



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

4:00 p.m., February 1, 2024

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

To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>

Call to Order by Mayor Gina Leichty

Approval of Minutes: January 25, 2024

Approval of Agenda

- 1) Fire Department approval:** Conditional offer of employment to Matthew A. Borton
- 2) Fire Department approval:** Conditional offer of employment to Allison R. Eagan
- 3) Fire Department approval:** Conditional offer of employment to Jonathan M. Lehman
- 4) Fire Department approval:** Conditional offer of employment to Derick D. Schmucker
- 5) Fire Department approval:** Conditional offer of employment to Travis J. Snethen
- 6) Engineering Department:** Approve the agreement with Donohue & Associates, Inc. for \$218,462 for Preliminary Design Engineering Services and the development of a Preliminary Engineering Report for a new wellfield and application to the Indiana State Revolving Fund
- 7) Engineering Department:** Approve the Wastewater on-call service agreement with Donohue & Associates for \$30,000.00, and authorize the Mayor to sign task orders as presented
- 8) Engineering Department:** Approve the Water on-call service agreement with Donohue & Associates for \$20,000.00, and authorize the Mayor to sign task orders as presented
- 9) Engineering Department:** Approve the agreement with Jones Petrie Rafinski, Inc. for \$5,000 to create specifications for a sewer pipe lining bid package
- 10) Engineering Department:** Approve Change Order No. 1 for a 4-foot pedestal pole and foundation for a \$3,266.76 increase for County Courts Consolidation Roadway Improvements

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD

MINUTES OF THE JANUARY 25, 2024 REGULAR MEETING

Convened in the Goshen Police & Court Building, 111 East Jefferson St., Goshen, Indiana

Present: Mayor Gina Leichty, Mike Landis, Orv Myers, Mary Nichols, and Barb Swartley

Absent:

CALL TO ORDER: Mayor Gina Leichty called the meeting to order at 4:00 p.m.

REVIEW/APPROVE MINUTES: Mayor Leichty presented the minutes of the Jan. 11, 2024, Regular Meeting as prepared by Clerk-Treasurer Aguirre. Board Member Mike Landis moved to approve the minutes as presented and the motion was seconded by Board Member Barb Swartley. Motion passed 5-0.

REVIEW/APPROVE AGENDA: Mayor Leichty presented the agenda with the suggestion that agenda item #16, *Review of the Order of the City of Goshen Building Commissioner for 407 Center Street (Ronald E. Davidhizar and/or M&H Rentals, LLC, property owner)*, be heard after related agenda item #4, *Michael Schmucker request: Approve a gravel driveway at 407 Center Street*. Board member Landis moved to accept the agenda as amended. Board member Swartley seconded the motion. The motion passed 5-0.

1) Oath of Office: For Board of Public Works and Safety member Barb Swartley

Mayor Leichty said she had re-appointed Barb Swartley to the Board of Public Works and Safety. She then swore Board member Swartley into office. Board members Mike Landis, Mary Nichols and Orv Myers were sworn into office Jan. 11. Board member Swartley was unable to attend that meeting.

2) Police Department request: Accept the resignation of Officer Guadalupe Mendoza Rivera #229

Police Chief José Miller asked the Board to approve the resignation of Officer Guadalupe Mendoza- Rivera #229, effective Thursday Jan. 11, 2024.

Chief Miller said on Jan. 8, 2024, Officer Mendoza requested to meet with someone from the Administration. During this meeting, Officer Mendoza questioned his decision to become a police officer. He said the biggest hurdle for him was the safety concern for himself or others while functioning as a police officer.

Chief Miller said Officer Mendoza was given some time to think about the decision but ultimately chose to resign. He had just completed the pre-basic training required by the Indiana Law Enforcement Academy. Chief Miller added, "I wish Guadalupe the best in life for whatever career path he chooses in the future."

In a resignation note, Officer Mendoza wrote, "Thank you for giving me the opportunity for something better in life, but something mentally is holding me back and I can't get around it. This is my resignation note."

Landis/Swartley made a motion to approve the resignation of Officer Guadalupe Mendoza Rivera #229, effective Thursday Jan. 11, 2024. Motion passed 5-0.

3) Fire Department request: Accept the resignation of Firefighter Timothy Perry, effective Feb. 2, 2024

City Fire Chief Dan Sink told the Board that Firefighter Timothy Perry has submitted his resignation, effective Feb. 2, 2024. The Chief asked the Board to affirm Firefighter Perry's resignation.

Chief Sink added, "We have enjoyed our work with Tim at the Goshen Fire Department and would like to wish him the very best in his new endeavors with his family."

Landis/Swartley made a motion to accept Firefighter Tim Perry's resignation, effective Feb. 2, 2023. The motion passed 5-0.



4) Michael Schmucker request: Approve a gravel driveway at 407 Center Street

Michael Schmucker of M&H Rentals, LLC. said his company's purchase of 407 Center Street was finalized on Jan. 24, 2024 and he wanted to install a gravel parking area at the property beside the alley to keep cars off the street. **Schmucker** said he had proposed the completed parking area would be roughly 28 feet by 17 feet, but **City Director of Public Works & Utilities Dustin Sailor** recommended that the driveway be 24 feet by 22 feet. He said if the proposed location is not acceptable, he would like to move it elsewhere because an extensive renovation is being proposed for the home, which has a pending City demolition order.

In a memorandum to the Board, **Schmucker** summarized the types of driveways in the neighborhood. He wrote that three houses have street parking; five houses have hard surface parking areas, and nine houses have gravel parking. He said the property to the east and the west both have gravel parking areas.

City Assistant Planning & Zoning Administrator Rossa Deegan told the Board that his department could have approved the parking area if it was planned to be concrete or asphalt, but Board approval is required for gravel. He said the department didn't object to the request. He added that the proposed location was not ideal but felt a location elsewhere would be better as long as setbacks were maintained.

In response to a question from **Board member Landis**, **Sailor** said his department would recommend that the driveway not be too close to the alley. He said the final dimensions would be negotiated after approval.

Landis/Swartley made a motion to allow Michael Schmucker of M&H Rentals, LLC to install a gravel driveway at 407 Center Street subject to approval of the location and dimensions of the driveway by the City Engineering Department. Motion passed 5-0.

Mayor Leichty asked **City Attorney Bodie Stegelmann** if the Board could take action now on the related agenda item, #16) *Review of the Order of the City of Goshen Building Commissioner for 407 Center Street (Ronald E. Davidhizar and/or M&H Rentals, LLC, property owner)*, rather than making **Mr. Schmucker** wait until the end of the meeting. **Stegelmann said that would be appropriate**

16) Review of the Order of the City of Goshen Building Commissioner for 407 Center Street (Ronald E. Davidhizar and/or M&H Rentals, LLC, property owner)

Mayor Leichty asked Assistant City Attorney Don Shuler to provide an update on the Order of the City of Goshen Building Commissioner for 407 Center Street (Ronald E. Davidhizar, property owner).

BACKGROUND:

An unsafe building review hearing on the Nov. 8, 2023 demolition Order of the City of Goshen Building Commissioner by the City Board of Public Works & Safety was scheduled Dec. 18, 2023 for the property located at 407 Center Street, Goshen (Ronald E. Davidhizar, property owner). The Board of Public Works and Safety needed to conduct the hearing and affirm, rescind, or modify the Building Commissioner's Order and determine what action to order concerning the property.

Along with hearing evidence, questioning witnesses, reviewing the record, and making findings, the Board had the option of affirming the Building Commissioner Order (if it agreed with demolition), rescinding the Order (if property violations had been fixed), or modifying the Order (if it believed that the property could be fixed). It could also postpone the hearing to a future date.

According to memorandum from the City Legal Department to the Board of Works, the Dec. 18 hearing was scheduled for the consideration of evidence and a decision on the Order requiring demolition.

The Building Commissioner identified 11 Goshen City Code violations that rendered the building and residential structure to be unsafe and ordered that it be demolished.



SUMMARY OF DEC. 18, 2023 HEARING ON THE ORDER OF THE CITY BUILDING COMMISSIONER FOR 407 CENTER STREET (RONALD E. DAVIDHIZAR, PROPERTY OWNER) AND THE BOARD'S ACTION:

Assistant City Attorney Don Shuler said the property at 407 Center Street was the subject of a Nov. 8, 2023 demolition order from the City of Goshen Building Commissioner. After the order was issued, Shuler said there was some discussion with the property owner and the property was included in auction and sold on Dec. 16, 2023, but not yet completed to **Michael Schmucker of M&H Rentals of Goshen**.

Schmucker told the Board that his company purchased the property on Dec. 16. He said he informed **Craig Blough of Bartel & Company** that M&H wants to close the sale as soon as possible and begin work on the property. Schmucker said he didn't yet have a plan in place for the property but planned to "gut" the interior and then assess what more needed to be done to make the building safe and bring everything up to code.

Craig B. Blough, a licensed real estate broker and auctioneer for Bartel & Company, confirmed that the property was auctioned Dec. 16, 2023. He said his company forwarded the title work for 407 Center Street in order to accelerate the closing so work could begin soon on the property.

Shuler said **City Building Commissioner Myron Grise** advised him today that he supported tabling this matter. Shuler said the Building Commissioner's demolition order has been recorded and remained in effect. If the matter were continued, Shuler said he and Grise would want the owner to return at that date with a scope of work and projected timeline for repairs that the Board could review and decide whether demolition was still warranted or if the property could be rehabilitated. He said at that time, the Board could then issue an order to the new property owner.

After discussion among Board members and consultation with City Attorney Bodie Stegelmann, Board members Swartley and Myers made a motion to delay the hearing on the City Building Commissioner's unsafe building order for 407 Center Street until Jan. 22, 2024 at which point the property would have conveyed to a new owner, who will come with a scope of work detailed plan for the rehabilitation of the building. Motion passed 5-0.

In a Jan. 22, 2024 memorandum to the Board, **Assistant City Attorney Shuler** summarized what had occurred at the Dec. 18, 2023 hearing. He wrote that he didn't have any further information concerning the property or the status of the closing. As such, the unsafe building review hearing was still scheduled and needed to be conducted pursuant to the demolition Order of the City of Goshen Building Commissioner, dated Nov. 8, 2023.

Before the Jan. 25, 2024 meeting began, **City Building Inspector Travis Eash** distributed to Board members a memorandum and report, dated Jan. 25, on 407 Center Street, which included photographs of the property showing its condition as of an Oct. 24, 2023 inspection. The memorandum included the following update on the property. "This property was sold at an auction and the new owner has provided the Building Department with an initial scope of work that we have accepted and approved. The Building Department's recommendation is that we allow 90 days and delay the hearing for the new owner to make the proper repairs to bring the property into compliance."

SUMMARY OF JAN. 25, 2024 UPDATE ON THE ORDER OF THE CITY BUILDING COMMISSIONER FOR 407 CENTER STREET (M&H RENTALS, LLC, PROPERTY OWNER) AND THE BOARD'S ACTION:

Assistant City Attorney Don Shuler summarized what occurred at the Board's Dec. 18, 2023 hearing and the action the Board ordered because of its pending sale. He said the sale was finalized on Jan. 24, 2024.

Shuler said City Building Inspector Travis Eash's memo to the Board included a proposed scope of work summary and timeline by M&H Rentals for 407 Center Street, which was acceptable to the Building Department. He said the Building Department was recommending a 90-day continuance to allow the new owner to present a plan for the rehabilitation and repair of the property.

Michael Schmucker said the sale closed Jan. 24, which he said was longer than anticipated. He said the demolition has begun and the structure will be "guttled down to the studs" and it "will be a new house when done" with new siding, a new roof and other extensive repairs. He anticipated completion in eight or nine months.



Clerk-Treasurer Aguirre summarized the action taken by the Board on Dec. 18. **Landis/Swartley then made a motion to continue the hearing until May 2, 2024 to determine if the work at 407 Center Street has been done and if the property owner is complying with the Order of the Building Commissioner. Motion passed 5-0.**

5) LaCasa request: For a few weeks, extend the placement of a construction materials dumpster in the street parking spaces in front of The Hattle Apartments, 210 E Lincoln Ave.

Brad Hunsberger, Vice President for Real Estate Development for LaCasa, asked the Board to extend the previously approved placement of a roll-off dumpster in the street parking in front of The Hattle Apartments at 210 E Lincoln Ave. He said LaCasa hasn't completed its demolition/reconstruction work in the basement.

Hunsberger said LaCasa removed the dumpster prior to a recent major snow event to allow City crews to clear the snow on Lincoln Avenue free of the dumpster in their way but wants it back to continue the work.

In a memorandum to the Board, LaCasa staff wrote that only one dumpster will be present in the street parking at a time and that two parking spots would be required for the dumpster to maintain visibility for cars turning into and out of the alley beside the building. LaCasa will close the dumpster each evening and clean up all debris/trash from the pathway between the dumpster and the basement stairway. Staff added that LaCasa has asked tenants to continue using the usual residential dumpster behind the building.

Landis/Swartley made a motion to approve placement of a dumpster in two parking spaces in front of 210 East Lincoln Avenue for 30 days. Motion passed 5-0.

6) Legal Department request: Approve and authorize Mayor Leichthy to execute the agreement with Velocity EHS for the three-year term at a total cost of \$15,740.31

City Attorney Bodie Stegelmann said the City of Goshen is required to complete annual reporting to the Indiana Department of Environmental Management (IDEM) and the Local and Regional Emergency Planning Commissions regarding the chemical inventory maintained at several of the City's facilities.

Stegelmann said the continuing services provided by Velocity EHS will allow the City to track, compile all product safety information regarding of chemicals electronically, and generate all required reports. This would be a three (3) year term agreement with the cost per year as follows:

Term	Annual cost
February 17, 2024 to February 16, 2025	\$4,992.96
February 17, 2025 to February 16, 2026	\$5,242.61
February 17, 2026 to February 16, 2027	\$5,504.74

Stegelmann said the total cost for the three-year agreement is \$15,740.31. He recommended that the Board approve and authorize Mayor Leichthy to execute the agreement with Velocity EHS at a total cost of \$15,740.31.

Landis/Swartley made a motion to approve and authorize Mayor Leichthy to execute the agreement with VelocityEHS for the three-year term at a total cost of \$15,740.31. Motion passed 5-0.

