want to take a break or throw their trash away in the trash cans that they will set out.

**Mr. Nash** asked if it is on their property.

**Ms. Ray** replied yes.

**Mrs. Cotner-Bailey** asked if they own the parking lot.

**Ms. Ray** stated that they have designated spots back there so she is assuming so.

**Mr. Nash** stated that as long as it is on their property she needs no approval from this board.

**Mr. Jeff Jaehnen** stated that he is the new director at the YMCA and requested permission to use the parking lot bordered by State Street, Black Street and Pearl Street during the Harvest Homecoming which would be Thursday, October 6<sup>th</sup> through Saturday, October 8<sup>th</sup> and the hours would be Thursday from 9:00 a.m. – 9:00 p.m. and Friday and Saturday from 9:00 a.m. – 10:00 p.m.

**Mr. Nash** asked if the YMCA will be closed those days.

**Mr. Jaehnen** replied yes.

**Mrs. Cotner-Bailey** asked if this is done as a fundraising effort.

**Mr. Jaehnen** replied yes and stated that the proceeds go to supporting our scholarships and things pertaining to youth programming.

**Mrs. Cotner-Bailey** suggested that he let the Floyd County Brewery know.

**Mr. Jaehnen** said that he would.

**Mr. Nash** asked if the west side of the parking lot is closed as well.

**Mr. Thompson** stated that they typically close the parking lot all the way around.

**Mrs. Cotner-Bailey** stated that it probably wouldn't hurt to notify The Exchange and the other restaurants as well.

**Mr. Jaehnen** said that he would.

**Mr. Thompson** moved to approve the closure of the YMCA parking lot from Thursday, October 6<sup>th</sup> through Saturday, October 8<sup>th</sup>, Mrs. Cotner-Bailey second, motion carries.

**OLD BUSINESS:**

**1. MS-IL Staffing & Packaging re: Temporary sign on city lot at 3217 Grant Line Rd.**

**Mr. Nash** stated that the legal department reviewed this request and we do have an ordinance that allows temporary signs displayed during business hours with several stipulations.

**Mr. Weeks** stated that he was just following up to see if the board had made a decision.

**Mr. Nash** stated that the board has not made a decision but he does have the ordinance. He then read the stipulations of temporary signage and requested a copy of the sign along with the exact size and the exact location.

**Mr. Weeks** presented a picture of the sign as well as a drawing of the lot where he wants to

place it which he reviewed with the board. He added that the size would probably be about 2'X4'.

**Mr. Nash** asked if he could provide the board with a sample of the sign and a sketch of the property to give exact distance.

**Mr. Weeks** replied yes.

**Mr. Nash** asked what period of time he is requesting.

**Mr. Weeks** replied through the first of November.

**Mr. Thompson** asked if it is a sandwich type board that restaurants use.

**Mr. Weeks** replied that it is more like a yard sign but a little bigger and they have a holder for it that sticks in the ground.

### **TABLED ITEMS:**

#### **COMMUNICATIONS - CITY OFFICIALS:**

##### **1. Courtney Lewis re: Permit for Ross Wells for Gregg for Governor event**

**Ms. Lewis** explained that this is a request to have a small rally for John Gregg for Governor at the amphitheater on Sunday, October 30<sup>th</sup> from 8:00 a.m. to 9:00 a.m. She said that set up would start at 7:00 a.m. and tear down would be completed by 10:00 a.m.

**Mrs. Cotner-Bailey** asked if they would need the restrooms.

**Ms. Lewis** replied that those would need to be unlocked.

**Mrs. Cotner-Bailey** asked when those get winterized.

**Mr. Gardner** replied that Thanksgiving is when they typically winterize them.

**Mrs. Cotner-Bailey** moved to approve, **Mr. Thompson** second, motion carries.

**Mr. Nash** stated that before this board approves street closures in the future, we need to look at how many booths will be set up and that type thing because it seemed to him that IndieFest didn't warrant closing the street and he heard several complaints that the street was closed.

**Ms. Lewis** stated that they had booths from Uptown Art to the Bank Street Brew House.

**Mr. Nash** stated that he counted seven or eight booths and there weren't very many people there the two or three times that he was by there so he didn't feel that it warranted closing the street. He said that in the future the board will have to have more information regarding the size of crowd expected, etc. before closing a street.

