



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

Regular Meeting Agenda

**2:00 p.m., Oct. 10, 2022**

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 Jeremy Stutsman**

### **Approval of Minutes: Oct. 3, 2022**

### **Approval of Agenda**

**1) Police Department:** Promotion of Austin M. Everage from Sergeant to Lieutenant, retroactive to Sept. 7, 2022

**2) Legal Department:** Agreement with Koorsen Fire and Security for 5-year FCD Hydro sprinkler system inspection

**3) Legal Department:** Agreement with Cummins Sales and Service, Inc., for maintenance of generators at multiple city sites

**4) Legal Department:** Amended agreement with Abonmarche for an expanded drainage study adjacent to the Keaffaber property, located between Berkey Avenue and SR 119

**5) Legal Department:** Agreement with The Davenport Group USA, Ltd for software implementation services

### **Privilege of the Floor**

### **Approval of Civil City and Utility Claims**

### **Adjournment**



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD  
MINUTES OF THE OCTOBER 3, 2022 REGULAR MEETING**

*Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana*

**Present:** Mayor Jeremy Stutsman and members Mike Landis, Mary Nichols and Barb Swartley

**Absent:** DeWayne Riouse

**CALL TO ORDER:** Mayor Stutsman called the meeting to order at 2:00 p.m.

**REVIEW/APPROVE MINUTES:** Mayor Stutsman presented the minutes of the Sept. 26, 2022 regular meeting. Board member Barb Swartley moved to approve the minutes as presented and the motion was seconded by Board member Mary Nichols. Motion passed 4-0.

**REVIEW/APPROVE AGENDA:** Mayor Stutsman presented the meeting agenda with the addition of a new item #1. *The opening of Requests for Proposal (RFPs) for a fixed-base operator for the City of Goshen Municipal Airport.* Board member Swartley moved to approve the agenda as suggested and Board member Nichols seconded the motion. Motion passed 4-0.

**1) The opening of Requests for Proposal (RFPs) for a fixed-base operator for the City Municipal Airport**

Mayor Stutsman opened the Requests for Proposal (RFPs) for a fixed-base operator for the City Municipal Airport. One bid was received from John Hull of Goshen Air Center, Inc. of Goshen, which has been the airport's fixed-base operator since 2005.

Goshen Air Center, Inc. is seeking to continue operating the airport and providing related services, including aircraft maintenance, fueling, cleaning and storage. The company also operates Aircraft Charter Services, which is based at the Goshen Air Center, and Emergency Radio Service LLC. Goshen Air Center, Inc., which was created in 1992, listed the following as its officers/representatives: Brian Hull, secretary and treasurer, John Hull, vice president, and Randall L. Sharkey, president and registered agent.

Mayor Stutsman/Nichols moved that the bid be referred to the City Legal Department. Motion passed 4-0.

**2) Goshen First United Methodist Church: Request to use City parking lot spaces and on-street parking spaces for a "Trunk or Treat" event on Oct. 29.**

Loraine Troyer, Mission Chairperson for Goshen First United Methodist Church, asked the Board to allow the partial use of a City lot and street parking spaces for the church's "Trunk or Treat" event on Oct. 29, 2022.

Troyer asked for the use of 10 parking spaces in the City lot on Fifth Street, between the church and City Hall starting in the morning of Oct. 29 until midnight. She asked for the use of five spaces next to the church and five spaces directly to the north, across from those spaces. She also asked for the closure and exclusive use of the six parallel parking spaces directly in front of the church on Fifth Street.

Because of concerns expressed by the Goshen Police Department, Troyer withdrew the church's request for the City to close Fifth Street, between Jefferson and Washington streets, for the event.



**Troyer** said 10 vehicles will be decorated and their trunks or backs of SUVs will be open with candy displayed and distributed to children trick or treat hours on Oct. 29. Church members expect 250 to 500 children to participate. **Clerk-Treasurer Aguirre** informed the Board that the Street Department has communicated with the Church about the barricades needed to close the parking spaces.  
**Swartley/Nichols moved to approve Motion passed 4-0.**

**3) Legal Department: Agreement with Dixon Engineering, Inc. for Inspection of Elevated Water Tanks located near Clinton Street and Caragana Court in the City of Goshen**

**Assistant City Attorney Matt Lawson** informed the Board that the Goshen Water Department has coordinated with Dixon Engineering, Inc. for the inspection of elevated water tanks located near Clinton Street and Caragana Court. **Lawson** said Dixon officials initially advised that its workers would not be available to begin work until November 2022. However, Dixon communicated to Goshen Water last week that an opening in its schedule allowed work to begin on Friday, Sept. 30, 2022. He said the unexpected opening in Dixon's schedule, combined with the preference in avoiding the weather-related challenges associated with a November start date, made it necessary for the agreement to be signed early so that Dixon could begin working.

**Lawson** said Dixon will be paid \$4,500 for the inspection of the water tank on Clinton Street, plus the cost to ship pressure relief valves provided by Dixon for use on the distribution system two (2) days prior to the inspection. Dixon will also be paid up to \$400 in hourly fees to clean the tank. Dixon will be paid \$4,750 for the inspection of the water tank on Caragana Court. In total, Dixon will be paid up to \$9,650, plus shipping costs for its work.