7 & 8) Community Development Block Grant (CDBG) requests: Acknowledge Conflict of Interest Disclosures for Councilor Brett Weddell and Councilor Megan Peel

Theresa Cummings, Community Development Specialist, told the Board that Brett Weddell, an elected Common Council member, serves as Chair of LaCasa, Inc.'s Board of Directors.

Cummings said in the interest of full transparency, **Councilor Weddell** was disclosing his service relative to LaCasa, noting that it is a volunteer position. He has agreed that in his role as a Council member, he will recuse himself in all matters between the City CDBG program and LaCasa to avoid a perceived conflict of interest.



Cummings also said **Councilor Megan Peel** is employed by LaCasa as its Development and Communications Manager. She informed the Board that in her role as a Council member, Councilor Peel will recuse herself in all matters relative to LaCasa to avoid a perceived conflict of interest.

Cummings said LaCasa is also a subrecipient and CBDO of Community Development Block Grant (CDBG) funds for Program Year 2023. She said public disclosures and applications to HUD for a waiver are required under the regulations which govern the CDBG program.

Cummings said these disclosures will be done annually as long as Councilors Weddell and Peel are serving in their capacities as Council members and with LaCasa. The annual disclosures cover fiscal year 2024. The disclosures were attached to the agenda packet, to be acknowledged by the Board of Public Works and Safety.

Landis/Swartley made a motion to acknowledge the Conflict of Interest Disclosures for Councilors Brett Weddell and Megan Peel. Motion passed 5-0.

9) Water Department request: Approve the allocation of 0.40 cents to the Water Maintenance Fund and 0.70 cents to the Sewer Maintenance Fund for the 2024 billing year

Marvin Shepherd, the incoming Superintendent of the City Water Treatment and Sewer Department, asked the Board of Works & Safety to modify the allocations to the Residential Water and Sewer Line Maintenance Repair Fund for 2024 to \$0.40 cents to the Water Fund and \$0.70 cents to the Sewer Fund.

Pursuant to Ordinance No. 4531, the Board is required to annually review the Residential Water and Sewer Line Maintenance Repair Fund balances and decide on how the \$1.10 repair fee is to be divided and assessed per the monthly water and sewer bills.

In 2023, the total sewer repair expenditures were \$77,439.23, with a beginning balance of \$19,262.29 and an ending balance, on Dec. 31, 2023, of \$23,136.85. In contrast, the total water repair expenditure in 2023 were \$68,113.57, with a beginning balance of \$38,644.52 and an ending balance on Dec. 31, 2023 of \$8,568.40. **Shepherd** said this included a \$12,000 funds transfer because the water fund was in the negative \$3,431.60, so further adjustments may be necessary later this year.

City Water & Sewer Office Manager Kelly Saenz said the City can allocate about \$8,600 a month for water and sewer repairs and is always hoping both funds will break even, but that hasn't been working out. She said some repairs have been as high as \$10,000 a month, so the funds will need to be monitored.

Board member Landis asked if there was a better accounting method to make adjustments instead of having reallocations approved by the Board. **Kent Holdren, the current Superintendent of the City Water Treatment and Sewer Department**, said annual adjustments used to be adequate, but it's difficult to predict the costs and that repair costs have risen so allocations twice a year might be better.

Board member Landis, Saenz and Mayor Leichty briefly discussed different ways to adjust the allocations. **City Attorney Stegelmann** and **Holdren** also discussed the procedure for reallocations from the repair funds.

Landis/Swartley then made a motion to approve the recommendation of the Goshen Utility Department to allocate 0.40 cents to the Water Maintenance Fund and 0.70 cents to the Sewer Maintenance Fund for the 2024 billing year. Motion passed 5-0.

10) Engineering Department request: Authorize the Mayor to sign the County Road 42 Marion Line railroad crossing delegation letter as the delegatee, which with the County's signature will allow the City to file the Federal Railway Administration quiet zone application

City Director of Public Works & Utilities Dustin Sailor told the Board that the City of Goshen has worked on the implementation of a quiet zone along the Marion Line railroad tracks for many years.



Sailor said with a new application being submitted to the Federal Railroad Administration (FRA), the City will need Elkhart County to delegate responsibility for the application and improvements necessary at the County Road 42 Marion Line railroad crossing.

Sailor said the paperwork attached to the Board's agenda packet was in a suitable format for the FRA. Therefore, he asked that the Board authorize Mayor Leichty to sign the delegation letter as the delegatee.

Landis/Swartley made a motion to authorize Mayor Leichty to sign the County Road 42 Marion Line railroad crossing delegation letter as the delegatee, which with the County's signature will allow the City to file the Federal Railway Administration quiet zone application. Motion passed 5-0.

11) Engineering Department request: Approve and authorize the Mayor to sign the Financial Commitment Letter to be submitted to the Indiana Department of Transportation (INDOT) during the Community Crossings Matching Grant Fund application

City Director of Public Works & Utilities Dustin Sailor said the City of Goshen is preparing to apply for the Community Crossings Matching Grant Fund through INDOT for an award of up to \$1,500,000.

Sailor said in order to be eligible for application, a Financial Commitment Letter must be signed by Mayor Leichty and submitted during time of application stating that Goshen will meet the financial match requested in the amount of \$1,500,000. In response to a question from **Mayor Leichty**, he said the City has budgeted for this possible expense.

Landis/Swartley made a motion to approve and authorize the Mayor to sign the Financial Commitment Letter to be submitted to the Indiana Department of Transportation during the Community Crossings Matching Grant Fund application. Motion passed 5-0.

12) Engineering Department request: Approve the agreement with BlueConduit for \$51,000 of Consulting Services and Predictive Modeling to help identify probable locations of Lead Service Lines, minimizing the number of physical surveys required to complete the City's Lead Service Line Inventory

City Director of Public Works & Utilities Dustin Sailor told the Board that the City is required to complete a lead and copper service line inventory for about 11,589 services. So far, he said about 246 services have been verified, and the work must be completed by Oct. 16, 2024.

Sailor said one option to complete the work would be an artificial intelligence evaluation of service lines based on the City's data of building and water line ages along with pot holes and locations. The resulting data will be used to determine the type of lines. He said not using this approach would take more time and cost much more money.

So, **Sailor** said approval was sought for an expenditure of \$51,000 for Consulting and Predictive Computer Modeling support from Abernethy Schwartz Partners LLC, doing business as BlueConduit, toward the City's efforts to request a \$300,000 Tier III grant for developing the Lead Service Line inventory.

Mayor Leichty asked if the City would still need to physically verify BlueConduit's findings after it completes its predictive modeling work. **Sailor** said it appears the federal government will accept the findings after additional work by the City to help verify some of the findings. The **Mayor** said she hopes this work will accelerate the process.

Landis/Swartley made a motion to approve the agreement with BlueConduit for \$51,000 of Consulting Services and Predictive Modeling to help identify probable locations of Lead Service Lines, minimizing the number of physical surveys required to complete the City's Lead Service Line Inventory and increasing the City's chances of obtaining State grant funding for up to \$300,000 for the City's lead service line inventory. Motion passed 5-0.

13) Engineering Department request: Approve and authorize the Mayor to sign the agreement with Abonmarche Consulting for the evaluation of the Herman Street Sewer for a lump sum fee of \$7,500



City Director of Public Works & Utilities Dustin Sailor told the Board that Goshen Wastewater has had operational issues with a residential grinder station on Herman Street. Over the past couple of years, he said the grinder pump has been changed, an air release valve has been added, and the force sewer line has been flushed multiple times. With all of this, he said the grinder station still has run erratically.

Sailor said the next step is to have the original design evaluated and evaluate potential installation issues. To perform this evaluation, he said Goshen Waste Water would like to retain the services of Abonmarche Consulting for a lump sum fee of \$7,500.

Landis/Swartley made a motion to approve the agreement with Abonmarche Consulting for the evaluation of the Herman Street Sewer for a lump sum fee of \$7,500.00 Motion passed 5-0.

14) Engineering Department request: Approve the attached agreement with Central Industrial Contractors, Inc. for \$45,738 to replace the failed sewer control valve at the Goshen Waste Water Treatment Plant and increase the height of the valve structure in order to prevent flooding into the structure

City Director of Public Works & Utilities Dustin Sailor told the Board that approval was sought for an expenditure of \$45,738 for replacement of the failed 30-inch sanitary sewer control valve at the Goshen Waste Water Treatment Plant and increase the height of the valve structure to prevent flooding into the structure.

In response to a question from **Board member Landis**, **Sailor** explained the work needed to make the repairs.

Landis/Swartley made a motion to approve the agreement with Central Industrial Contractors, Inc. for \$45,738 to replace the failed 30-inch sanitary sewer control valve at the Waste Water Treatment Plant and increase the height of the valve structure in order to prevent flooding into the structure. Motion passed 5-0.

15) Engineering Department request: Approve and authorize the Agreement with Habitat for Humanity of Elkhart County, Inc. for the completion of the project at 803 Arehart Street

City Director of Public Works & Utilities Dustin Sailor told the Board that the City Stormwater Department requested the approval of an agreement for the Completion of Construction for the home at 803 Arehart Street, which has passed its final building inspection. He said the project is substantially complete except for the instillation of 330 square feet of sidewalk, planting one large shade tree, and stabilizing 7,224 square feet of disturbed area. He said these final requirements cannot be completed at this time due to weather conditions.

Sailor said the Stormwater Department submitted this agreement for the Completion of the Construction Project for approval and authorization for the Mayor and Board Members to execute. He also said the property owner, Habitat for Humanity of Elkhart County, Inc., agrees to complete all concrete and stabilization work by June 15, 2024. The expected cost of work is \$4,745 and a surety check in that amount has been remitted to the Clerk-Treasurer's Office.

Landis/Swartley made a motion to approve and authorize the Board to execute the agreement with Habitat for Humanity of Elkhart County for the Completion of the project at 803 Arehart Street. Motion passed 5-0.

Privilege of the Floor (opportunity for public comment for matters not on the agenda):

Mayor Leichty opened Privilege of the Floor at 4:39 p.m. There were no comments.

At 4:39 p.m. Mayor Leichty recessed the Board of Public Works and Safety meeting and opened public hearings to review orders of the City of Goshen Building Commissioner for two Goshen properties.



CITY BOARD OF PUBLIC WORKS & SAFETY PUBLIC HEARINGS:

4:00 p.m., January 25, 2024

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

Members: Mayor Leichty, Mike Landis, Orv Myers, Mary Nichols, Barb Swartley

Mayor Leichty began the hearings by swearing in two witnesses to give complete and truthful testimony: City Building Inspector Travis Eash and Roman Navarro, the owner of 304 West Oakridge Avenue, which was a property subject to one of the two of the hearings on Jan. 25, 2024.

17) Review of the Order of the City of Goshen Building Commissioner for 205 Middlebury Street (Ronald E. Davidhizar, property owner)

At 4:40 p.m., Mayor Leichty convened a hearing to review the Order of the City of Goshen Building Commissioner for 205 Middlebury Street (Ronald E. Davidhizar, property owner).

BACKGROUND:

An unsafe building review hearing on the Nov. 21, 2023 demolition Order of the City of Goshen Building Commissioner by the City Board of Public Works & Safety was scheduled Jan. 25, 2024 for the property located at 205 Middlebury Street, Goshen (Ronald E. Davidhizar, property owner). The Board of Public Works and Safety needed to conduct the hearing and affirm, rescind, or modify the Building Commissioner's Order and determine what action to order concerning the property.

Along with hearing evidence, questioning witnesses, reviewing the record and making findings, the Board had the option of affirming the Building Commissioner Order (if it agreed with demolition), rescinding the Order (if property violations had been fixed), or modifying the Order (if it believed that the property could be fixed). It could also postpone the hearing to a future date.

According to a Jan. 25, 2024 memorandum from the City Legal Department to the Board of Works, the Jan. 25 hearing was scheduled for the consideration of evidence and a decision on the Order requiring:

"Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before Feb. 29, 2024."

Building Commissioner Myron Grise identified the following City Code violations in his Nov. 21, 2023 Order:

1. The foundation of the structure has not been kept in good repair and has deteriorated to make the structure likely to partially or completely collapse, violations of Sections 6.3.1. l(b) and (r). Multiple areas around the foundation have significant cracks and holes that compromise the structural integrity of the foundation. Multiple areas where cinder blocks in block walls have been removed or fallen, thereby not allowing proper support. There are multiple areas where gaps permit small animals or rodents to enter the structure.

2. The ceilings inside the structure have not been kept in good repair, are collapsing or in danger of collapsing or failing, a violation of Sections 6.3.1. l(b), (r), and (p). Multiple ceilings inside the structure have collapsed. Multiple areas throughout the structure where the walls and ceilings have detached.

3. The floors inside the structure have not been kept in good repair, are collapsing or in danger of collapsing or failing, a violation of Sections 6.3.1. l(b), (r), and (p). Multiple floors throughout the structure have partially collapsed or are in danger of collapse due to dilapidation. Floor coverings are torn throughout the structure. Multiple areas throughout the structure the floors and walls have detached.

4. The walls inside the structure have not been kept in good repair, a violation of Section 6.3 .1.1 (b). There are multiple areas in the structure where the walls have detached from the ceilings and/ or floors, indicating structural failure and deterioration.



5. The windows and doors of the structure have not been kept in good repair, a violation of Section 6.3.1.l(d). There are multiple broken windows and doors at the structure.

6. There is no operable plumbing system at the structure, a violation of Section 6.3.1. l(a). All plumbing fixtures have not been maintained and are not properly connected.

7. There is no operable heating system at the structure, a violation of Section 6.3.1. l(a). The furnace does not work. The gas line is rusted out and cut. There is no duct system installed. There is no working water heater.

8. There is no working electrical system at the structure, a violation of Section 6.3.1. l(a). The electrical system does not work and there are loose, hanging, and exposed electrical wires throughout the structure.

9. The structure is vacant and not secure, a violation of Section 6.3.1. l(ff). The property is easily accessible to people and animals. The structure is full of trash and animal feces.

Building Commissioner Grise concluded in his report that the residential structure located at 205 Middlebury Street was unsafe within the meaning of Indiana Code § 36-7-9-4(a)(1), (2), (5), and (6). He wrote, "The deterioration to the foundation, the collapsing walls, floors, and ceilings, and the detaching of walls from the ceilings and floors renders the structure in an impaired structural condition that makes it unsafe to person or property. The loose, hanging, exposed electrical wires throughout the structure, coupled with its unsecured nature and accumulated trash and materials inside, renders it a fire hazard.