**Ms. Lewis** said okay.

##### **2. Linda Moeller re: Bank Reconciliation Worksheet for August 2016**

**Mrs. Moeller** presented the Bank Reconciliation Worksheet for August 2016 and asked that it be read into the minutes.

**Mr. Nash** stated that the record should reflect that the Bank Reconciliation Worksheet for August 2016 was received by the board and read into the minutes.

##### **3. Fire Chief Juliot re: Smoke Detector Blitz**

**Mr. Nash** asked how the blitz went.

**Fire Chief Juliot** replied that it went very well and they had a lot of volunteers.

**Mr. Nash** asked how many they distributed.

**Fire Chief Juliot** replied that he hasn't gotten the total numbers on that yet and Red Cross is supposed to get them to him this week. He added that they had three teams of 60.

**4. Art Niemeier for Mike Hall re: Street closures for Harvest Homecoming**

**Mr. Niemeier** asked if Mr. Hall provided the board with the street closures.

**Mr. Nash** replied no.

**Mr. Niemeier** stated that he does have those and will get the board members a copy. He explained that the closures are the same as they have been in previous years for the parade route and booth days. He also explained that the entrance to the parking lot on Pearl Street and the Bank Street closure just south of Main Street where the rides are located has already been taken care of. He then requested the street closures in detail for the parade route, the booth days, the rides and the riverfront. Said list of closures is on file in the city clerk's office. He also presented the board as well as Police Chief Bailey with a list of chaperons for the Spring Street Run before the parade.

**Mr. Nash** asked Police Chief Bailey if he is satisfied with the chaperons for the race before the parade because there were some questions about the chaperoning in the past.

**Police Chief Bailey** stated that it is well organized and he is satisfied.

**Mr. Thompson** stated that it will be shut down at 10:00 a.m. for the race and then leave it closed for the parade.

**Mr. Niemeier** stated that last year that worked out very well.

**Mr. Nash** asked if there is a cancellation of the race would it be posted on the NATC website.

**Mr. Niemeier** stated that they will also send out a mass email to all of the runners.

**Mrs. Cotner-Bailey** asked if that event would be cancelled would the streets still need to be closed at 10:00 a.m.

**Mr. Niemeier** replied no.

**Mr. Thompson** asked if there is something at the farmer's market on the day of the parade.

**Mr. Niemeier** said that they came and got a separate approval for that event.

**Mr. Thompson** moved to approve the above closure requests for the Harvest Homecoming, Mrs. Cotner-Bailey second, motion carries.

**5. Chris Gardner re: Ohio River Greenway Project groundbreaking**

**Mr. Gardner** stated that the groundbreaking will be this Friday, September 28<sup>th</sup> at 10:00 a.m. at the 18<sup>th</sup> Street turnaround.

**6. Mickey Thompson re: Oak Street water main replacement project**

**Mr. Thompson** stated that they will be working on the Silver Street end and will do it the same as they did on Vincennes Street with police and flaggers there to handle traffic.

**APPOINTMENTS:**

**BIDS:**

**CLAIMS:**

**APPROVAL OF MINUTES:**

**Mrs. Cotner-Bailey moved to approve the Regular Meeting Minutes for September 20, 2016, Mr. Thompson second, motion carries.**

**ADJOURN:**

There being no further business before the board, the meeting adjourned at 10:50 a.m.

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Warren Nash, President

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Vicki Glotzbach, City Clerk



**Vicki Glotzbach**

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**From:** Jim Silliman <j.silliman@jtleng.com>  
**Sent:** Tuesday, September 27, 2016 11:53 AM  
**To:** Vicki Glotzbach  
**Cc:** Scott Wood; John Rosenbarger; David Duggins  
**Subject:** Grant Line West Ind. and Business Park plat for approval at next Board meeting  
**Attachments:** 0892 Rev Plat (4).pdf

Vicki,

Please add the attached plat for the Grant Line West Industrial and Business Park , that received preliminary and secondary approval at the most recent Plan Commission meeting, to the agenda for the Tuesday October 4 Board of Public Works and Safety meeting for review and approval/signing.