**Swartley/Nichols moved to approve and ratify the agreement, retroactive to Sept. 30, 2022, with Dixon Engineering, Inc. for the inspection of elevated water tanks located near Clinton Street and Caragana Court, the total cost being up to \$9,650, plus the cost to ship pressure relief valves provided by Dixon for use on the distribution system two (2) days prior to the inspection. Motion passed 4-0.**

**4) Engineering Department: Approve Change Order No. 3 for the Crossing Subdivision (JN: 2020-0033)**

**City Civil Traffic Engineer Josh Corwin** reminded the Board that at its Sept. 12, 2022 meeting, members approved a change order request for the Crossing Subdivision to allow for the purchase and placement of arborvitae screening. He said upon further review of the planting proposed to achieve the screening density agreed to with the Villas of Park Meadows Neighborhood Association, it was determined 18 arborvitae needed to be added to the contract.

**Corwin** said the contract increase for the 18 additional arborvitae is \$6,801.48, and brings the new contract change order amount to \$79,367.33, which is a 5.81 percent increase to the contract price. This change order, with previous change orders, increases the total project cost to \$1,445,457.56.

**Swartley/Nichols moved to approve Change Order No. 3 with HRP construction for \$6,801.48 for the addition of 18 arborvitae plantings. Motion passed 4-0.**

**5) Engineering Department: Approve Change Order No. 5 for the Douglas, Reynolds, and 16th Streets Project (JN: 2020-0017)**

**City Civil Traffic Engineer Josh Corwin** asked the Board to approve Change Order No. 5 for the Douglas, Reynolds, & 16th Streets Reconstruction Project.



**Corwin** said HRP completed final overseeding in May 2022, but sufficient growth did not occur in two larger areas by September 2022. HRP agreed to a deduction in retainage if Goshen Water & Sewer crews would overseed these areas again. Goshen crews completed this work later in September.

**Corwin** said Change Order No. 5 includes the deduction in project retainage, based on time and materials costs from Goshen Water & Sewer. The original contract amount, plus additions from Change Order No. 1 through Change Order No. 4, was \$985,086.04. The quantities from Change Order No. 5 decrease the total retainage paid to HRP by \$174.14, for a revised contract amount of \$984,911.90, an increase of 12.01% over the original contract price. No additional time will be added to the contract.

**Swartley/Nichols** moved to approve Change Order No. 5 for the Douglas, Reynolds, and 16th Streets Project for a decrease in contract amount of \$174.14. Motion passed 4-0.

#### 6) Engineering Department: Approve Lane Restriction on River Vista Drive

City Civil Traffic Engineer **Josh Corwin** told the Board that Dana Miller Building Solutions, Inc. was requesting a lane restriction on River Vista Drive to connect to an existing storm line along the south side of the street. The south lane would be restricted beginning on Tuesday, Oct. 4 thru Wednesday, Oct. 5, 2022. He said the restriction would be between Woodward Place and South Main Street. He said the contractor would be allowed one lane to work within at any one time.

**Swartley/Nichols** moved to approve lane restriction on River Vista Drive, beginning Oct. 4 through Oct. 5, 2022. Motion passed 4-0.

#### 7) Board of Public Works and Safety Order: Continued hearing for the vault at 206 N. Main Street (Dormer L. Metzger, property owner)

City Attorney **Bodie Stegelmann** briefed the Board about the status of the continued hearing for the vault at 206 N. Main Street (Dormer L. Metzger, property owner).

#### BACKGROUND:

On April 25, 2022, City Building Commissioner **Myron Grise** notified **Jerry and Dorma Metzger**, owners of 206 N. Main Street, that an underground vault on their property was in violation of Goshen City Code.

The Goshen Building Department and Clear Creek & Associates, Inc. inspected the property at 206 N. Main Street and violations of the Neighborhood Preservation Ordinance (Minimum Housing Ordinance) were cited. The real estate was inspected again on April 27, 2021 which showed no significant improvement.

The real estate was deemed unsafe within the meaning of Indiana Code § 36-7-9-4 in that the underground vault and parking lot above the vault on the real estate is in an impaired structural condition that makes it unsafe and dangerous to person or property because of a violation of Goshen City Code Title 6, Article 3, Chapter 1 concerning building condition or maintenance.

The following violations of Section 6, Article 3, Chapter 1 of the Goshen City Code were cited by the Goshen Building Department inspector and have not been satisfactorily repaired or remedied:

1. There are multiple areas where the structure has begun to collapse or is in danger of collapsing (violation of Section 6.3.1.1 (p)).
2. There is water entering the vault and the ceiling is beginning to collapse causing the structure to be unsafe and dangerous (violation of Section 6.3.1.1 (b)).



3. There are multiple areas where the concrete is fractured and in danger of collapsing (violation of Section 6.3.1. l(j))
4. The support beams do not support the proper load required (violation of Section 6.3.1.1(1)).
5. Steel and concrete corrosion that is supporting the parking lot above the vault has severe cracking and is beginning to collapse (violation of Section 6.3 .1.1 ( o )).
6. The vault and parking lot above has deteriorated to the point that it is unsafe to be used as intended (violation of Section 6.3.1.l(r)).
7. The roof, walls and columns of the vault are all deteriorating so that the structural integrity cannot hold the loads imposed on the parking lot above (violation of Section 6.3.1. l(y)).

**The property owners were ordered to seal and fill in the vault to the City of Goshen Engineering Department's specifications and ensure that it is in compliance with Title 6, Article 3, Chapter 1 of the Goshen City Code by June 3, 2022.**

In the event that the property owners failed to comply with this Order, the City of Goshen could take action to make the required corrections and bill the owners for the costs of such work, including, the actual cost of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts could become a lien upon the property and can ultimately be enforced as any other judgment.

**The Metzgers were further notified that a hearing would be held before the Board of Public Works and Safety on June 6, 2022 to review the Order of the City of Goshen Building Commissioner. The hearing was held.**

**June 6, 2022 hearing testimony, discussion and decision:**

Speaking for property owners **Jerry and Dorma Metzger** was **Duane Metzger**, who said he was representing his parents. He said his father is deceased. Metzger said the size of the vault has been misinterpreted. He said it is only on an edge of the property, and is not as unsafe as alleged because it is not under the primary parking area.