"The structure is dangerous to person or property because of violations of the Neighborhood Preservation Ordinance, particularly violations concerning damage and deterioration to the foundation, falling or missing cinder blocks, collapsing floors, ceilings, and walls, and its unsecured nature. The structure is vacant and not maintained in a manner that permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance."

Commissioner Grise further wrote, "Due to compromised structural integrity of the foundation due to significant cracks and holes, and evidence of structural failure present in the collapsing walls, ceilings, and floors, and the detaching of the walls of the ceilings and floors, along with the structure's continued deterioration due to neglect, the condition of the residential structure warrants removal. In its present condition, the is unfit for human habitation, occupancy, or use, and the conditions exist to the extent that life, health, property, and safety of the public is threatened. The structure is an unsafe building and the tract of real property on which the unsafe building is located shall be considered the unsafe premises."

Commissioner Grise ordered the property owner to "demolish the unsafe buildings identified in Section 2 of this Order at the property identified in Section 1 of this Order and remove all demolition remains, trash, and debris on the unsafe premises and return the site to natural grade."

The Board hearing was scheduled because the time to complete the demolition required by the Building Commissioner's Order had passed and the conditions and violation cited in the Order still existed. The Building Commissioner determined the cited conditions rendered the building and residential structure to be unsafe and that it should be demolished.

Before the meeting began, **City Building Inspector Travis Eash** distributed to Board members a memorandum and report, dated Jan. 25, 2024, on 205 Middlebury Street, which included photographs of the property showing its condition as of a Nov. 1, 2023 inspection. The memorandum documented alleged code violations and the poor condition of the home that Eash wrote made it "uninhabitable and unsafe."

Eash wrote, "There have not been any permits pulled on this property for at least 20 years, there has been no water usage at this property since at least 2007 (which is how far back they were able to check). This property has never been registered as a rental property with the City of Goshen and no rental inspections were ever conducted."

Eash concluded: "Due to the multiple violations, current unsafe condition of the property and lack of motivation or initiative from the owner to do anything to bring the property into a habitable state the Building Department's recommendation is that the property be determined to be unsafe and the property demolished."



SUMMARY OF Jan. 25, 2024 HEARING ON THE ORDER OF THE CITY BUILDING COMMISSIONER FOR 205 MIDDLEBURY STREET (RONALD E. DAVIDHIZAR, PROPERTY OWNER) AND THE BOARD'S ACTION:

Assistant City Attorney Don Shuler said the first property to be reviewed was at 205 Middlebury Street, which was the subject of a Nov. 21, 2023 demolition order from the City of Goshen Building Commissioner.

Shuler said prior to today's hearing, the City received a request from Ronald Davidhizar's attorney concerning certain evidence from the inspection of the property on Nov. 1, 2023. So, Shuler said the City has given consideration to trying to resolve the issue outside of the Board of Works & Safety.

Before today's meeting, **Shuler** said there was a meeting involving City staff, Davidhizar and his attorney, an agreement was reached to conduct an inspection of the property next Friday, Feb. 2, 2024. As a result of the agreement, Shuler said today's hearing would be continued after the inspection if necessary.

Mayor Leichty asked **City Attorney Bodie Stegelmann** about the appropriate motion – whether to table the hearing or continue it to another date. Stegelmann said no date should be set.

Landis/Swartley made a motion to continue the hearing on the Order of the City of Goshen Building Commissioner for 205 Middlebury Street to whatever unspecified date requested by either City staff or the property owner. Motion passed 5-0.

18) Review of the Order of the City of Goshen Building Commissioner for 304 West Oakridge Avenue (Roman Navarro, Nationstar Mortgage, LLC and State of Indiana Gross Income Tax Division, property owners)

At 4:43 p.m., **Mayor Leichty** convened a hearing to review the Order of the City of Goshen Building Commissioner for 304 West Oakridge Avenue (Roman Navarro, Nationstar Mortgage, LLC and State of Indiana Gross Income Tax Division, property owners).

BACKGROUND:

An unsafe building review hearing on the Nov. 27, 2023 demolition Order of the City of Goshen Building Commissioner by the City Board of Public Works & Safety was scheduled Jan. 25, 2024 for the property located at 304 West Oakridge Avenue (Roman Navarro, property owner). The Board of Public Works and Safety needed to conduct the hearing and affirm, rescind, or modify the Building Commissioner's Order and determine what action to order concerning the property.

Along with hearing evidence, questioning witnesses, reviewing the record and making findings, the **Board had the option of affirming the Building Commissioner Order (if it agreed with demolition), rescinding the Order (if property violations had been fixed), or modifying the Order (if it believed that the property could be fixed). It could also postpone the hearing to a future date.**

According to a **Jan. 25, 2024** memorandum from the City Legal Department to the Board of Works, the Jan. 25 hearing was scheduled for the consideration of evidence and a decision on the Order requiring:

"Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before Feb. 29, 2024."

Building Commissioner Myron Grise identified the following City Code violations in his Nov. 27, 2023 Order:

1. The foundation is failing, making the structure likely to collapse, a violation of Sections 6.3.1. l(b) and (r). The foundation wall on the west side of the structure has collapsed, and the earth beneath it has washed (away) causing the concrete to collapse into the basement. The collapsed foundation wall renders the entire structure in danger of collapse. The floor has started to sag as a result of the failing foundation.



2. The structure has become so dilapidated and deteriorated that it has become freely accessible, a violation of Section 6.3.1. l(w). The collapsed foundation wall and concrete makes the structure a danger to anyone who enters.

3. The chimney is not structurally sound, a violation of Section 6.3.1. l(z). Areas of the chimney are failing.

4. There is no working heating and mechanical system at the structure, a violation of Section 6.3.1. l(a).

5. There is no working plumbing system at the structure, a violation of Section 6.3.1. l(a).

6. There is no working electrical system at the structure, a violation of Section 6.3.1. l(a). There is also loose exposed electrical wiring throughout the structure.

7. The windows have not been kept in good repair, a violation of Section 6.3.1. l(d). There are multiple broken windows that have been boarded up.

Building Commissioner Grise concluded in his report that the residential structure located at 304 West Oakridge Avenue was unsafe within the meaning of Indiana Code § 36-7-9-4(a)(1), (2), (5), and (6). He wrote, “The collapsed foundation wall on the west side, permitting earth to wash into the basement and causing the floor to sag, renders the structure in an impaired structural condition that makes it unsafe to person or property. The dilapidated nature of the structure, its deterioration due to neglect, its loose exposed electrical wiring, and its unsecured nature makes it a fire hazard. The structure is dangerous to person or property because of violations of the Neighborhood Preservation Ordinance, particularly violations concerning the collapsed foundation wall, failing chimney, and unsecured nature. The structure is vacant and not maintained in a manner that permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.”

Commissioner Grise further wrote, “Due to the collapsed foundation wall and the failing chimney, combined with the unsecured nature of the structure and its continued deteriorated as a result of neglect, the structure warrants removal. In its present condition, the structure is unfit for human habitation, occupancy, or use, and the conditions exist to the extent that life, health, property, and safety of the public is threatened. The structure is an unsafe building and the tract of real property on which the unsafe building is located shall be considered the unsafe premises.”

Commissioner Grise ordered the property owner to “demolish the unsafe buildings identified in Section 2 of this Order at the property identified in Section 1 of this Order and remove all demolition remains, trash, and debris on the unsafe premises and return the site to natural grade.”

The Board hearing was scheduled because the time to complete the demolition required by the Building Commissioner’s Order had passed and the conditions and violation cited in the Order still existed. The Building Commissioner determined the cited conditions rendered the building and residential structure to be unsafe and that it should be demolished.

Before the meeting began, **City Building Inspector Travis Eash** distributed to Board members a memorandum and report, dated Jan. 25, 2024, on 304 West Oakridge Avenue which included photographs of the property showing its condition as of an Oct. 24, 2023 inspection.

SUMMARY OF JAN. 25, 2024 HEARING ON THE ORDER OF THE CITY BUILDING COMMISSIONER FOR 304 WEST OAKRIDGE AVENUE (ROMAN NAVARRO, PROPERTY OWNER) AND THE BOARD’S ACTION:

Assistant City Attorney Don Shuler said the property to be reviewed was at 304 West Oakridge Avenue, which was the subject of a Nov. 27, 2023 demolition order from the City of Goshen Building Commissioner. He provided brief background of the case.

Reading from his Jan. 25, 2024 report to the Board, **City Building Inspector Travis Eash** discussed the findings of his Oct. 24, 2023 inspection of the property.

Eash said, “While conducting my inspection I documented multiple violations but the most severe and most unsafe is there is a foundation wall on the west side of the structure that is 15 to 20 ft long that has completely collapsed, which has caused the ground to fail causing the sidewalk and driveway to collapse as well.”



Eash also said, “The floor has begun to sag due to improper support and is unsafe to walk. This area has become a danger to anyone who walks the premises. This makes entering the structure unsafe. Some other violations are no working plumbing system, electrical system or heating system. There are broken windows on the property and the chimney is beginning to fail and has loose bricks.”

Eash concluded, “Due to the severity and danger of the foundation wall collapse and the lack of structural integrity, the Building Department’s recommendation is that the structure be determined unsafe and demolished.”

Board member Landis asked if the inspection was the first time the property came to the attention of the City. **Eash** said a complaint was received last spring from a City staff member about the condition of the home.

Ramon Navarro, the owner of 304 West Oakridge Avenue, said he agreed with Eash that work needed to be done at the structure. Unfortunately, he said work has not been done because he has been in bankruptcy since before the inspection. He said, “It’s not that I don’t want to fix the stuff; is that I financially can’t right now.”

Since this was his first time before the Board of Works & Safety, **Navarro** said he wasn’t sure about his options. He said he cannot afford to fix any of the problems. He said repairing the foundation would cost about \$64,000 and tearing it down would cost about \$32,000. So, he said he didn’t know what options were available because anything recovered from the bankruptcy would be used to pay back creditors.

In response to a question from **Mayor Leichty**, **Navarro** said he left his home in Missouri, moved back to Goshen when his father became sick and obtained the home about 2012. Because of a lack of work, Navarro said he hasn’t been able to make any payments, which is why the home went into bankruptcy.

Navarro said the property is an old grocery store that was originally opened in 1989. He said the store was moved to another location and the old building was later used for storage.

Mayor Leichty asked how long water and sewer service was disconnected to the structure. **City Water & Sewer Office Manager Kelly Saenz** said she wasn’t sure because Navarro’s parents live in an adjoining building that shared a water meter.

Mayor Leichty said part of the City’s obligation is to address blight that contributes to the diminishment of neighboring properties. She asked **Navarro** what corrective action he could take at this time.

Navarro said he agreed with the City inspector’s suggestion of demolishing the building. He said that is something he has wanted to do but can only commit to demolishing the structure in stages because doing so all at once would be impossible because of his financial situation. He said the City could demolish the building and send him a bill, but he didn’t know how long before that could be paid because of the bankruptcy.

Board member Swartley asked if the mortgage on the property included all three building on the site. **Navarro** said it did – a home, the building pending demolition and a lot. Navarro said he tried to sell part of the property, but the mortgage company refused to allow that. He said he would still like to do that. He added that the mortgage was in default and subject to the bankruptcy.

City Attorney Bodie Stegelmann said he was concerned that the property was likely an asset of the bankruptcy estate. He said the City Legal Department was unaware the property was in bankruptcy. Stegelmann said before the Board takes any kind of action, time is needed to explore the issue and discuss options with Navarro before the Board further considers the matter in a few weeks.

Landis/Swartley made a motion to continue the hearing on the Order of the City of Goshen Building Commissioner for 304 Oakridge Avenue to Feb. 22, 2024 to explore the issues. Motion passed 5-0.



At 4:56 p.m., Mayor Leichty adjourned the hearings on the Orders of the City of Goshen Building Commissioner for two properties and reopened the Board of Public Works & Safety meeting.

Approval of Civil City and Utility Claims

As all matters before the Board of Public Works & Safety were concluded, Mayor Leichty/Board member Landis moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 5-0.

Adjournment

Mayor Leichty adjourned the Board of Works meeting at 4:56 p.m.

EXHIBIT #1: A memorandum and report by City Building Inspector Travis Eash, distributed to Board members and dated Jan. 25, 2024, on the property at 407 Center Street, which included photographs of the property showing its condition as of Oct. 24, 2023. The memorandum included an update on the status of the property. The report was submitted during and for consideration of agenda items #4 and \$16.

EXHIBIT #2: A memorandum and report by City Building Inspector Travis Eash, distributed to Board members and dated Jan. 25, 2024, on the property at 205 Middlebury Street, which included photographs of the property showing its condition as of Nov. 1, 2023. The memorandum documented alleged code violations and the poor condition of the home that Eash wrote made it “uninhabitable and unsafe.” The report was submitted during and for consideration of agenda item #17.

EXHIBIT #3: A memorandum and report by City Building Inspector Travis Eash, distributed to Board members and dated Jan. 25, 2024, on the property at 304 West Oakridge Avenue, which included photographs of the property showing its condition as of Oct. 24, 2023. The report concluded that “Due to the severity and danger of the foundation wall collapse and the lack of structural integrity, the Building Department’s recommendation is that the structure be determined unsafe and demolished.” The report was submitted during and for consideration of agenda item #18.

APPROVED:

Mayor Gina Leichty



Mike Landis, Member

Orv Myers, Member

Mary Nichols, Member

Barb Swartley, Member

ATTEST:

Richard R. Aguirre, City of Goshen Clerk-Treasurer



CITY OF GOSHEN LEGAL DEPARTMENT

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February 1, 2024

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Matthew A. Borton

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Matthew A. Borton, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Matthew currently possesses Basic EMT certification. Once employed, Matthew will be required to complete a Firefighter I/II training program and obtain certification, complete a paramedic training program and obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years.