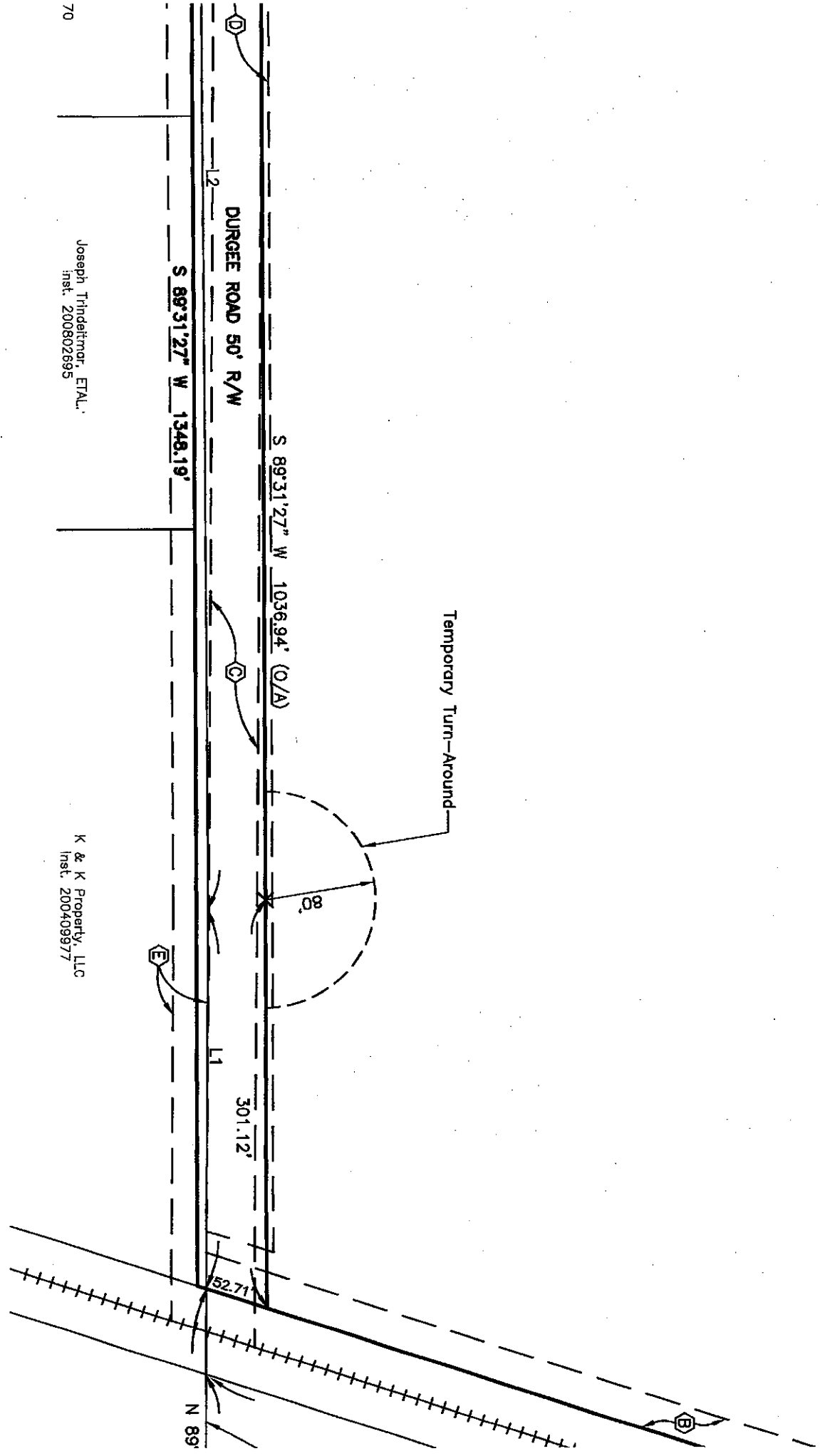
Sincerely,

James G. Silliman III (Jim), P.E.  
Project Engineer

**Jacobi, Toombs and Lanz, Inc.**  
Consulting Engineers  
1829 East Spring Street  
New Albany, IN 47150  
Phone: 812 207-2178 (direct line)  
Phone: 812 945-9585 (main)  
Mobile: 502 751-4299  
Fax: 812 945-6656

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TRACT A  
24.745 ACRES



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Joseph Tindeltmair, ETAL.  
Inst. 200802695