**Building Commissioner Myron Grise** presented the Board with Memorandum, dated June 6, 2022, about the condition of the property at 206 N. Main Street

**Grise** said the property has been under review for a while, but the size of the vault was unknown until an inspection. A consultant for the City, Clear Creek & Associates, inspected the vault and rated it as needing immediate repair and should be filled. He said the City recently received a report that part of the parking lot was collapsing into the vault.

**Grise** reported that while a portion of the parking lot has been marked off to prohibit parking, the vault is showing increasing signs of failing and the parking lot is in danger of collapse. He showed photos of the vault's condition.

**Grise** said the family got an estimate to fill in the vault, but no work has been done.

**Metzger** said the estimate was about \$34,000 about a year and a half ago. Metzger said he has worked to limit parking in the private lot. He suggested that the City purchase a portion of the lot and make the repairs.

**Grise** said the vault has old equipment, other items and debris that will have to be removed before the vault is filled.

Asked by **Mayor Stutsman** about the options for the Board, **City Attorney Bodie Stegelmann** said the Building Commissioner was asking that vault be filled. **Grise** said he feared the vault will collapse and that a vehicle will fall through if the vault is not filled soon.

In response to a question from the **Mayor**, **City Attorney Stegelmann** said the City has had initial discussions about obtaining part of the parking lot. Mayor Stutsman said the Board could deem the vault to be unsafe and allow those City discussions to continue on how to resolve the situation.



Metzger, Grise and Board members discussed options on how to proceed as well as details of the private parking lot. City Public Works and Utilities Director Dustin Sailor said the lot could accommodate 11 vehicles. Stegelmann eventually recommended that the Board make a finding that the vault was unsafe, but delay any order for 30 to 45 days to allow the discussions to continue.

Mayor Stutsman/Landis moved to deem the area unsafe, but to continue the matter until July 18 to allow the City to conclude discussions with the property owner. Motion passed 4-0.

The scheduled hearing on July 18, 2022 was continued to Aug. 1, 2022 to allow City staff more time to speak with the property owners about the matter.

#### Aug. 1 hearing testimony, discussion and decision:

Dorma L. Metzger of Goshen, the owner of 206 N. Main Street, addressed the Board of Works & Safety. Metzger said three weeks ago, Deputy City Mayor Mark Brinson and another City staff member contacted her son, Duane Metzger, and ask to meet with them, which they did. She said Brinson proposed that the family donate the parking lot (with the vault underneath) to the City and the City would do the work to fill and seal the vault as required by the City. She said Brinson further told them there would be no cost for this work to New Image (which is adjacent to the parking lot and owned by the Metzgers) because this would be a tax-deductible property and a donation. Metzger said she and her son were told that the contractor very likely would not begin the vault filling and sealing project until next construction season, which would be the spring of 2023. In the meantime, Metzger said they were told they could continue using the parking lot until construction began.

Metzger said using the City engineer's drawing as a guide, her son has done extensive work putting up multiple "no parking" signs and painting the approximately one-third of the parking lot that is over the vault area. She said these efforts have kept cars from entering this area.

Metzger said the diagram they have depicts only one door into the building. But she said there is a second door further back with entry into two-thirds of the building allowing for an additional tenant, who has been there for many years. She said parking needs to be allowed for handicapped entry from the parking lot and next to the building.

Metzger said that when the vault filling project is complete, the parking lot should be of benefit to the north end of town and help with the limited parking in the area. Metzger said she will be meeting with her accountant and real estate agent to discuss the particulars and will get back to Brinson. And Metzger said Brinson indicated he would put together a draft for Metzger and her son to review and they will then get back to him.

City Attorney Bodie Stegelmann told the Board that he spoke to Deputy Mayor Brinson at the end of last week and he basically confirmed everything that Dorma Metzger just said. Stegelmann said it would take some time to get the proper paperwork together and he suggested continuing the hearing to mid- to late-September.

Mayor Stutsman/Board member Riouse moved to continue the hearing for the vault at 206 N. Main Street (Dorma L. Metzger, property owner) to Oct. 3, 2022. Motion passed 5-0.

#### Oct. 3 update and Board action:

City Attorney Bodie Stegelmann reviewed the background of the hearing for the vault at 206 N. Main Street with the Board. Stegelmann said it had been decided that City staff should discuss the possibility of Dormer Metzger donating the parking lot to the City.





**Stegelmann** said the City would then fill in the vault and turn the private parking lot into a public parking lot. **Stegelmann** said the property has now been sold and there is a new owner. He said City staff will meet with the new owner on Wednesday, Oct. 5 in hopes of making the same arrangement for the parking lot. He suggested continuing the hearing for 45 days to allow those discussions to take place and an agreement to be reached.

**Board member Landis** asked if the City had lost any leverage since the property has been sold. **Stegelmann** said the City did not lose any leverage because the new property owner had been informed of the vault enforcement action. **Stegelmann** suggested delaying the hearing until Nov. 21.

**Swartley/Nichols** moved to continue the Board action on the vault repair until Nov. 21. Motion passed 4-0.

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

**Mayor Stutsman** opened Privilege of the Floor at 2:15 p.m.

**Clerk-Treasurer Richard R. Aguirre** advised the Board and City Department heads that today's meeting was the fourth of eight Board meetings on consecutive Mondays. He said the Board would not meet Nov. 7 and Nov. 28 and Dec. 26. After the October meetings, the Board is scheduled to meet Nov. 14 and 28 and Dec. 5, 12 and 19. He asked Board members to inform the Mayor's Office and the Clerk-Treasurer if they planned to be absent for any of the remaining nine meetings of the year to help ensure there are quorums for the meetings.