The Fire Department will request the Board to confirm the offer of employment when the prerequisites are met and an opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Matthew A. Borton as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Matthew A. Borton, and authorize the Mayor to execute the agreement.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on _____, 2024, which is the date of the last signature set forth below, by and between **Matthew A. Borton** ("Borton") and **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Borton employment as a probationary firefighter of the Goshen Fire Department. Borton accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and Borton understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. Borton understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Goshen Fire Department is initiating the pension physical and psychological testing, Borton understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Borton agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Borton understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Borton to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Borton's expense. If additional reports and/or testing are required, Borton may elect to terminate this agreement.
- (4) InPRS will determine whether Borton has any Class 3 excludable conditions. Borton understands that if InPRS finds that Borton has any Class 3 excludable conditions, Borton will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Borton's employment if the disability is related to the Class 3 excludable

condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Borton understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to Borton if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Borton accepts City's withdrawal and this agreement shall be terminated.

AGREE TO OBTAIN FIREFIGHTER I/II CERTIFICATION

- (1) As a condition of employment with City and the Goshen Fire Department, Borton is required to successfully complete a Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Borton's first day of employment with the Goshen Fire Department. If Borton is unable to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Borton's first day of employment with the Goshen Fire Department due to program scheduling difficulties, then Borton will be given eleven (11) months from the first day of the Firefighter I/II training program to successfully complete the Firefighter I/II training program, pass the certification test and obtain Firefighter I/II certification.
- (2) Upon commencing employment, Borton agrees to enroll in a Firefighter I/II training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the certification test, and obtain Firefighter I/II certification. If Borton is currently enrolled in and attending a Firefighter I/II training program prior to commencing employment, Borton agrees to continue to attend and successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification.
- (3) Starting on Borton's first day of employment, City will pay the cost of the Firefighter I/II training program. If Borton is currently enrolled in and attending a Firefighting I/II training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Borton's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Borton for the time to attend the training program. Borton shall have one (1) opportunity to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification. City will pay the cost for the Firefighter I/II training program, or prorated portion thereof, and for Borton's time to attend the Firefighter I/II training program one (1) time.

- (4) If Borton refuses to attend the Firefighter I/II training program, fails to successfully complete the Firefighter I/II training program, or fails to pass the certification test and obtain Firefighter I/II certification as required under paragraphs (1) and (2), Borton's employment with City and the Goshen Fire Department will be terminated for cause.

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Borton is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Borton agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Borton is currently enrolled in and attending a paramedic training program prior to commencing employment, Borton agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Borton's first day of employment, City will pay the cost of the paramedic training program. If Borton is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Borton's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Borton for the time to attend class and required clinical sessions. Borton shall schedule all classes and clinical sessions when Borton is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Borton's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Borton's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Borton's time to attend the paramedic training program.
- (4) Borton shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Borton agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Borton refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the paramedic class, or fails to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program, Borton's employment with City and the Goshen Fire Department will be terminated for cause.
- (6) Except as provided by paragraph (10), if Borton leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including

termination, Borton agrees to repay City the City's actual cost for Borton to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Borton's shift due to Borton's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).

- (7) Upon receiving an Indiana paramedic license, Borton agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Borton agrees to maintain Borton's paramedic license as long as Borton is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Borton agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Borton fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Borton agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Borton to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Borton serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Borton agree to establish in writing City's actual cost for Borton to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Borton's shift due to Borton's attendance of the paramedic training classes and clinical sessions.
- (9) Borton's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Borton's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Borton's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Borton fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical for Borton to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

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

Gina M. Leichty, Mayor

Matthew A. Borton

Date: _____

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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February 1, 2024

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Allison R. Eagan

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Allison R. Eagan, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Allison currently possesses Firefighter I/II certification and Basic EMT certification. Once employed, Allison will be required to complete a paramedic training program and obtain an Indiana paramedic license and serve as an active paramedic with the Department a minimum of three years.

The Fire Department will request the Board to confirm the offer of employment when the prerequisites are met and an opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Allison R. Eagan as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Allison R. Eagan, and authorize the Mayor to execute the agreement.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on _____, 2024, which is the date of the last signature set forth below, by and between **Allison R. Eagan** ("Eagan") and **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Eagan employment as a probationary firefighter of the Goshen Fire Department. Eagan accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and Eagan understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. Eagan understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Goshen Fire Department is initiating the pension physical and psychological testing, Eagan understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Eagan agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Eagan understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Eagan to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Eagan's expense. If additional reports and/or testing are required, Eagan may elect to terminate this agreement.
- (4) InPRS will determine whether Eagan has any Class 3 excludable conditions. Eagan understands that if InPRS finds that Eagan has any Class 3 excludable conditions, Eagan will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Eagan's employment if the disability is related to the Class 3 excludable

condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Eagan understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to Eagan if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Eagan accepts City's withdrawal and this agreement shall be terminated.

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Eagan is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Eagan agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Eagan is currently enrolled in and attending a paramedic training program prior to commencing employment, Eagan agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Eagan's first day of employment, City will pay the cost of the paramedic training program. If Eagan is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Eagan's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Eagan for the time to attend class and required clinical sessions. Eagan shall schedule all classes and clinical sessions when Eagan is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Eagan's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Eagan's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Eagan's time to attend the paramedic training program.
- (4) Eagan shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Eagan agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Eagan refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the

paramedic class, or fails to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program, Eagan's employment with City and the Goshen Fire Department will be terminated for cause.

- (6) Except as provided by paragraph (10), if Eagan leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including termination, Eagan agrees to repay City the City's actual cost for Eagan to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Eagan's shift due to Eagan's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).
- (7) Upon receiving an Indiana paramedic license, Eagan agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Eagan agrees to maintain Eagan's paramedic license as long as Eagan is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Eagan agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Eagan fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Eagan agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Eagan to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Eagan serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Eagan agree to establish in writing City's actual cost for Eagan to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Eagan's shift due to Eagan's attendance of the paramedic training classes and clinical sessions.
- (9) Eagan's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Eagan's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Eagan's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Eagan fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness

which make it impractical for Eagan to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

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

Gina M. Leichty, Mayor

Allison R. Eagan

Date: _____

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

February 1, 2024

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Jonathan M. Lehman

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Jonathan M. Lehman, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Jonathan currently possesses Basic EMT certification. Once employed, Jonathan will be required to complete a Firefighter I/II training program and obtain certification, complete a paramedic training program and obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years.

The Fire Department will request the Board to confirm the offer of employment when the prerequisites are met and an opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Jonathan M. Lehman as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Jonathan M. Lehman, and authorize the Mayor to execute the agreement.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on _____, 2024, which is the date of the last signature set forth below, by and between **Jonathan M. Lehman** ("Lehman") and **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Lehman employment as a probationary firefighter of the Goshen Fire Department. Lehman accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and Lehman understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. Lehman understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Goshen Fire Department is initiating the pension physical and psychological testing, Lehman understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Lehman agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Lehman understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Lehman to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Lehman's expense. If additional reports and/or testing are required, Lehman may elect to terminate this agreement.
- (4) InPRS will determine whether Lehman has any Class 3 excludable conditions. Lehman understands that if InPRS finds that Lehman has any Class 3 excludable conditions, Lehman will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Lehman's employment if the disability is related to the Class 3 excludable

condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Lehman understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to Lehman if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Lehman accepts City's withdrawal and this agreement shall be terminated.

AGREE TO OBTAIN FIREFIGHTER I/II CERTIFICATION

- (1) As a condition of employment with City and the Goshen Fire Department, Lehman is required to successfully complete a Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Lehman's first day of employment with the Goshen Fire Department. If Lehman is unable to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Lehman's first day of employment with the Goshen Fire Department due to program scheduling difficulties, then Lehman will be given eleven (11) months from the first day of the Firefighter I/II training program to successfully complete the Firefighter I/II training program, pass the certification test and obtain Firefighter I/II certification.
- (2) Upon commencing employment, Lehman agrees to enroll in a Firefighter I/II training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the certification test, and obtain Firefighter I/II certification. If Lehman is currently enrolled in and attending a Firefighter I/II training program prior to commencing employment, Lehman agrees to continue to attend and successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification.
- (3) Starting on Lehman's first day of employment, City will pay the cost of the Firefighter I/II training program. If Lehman is currently enrolled in and attending a Firefighting I/II training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Lehman's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Lehman for the time to attend the training program. Lehman shall have one (1) opportunity to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification. City will pay the cost for the Firefighter I/II training program, or prorated portion thereof, and for Lehman's time to attend the Firefighter I/II training program one (1) time.

- (4) If Lehman refuses to attend the Firefighter I/II training program, fails to successfully complete the Firefighter I/II training program, or fails to pass the certification test and obtain Firefighter I/II certification as required under paragraphs (1) and (2), Lehman's employment with City and the Goshen Fire Department will be terminated for cause.

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Lehman is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Lehman agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Lehman is currently enrolled in and attending a paramedic training program prior to commencing employment, Lehman agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Lehman's first day of employment, City will pay the cost of the paramedic training program. If Lehman is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Lehman's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Lehman for the time to attend class and required clinical sessions. Lehman shall schedule all classes and clinical sessions when Lehman is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Lehman's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Lehman's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Lehman's time to attend the paramedic training program.
- (4) Lehman shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Lehman agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Lehman refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the paramedic class, or fails to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program, Lehman's employment with City and the Goshen Fire Department will be terminated for cause.

- (6) Except as provided by paragraph (10), if Lehman leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including termination, Lehman agrees to repay City the City's actual cost for Lehman to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Lehman's shift due to Lehman's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).
- (7) Upon receiving an Indiana paramedic license, Lehman agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Lehman agrees to maintain Lehman's paramedic license as long as Lehman is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Lehman agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Lehman fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Lehman agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Lehman to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Lehman serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Lehman agree to establish in writing City's actual cost for Lehman to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Lehman's shift due to Lehman's attendance of the paramedic training classes and clinical sessions.
- (9) Lehman's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Lehman's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Lehman's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Lehman fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical for Lehman to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

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

Gina M. Leichty, Mayor

Jonathan M. Lehman

Date: _____

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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www.goshenindiana.org

February 1, 2024

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Derick D. Schmucker

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Derick D. Schmucker, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Derick currently possesses Firefighter I/II certification. Once employed, Derick will be required to complete a Basic EMT training program and obtain certification, complete a paramedic training program and obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years.

The Fire Department will request the Board to confirm the offer of employment when the prerequisites are met and an opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Derick D. Schmucker as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Derick D. Schmucker, and authorize the Mayor to execute the agreement.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on _____, 2024, which is the date of the last signature set forth below, by and between **Derick D. Schmucker** ("Schmucker") and **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Schmucker employment as a probationary firefighter of the Goshen Fire Department. Schmucker accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and Schmucker understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. Schmucker understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Goshen Fire Department is initiating the pension physical and psychological testing, Schmucker understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Schmucker agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Schmucker understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Schmucker to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Schmucker's expense. If additional reports and/or testing are required, Schmucker may elect to terminate this agreement.
- (4) InPRS will determine whether Schmucker has any Class 3 excludable conditions. Schmucker understands that if InPRS finds that Schmucker has any Class 3 excludable conditions, Schmucker will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability

benefits from the 1977 Fund throughout Schmucker's employment if the disability is related to the Class 3 excludable condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Schmucker understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to Schmucker if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Schmucker accepts City's withdrawal and this agreement shall be terminated.

AGREE TO OBTAIN BASIC EMT CERTIFICATION

- (1) As a condition of employment with City and the Goshen Fire Department, Schmucker is required to successfully complete a Basic EMT training program, pass the certification test, and obtain Basic EMT certification within eleven (11) months of Schmucker's first day of employment with the Goshen Fire Department. If Schmucker is unable to successfully complete the Basic EMT training program, pass the certification test, and obtain Basic EMT certification within eleven (11) months of Schmucker's first day of employment with the Goshen Fire Department due to program scheduling difficulties, then Schmucker will be given eleven (11) months from the first day of the Basic EMT training program to successfully complete the Basic EMT training program, pass the certification test and obtain Basic EMT certification.
- (2) Upon commencing employment, Schmucker agrees to enroll in a Basic EMT training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the certification test, and obtain Basic EMT certification. If Schmucker is currently enrolled in and attending a Basic EMT training program prior to commencing employment, Schmucker agrees to continue to attend and successfully complete the Basic EMT training program, pass the certification test, and obtain Basic EMT certification.
- (3) Starting on Schmucker's first day of employment, City will pay the cost of the Basic EMT training program. If Schmucker is currently enrolled in and attending a Basic EMT training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Schmucker's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Schmucker for the time to attend the training program. Schmucker shall have one (1) opportunity to successfully complete the Basic EMT training program, pass the certification test, and obtain Basic EMT certification. City will pay the cost for the Basic EMT training program, or prorated portion thereof, and for Schmucker's time to attend the Basic EMT training program one (1) time.

- (4) If Schmucker refuses to attend the Basic EMT training program, fails to successfully complete the Basic EMT training program, or fails to pass the certification test and obtain Basic EMT certification as required under paragraphs (1) and (2), Schmucker's employment with City and the Goshen Fire Department will be terminated for cause.

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Schmucker is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Schmucker agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Schmucker is currently enrolled in and attending a paramedic training program prior to commencing employment, Schmucker agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Schmucker's first day of employment, City will pay the cost of the paramedic training program. If Schmucker is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Schmucker's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Schmucker for the time to attend class and required clinical sessions. Schmucker shall schedule all classes and clinical sessions when Schmucker is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Schmucker's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Schmucker's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Schmucker's time to attend the paramedic training program.
- (4) Schmucker shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Schmucker agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Schmucker refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the paramedic class, or fails to obtain an Indiana paramedic license within one (1)

year after completion of the paramedic training program, Schmucker's employment with City and the Goshen Fire Department will be terminated for cause.

- (6) Except as provided by paragraph (10), if Schmucker leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including termination, Schmucker agrees to repay City the City's actual cost for Schmucker to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Schmucker's shift due to Schmucker's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).
- (7) Upon receiving an Indiana paramedic license, Schmucker agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Schmucker agrees to maintain Schmucker's paramedic license as long as Schmucker is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Schmucker agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Schmucker fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Schmucker agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Schmucker to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Schmucker serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Schmucker agree to establish in writing City's actual cost for Schmucker to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Schmucker's shift due to Schmucker's attendance of the paramedic training classes and clinical sessions.
- (9) Schmucker's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Schmucker's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Schmucker's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Schmucker fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical for Schmucker to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

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

Gina M. Leichty, Mayor

Derick D. Schmucker

Date: _____

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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February 1, 2024

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Travis J. Snethen

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Travis J. Snethen, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Travis currently possesses Basic EMT certification. Once employed, Travis will be required to complete a Firefighter I/II training program and obtain certification, obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years.