K & K Property, LLC  
Inst. 200409877

SITE INFORMATION

MAXIMO "Parent" Work Order Number 14009002

Street Address 3706 Green Valley Rd Lot Number \_\_\_\_\_

Nearest Cross Street Mt. Tabor Rd City/Town New Albany

County Floyd Township New Albany Tax Code \_\_\_\_\_

Subdivision/Development \_\_\_\_\_ Map Number 207-264

Service Type: Residential  Commercial \_\_\_\_\_ Conversion \_\_\_\_\_

Main: Size 4 Material:  Plastic-T  Plastic-Y  Steel  Cast Iron  Other

MAOP 60  Inches  PSIG Operating Pressure 54  Inches  PSIG

Install Type:  Rough grade  Established Grade  Short Side, trench in feet 133

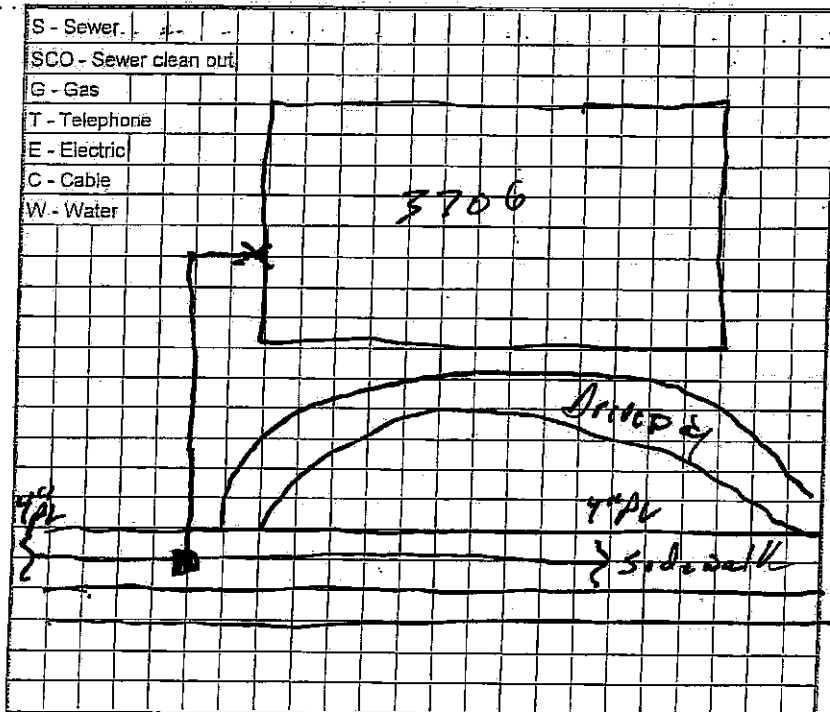
Long Side Bore in feet \_\_\_\_\_ Trench in feet \_\_\_\_\_ Total length in feet 133

Pipe Size:  1/2" CTS  1" CTS  2" IPS  Other (Write in) \_\_\_\_\_

Financials: Operation Center # 5920 Project # 31001 Task # 046

Recommended Labor Resource  Company  Contractor

SKETCH: Instructions - indicate NORTH, all measurements are approximate



Materials Needed
HP Meter Set
1" PL Riser
133' 1" PL Pipe
133' Tracer Wire
3" Elec Comp
1" EFV
4x1 Tee

MAXIMO SITE VISIT / SEWER LOCATE FORM

Operations Center (Write in) Clarksville  
Street Address 3706 Green Valley Rd City/Town New Albany  
MAXIMO "Parent" Work Order Number 14009002  
MAXIMO "Child" Work Order Number 19010479

New  Renew  Retire  Resize  Relocate  Other  Estimate only

1.  <sup>Y</sup>  <sup>N</sup> Sewer lateral locate is needed. If not, explain why. \_\_\_\_\_

2.  <sup>Y</sup>  <sup>N</sup> Site is ready for service installation. If not, check below WHY the site is not ready and place job in review with an explanation in SYCLO.

House has not been started  Building materials are blocking route

Lot is not at final grade  Other (Write in) \_\_\_\_\_

3.  <sup>Y</sup>  <sup>N</sup> Site is marked in white for locates or locates have been requested and will be ready in two working days.