There were no further public comments, so **Mayor Stutsman** closed Privilege of the Floor at 2:16 p.m.

As all matters before the Board of Public Works & Safety were concluded, board members **Mayor Stutsman/Mary Nichols** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 4-0.

**Mayor Stutsman** adjourned the meeting at 2:16 p.m.

*EXHIBIT #1: Proposal for Fixed-Base Operator for the City of Goshen Municipal Airport by Goshen Air Center, Inc., submitted Oct. 3, 2022.*

APPROVED

---

**Mayor Jeremy Stutsman**



---

Mike Landis, Member

---

Mary Nichols, Member

---

DeWayne Riouse, Member

---

Barb Swartley, Member

ATTEST

---

Richard R. Aguirre, City of Goshen Clerk-Treasurer





**Jose' D. Miller**

**Chief of Police**

111 E Jefferson St  
Goshen, Indiana 46528

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

Date: September 10<sup>th</sup>, 2022

From: Jose' Miller, Chief of Police

Reference: **Promotion of Austin M. Everage from Sergeant to Lieutenant**

I am requesting the Goshen Board of Public Works and Safety approve the promotion of Austin M. Everage from the rank of Sergeant to the rank of Lieutenant. A recent Lieutenant position opened up on patrol and Austin has been selected to fill the vacancy. I would like to have the promotion be **retroactive to Friday September 7<sup>th</sup>, 2022.**

\*Everage will be present for the Board of Works Meeting.\*

Respectfully,

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

Jose' Miller #116

Chief of Police

Goshen City Police Department  
111 E. Jefferson Street  
Goshen, IN. 46528

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

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

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



## CITY OF GOSHEN LEGAL DEPARTMENT

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

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

October 10, 2022

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

**From:** Brandy L. Toms – Presented by David Gibbs

**Subject:** Agreement for services with Koorsen Fire and Security regarding the 5-year FCD Hydro sprinkler system inspection.

Attached for the Board's approval and authorization for Mayor Stutsman to execute is an agreement with Koorsen Fire and Security regarding the 5-year FCD Hydro sprinkler system inspection. Koorsen Fire and Security will be paid Four Hundred Ninety-Five (\$495) for this one-time service.

### **Suggested Motion:**

Approve and execute Mayor Stutsman to execute the agreement with Koorsen Fire and Security regarding the 5-year FCD Hydro sprinkler system inspection at a cost of Four Hundred Ninety-Five (\$495) for this one-time service.

# AGREEMENT

## To Provide Annual Sprinkler System Inspection

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Koorsen Fire and Security** (“Contractor”), whose mailing address is 3953 Ralph Jones Drive, South Bend, Indiana 46628, 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 Commission (“City”).

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

### **Section 1. Contractor Duties**

Contractor shall provide City the following services which shall include the provision of all labor, supplies, materials, tools, equipment, supervision, insurance and all other items necessary to provide annual inspection services as part of the 5-year FCD Hydro (hereinafter referred to as “Duties”). Contractor’s Duties under this agreement include:

- (A) Isolate and drain fire sprinkler system associated to FDC.
- (B) Inspect FDC check valve and verify that all components operate correctly, move freely, and are in good condition.
- (C) Install blind flange or cap based on type of FDC check valve in service.
- (D) Pressurize FDC to 150psi and hold for a period of two (2) hours.
- (E) Drain FDC
- (F) Follow test, reinstall check valve using new couplings or flange kits.
- (G) Fill fire sprinkler system with water and check for leaks before leaving.

### **Section 2. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall commence the Duties as soon as practical after receiving a notice to proceed from City.
- (D) Contractor shall complete all Duties during regular business hours.

### **Section 3. Compensation**

City agrees to compensate Contractor the sum of Four Hundred Ninety-Five Dollars \$495.00 for performing all Duties.

### **Section 4. Payment**

- (E) Payment shall be upon City's receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen  
c/o Goshen Street Department  
Attention: David Gibbs  
475 Steury Ave  
Goshen, IN 46528

- (F) 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.
- (G) Contractor 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. Licensing/Certification Standards**

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

### **Section 6. Independent Contractor**

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor 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 Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor 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 7. Non-Discrimination**

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

## **Section 8. Employment Eligibility Verification**

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

## **Section 9. Contracting with Relatives**

Pursuant to Indiana Code § 36-1-21, if the Contractor 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 Contractor certifies that Contractor 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 10. No Investment Activities in Iran**

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

## **Section 11. Indemnification**

Contractor 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 Contractor or any of Contractor'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 Contractor 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 12. Force Majeure**

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

## **Section 13. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor 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 Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.

- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

**Section 14. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor 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 Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**Section 15. 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

Contractor: Koorsen Fire & Security  
Attn: Diana Smith  
3953 Ralph Jones Drive  
South Bend, IN 46528

**Section 16. Subcontracting or Assignment**

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



## **Section 17. 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 18. 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 19. Applicable Laws**

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

## **Section 20. 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 21. 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 22. 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 23. Entire Agreement**

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

**Section 24. Authority to Bind Contractor**

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

**Koorsen Fire & Security**

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

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

\_\_\_\_\_  
Printed: \_\_\_\_\_

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

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



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

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

October 10, 2022

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

**From:** Carla Newcomer

**Subject:** Agreement for Maintenance of Generators on Multiple City Sites

Attached for the Board's approval and execution is an agreement with Cummins Sales and Service, Inc., for Maintenance of Generators on Multiple City Sites. Cummins Sales and Service will be paid \$26,789.77 for the services.