The Fire Department will request the Board to confirm the offer of employment when the prerequisites are met and an opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Travis J. Snethen as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Travis J. Snethen, and authorize the Mayor to execute the agreement.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on _____, 2024, which is the date of the last signature set forth below, by and between **Travis J. Snethen** ("Snethen") and **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Snethen employment as a probationary firefighter of the Goshen Fire Department. Snethen accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and Snethen understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. Snethen understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Goshen Fire Department is initiating the pension physical and psychological testing, Snethen understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Snethen agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Snethen understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Snethen to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Snethen's expense. If additional reports and/or testing are required, Snethen may elect to terminate this agreement.
- (4) InPRS will determine whether Snethen has any Class 3 excludable conditions. Snethen understands that if InPRS finds that Snethen has any Class 3 excludable conditions, Snethen will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Snethen's employment if the disability is related to the Class 3 excludable

condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Snethen understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to Snethen if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Snethen accepts City's withdrawal and this agreement shall be terminated.

AGREE TO OBTAIN FIREFIGHTER I/II CERTIFICATION

- (1) As a condition of employment with City and the Goshen Fire Department, Snethen is required to successfully complete a Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Snethen's first day of employment with the Goshen Fire Department. If Snethen is unable to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification within eleven (11) months of Snethen's first day of employment with the Goshen Fire Department due to program scheduling difficulties, then Snethen will be given eleven (11) months from the first day of the Firefighter I/II training program to successfully complete the Firefighter I/II training program, pass the certification test and obtain Firefighter I/II certification.
- (2) Upon commencing employment, Snethen agrees to enroll in a Firefighter I/II training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the certification test, and obtain Firefighter I/II certification. If Snethen is currently enrolled in and attending a Firefighter I/II training program prior to commencing employment, Snethen agrees to continue to attend and successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification.
- (3) Starting on Snethen's first day of employment, City will pay the cost of the Firefighter I/II training program. If Snethen is currently enrolled in and attending a Firefighting I/II training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Snethen's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Snethen for the time to attend the training program. Snethen shall have one (1) opportunity to successfully complete the Firefighter I/II training program, pass the certification test, and obtain Firefighter I/II certification. City will pay the cost for the Firefighter I/II training program, or prorated portion thereof, and for Snethen's time to attend the Firefighter I/II training program one (1) time.

- (4) If Snethen refuses to attend the Firefighter I/II training program, fails to successfully complete the Firefighter I/II training program, or fails to pass the certification test and obtain Firefighter I/II certification as required under paragraphs (1) and (2), Snethen's employment with City and the Goshen Fire Department will be terminated for cause.

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Snethen is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Snethen agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Snethen is currently enrolled in and attending a paramedic training program prior to commencing employment, Snethen agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Snethen's first day of employment, City will pay the cost of the paramedic training program. If Snethen is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Snethen's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Snethen for the time to attend class and required clinical sessions. Snethen shall schedule all classes and clinical sessions when Snethen is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Snethen's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Snethen's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Snethen's time to attend the paramedic training program.
- (4) Snethen shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Snethen agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Snethen refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the paramedic class, or fails to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program, Snethen's employment with City and the Goshen Fire Department will be terminated for cause.

- (6) Except as provided by paragraph (10), if Snethen leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including termination, Snethen agrees to repay City the City's actual cost for Snethen to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Snethen's shift due to Snethen's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).
- (7) Upon receiving an Indiana paramedic license, Snethen agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Snethen agrees to maintain Snethen's paramedic license as long as Snethen is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Snethen agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Snethen fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Snethen agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Snethen to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Snethen serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Snethen agree to establish in writing City's actual cost for Snethen to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Snethen's shift due to Snethen's attendance of the paramedic training classes and clinical sessions.
- (9) Snethen's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Snethen's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Snethen's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Snethen fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical for Snethen to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Works and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

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

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

Gina M. Leichty, Mayor

Travis J. Snethen

Date: _____

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: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **DONOHUE & ASSOCIATES, INC.
GOSHEN WATER SYSTEM UPGRADE & EXPANSION 2025
PRELIMINARY ENGINEERING CONSULTING SERVICES AGREEMENT
JN: 2023-0040**

DATE: February 1, 2024

Approval is sought for an expenditure of \$218,462 for Preliminary Design Engineering Services by **Donohue & Associates, Inc** for a new wellfield. Primary deliverables for this phase include a cost estimate and a Preliminary Engineering Report (PER) that will be used for an Indiana SRF funding application in the spring of 2025.

Seven firms responded to the City's Request for Proposal, attending an online pre-bid meeting. Six attended a pre-bid walk through and ultimately three submitted proposals.

A Consultant Selection Advisory Committee was assembled consisting of the Director of Public Works & Utilities, the Utilities City Engineer, the Water & Sewer Superintendent, the Water Quality Supervisor, and a Board of Public Works Member. Bids were evaluated on a technical basis by each member individually and then compiled (Summary attached.) The committee met in-person to discuss the combined results and a consensus was reached, selecting Donohue as the best candidate from a technical standpoint. Though Donohue did not have the lowest cost proposal, the committee felt their technical approach as reflected in their proposal and amplified in the interviews with the top two bidders (Donohue and DLZ) made them the optimum choice for this project.

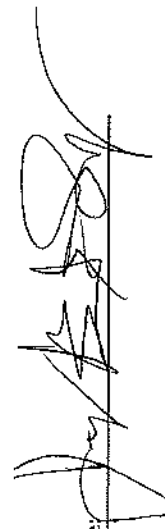
Requested Motion: Move to approve the attached agreement with Donohue & Associates, Inc. for \$218,462 for Preliminary Design Engineering Services and development of a PER for application to the Indiana State Revolving Fund.

Goshen Water System Upgrade - Proposal Evaluation

Project No. 2023-0041

Category	Jones & Henry Engineers, LTD					DLZ Engineering, Inc.					Arcadis U.S., Inc.					HWC Engineering					Hazen and Sawyer, P.C.					Donohue & Associates				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Project Management/ Key Personnel (25)	0	0	0	0	0	25	25	20	18	20	0	0	0	0	0	20	15	15	15	15	0	0	0	0	0	25	25	20	20	15
Project Approach (25)	0	0	0	0	0	20	22	15	20	20	0	0	0	0	0	15	10	10	18	10	0	0	0	0	0	23	20	20	20	22
Overall Firm/ Team Qualification (20)	0	0	0	0	0	20	15	15	18	20	0	0	0	0	0	15	15	10	18	10	0	0	0	0	0	20	20	18	18	15
Previous Experience with the City (10)	0	0	0	0	0	10	5	8	10	10	0	0	0	0	0	5	5	2	2	3	0	0	0	0	0	10	10	15	10	10
Weighted Sub-Total Compensation (20)	0	0	0	0	0	75	67	58	66	70	0	0	0	0	0	55	45	37	53	38	0	0	0	0	0	78	75	73	68	62
TOTAL of All Scores						351					15					0					228					368				

Reviewer Totals	208	187	178	187	170
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Signature: 

Title: Utilities City Engineer

Date: Monday 12/4/2023

**AGREEMENT WITH DONOHUE & ASSOCIATES FOR PRELIMINARY
ENGINEERING DESIGN CONSULTING SERVICES FOR THE GOSHEN
WATER SYSTEM UPGRADE AND EXPANSION
PROJECT NO. 2023-0040**

THIS AGREEMENT is entered into on _____, 2024, which is the last signature date set forth below, by and between **Donohue & Associates, Inc.** (“Consultant”), whose mailing address is 209 North Main Street, Suite 206, South Bend, Indiana 46601, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Scope of Services

Consultant’s professional engineering services under this Agreement shall include performing an evaluation of existing water system facilities and completing the Preliminary Design phase for the Goshen Water System Upgrade & Expansion 2025 project. The analysis and design will be primarily guided by the requirements of the Indiana State Revolving Fund Preliminary Engineering Report (PER) addressing the condition of existing water wells and facilities, the improvements needed, development and evaluation of alternatives, and summarizing selected water system improvements as outlined below. Existing wells and facilities to be evaluated include the following:

- (A) North Wellfield.
 - (1) Condition of existing wells and options available including abandoning some well(s).
 - (2) Adding a new well(s) on the existing site or an adjacent property to restore site capacity.
 - (3) Risks associated with water system contamination.
 - (4) Risks and operational concerns of Chlorine and investigation of alternative treatment options using best available technology.
 - (5) Wellfield, clearwell, and filtration capacity for future viability of the site.
 - (6) Consideration of impacts due to site proximity to floodplain.
 - (7) Structural and operational conditions of the North Water Treatment Plant (WTP).
 - (i) Deck over basement of the original 1935 segment of the building.
 - (ii) Clearwell condition and flood risk.
 - (iii) Aerator facility.
 - (iv) High service pumping.
 - (v) Condition and capacity of pressure filters
 - (8) Determine how to make site viable for 20 to 30 years of additional operation.

- (B) Kercher Wellfield.
 - (1) Risks associated with water system contamination.
 - (2) Confirm City's current thinking which leads to ultimately abandoning the site.
 - (3) Establish a plan to deal with the interim operational conditions of the Kercher WTP including:
 - (i) Condition of existing wells. Develop a plan to keep them viable for 5 to 10 years of additional operation.
 - (ii) Standby power generator.
 - (iii) Primary flow meter replacement.
 - (iv) Need to replace filter media.
- (C) Hilltop Storage Tank and Booster Pump Station.
 - (1) Determine current and future water demand.
 - (2) Develop and evaluate alternatives for utilizing more of the tank volume for storage.
 - (3) Develop and evaluate alternative locations for installing new larger pumps.
- (D) South Wellfield Property.
 - (1) Evaluate preliminary site layout by City.
 - (2) Confirm the location choice of the new South Wellfield
 - (3) Determine appropriate scenarios for modeling and coordinate with City's modeling consultant to review and interpret the findings in order to offer recommendations on optimum operation for the new South WTP and the water distribution system.
 - (4) Perform an Aquifer Analysis to identify the sustainable withdrawal rate from the aquifer without adversely impacting adjoining properties still on well water and area farmers pumping groundwater for crop irrigation.
 - (5) Provide a preliminary design layout of the new wellfield and water treatment plant that will satisfy needs established by the consultant for the next twenty years with provisions for expansion to meet the City's needs into the next thirty years and beyond.
- (E) General
 - (1) Water Treatment:
 - (i) Provide preliminary options that pose minimal risk to utility staff and the public while maintaining effective treatment residuals in the distribution system with the lowest level of disinfection by-products.
 - (ii) Recommend whether fluoride treatment should be continued.
 - (iii) Consider new water treatment system(s) to implement the agreed-upon solution at all locations.

(2) Items Not Included:

- (i) Three-dimensional aquifer modeling and analysis services have not been included in this scope of services of this Agreement.

(F) Project Deliverables:

Item 1 – Project Management

- (1) Prepare a Project Work Plan containing the project background, project goals and objectives, task-based project scope, project schedule, budget for each work task, listing and schedule of deliverables.

(2) Project Development

- (i) Conduct a project kickoff workshop to introduce team members and review the Project Work Plan to confirm the Project goals and objectives. Provide a list of information needed on the existing water system facilities and operation. Prepare and electronically distribute notes documenting the workshop.
- (ii) As soon as possible, draft for the City a letter amendment for the existing drinking water SRF loan PER to utilize the remaining budget in that SRF loan to fund preparation of a PER for this Project.
- (iii) Prepare a new Drinking Water SRF Loan application for this Project and at the completion of this preliminary design phase submit it to IFA after approval by the City.
- (iv) Attend or participate in a virtual meeting for a PER planning meeting, which may be scheduled by Indiana SRF.

- (3) Prepare agendas, conduct meetings and workshops, and prepare and electronically distribute workshop notes for the following anticipated PER preparation meetings and workshops:

- (i) A virtual project status report meeting with the City within five (5) weeks after issuance of a notice to proceed.
- (ii) A workshop to review drafted PER Chapters No. 1 and 2 addressing the current conditions and water system needs within eight (8) weeks after issuance of a notice to proceed.
- (iii) A workshop to review drafted PER Chapters No. 3, 4, and 5 within seven (7) weeks after the workshop to review PER Chapters No. 1 and 2.
- (iv) Attend a public hearing for the PER within four (4) weeks after the workshop for review of PER Chapters No. 3, 4, and 5. PER chapters to be addressed in the public hearing will be the Executive Summary and Chapters No. 1, 2, 3, 4, and 5.
- (v) A virtual meeting with the City to review the final PER including final Chapter No. 6 three (3) to four (4) weeks after the public hearing.
- (vi) Provide monthly progress reports to the City to document services performed and schedule status. This task is typically performed as part of the monthly project invoicing routine.

Item 2 – Preliminary Engineering Report Preparation

A PER shall be prepared in the format prescribed in a June 2023 guidance document by the Indiana Finance Authority (IFA) for funding by an Indiana State Revolving Fund (SRF) Loan. Consultant's services for PER preparation shall include the following:

Chapter 1 – Current Conditions

Review received information previously requested to assess condition of existing water system wells and facilities and to determine what additional information needs to be requested. Perform onsite inspections of water system wellfields and facilities to collect additional existing condition information and to identify operation and maintenance issues. Draft Chapter 1 of the PER that is to discuss the following topics to establish the current water system conditions and needs:

- (1) For the two existing wellfields, address wells at end of useful life, capacity limitations, operational problems, existing known wellfield contamination, and emerging contaminant concerns.
- (2) For both existing water treatment plants address facilities and equipment at end of useful life, undersized capacity, operational problems, and potential issues with treating emerging contaminants.
- (3) For the existing Hilltop Storage Tank and Booster Station address facility and equipment at end of useful life, undersized capacity, and operational problems.
- (4) For the existing distribution system that will connect to the proposed South Wellfield and WTP based on the modeling performed by another City Consultant recommend how service pressures and management of the elevated tanks should occur for optimum operation of the proposed WTP and water distribution system. Also discuss an evaluation of the City's preliminary site layout and identify the sustainable groundwater withdrawal rate from the aquifer without adversely impacting the adjoining properties still on well water and area farmers pumping groundwater for crop irrigation.
- (5) If applicable, provide available supporting information to document the Project needs, which may include, but is not limited to water quality testing data, water modeling, inspection reports, and/or signed agreements with significant users.
- (6) Identify current population served by the water system and provide a map of the existing service area. Also identify if the entire service area is completely within the City limits.
- (7) Describe the current significant water users.
- (8) Discuss existing water consumption for at least the last 12 months including:
 - (i) Water pumped versus sold.
 - (ii) Estimated public water use.
 - (iii) Percent water loss.
 - (iv) A breakdown of domestic, commercial/institutional, and industrial consumption.
 - (v) Existing average day, peak day, and peak hour demand versus design capacities of

the system.