Locate Number \_\_\_\_\_ Time Called \_\_\_\_\_

Start Date \_\_\_\_\_ Expiration Date \_\_\_\_\_

4.  <sup>Y</sup>  <sup>N</sup> Permits needed prior to the planned work accordance with state, county, or municipal requirements. Specify which permits are needed. (Write in)

side walk

5.  <sup>Y</sup>  <sup>N</sup> Necessary material is in truck stock. If not what is needed (Write in) \_\_\_\_\_

6. Estimated scheduled start date (Write in) \_\_\_\_\_

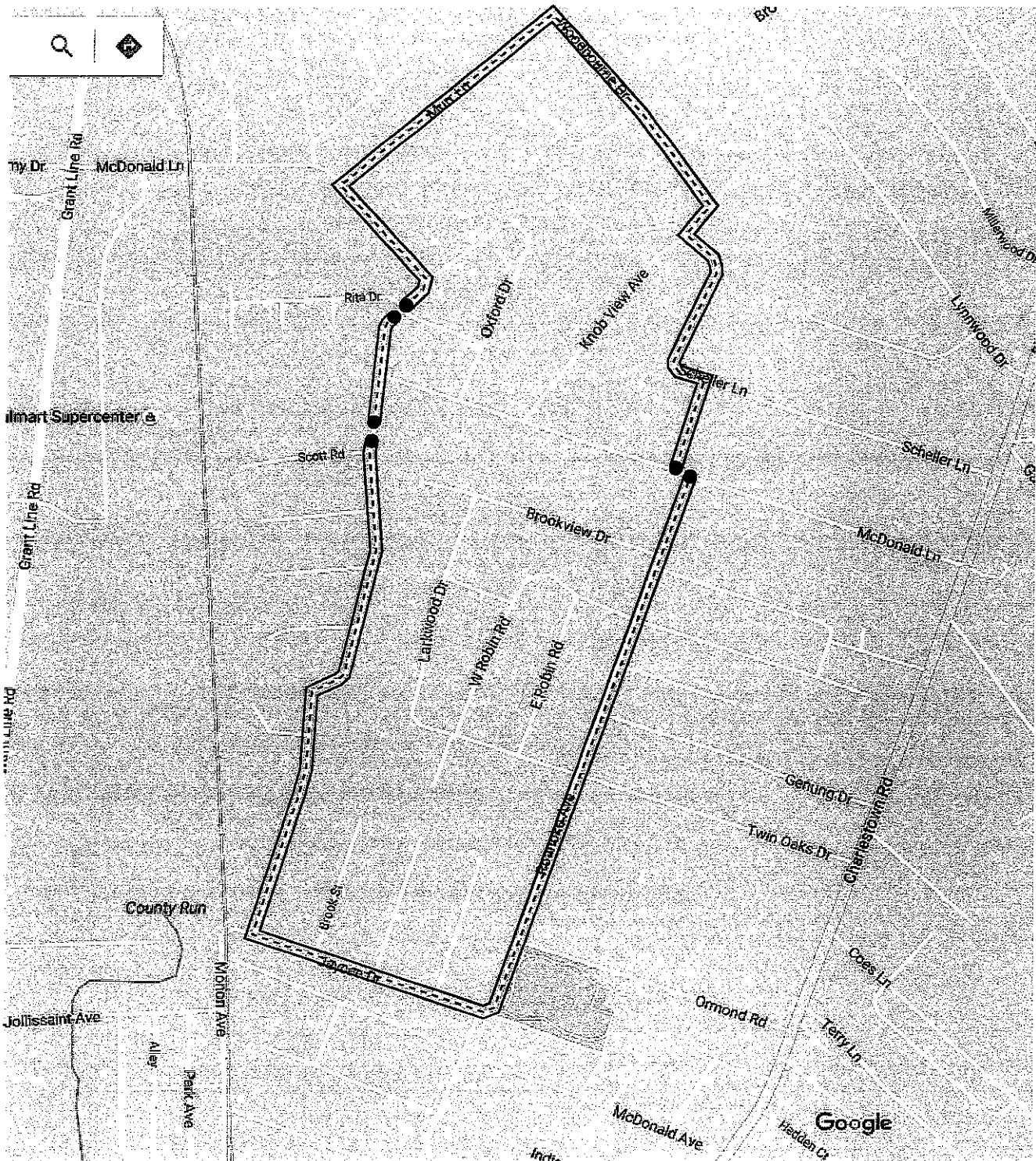
7. Other information needed to complete this work:

Special crew or equipment (Write in) \_\_\_\_\_

Other (Write in) \_\_\_\_\_ Welder

Completed by S. Jenkins Date 9-23-16

Return this completed form with the Crew Sheet to the Operations Assistant and Scheduler no later than the next business day.