**Suggested Motion:**

Approve and execute the agreement with Cummins Sales and Service, Inc., for the Maintenance of Generators on Multiple City Sites. Cummins Sales and Service, Inc. will be paid \$26,789.77 for the service.

# AGREEMENT

## Planned Maintenance Agreement for City Generators

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Cummins Sales and Service, Inc.** (“Contractor”), whose mailing address is 3025 North Home Street, Mishawaka IN 46545, 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. Contractor Duties**

Contractor shall provide City the services for Maintenance of the Generators on Multiple Sites in the City, which services are more particularly described in Cummins Sales and Service, Inc. proposal dated August 5, 2022 attached as Exhibit A (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.

Contractor’s duties under this agreement include:

- (A) Maintenance Inspection with oil samples
- (B) Full Maintenance Service
- (C) Full Maintenance Service with 2-hour load bank test.

### **Section 2. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) This agreement shall be effective for a period of two years (2) beginning on September 1, 2022 and shall terminate on August 31, 2024.

### **Section 3. Compensation**

- (A) City will compensate Cummins for the Planned Maintenance of the Generators on Multiple Sites in the City based on the standard rates for each generator set forth in the attached proposal for each of the sites included on the proposal, but in no event will the total compensation exceed Twenty-Six Thousand Seven Hundred Eighty-Nine Dollars and Seventy-Seven Cents (\$26,789.77).

### **Section 4. Payment**

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

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

- (B) 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.
- (C) Contractor 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. Licensing/Certification Standards**

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

## **Section 6. Independent Contractor**

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor 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 Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor 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 7. Non-Discrimination**

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

## **Section 8. Employment Eligibility Verification**

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.
- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.

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

## **Section 9. Contracting with Relatives**

Pursuant to Indiana Code § 36-1-21, if the Contractor 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 Contractor certifies that Contractor 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 10. No Investment Activities in Iran**

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

## **Section 11. Indemnification**

Contractor 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 Contractor or any of Contractor'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 Contractor 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 12. Force Majeure**

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

## **Section 13. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor 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 Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred

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

#### **Section 14. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor 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 Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

#### **Section 15. 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

Contractor: Cummins Sales and Service, Inc.  
3025 North Home Street  
Mishawaka, IN 46545



## **Section 16. Subcontracting or Assignment**

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

## **Section 17. 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 18. 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 19. Applicable Laws**

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

## **Section 20. 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 21. 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 22. 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 23. Entire Agreement**

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

**Section 24. Authority to Bind Contractor**

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

**Cummins Sales and Service, Inc.**

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

\_\_\_\_\_

\_\_\_\_\_  
Michael A. Landis, Member

Printed: \_\_\_\_\_

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

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

\_\_\_\_\_  
DeWayne Riouse, Member

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

\_\_\_\_\_  
Barb Swartley, Member

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



# Sales and Service

MISHAWAKA IN BRANCH  
 3025 NORTH HOME STREET  
 MISHAWAKA, IN 46545  
 Phone: 574-252-2154

## PLANNED MAINTENANCE AGREEMENT

Customer Address	Customer Contact	Quote Information
CITY OF GOSHEN 204 E JEFFERSON ST Goshen, IN 46528	Contact: Jeff Halsey Phone: 574 206-3111 Fax: 574 533-8626 Cust Id: 508428	Quote Date: 05-AUG-22 Quote Expires: 16-NOV-22 Quote Num: 173636 Quoted By: Carla Figueroa Quote Term: 2 Year(s)

### Site Information

1	EGBERT FIRE DEPT	308 EGBERT RD	GOSHEN	IN	46526
2	MUNICIPAL BUILDING	111 EAST JEFFERSON	GOSHEN	IN	46526
3	GOSHEN STREET DEPT.	475 STEURY AVE	GOSHEN	IN	46528
4	ALPRO LIFT STATION	3715 E KERCHER RD	GOSHEN	IN	46526
5	BASHOR LIFT STATION	2412 BASHOR RD	GOSHEN	IN	46526
6	CARTER LIFT STATION	300 CARTER RD	GOSHEN	IN	46526
7	CENTURY DR LIFT STATION	2052 CENTURY DR	GOSHEN	IN	46528
8	CLINTON LIFT STATION	2203 E CLINTON ST	GOSHEN	IN	46528
9	CR 28 LIFT STATION	22501 CR 28	GOSHEN	IN	46528
10	CR 38 LIFT STATION	3118 E KERCHER RD	GOSHEN	IN	46526
11	FAIRFIELD SCH LIFT STATIO	67256 CR 31	GOSHEN	IN	46528
12	GOSHEN AIRPORT LIFT	66675 US 33	GOSHEN	IN	46528
13	KERCHER LIFT STATION	111 W KERCHER RD	GOSHEN	IN	46526
14	LINCOLN LIFT STATION	1102 LINCOLN AVE	GOSHEN	IN	46528
15	LYNWOOD LIFT STATION	1915 LYNWOOD DR	GOSHEN	IN	46526
16	STARCRAFT LIFT STATION	2701 COLLEGE AVE	GOSHEN	IN	46528
17	TWELFTH ST LIFT STATION	1711 TWELFTH ST	GOSHEN	IN	46528
18	PLANT SCADA MAINT	1000 W WILDEN AVE	GOSHEN	IN	46528
19	WATER TOWER	2109 CARAGANA CT	GOSHEN	IN	46526
20	HILLTOP	111 HILLTOP	GOSHEN	IN	46528
21	CLINTON WATER TOWER	2502 W CLINTON	GOSHEN	IN	46526
22	KERCHER PLANT	1513 EISENHOWER DRIVE N	GOSHEN	IN	46526
23	NORTH PLANT	308 N 5TH ST	GOSHEN	IN	46528
24	CENTRAL STATION	209 N 3RD ST	GOSHEN	IN	46526
25	COLLEGE AVE STATION	1203 COLLEGE AVE	GOSHEN	IN	46526
26	RELIANCE ROAD STATION	209 N 3RD ST	GOSHEN	IN	46526