- (vi) Backwash water and/or residual disposal.
- (vii) Include schematics, maps, graphs, and/or tables as appropriate to assist the IFA reviewer in understanding the existing system layout, conditions, and needs.

Chapter 2 – Utility Needs

- (1) Identify the 20-year service area population and provide a map of the projected 20- year service area.
- (2) Summarize the projected 20-year capacity needs by including a table identifying domestic demand (D), commercial demand (C)), industrial demand (I), total DCI demand, water loss, average daily demand, peaking factors for peak day and peak hour, peak total DCI, peak day demand and peak hour demand.
- (3) Based on the current system conditions and capacities, and the projected 20-year capacity needs, discuss the overall needs of the system, including the supply, storage, and treatment systems plus improvements to the distribution system to optimize operation of the proposed South WTP.

Chapter 3 – Evaluation of Alternatives

- (1) Identify and discuss the evaluation of feasible alternatives to address the identified needs. A discussion of the “No Action” alternative and a “Regionalization” alternative is to be included.
- (2) Include a 20-year net present worth (NPW) analysis for all feasible alternatives identified. The NPW analysis is to be converted to present day dollars. Salvage value is to be estimated and included in the NPW analysis using the anticipated life expectancy of the construction items and a straight-line depreciation calculated at the end of the 20-year planning period. Detailed NPW calculation information is to be included in an appendix to the PER.
- (3) Provide a brief discussion on the factors considered in the alternatives evaluation. These factors may include monetary, technical, or reliability reasons, ability to implement the alternative, environmental impacts, and/or other project specific factors. If the selected alternative does not have the lowest NPW, then discuss other factors the influenced selection of the preferred alternative.

Chapter 4 – Proposed Project

- (1) Describe the selected plan components and how the current and future needs of the City’s water system will be met.
- (2) If applicable to the proposed Project, include a brief discussion on the following topics:
 - (i) Prioritization of needs if phasing is proposed and/or identified 20-year needs will not be fully addressed by the selected Project alternative.
 - (ii) Identify whether the City owns or has legal access to the land where the proposed Project will be located. If additional land rights are required for the Project, include a schedule for acquiring property rights prior to loan closure.
 - (iii) Discuss any setback restrictions that will be taken into consideration during design.
 - (iv) Provide a summary of the raw water analysis and discussion of any specialized treatment needs if development of a new raw water source or treatment facility is

proposed.

- (v) Discuss impacts the proposed Project will have on the City's water utility operations.
 - (vi) Discuss any potential discharges and how they will be handled if the Project will produce a change in backwash and/or residuals. Include an estimate of the waste stream volume and strength and any permits that will be required. If the discharge will be to a sanitary sewer system, include documentation that the receiving collection system and wastewater treatment plant (WWTP) has capacity to adequately convey and treat the discharge.
 - (vii) Discuss any pertinent hydraulic modeling outputs and design considerations if the Project is addressing unique pressure and/or flow needs.
 - (viii) Discuss if any measures will be incorporated into the Project to protect public health from potential lead release during and after the proposed Project.
- (3) Provide a figure with aerial photography showing all major elements of the proposed Project, including a north arrow and bar scale.
 - (4) Summarize the proposed Project cost by including a cost table. Document the cost basis with a date, or equivalent metric, and include a contingency. If the Project includes phasing, include costs by Project phase.
 - (5) Identify any costs that are ineligible for SRF financing and/or will be paid for from a different source of funding.
 - (6) Summarize the proposed Project schedule with a table as is listed in the IFA June 2023 PER Guidance Document. If the Project includes alternate funding sources or phasing, discuss these items, and include associated key milestone dates to the table.
 - (7) Discuss if the City will be pursuing the Green Project Reserve (GPR) Sustainability Incentive, including climate resiliency. If so, discuss the GPR-eligible components in the PER or in an appendix to the PER and include a completed SRF Loan Program GPR Sustainability Incentive Drinking Water Checklist with appropriate backup documentation.

Chapter 5 – Evaluation of Environmental Impacts

- (1) Provide a brief description of the proposed facility sites and line routes, particularly vegetation and disturbance history, including easements and rights-of-way. Discuss the complete area to be disturbed during construction (temporary and permanent) and include the construction corridor width for any linear work.
 - (i) If a Project is near a brownfield site (current or former), include a discussion of the brownfield site and potential or known contaminants.
 - (ii) Provide supporting graphics that include a north arrow and bar scale and clearly show all proposed Project elements.
- (2) Discuss the Quadrangle map(s) name, Section(s), Township(s), and Range(s) for each Project element.
- (3) Discuss the potential negative environmental impacts of the proposed Project within each of the following categories. Provide supporting graphics that include a north arrow and bar scale and show all proposed Project elements.

- (i) Disturbed/Undisturbed Land
 - (ii) Historic Properties
 - (iii) Wetlands
 - (iv) Surface Waters
 - (v) Groundwater
 - (vi) 100-year and 500-year floodplain(s)
 - (vii) Plants and Animals
 - (viii) Farmland
 - (ix) Air Quality
 - (x) Open Space and Recreational Opportunities
 - (xi) Lake Michigan Coastal Management Zone
 - (xii) National Natural Landmarks
- (4) Discuss any specific mitigation measures, which will be incorporated into the Project to eliminate or minimize the identified environmental impacts.
 - (5) Include prescribed IFA language for “Induced/Secondary Impacts”.
 - (6) If the Project is to be completed in phases, discuss any identified cumulative impacts of the entire proposed system, including all succeeding phases.

Chapter 6 – Public Participation and Legal, Financial, and Managerial Capability

- (1) Assist the City in conducting a public hearing to discuss the proposed Project.
- (2) Prepare and include under this chapter the publisher’s affidavit and a copy of the public hearing notice from the local newspaper that published the notice. The notice is to be placed and paid for by the City in the local newspaper once, 10 days prior to the Public Hearing. This public notice is to state where and that the PER Executive Summary and Chapters 1 – 5 are available for public review 10 days prior to the public hearing. The public notice is to also state that written comments will be accepted at the public hearing and for five days after the public hearing.
- (3) Include a sign-in sheet from the public hearing, including email addresses.
- (4) Minutes for the public hearing will be prepared by the City for inclusion in the PER.
- (5) Include all written comments submitted by the public, including comments submitted during the public hearing and during the 5-day period following the hearing. Also include any response to comments provided by, or on behalf of, the City. State if no comments were received.
- (6) Provide email addresses with the submitted PER for the following:
 - (i) Attendees from the public hearing sign-in-sheet.
 - (ii) Interested parties (those individuals, industries, groups, and organizations who demonstrated an interest in receiving copies of the Environmental Assessment

(EA)/Finding of No Significant Impact (FNSI).

- (iii) Local media outlets (newspaper, radio, or television).
- (iv) If e-mail addresses are not available, then self-sticking mailing labels will be provided with the submitted PER.
- (7) Include in the PER the City executed copies of the Signatory Authorization Resolution and PER Acceptance Resolution.
- (8) Work with the City to complete the SRF Financial Information Form and include it in the PER. Include a brief discussion of current user rates and estimated post-project user rates. If the City wishes to refinance existing debt through the SRF Loan Program, then include this information in the discussion.
- (9) Discuss applicable inter-local agreements, including any quantity limitations and expiration dates.
- (10) State if the City is regulated by the Indiana Utility Regulatory Commission (IURC). If the City is under the jurisdiction of IURC, then discuss the status of any necessary IURC approvals related to the proposed Project.
- (11) Report based on information from the City on its annual participation in utility regional planning meetings.
- (12) Include with the PER submittal to IFA a City completed Asset Management Program (AMP) Certification form.
- (13) Discuss the status of the City's progress towards meeting the requirement to submit a validated water loss audit to IFA for compilation into IFA's biennial report to the General Assembly in every even numbered year.

Section 2. PROJECT TIMING

Consultant's services shall begin as soon as practical after receiving a notice to proceed from the City. Consultant shall provide the City with the Public Hearing review copy of the PER within 18 weeks from receipt of the notice to proceed. Consultant shall finalize the PER and submit the finalized PER to the Indiana SRF Office for its review and approval within 6 weeks after the Public Hearing.

Section 3. CITY'S RESPONSIBILITIES

- (A) City shall identify a person authorized to act as City's representative to respond to questions and make decisions on behalf of City, accept completed documents, approve payments to Consultant, and serve as liaison with Consultant as necessary for Consultant to complete its Services.
- (B) Furnish to Consultant copies of existing documents and data pertinent to Consultant's Scope of Services, including but not limited to and where applicable: design and record drawings for existing facilities; property descriptions, land use restrictions, surveys, test well data, monthly reports of operation for both existing WTP's for the past two years; electric and gas utility bills for both existing WTPs and the Hilltop Storage Tank and Booster Station; water consumption information during the past two years for domestic, commercial and industrial users; existing equipment shop drawings and/or operation and maintenance manuals; field survey data along with topographical survey mapping and applicable GIS information; and geotechnical and environmental studies, or assessments.

- (C) Provide a copy of the current SRF Drinking Water Loan PER and any amendments to date along with the remaining unspent SRF loan amount to Consultant.
- (D) City shall be responsible for all requirements and instructions that it furnishes to Consultant pursuant to this Agreement, and for the accuracy and completeness of all reports, data, programs, and other information furnished by City to Consultant pursuant to this Agreement. Consultant may use and rely upon such requirements, instructions, reports, data, programs, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations provided by City applicable to the furnished items.
- (E) Provide to Consultant existing information regarding the existence and locations of utilities and underground facilities.
- (F) Provide Consultant safe access to premises necessary for Consultant to provide the Services.
- (G) Inform Consultant whenever City observes or becomes aware of a Hazardous Environmental Conditions that may affect Consultant's Scope of Services or time for performance.
- (H) Publish a public hearing notice in a local newspaper.
- (I) Provide a written transcript or minutes of the public hearing to Consultant for inclusion in the PER submitted to IFA.
- (J) Determine if the City wants to pursue the Green Project Reserve (GPR) Sustainability Incentive, including climate resiliency.
- (K) Provide email addresses or mailing addresses for those individuals, industries, groups, and organizations who have demonstrated an interest in receiving copies of the Environmental Assessment (EA)/Finding of No Significant Impact (FNSI).
- (L) Provide needed information to Consultant for preparing the SRF Financial Information Form.
- (M) Approve for inclusion in the PER the City executed copies of the Signatory Authorization Resolution and PER Acceptance Resolution.
- (N) Provide reports to Consultant on the City's annual participation in utility regional planning meetings.
- (O) Provide to Consultant a signed copy of the certification form for a completed Asset Management Program.
- (P) Provide to Consultant information on the status of the City's progress towards meeting the requirement to submit a validated water loss audit to IFA on a biennial basis.

Section 4. Compensation

- (A) The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's hourly rates as set forth in the table below, and the hours actually worked for an amount not to exceed **Two Hundred Eighteen Thousand Four Hundred Sixty-Two Dollars (\$218,462.00)**.

Hourly Rate Schedule:

Donohue & Associates		Arcadis	
Classification	2024 Hourly Rate*	Classification	2024 Hourly Rate*
Engineer/Specialist IX	\$280	Project/Program Director	\$313
Engineer/Specialist VIII	\$260	Principal Engineer/Scientist/Architect II	\$292
Engineer/Specialist VII	\$240	Principal Engineer/Scientist/Architect I	\$254
Engineer/Specialist VI	\$225	Senior Engineer/Scientist/Architect II	\$196
Engineer/Specialist V	\$205	Senior Engineer/Scientist/Architect I	\$180
Engineer/Specialist IV	\$190	Project Engineer/Scientist/Architect	\$170
Engineer/Specialist III	\$175	Staff Engineer/Scientist/Architect	\$159
Engineer/Specialist II	\$155	Engineer/Scientist	\$138
Engineer/Specialist I	\$135	Technician/Project Assistant IV	\$170
Technician II	\$120	Technician/Project Assistant III	\$142
Technician I	\$100	Technician/Project Assistant II	\$127
Administrative Assistant III	\$100	Technician/Project Assistant I	\$117
Administrative Assistant II	\$90		
Administrative Assistant I	\$80		

*Consultant's Hourly Rate Schedule is adjusted annually and is capped at 5% annual adjustment after 2024.

- (B) Payment(s) to Consultant for services rendered under this Agreement shall be made by the City upon receipt of a detailed invoice from Consultant for services completed provided satisfactory performance of Consultant has been attained. The detailed invoices shall include the total agreement amount, payments to date, payment requested for each invoice, remaining agreement balance, and employee names and hours worked on the Project for each invoice. Consultant is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Consultant. Payment is deemed to be made on the date of mailing the check.

Section 5. Payment

- (A) City shall pay Consultant in accordance with Section 4 of this Agreement.
- (B) Payment shall be upon City's receipt of a detailed invoice from Consultant. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Goshen Engineering Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

- (C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.

- (D) Consultant is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 6. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Consultant or Consultant's employees, agents or subconsultants under this agreement, shall become and remain the property of and may be used by City. Consultant may retain a copy of the Documents for its records. Use of final documents on other projects shall be at the sole risk of the City.

Section 7. Licensing/Certification Standards

Consultant certifies that Consultant possesses and agrees to maintain any and all licenses, certifications, or accreditations as required for the services provided by Consultant pursuant to this agreement.