Road Closure - South Hickoryvale Drive will be closed at Scott Rd/box culvert to just north of Rita Drive.

Southern Road closure - Hickoryvale Drive south to Jaycee Drive to Roanoke Avenue north or McDonald Lane.

Northern Road closure - Roanoke Avenue north to Scheller Lane west/north to Knob View Avenue to Woodbourne Drive west to Murr Lane south/west to McDonald Lane.

**Road Closure in RED**  
**Detours in BLUE**

PROPOSED BRIDGE PAINTING  
CSXT OVER EAST 8<sup>TH</sup> STREET  
IN THE VICINITY OF CSXT MILEPOST 00Q-316.63  
IN NEW ALBANY, FLOYD COUNTY, INDIANA  
CSXT OP NUMBER IN0812

**PRELIMINARY ENGINEERING AGREEMENT**

This Preliminary Engineering Agreement (this “**Agreement**”) is made as of \_\_\_\_\_, 201\_\_, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“CSXT”), and the City of New Albany, a body corporate and political subdivision of the State of Indiana (“Agency”).

**EXPLANATORY STATEMENT**

1. Agency wishes to facilitate the development of the proposed painting of the bridge carrying CSXT over East 8<sup>th</sup> Street (DOT# 352 427Y) in the vicinity of CSXT Milepost 00Q-316.63, Louisville Division, Hoosier Subdivision, located in New Albany, Floyd County, Indiana (the “**Project**”).
2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties’ consideration of the Project.
3. Subject to the approval of CSXT, which approval may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. **Scope of Work**

- 1.1. **Generally.** The work to be done by CSXT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for CSXT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, assessments, studies, agreements and related construction documents submitted to CSXT by Agency for the Project (collectively, the “**Engineering Work**”). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT’s opinion, is not relevant to CSXT’s participation in the Project.
- 1.2. **Effect of CSXT Approval or Preparation of Documents.** By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the “**Plans**”), CSXT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy CSXT’s requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the

PROPOSED BRIDGE PAINTING  
CSXT OVER EAST 8<sup>TH</sup> STREET  
IN THE VICINITY OF CSXT MILEPOST 00Q-316.63  
IN NEW ALBANY, FLOYD COUNTY, INDIANA

integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or the Project constructed in accordance with the Plans.

2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project, which approval or consent may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities. The Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.
3. Reimbursement of CSXT Expenses.
  - 3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by CSXT pursuant to applicable law (collectively, the "Reimbursable Expenses").
  - 3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$7,700.00 (the "Estimate" as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.
  - 3.3. Payment Terms.
    - 3.3.1. Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in CSXT Schedule PA attached hereto, a copy of which shall accompany the advance payment. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.
    - 3.3.2. Following completion of all Engineering Work, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.
    - 3.3.3. In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount

PROPOSED BRIDGE PAINTING  
CSXT OVER EAST 8<sup>TH</sup> STREET  
IN THE VICINITY OF CSXT MILEPOST 00Q-316.63  
IN NEW ALBANY, FLOYD COUNTY, INDIANA

until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

- 3.4. Effect of Termination. Agency's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.
4. Appropriations. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations.
5. Termination.
- 5.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.
- 5.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (ii) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from CSXT to Agency of such breach.
- 5.3. Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or safely suspend the Engineering Work. Agency shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.
6. Subcontracts. CSXT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.
7. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered (i) on the expiration of three (3) days following mailing by first class U.S. mail, (ii) on the next business day following mailing by a nationally recognized overnight carrier, or (iii) on the date of transmission, as evidenced by written confirmation of successful transmission, if by facsimile or other electronic transmission if sent on a business day (or if not sent on a business day, then on the next business day after the date sent), to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:



PROPOSED BRIDGE PAINTING  
CSXT OVER EAST 8<sup>TH</sup> STREET  
IN THE VICINITY OF CSXT MILEPOST 00Q-316.63  
IN NEW ALBANY, FLOYD COUNTY, INDIANA

If to CSXT: CSX Transportation, Inc.  
500 Water Street, J301  
Jacksonville, Florida 32202  
Attention: Director Project Management – Public Projects

If to Agency: City of New Albany  
311 Hauss Square  
Room 309  
New Albany, Indiana 47150  
Attention: Larry Summers, City Engineer