Site	Unit Number	Manufacturer	Model	Prod Model	Serial Number	Type
1	4225290	GENERAC	GEN SET	0050531	4225290	ST
2	MUNICIPAL BLD	ONAN	GEN SET	100.0GGHH	I010287095	ST
3	G110233998	ONAN	60.0 GGHE-7529	60.0 GGHE-7529827	G110233998	ST
4	H080199787	ONAN	35.0GGFD	35.0GGFD	H080199787	ST
5	J070121241	ONAN	GEN SET	GGHG	J070121241	AC
6	D010228045	ONAN	GGHB-4958155A	GGHB-4958155A	D010228045	ST
7	G030528055	GEN SET	UNLISTED	GGHG	G030528055	GENSET
8	0872481565	ONAN	GEN SET	30EK-15R/9182D	0872481565	AC
8	CLINTON LIFT S	ONAN	STANDBY SYST	GG02	H180404348	ST
9	SG035K364	GENERAC	GEN SET	98A04384	SG035K364	ST
10	I10054189	ONAN	GEN SET	GGMB	I10054189	AC



# Sales and Service

## PLANNED MAINTENANCE AGREEMENT

<u>Customer Address</u>		<u>Customer Contact</u>		<u>Quote Information</u>		
CITY OF GOSHEN 204 E JEFFERSON ST Goshen, IN 46528		Contact: Jeff Halsey		Quote Date: 05-AUG-22		
		Phone: 574 206-3111		Quote Expires: 16-NOV-22		
		Fax: 574 533-8626		Quote Num: 173636		
		Cust Id: 508428		Quoted By: Carla Figueroa		
				Quote Term: 2 Year(s)		
11	SG0060-J365	GENERAC	GEN SET	4210660200	SG0060-J365	ST
12	SG0070-J366	GENERAC	GEN SET	4210640100	SG0070-J366	ST
13	C140657591	ONAN	GEN SET	GGPB	C140657591	AC
14	A110181206	ONAN	GEN SET	GGHE	A110181206	AC
15	H140729591	ONAN	GENSET	20.0 GGMA	H140729591	ST
16	F160964091	ONAN	GEN SET	GG02-1622655-A	F160964901	ST
17	E990906308	ONAN	GEN SET	GGHD	E990906308	AC
18	A110180417	ONAN	25.OGGMB-6324	25.GGMB-6324016C	A110180417	ST
19	I150874856	ONAN	GEN SET	GG02-1525145-A	I150874856	ST
20	HILLTOP	GENERAC	3137330200	3137330200	2072237	ST
21	UNIT 1	ONAN	GEN SET	GG02-1422894A	K140769997	ST
22	ED-92508-2/27	GEN SET	WITH ENCLOSURE	680FDF4352AA W	ED-92508-2/27	GEN SET
23	33JDGMFP0003	KOHLER	GEN SET	750 REOZMD	33JDGMFP0003	ST
24	NFS00851	OLYMPIAN	GEN SET	G35F3S	NFS00851	ST
25	4306527	GENERAC	GEN SET	QT02015ANSN	4306527	ST
26	4528363	GENERAC	GEN SET	QT03524ANSN	4528363	ST

<u>Site</u>	<u>Unit Number</u>	<u>Service Event</u>	<u>Qty</u>	<u>Sell Price</u>	<u>Extended Price</u>
1	4225290	FULL PM SERVICE (FS)	1	459.75	459.75
		INSPEC SVC W/SAMPLE	1	233.28	233.28
2	MUNICIPAL BLD.	FULL PM SERVICE (FS)	2	404.99	809.98
		INSPEC SVC W/SAMPLE	2	270.59	541.18
3	G110233998	FULL PM SERVICE (FS)	2	414.97	829.94
		INSPEC SVC W/SAMPLE	2	288.58	577.16
4	H080199787	INSPEC SVC W/SAMPLE	2	237.62	475.24
5	J070121241	INSPEC SVC W/SAMPLE	2	275.27	550.54
6	D010228045	INSPEC SVC W/SAMPLE	2	283.59	567.18
7	G030528055	INSPEC SVC W/SAMPLE	2	276.25	552.50
8	0872481565	INSPEC SVC W/SAMPLE	2	224.31	448.62
8	CLINTON LIFT ST	FULL SVC W/SAMPLE	2	329.98	659.96
9	SG035K364	INSPEC SVC W/SAMPLE	2	234.29	468.58
10	I10054189	INSPEC SVC W/SAMPLE	2	239.28	478.56
11	SG0060-J365	INSPEC SVC W/SAMPLE	2	293.57	587.14
12	SG0070-J366	INSPEC SVC W/SAMPLE	2	364.52	729.04
13	C140657591	INSPEC SVC W/SAMPLE	2	234.29	468.58
14	A110181206	INSPEC SVC W/SAMPLE	2	288.58	577.16
15	H140729591				