Section 8. Independent Consultant

- (A) Consultant shall operate as a separate entity and independent consultant of the City of Goshen. Any employees, agents or subconsultants of Consultant shall be under the sole and exclusive direction and control of Consultant and shall not be considered employees, agents or subconsultants of City. 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 Consultant and/or Consultant's employees, agents or subconsultants.
- (B) Consultant understands that City will not carry worker's compensation or any other insurance on Consultant and/or Consultant's employees or subconsultants.
- (C) Consultant is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 9. Non-Discrimination

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

Section 10. Employment Eligibility Verification

- (A) Consultant shall enroll in and verify the work eligibility status of all Consultant's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Consultant is not required to participate in the E-Verify program should the program cease to exist. Consultant is not required to participate in the E-Verify program if Consultant is self-employed and does not employ any employees.

- (B) Consultant shall not knowingly employ or contract with an unauthorized alien, and consultant shall not retain an employee or continue to contract with a person that the Consultant subsequently learns is an unauthorized alien.
- (C) Consultant shall require their subconsultants, who perform work under this agreement, to certify to the Consultant that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. Consultant agrees to maintain this certification throughout the duration of the term of a contract with a subconsultant.
- (D) City may terminate the agreement if Consultant fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

Section 11. Contracting with Relatives

Pursuant to Indiana Code § 36-1-21, if the Consultant is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the Consultant certifies that Consultant has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

Section 12. No Investment Activities in Iran

In accordance with Indiana Code § 5-22-16.5, Consultant certifies that Consultant does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

Section 13. Indemnification

Consultant shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries but only to the extent they are found to be caused by any intentional, reckless or negligent act or omission by Consultant or any of Consultant's agents, officers and employees during the performance of services under this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Consultant is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not exceed the Consultant's amount of insurance coverage required under this agreement.

To the fullest extent permitted by law, City and Consultant each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, but not defend, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City and Consultant, they shall be borne by each party in proportion to its negligence.

Section 14. Insurance

- (A) Prior to commencing work, the Consultant shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the agreement with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Consultant shall

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

- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Consultant 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 aggregate
 - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$2,000,000 each occurrence and aggregate
 - (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 15. Force Majeure

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this agreement if and to the extent that such party's performance under this agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the agreement and the other party shall have no recourse.

Section 16. Default

- (A) If Consultant fails to perform the services or comply with the provisions of this agreement, then Consultant may be considered in default.
- (B) It shall be mutually agreed that if Consultant fails to perform the services or comply with the provisions of this agreement, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Consultant shall have the opportunity to cure. If the default is not cured within the time period allowed, the agreement 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 Consultant shall be liable to the City for any excess costs incurred
- (C) Consultant may also be considered in default by the City if any of the following occur:

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

Section 17. Termination

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

Section 18. Notice

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana
 Attention: Goshen Legal Department
 204 East Jefferson St., Suite 2
 Goshen, IN 46528

Consultant: Donohue & Associates
 209 North Main Street, Suite 206
 South Bend, IN 46601

Section 19. Subcontracting or Assignment

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

Section 20. Amendments

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.

Section 21. Waiver of Rights

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

Section 22. Applicable Laws

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

Section 23. 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 or legally binding requirement 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 prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 24. Severability

In the event that any provision of the 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.

Section 25. Binding Effect

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

Section 26. Entire Agreement

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

Section 27. Authority to Execute

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

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

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

Donohue & Associates, Inc.

Gina Leichty, Mayor

Jeremy Roschyk, Vice President

Date Signed: _____

Date Signed: _____



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 & Utilities

RE: **WASTEWATER UTILITY ON-CALL SERVICES AGREEMENT WITH DONOHUE & ASSOCIATES (JN: 2024-0014)**

DATE: January 30, 2024

The Wastewater Utility has maintained a task order based on-call services contract with Donohue & Associates (Donohue) for the last 12 years. The most recent on-call services agreement expired at the end of 2023. Goshen Wastewater Utility has found this service valuable, and would like to renew the service agreement with Donohue for 2024, for a not to exceed fee of \$30,000.

As this agreement is setup, the Mayor is authorized to approve with signature each task order.

Requested Motion: Move to approve the Wastewater on-call service agreement with Donohue and Associates for \$30,000.00, and authorize the Mayor to sign task orders as they are presented by the utility.

AGREEMENT FOR PROFESSIONAL ENGINEERING ON-CALL CONSULTING SERVICES FOR THE CITY OF GOSHEN WASTEWATER COLLECTION AND TREATMENT SYSTEM

THIS AGREEMENT is entered into on _____, 2024, between Donohue & Associates, hereinafter referred to as "Consultant", and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

WHEREAS, the Board of Public Works and Safety determines it is expedient and in the best public interest to employ professional engineering services for programming and consulting assistance and other related Wastewater Treatment Plant (WWTP) and Collection System issues as required by the City.

WHEREAS, the City desires to enter into an agreement with Consultant, and Consultant agrees to provide on-call professional engineering, programming, and consulting services for the City as required by the City.

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

SCOPE OF SERVICE

Consultant's professional engineering services under this Agreement shall be on an on-call basis to provide the City's Drinking Water Treatment and Distribution System with consulting services to assist with programming and other related engineering issues as required by the City.

City shall submit to Consultant a completed Task Order form (Exhibit A) per each request for Consultant's service by mail or email. The Task Order form shall include the scope of service requested, the start and completion requirements including a schedule, if applicable, and the compensation for the task. For each service request made by the City, Consultant shall prepare an email summarizing the requested services and send to the City for their concurrence prior to commencing work.

Consultant's services for each Task Order included in this Agreement shall begin as soon as practical after receiving the Task Order from the City and shall be completed as per the completion date that the City identifies on each Task Order.

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

TERMS OF THE AGREEMENT

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

This Agreement shall remain in effect for one (1) year or until the agreed to funds of Thirty Thousand Dollars (\$30,000.00) are depleted, whichever comes first.

COMPENSATION

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's hourly rates as set forth in the table below and based on the not to exceed amount of

compensation that the City identifies on each Task Order and the hours actually worked on the tasks for an amount not to exceed Thirty Thousand Dollars (\$30,000).

Donohue & Associates Hourly Rate Schedules

Classification	2024 Rates*
Engineer/Specialist IX	\$280.00
Engineer/Specialist VIII	\$260.00
Engineer/Specialist VII	\$240.00
Engineer/Specialist VI	\$225.00
Engineer/Specialist V	\$205.00
Engineer/Specialist IV	\$190.00
Engineer/Specialist III	\$175.00
Engineer/Specialist II	\$155.00
Engineer/Specialist I	\$133.00
Technician II	\$120.00
Technician I	\$100.00
Administrative Assistant III	\$100.00
Administrative Assistant II	\$90.00
Administrative Assistant I	\$80.00

*Consultant's Hourly Rate Schedule is adjusted annually and is capped at 5% annual adjustment after 2024.

Payment(s) to Consultant for services rendered under this Agreement shall be made by the City upon receipt of a detailed invoice from Consultant for services completed provided satisfactory performance of Consultant has been attained. The detailed invoice shall include the total agreement amount, payments to date, remaining agreement balance, and employee names and hours worked on specific task(s). Consultant is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Consultant. Payment is deemed to be made on the date of mailing the check.

City's obligation for services rendered is subject to City of Goshen Common Council's annual appropriation of funds.

INDEPENDENT CONTRACTOR

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

NON-DISCRIMINATION

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

INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries, but only to the extent they are found to be caused by a negligent act or omission by Consultant or any of their officers, agents, officials, and employees, during the performance of services under this Agreement with the City of Goshen. Such indemnity shall include reasonable attorney’s fees and all costs and other expenses incurred by the City. City agrees that, to the fullest extent permitted by law, Consultant’s total liability to City for any and all injuries, claims, losses, expenses or damage arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Engineer’s negligence, errors, omissions, strict liability, or breach of contract, shall not exceed the proceeds available from Engineer’s professional liability insurance policy for a maximum of \$2,000,000 per claim and \$2,000,000 aggregate.

INSURANCE

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

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

Workers Compensation & Employer’s Liability.....	Statutory Limits
General Liability.....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and \$2,000,000 Aggregate
Professional Liability.....	Combined Bodily Injury and Property Damage \$2,000,000 per Claim and Aggregate
Automobile Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Accident 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 agreement if and to the extent that such party’s performance under this agreement 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 agreement and the other party shall have no recourse.

BREACH

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

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

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

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

TERMINATION

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

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

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents pertaining to the project prepared by Consultant under this Agreement. Consultant is not liable for changes made to the documents pertaining to the project by the City or anyone retained by the City.

OWNERSHIP OF DOCUMENTS

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

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 agreement 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. And 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 the Consultant:

Donohue & Associates, Inc.
Attention: Jeremy Roschyk, P.E.
209 North Main Street, Suite 206
South Bend, IN 46601

APPLICABLE LAWS

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

MISCELLANEOUS

- A. Any provisions 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.

EMPLOYMENT ELIGIBILITY VERIFICATION

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

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

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

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

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

CONTRACTING WITH RELATIVES

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

SEVERABILITY

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

**Approved for City
Board of Public Works and Safety**

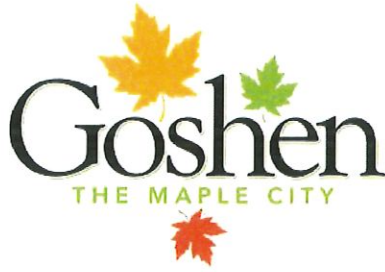
Approved for Consultant

Gina Leichty, Mayor

Jeremy Roschyk, P.E., Vice President

Date: _____

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 & Utilities

RE: **WATER UTILITY ON-CALL SERVICES WITH DONOHUE & ASSOCIATES
(JN: 2024-0013)**

DATE: January 30, 2024

The Water Utility has maintained a task order based on-call services contract with Donohue & Associates (Donohue) for the last 12 years. The most recent on-call services agreement expired at the end of 2023. Goshen Water Utility has found this service valuable, and would like to renew the service agreement with Donohue for 2024, for a not to exceed fee of \$20,000.

As this agreement is setup, the Mayor is authorized to approve with signature each task order.

Requested Motion: Move to approve the Water on-call service agreement with Donohue & Associates for \$20,000.00, and authorize the Mayor to sign task orders as they are presented by the utility.

AGREEMENT FOR PROFESSIONAL ENGINEERING ON-CALL CONSULTING SERVICES FOR THE CITY OF GOSHEN DRINKING WATER TREATMENT AND DISTRIBUTION SYSTEM

THIS AGREEMENT is entered into on _____, 2024, between Donohue & Associates, hereinafter referred to as “Consultant”, and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City”.

WHEREAS, the Board of Public Works and Safety determines it is expedient and in the best public interest to employ professional engineering services for programming and consulting assistance and other related Drinking Water Treatment and Distribution System issues as required by the City.

WHEREAS, the City desires to agreement with Consultant, and Consultant agrees to provide on-call professional engineering, programming, and consulting services for the City as required by the City.

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

SCOPE OF SERVICE

Consultant’s professional engineering services under this Agreement shall be on an on-call basis to provide the City’s Drinking Water Treatment and Distribution System with consulting services to assist with programming and other related engineering issues as required by the City.

City shall submit to Consultant a completed Task Order form (Exhibit A) per each request for Consultant’s service by mail or email. The Task Order form shall include the scope of service requested, the start and completion requirements including a schedule, if applicable, and the compensation for the task. For each service request made by the City, Consultant shall prepare an email summarizing the requested services and send to the City for their concurrence prior to commencing work.

Consultant’s services for each Task Order included in this Agreement shall begin as soon as practical after receiving the Task Order from the City and shall be completed as per the completion date that the City identifies on each Task Order.

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

TERMS OF THE AGREEMENT

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

This Agreement shall remain in effect for one (1) year or until the agreed to funds of Twenty Thousand Dollars (\$20,000.00) are depleted, whichever comes first.

COMPENSATION

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant’s hourly rates as set forth in the table below and based on the not to exceed amount of

compensation that the City identifies on each Task Order and the hours actually worked on the tasks for an amount not to exceed Twenty Thousand Dollars (\$20,000).

Donohue & Associates Hourly Rate Schedules

Classification	2024 Rates*
Engineer/Specialist IX	\$280.00
Engineer/Specialist VIII	\$260.00
Engineer/Specialist VII	\$240.00
Engineer/Specialist VI	\$225.00
Engineer/Specialist V	\$205.00
Engineer/Specialist IV	\$190.00
Engineer/Specialist III	\$175.00
Engineer/Specialist II	\$155.00
Engineer/Specialist I	\$133.00
Technician II	\$120.00
Technician I	\$100.00
Administrative Assistant III	\$100.00
Administrative Assistant II	\$90.00
Administrative Assistant I	\$80.00

*Consultant's Hourly Rate Schedule is adjusted annually and is capped at 5% annual adjustment after 2024.

Payment(s) to Consultant for services rendered under this Agreement shall be made by the City upon receipt of a detailed invoice from Consultant for services completed provided satisfactory performance of Consultant has been attained. The detailed invoice shall include the total agreement amount, payments to date, remaining agreement balance, and employee names and hours worked on specific task(s). Consultant is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Consultant. Payment is deemed to be made on the date of mailing the check.

City's obligation for services rendered is subject to City of Goshen Common Council's annual appropriation of funds.

INDEPENDENT CONTRACTOR

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

NON-DISCRIMINATION

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

INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries, but only to the extent they are found to be caused by a negligent act or omission by Consultant or any of their officers, agents, officials, and employees, during the performance of services under this Agreement with the City of Goshen. Such indemnity shall include reasonable attorney’s fees and all costs and other expenses incurred by the City. City agrees that, to the fullest extent permitted by law, Consultant’s total liability to City for any and all injuries, claims, losses, expenses or damage arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Engineer’s negligence, errors, omissions, strict liability, or breach of contract, shall not exceed the proceeds available from Engineer’s professional liability insurance policy for a maximum of \$2,000,000 per claim and \$2,000,000 aggregate.

INSURANCE

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

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

Workers Compensation & Employer’s Liability.....	Statutory Limits
General Liability.....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and \$2,000,000 Aggregate
Professional Liability.....	Combined Bodily Injury and Property Damage \$2,000,000 per Claim and Aggregate
Automobile Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Accident 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 agreement if and to the extent that such party’s performance under this agreement 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 agreement and the other party shall have no recourse.