8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
10. Assignment. CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.
11. Applicable Law. This Agreement shall be governed by the laws of the State of Indiana, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

**CITY OF NEW ALBANY, INDIANA**

By: \_\_\_\_\_  
Larry Summers, City Engineer

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Tony C. Bellamy, P.E.  
Director Project Management – Public Projects

PROPOSED BRIDGE PAINTING  
CSXT OVER EAST 8<sup>TH</sup> STREET  
IN THE VICINITY OF CSXT MILEPOST 00Q-316.63  
IN NEW ALBANY, FLOYD COUNTY, INDIANA  
CSXT OP NUMBER IN0812

**CSXT Schedule PA**

(Advance Payment – Preliminary Engineering Agreement)

**PAYMENT SUBMISSION FORM**

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Payment is hereby provided in accordance with the terms of Section 3.3 of the Agreement dated \_\_\_\_\_, 201\_\_, between Agency and CSXT.

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- 1) A copy of this Payment Submission Form shall accompany all payments delivered by Agency to CSXT which shall be forwarded to the following address:

**CSX Transportation, Inc.  
P. O. Box 116651  
Atlanta, GA 30368-6651**

- 2) Email copies of check and this form to Nicole\_Henning@csx.com and LShaw@Benesch.com
- 

Upon execution and delivery of this Agreement by Agency, Agency will remit payment in accordance with Section 3.3.1. of this Agreement.

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**(All information below to be completed by Agency providing Payment)**

<u>Check No.</u>	<u>Payment Amount</u>	<u>Date of Check</u>
_____	<u>\$7,700.00</u>	_____

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_



## Arts Council of Southern Indiana Loan Policy

### Conditions of loan

This agreement is entered into between the Arts Council of Southern Indiana, the owner of the object loaned, and referred to herein as ACSI or Lender and the Civil city of New Albany, Indiana, referred to herein as Borrower, on this day \_\_\_\_\_ 2013.

#### **Object Care**

The borrowing institution (The Civil City of New Albany) will take care for the safe custody of objects lent to the Borrower. Once the Borrower is 'in possession' of the object, the security, storage, handling display and preservation of the object will be the responsibility of the Borrower, who will assume responsibility for all aspects of its physical care and seek to ensure its protection against loss, damage or deterioration in accordance with accepted museum practice.

'In possession' refers to the point after the loan agreement has been signed when the object is either collected by the Borrower's staff (or designated carrier) or it has arrived on the Borrower's premises having been delivered by ACSI (the Arts Council of Southern Indiana) or another party, to the point when the object is returned (delivered) by the Borrower's staff (or designated carrier) or collected by the Lender or another party, after termination/expiry of the loan agreement.

The term 'Object' refers to any artwork or display materials, or part of artwork or display materials (i.e. pedestals, plaques, signage etc.). A full inventory of all objects and parts of objects will be included in the loan agreement.

#### **Conservation**

All objects being lent by ACSI will be fit to travel. A pre-loan condition check will be undertaken either by the Borrower or by ACSI staff. If the object requires conservation, restoration, repair or maintenance, terms shall be agreed separately with the Lender before this agreement is signed. Upon arrival in and departure from the borrowing institution, a full condition check will be undertaken by the Borrower or by appropriate experts nominated by the Borrower.

During the loan period, remedial treatment (except emergency treatment) will not be carried out without written agreement between the Lender and the Borrower describing the nature of the work and which party is to pay for it either wholly or in part. If the Lender does not agree that remedial work should take place, the Borrower shall have the right to return the object to ACSI.

The borrower will become liable to reimburse ACSI for the full costs of any work preparatory to the display of the object and any conservation work done at the ACSI expense during the loan and if the loan is terminated by ACSI prior to the expiry of the loan period.

#### **Environment and handling**

ACSI will notify the Borrower of any specific environmental and handling requirements of the object.

- The Object will be displayed in a manner agreed upon by the lender and borrower.
- All expense for the display of the object will be borne by the borrower.
- Signage, lighting and information that are approved by the lender and appropriate to the Object will be included at the site of the object on display.
- The borrower agrees a yearly to the inspection of the Object by a qualified professional to determine the state of the Object. If repairs and/or conservation work is

recommended the borrower is liable for that expense. If these terms are not met the loan may be terminated by ACSI.