# Sales and Service

## PLANNED MAINTENANCE AGREEMENT

<u>Customer Address</u>		<u>Customer Contact</u>		<u>Quote Information</u>	
CITY OF GOSHEN 204 E JEFFERSON ST Goshen, IN 46528		Contact: Jeff Halsey Phone: 574 206-3111 Fax: 574 533-8626 Cust Id: 508428		Quote Date: 05-AUG-22 Quote Expires: 16-NOV-22 Quote Num: 173636 Quoted By: Carla Figueroa Quote Term: 2 Year(s)	
15	H140729591	INSPEC SVC W/SAMPLE	2	222.64	445.28
16	F160964091	INSPEC SVC W/SAMPLE	2	230.97	461.94
17	E990906308	INSPEC SVC W/SAMPLE	2	281.92	563.84
18	A110180417	INSPEC SVC W/SAMPLE	2	224.31	448.62
19	I150874856	INSPEC SVC W/SAMPLE	2	232.77	465.54
20	HILLTOP	FULL PM SERVICE (FS) INSPEC SVC W/SAMPLE	2 2	519.10 296.51	1,038.20 593.02
21	UNIT 1	INSPEC SVC W/SAMPLE	2	217.78	435.56
22	ED-92508-2/27	FULL SVC W/2 HR LOAD BANK INSPEC SVC W/SAMPLE	2 2	2,213.52 336.19	4,427.04 672.38
23	33JDGMFP0003	FULL PM SERVICE (FS) INSPEC SVC W/SAMPLE	2 2	1,373.46 387.64	2,746.92 775.28
24	NFS00851	FULL PM SERVICE (FS) INSPEC SVC W/SAMPLE	2 2	392.49 225.97	784.98 451.94
25	4306527	FULL PM SERVICE (FS) INSPEC SVC W/SAMPLE	2 2	390.99 230.97	781.98 461.94
26	4528363	FULL PM SERVICE (FS) INSPEC SVC W/SAMPLE	2 2	392.49 217.97	784.98 435.94

### \*\*\*Generator Planned Equipment Maintenance Quote\*\*\*

- Based on previous PM schedule, services are tentatively scheduled for:  
Maintenance Inspection with oil samples- TBD 2022 & September 2023  
Full Maintenance Service- TBD 2022 & September 2023  
Maintenance Inspection- March 2023 & 2024

For any questions regarding this proposal and to continue your services without interruption, please sign the agreement and return to: carla.figueroa@cummins.com 445-787-3057

### \*\*\*Payment Info\*\*\*

Customers with a line of credit will be invoiced after the completion of service event unless requested otherwise. Customers without a line of credit including residential customers will be invoiced annually prior to services being performed.

Purchase order bill must be made out to Cummins Inc. or Cummins Sales and Service PO# \_\_\_\_\_  
W9 available upon request.

### \*\*\*Auto Renewal Option\*\*\*

Planned Equipment Maintenance Agreements are designed with an automatic renewal provision. If you wish to participate in the auto renew option, please check the box below:

Opt-in to Automatic Renewal



# Sales and Service

## PLANNED MAINTENANCE AGREEMENT

<u>Customer Address</u>	<u>Customer Contact</u>	<u>Quote Information</u>
CITY OF GOSHEN 204 E JEFFERSON ST Goshen, IN 46528	Contact: Jeff Halsey Phone: 574 206-3111 Fax: 574 533-8626 Cust Id: 508428	Quote Date: 05-AUG-22 Quote Expires: 16-NOV-22 Quote Num: 173636 Quoted By: Carla Figueroa Quote Term: 2 Year(s)

This agreement will automatically renew at the end of the term for a period equal to the original term (the Renewal Term). In such event, cost increases for the Renewal Term will not exceed 4%. Either party has the right to terminate this Agreement with thirty (30) days prior written notice unless the work has already been performed.

For any questions regarding your account or additional sales opportunities:

### Territory Manager Contact Information:

Jillian Wippel  
Phone: 260-241-1718  
Email: jillian.wippel@cummins.com

Unless otherwise noted, quote reflects services completed during regular business hours. Additional repairs will not be performed without customer's authorization. PM customers receive a discounted labor rate on recommended repairs for units on this agreement.

<b>Standard Agreement Amount</b>	<b>\$26,789.77</b>
<b>Proposal Total</b>	<b>\$26,789.77</b>

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITY, WHICH ARE EXPRESSLY INCORPORATED HEREIN. CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD, AND ACCEPTED.

### **Customer Approval**

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

### **CUMMINS INC**

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



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

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

October 10, 2022

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

**From:** Brandy L. Toms; presented by Bodie Stegelmann

**Subject:** Agreement drainage study on the Keaffaber property located between Berkey Avenue and SR 119 to include the Humbarger and Pollock property.

Attached for the Board's approval and authorization for Mayor Stutsman to execute is Amendment No. 1 to an agreement with Abonmarche for the expansion a drainage study on the Keaffaber property located between Berkey Avenue and SR 119 to include the Humbarger and Pollock property. Abonmarche Consultants, Inc. will be paid \$6,500 for these additional services. This cost is in addition to \$18,800 for the field Survey and Drainage Study already under contract.

**Suggested Motion:**

Approve and authorize Mayor Stutsman to execute Amendment No. 1 to the Agreement with Abonmarche Consultants, Inc, for the expansion of services of a drainage study on the Keaffaber property located between Berkey Avenue and SR 119 to include the Humbarger and Pollock property at an additional cost \$6,500.



## AMENDMENT NO. 1

### Keaffaber Property Drainage Study

THIS AMENDMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Abonmarche Consultants Inc.** (“Consultant”), whose mailing address is 303 River Race Drive, Unit 206, Goshen Indiana 46526, 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”).