BREACH

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

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

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

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

TERMINATION

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

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

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents pertaining to the project prepared by Consultant under this Agreement. Consultant is not liable for changes made to the documents pertaining to the project by the City or anyone retained by the City.

OWNERSHIP OF DOCUMENTS

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

ASSIGNMENT

Neither party shall subcontract or assign any right or interest under this agreement, 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 agreement 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. And 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 the Consultant:

Donohue & Associates, Inc.
Attention: Jeremy Roschyk, P.E.
209 North Main Street, Suite 206
South Bend, IN 46601

APPLICABLE LAWS

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

MISCELLANEOUS

- A. Any provisions 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.

EMPLOYMENT ELIGIBILITY VERIFICATION

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

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

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

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

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

CONTRACTING WITH RELATIVES

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

SEVERABILITY

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

**Approved for City
Board of Public Works and Safety**

Approved for Consultant

Gina Leichty, Mayor

Jeremy Roschyk, P.E., Vice President

Date: _____

Date: _____



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **JONES PETRIE RAFINSKI, INC.
GOSHEN SANITARY SEWER CIPP PROJECT
JN: 2023-0046**

DATE: February 1, 2024

Approval is sought for an expenditure not to exceed \$5,000 to create project specifications to line failing sections of sewer piping by **Jones Petrie Rafinski, Inc.** The lining will significantly extend the life of these piping sections. Creating specifications is the first step in developing a full bid package for this project.

Requested Motion: Move to approve the attached agreement with Jones Petrie Rafinski, Inc. for an amount not to exceed \$5,000 to create specifications for a sewer pipe lining bid package.

**AGREEMENT WITH JONES PETRIE RAFINSKI REGARDING THE CITY OF
GOSHEN SANITARY SEWER CIPP PROJECT
PHASE 1**

THIS AGREEMENT is entered into on _____, 2024, which is the last signature date set forth below, by and between **Jones Petrie Rafinski** (“Consultant”), whose mailing address is 325 S. Lafayette Blvd., South Bend, Indiana 46601, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Redevelopment Commission (“City”).

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

Section 1. Consultant’s Duties

Consultant shall provide City the services for Phase 1 of City’s Sanitary Sewer Cured-in-Place Pipe (CIPP) Project, which services are more particularly described in Consultant’s January 24, 2024 proposal attached as Exhibit A and incorporated herein (hereinafter referred to as “Duties”).

In the event of any conflict between the terms of this agreement and the terms contained in the proposal attached as Exhibit A, the terms set forth in this agreement shall prevail.

Consultant Duties under this agreement include preparing construction specifications for the proposed project, including sanitary sewer CIPP contraction and lining of manhole structures.

Section 2. Effective Date; Term

The agreement shall become effective on the day of execution and approval by both parties.

Consultant expects to complete project within thirty (30) days from the notice to proceed.

Section 3. Compensation

City agrees that Consultant’s compensation for this project is not to exceed Five Thousand Dollars (\$5,000.00) for performing all Duties. Consultants fee schedule is included in the attached proposal.

Section 4. Payment

Payment shall be upon City’s receipt of a detailed invoice from Consultant. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o City of Goshen Engineering
204 East Jefferson Street, Suite 1
Goshen, IN 46528

Payment will be made within forty-five (45) days following City’s receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.

Consultant is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Consultant or Consultant's employees, agents or subconsultants under this agreement, shall become and remain the property of and may be used by City. Consultant may retain a copy of the Documents for its records, including electronic files, as instruments of professional service. The final documents prepared under this agreement shall become the property of City upon completion of the services and payment in full of all monies due to Consultant.

Section 6. Licensing/Certification Standards

Consultant certifies that Consultant possesses and agrees to maintain any and all licenses, certifications, or accreditations as required for the services provided by Consultant pursuant to this agreement.

Section 7. Independent Contractor

Consultant shall operate as a separate entity and independent Contractor of the City of Goshen. Any employees, agents or subcontractors of Consultant shall be under the sole and exclusive direction and control of Consultant and shall not be considered employees, agents or subcontractors of City. 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 Consultant and/or Consultant's employees, agents or subcontractors.

Consultant understands that City will not carry worker's compensation or any other insurance on Consultant and/or Consultant's employees or subcontractors. Prior to commencing work under this agreement, and if Consultant utilizes employees or subcontractors to perform work under this agreement, Consultant agrees to provide City a certificate(s) of insurance showing Consultant's and any subcontractor's compliance with workers' compensation statutory requirements.

Consultant is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 8. Non-Discrimination

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

Section 9. Employment Eligibility Verification

Consultant shall enroll in and verify the work eligibility status of all Consultant's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Consultant is not required to participate in the E-Verify program should the program cease to exist. Consultant is not required to participate in the E-Verify program if Consultant is self-employed and does not employ any employees.

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

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

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

Section 10. Contracting with Relatives

Pursuant to Indiana Code § 36-1-21, if the Consultant is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the Consultant certifies that Consultant has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

Section 11. No Investment Activities in Iran

In accordance with Indiana Code § 5-22-16.5, Consultant certifies that Consultant does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

Section 12. Indemnification

Consultant shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Consultant or any of Consultant's agents, officers and employees during the performance of services under this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Consultant is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required under this agreement.

Section 13. Insurance

Prior to commencing work, the Consultant shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Consultant shall specifically include

coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.

Consultant 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 aggregate
- (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 14. 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 notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

Section 15. Default

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

It shall be mutually agreed that if Consultant fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Consultant shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Consultant shall be liable to the City for any excess costs incurred.

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

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

Section 16. Termination

The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Consultant shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.

City may terminate this agreement, in whole or in part, in the event of default by Consultant.

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 agreement.

Section 17. Notice

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana
Attention: Goshen Legal Department
204 East Jefferson St., Suite 2
Goshen, IN 46528

Consultant: Jones Petrie Rafinski
Attn: Brett Konarski, PE
325 S. Lafayette Blvd
South Bend, IN 46601

Section 18. Subcontracting or Assignment

Consultant shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Consultant to subcontract or

assign any portion of the agreement shall not be construed to relieve Consultant from any responsibility to fulfill all contractual obligations.

Section 19. Amendments

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.

Section 20. Waiver of Rights

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

Section 21. Applicable Laws

Consultant 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.

Consultant agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

Section 22. Miscellaneous

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 or legally binding requirement shall govern.

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.

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

Section 23. Severability

In the event that any provision of the 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.

Section 24. Binding Effect

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

Section 25. Entire Agreement

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

Section 26. Authority to Bind Consultant

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

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

City of Goshen, Indiana
Board of Public Works & Safety

Jones Petrie Rafinski, Corp.

Gian Leichty, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____



Land Surveying · Civil Engineering · Planning · Architecture · Project Funding · GIS · Environmental · Renewable Energy · Landscape Architecture

January 24, 2024

City of Goshen
Engineering Department
204 E. Jefferson Suite 1
Goshen IN, 46528

Attention: Jamey Bontrager-Singer

**RE: PROPOSAL FOR THE CITY OF GOSHEN SANITARY SEWER CIPP PROJECT
CONSTRUCTION SPECIFICATIONS**

Thank you for contacting Jones Petrie Rafinski (JPR) to provide this Proposal for Phase 1 of the City's Sanitary Sewer CIPP project. JPR welcomes the opportunity to bring our services to this project.

Project Understanding

The City of Goshen has completed a Wastewater Sewer System Study to identify areas within the municipal sanitary sewer network that require repair. It is understood that the City has chosen to improve these areas of the sewer system with Cured-in-Place Pipe (CIPP) lining. It is further understood that sewer sections in which root infiltration has been observed will require additional repair and improvements before CIPP construction may be performed and that repair of sanitary manhole structures in which structural defects are observed may be included in the project.

The City of Goshen has indicated that the project will be completed in two phases. Phase 1 will include preparation of construction specifications for CIPP improvements and lining of sanitary manhole structures. The following Proposal and fee estimate is for Phase 1 of the project only.

Phase 2 will include finalization of the bid package after the City of Goshen Engineering staff have established the full scope of sewer system repairs. The Phase 2 scope of work and fee estimate will be provided at a later date.

Scope of Services

The following are the tasks that JPR will perform.

Phase 1 – Project Specifications

The project team will prepare construction specifications for the proposed project, including sanitary sewer CIPP construction and lining of manhole structures. Phase 1 shall include a project review meeting with City of Goshen Engineering Department staff to confirm details for these improvements.

Schedule

JPR would anticipate our involvement in the contemplated scope of work to be completed within 30 days from the Notice to Proceed.

Project Fees

The **Time and Expense, Not to Exceed** fee to provide the task outlined in the Scope of Services is as follows:

Phase 1: Construction Specifications & Coordination Meeting - \$5,000

The current JPR Service Fee Schedule is attached for reference.

Reimbursable Expenses

At this stage of the project reimbursable expenses are not anticipated.

Note: All reimbursable expenses are billed at 1.1 times the cost.

Exclusions

Please note the following assumptions and clarifications regarding our fees above:

- Out-of-scope services are not included in this proposal but can be provided as an Additional Service at our standard hourly rates (work will not commence on any out-of-scope services unless and until approved by the client).
- Phase 2 services
- Topographic survey
- Construction Plans

JPR appreciates the opportunity to be of service on this project, and will begin upon acceptance of this proposal. Should you have any questions or require additional information, please feel free to contact me at (574) 232-4388. If acceptable, please execute the Proposal by signature where indicated, and return a copy by email to bkonarski@jpr1source.com.

Sincerely,



Brett Konarski, PE
Utilities Division Leader – South Bend

PROPOSAL ACCEPTANCE

This proposal for (**PROPOSAL FOR City of Goshen Sanitary Sewer CIPP Project – Phase 1**) is hereby accepted and authorization to proceed hereby granted.

Accepted By: _____ Date: _____
City of Goshen Representative

Billing address: _____

Phone No.: _____

E-mail: _____



JONES
PETRIE
RAFINSKI

JONES PETRIE RAFINSKI CORP.

**Service Fee
Schedule(s):**

Effective September 1, 2023

	Standard Hourly Rates	Activity Code
PROJECT SUPPORT		
Principal	\$250	PPS
Management Staff I	\$225	MS1
Management Staff II	\$160	MS2
Professional Engineer I	\$200	PE1
Professional Engineer II	\$160	PE2
Professional Architect	\$160	RA
Professional Landscape Architect	\$160	PLA
Professional Surveyor	\$148	PS
Professional Geologist	\$148	PG
Graduate Staff	\$125	GS
Engineering Dept. Support Staff	\$115	EDS
Architecture Dept. Support Staff	\$115	ADS
Landscape Arch. Support Staff	\$115	LDS
Survey Dept. Support Staff	\$115	SDS
Utility Operations Support Staff	\$115	UMS
Environmental Dept. Support Staff	\$90	ENS
Survey Field Services Technician 1	\$150	SF1
Survey Field Services Technician 2	\$115	SF2
Environmental Field Technician	\$90	EFT
Resident Project Representative 1	\$120	RPR 1
Resident Project Representative 2	\$110	RPR 2
Utility Operations Field Technician	\$115	UFT
OVERHEAD SUPPORT		
Certified Public Accountant	\$175	CPA
Clerical & Accounting Staff I	\$125	CAS1
Clerical & Accounting Staff II	\$115	CAS2
Information Technology Services	\$160	IT
Marketing Services	\$125	MTG
Human Resources	\$125	HR

Direct expenses such as printing/copies, messenger/delivery services, shipping expenses, permit application fees, sub-consultants, or sub-contractors, etc., that are paid for by JPR Corp. on behalf of client will be passed on with a 10% markup in most cases, and is further defined and stipulated within project specific agreements and/or contracts.

For inquiries regarding this information, please contact us via phone at any of the numbers provided below or you may do so via email at accounting@jpr1source.com



**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 Public Works and Safety

FROM: Goshen Engineering Department

RE: **CHANGE ORDER NO. 1 FOR COUNTY COURTS CONSOLIDATION
ROADWAY IMPROVEMENTS
(JN: 2021-0014)**

DATE: February 1, 2024

Attached, find Change Order No. 1 for the County Courts Consolidation Roadway Improvements project.

As the City and its contractor prep for the start of this project, it has been determined a 4' pedestal pole and foundation were not included as a pay item. Goshen Engineering requests the Board's permission to add the pole and foundation and increase the project cost by \$3,266.76.

The original contract amount was \$4,165,762.30. The 4' pedestal pole and foundation increase the contract by \$3,266.76, for a revised contract amount of \$4,169,029.06, an increase of 0.08%.

Requested motion: Move to approve Change Order No. 1 for the 4' pedestal pole and foundation for an increase of \$3,266.76.

CHANGE ORDER FORM

Pg 1 of 3

Change Order No. 1
Date: 2/1/24

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

OWNER: City of Goshen
PROJECT NAME: County Courts Consolidation Roadway Improvements
PROJECT NUMBER: 2021-0014
CONTRACTOR: Niblock Excavating, Inc.

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

As the City and its contractor prep for the start of this project, it has been determined a 4' pedestal pole and foundation were not included as a pay item. The 4' pedestal pole and foundation will be installed at the crosswalk on Reliance Road.

CO1.1	4' Pedestal Pole and Foundation	1 EA	@	\$3,266.76	\$3,266.76
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Subtotal - \$3,266.76

CHANGE ORDER FORM

Pg 2 of 3

Change Order No. 1

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract	\$4,165,762.30
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers 0 to <u>0</u>	\$0.00
3. Amount of Contract, not including this supplement	\$4,165,762.30
4. Addition/ Reduction to Contract due to this supplement	\$3,266.76
5. Amount of Contract, including this supplemental	\$4,169,029.06
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)	\$3,266.76
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>1</u> (Line 6 divided by Line 1)	0.08%

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 ___ calendar days
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 x-2431, 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 furnished 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 (.08) percent.

CHANGE ORDER FORM

Pg. 3 of 3

Change Order No. 1

RECOMMENDED FOR ACCEPTANCE



Dustin Sailor, PE

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

Mayor

Member

Member

Member

Member

ACCEPTED: CONTRACTOR

Niblock Excavating, Inc.

BY:

Signature of authorized representative

Printed

Title