***Loan period***

The term of the loan period will be one year, with an option for the renewal of the agreement for a further period on such terms and conditions as shall be agreed between the Lender and the Borrower. The loan will be reviewed at the end of the exhibition year. All loans are for a fixed period and in both cases, an expiry date for the loan will be agreed and specified on the loan agreement. If either the Lender or the Borrower wishes to terminate the loan before the due date, at least three months' notice shall be given.

***Insurance***

The Borrower will insure the object, while it is on loan, against 'all risks' for the valuation agreed by both parties. Insurance will commence once the Borrower is 'in possession' of the object. The Lender does not accept liability for any uninsured damage or loss, nor does it accept liability for the deterioration or replacement of perishable objects.

***Insurance value***

Within a reasonable time not to exceed 30 days after this loan agreement is signed, the insurance value of the object must be determined, at the Borrower's expense, by an independent valuer agreed by both parties, whose valuation shall be binding. The Borrower must provide the lender with a letter of indemnity from their insurers no later than one week before the date of collection, stating that they are prepared to extend cover during transit, for the full period of the loan and for the full cost of the valuation. Should it be considered desirable for the value to be revised during the period of the loan, it will be the responsibility of the Lender to commence negotiations to this effect. The insurance value of the object as agreed by both parties is without prejudice to any other valuation of the object that has or may be agreed for any other purpose.

***Location of object***

The object will be placed at a site owned and operated by the borrowing institution, or a site agreed to by both parties in advance of the loan. The object will not be removed from the Borrower's premises except in an emergency, or with the express written permission of the Lender.

***Photography***

It is assumed that, unless otherwise stated, permission is granted for photography, reproduction and filming of the object by visitors to the Borrowing institution for their own private use, and by the Borrower for security, record, and exhibition and publicity purposes. Any images or merchandise based on and/or of the object produced for sale will be subject to a 30% commission paid to the Lender.

***Acknowledgement***

The Borrower will acknowledge the Lender's name and location in any caption, catalogue, video, guidebook or other publication.

The form of acknowledgement is as follows:

On loan from The Arts Council of Southern Indiana, 820 East Market, New Albany, IN.  
[www.artscouncilsi.org](http://www.artscouncilsi.org)

***Access***

By giving prior notice, the Lender, and guests, will be allowed free access to the Borrower to see the loaned property during the normal working hours of the borrowing institution. All bona fide researchers recommended via the Lender will be allowed free entry to view the objects.

***Address***

The Lender will notify the Borrower of any change of address. This is particularly important for the return of objects at the expiry or termination of the agreement. The address to which the object will be returned is required (if different from the signed page of the agreement).

**Ownership**

The Lender will notify the Borrower of any change of ownership of the object. If the legal ownership of the object should change during the period of the loan, the new Owner will be required to establish, prior to return, their authority to receive the object by proof satisfactory to the Borrower.

At the end of the loan period, the Borrower will contact ACSI in order to decide on the future of the object. Three months notice will be given by either party if the loan is not to be renewed and the object is to be returned to the Lender.

**Sale**

Loans are accepted by the Borrower on the understanding that the Lender will not enter into negotiations for the sale of all or any part of the object while they are at the Borrower. In the event of such negotiations taking place, the Borrower reserves the right to terminate the loan and return the object to the Lender. The lender will then become liable to reimburse the Borrower for the full costs of any work preparatory to the display of the object and any conservation work done at the Borrower's expense.

**Disputes**

In the event of a dispute between the Borrower and the Lender, an arbitrator shall be appointed by agreement, or, in default of agreement, by the American Arbitration Association. The decision of the arbitrator shall be accepted by both parties.

**Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana and each party agrees to submit to the exclusive jurisdiction of the Indiana courts as regards any claim or matter arising under this agreement.

**The present agreement supersedes and replaces all previous agreements on the object described. The agreement is binding on all heirs, assigns and successors-in-title to the owner of the object.**

Title of work Landscape  
Name of Artist Jeptha Bernard Bright – work signed as Barney Bright  
Date work completed 1958  
Media Cast bronze Size 29" tall x 28" wide x 22" deep  
Condition of work Excellent  
Display elements Limestone pedestal and base, stone signage pedestal and bronze plaque

\_\_\_\_\_  
Arts Council of Southern Indiana, Board President Date

\_\_\_\_\_  
Board of Public Works, President Date