#### RECITALS

- (A) City and Consultant entered into an Agreement on July 5, 2022, for a drainage study on the Keaffaber property located between Berkey Avenue and SR 119 tentatively called ‘Cherry Creek’.
- (B) The drainage study conducted posed additional questions requiring an amendment of the existing agreement to allow Consultant to expand the drainage analysis and report to include the Humbarger and Pollock property located north of Berkey Avenue.
- (C) Any modification or amendment to the terms and conditions of the Agreement shall be made in writing and signed by both parties.

In consideration of the terms, conditions and mutual covenants to be kept and performed under the original Agreement, and under the terms, conditions and mutual covenants of this Amendment, the parties agree as follows:

#### **Section 1. Contractor Duties**

The Agreement shall be amended by adding the Scope of Services found on the attached Professional Services Agreement Amendment No. 1, dated September 19, 2022, which services are more particularly described in the attached Exhibit A (hereinafter referred to as “Duties”):

#### **Section 2. Effective Date; Term**

- (A) The Amendment shall become effective on the day of execution and approval by both parties.

#### **Section 3. Compensation**

- (A) City agrees to compensate Consultant the sum of Six Thousand Five Hundred Dollars \$6,500 for performing Duties under this Amendment.

#### **Section 4. Original Agreement**

In all respects, all other provisions of the original Agreement not affected by this Amendment shall remain in full force and effect.

**Section 5. Authority to Execute**

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

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

**City of Goshen, Indiana**

Goshen Board of Public Works and Safety

**Abonmarche Consultants, Inc.**

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

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

\_\_\_\_\_  
Printed: \_\_\_\_\_

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

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



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

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

October 10, 2022

**To:** Board of Public Works and Safety  
**From:** Carla Newcomer  
**Subject:** Agreement for Software Implementation Services

Attached for the Board's approval and execution is an agreement with **The Davenport Group USA, Ltd** for software implementation services. The company. will be paid an hourly rate not to exceed \$6,696.00 for the services.

**Suggested Motion:**

Approve and execute the agreement with The Davenport Group USA, Ltd., for software implementation services.

# AGREEMENT

## SOFTWARE IMPLEMENTATION SERVICES

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **The Davenport Group USA, Ltd.**, (“Contractor”), whose mailing address is 651 W. Terra Cotta Ave., Crystal Lake, Illinois, 60014 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. Contractor Duties**

Contractor shall provide City Software Implementation Services, which services are more particularly described in The Davenport Group USA, Ltd., September 22, 2022 proposal attached as Exhibit A (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.

Scope of work includes hourly services toward implementing goals outlined in the attached proposal. Work items include regular meetings, designing forms and reports, programming violation fee structures and tiers, and other items in the detailed in the attached proposal

### **Section 2. Effective Date; Term**

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

### **Section 3. Compensation**

(A) City will compensate Contractor for the Implementation and Configuration of Items for the Ordinance Violation Bureau based on the hourly rate of One Hundred Twenty-Four Dollars (124.00) per hour (discounted from the standard hourly rate of 156.00 per hour) set forth on the attached and the actual hours worked, but in no event will the total compensation not to exceed Six Thousand Six Hundred Ninety-Six Dollars (\$6,696.00).

### **Section 4. Payment**

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

City of Goshen  
c/o Legal Department  
204 East Jefferson Street, Suite 2  
Goshen, IN 46528

- (C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current 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 Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

Including electronic files, as instruments of professional service. Nevertheless, 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 Contractor.

### **Section 6. Licensing/Certification Standards**

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

### **Section 7. Independent Contractor**

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor 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 Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor 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**

Contractor agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Contractor or any subcontractors, or any other person acting on behalf of Contractor or a subcontractor, shall not discriminate against any employee or applicant for employment to

be employed in the performance of this agreement, with respect to the employee's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment, because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of contract.

### **Section 9. Employment Eligibility Verification**

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

### **Section 10. Contracting with Relatives**

Pursuant to Indiana Code § 36-1-21, if the Contractor 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 Contractor certifies that Contractor 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, Contractor certifies that Contractor does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

### **Section 12. Indemnification**

Contractor 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 Contractor or any of Contractor'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 Contractor 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. Force Majeure**

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

### **Section 14. Default**

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

### **Section 15. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor 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 Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

### **Section 16. 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

Contractor: Davenport Group USA, Ltd.  
651 W. Terra Cotta Ave.,  
Crystal Lake, Illinois, 60014

### **Section 17. Subcontracting or Assignment**

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



## **Section 18. 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 19. 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 20. Applicable Laws**

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

## **Section 21. 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 22. 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 23. 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 24. Entire Agreement**

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

**Section 25. Authority to Bind Contractor**

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

**The Davenport Group, USA, Ltd.**

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

\_\_\_\_\_  
Printed: \_\_\_\_\_

\_\_\_\_\_  
Michael A. Landis, Member

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

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

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

\_\_\_\_\_  
DeWayne Riouse, Member

\_\_\_\_\_  
Barb Swartley, Member

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

# Software Services Price Quote

Prepared For: Goshen, IN



## Software Implementation Services

The following are work items related to implementation services to bring the Code Enforcement division online for the City.

<b>Implementation and Configuration of Items for the Ordinance Violation Bureau</b>	<b>\$156/hour</b>
Scope of work includes hourly services toward implementing goals outlined in Attachment A. Work items include regular meetings, designing forms and reports, programming violation fee structures and tiers, and other items as outlined in the scope of work.	
Hours	54 Hours
Hourly Rate	\$ 124.00
<b>Total</b>	<b>\$ 6,696.00</b>

<b>Optional Onsite Training</b>	<b>\$156/hour</b>
Davenport recommends the City invest in onsite training for the implementation of this project to ensure the successful utilization of the work herein. All onsite training includes 2 Davenport staff trainers.	
Base Travel Expenses	\$ 2,500
Training Materials and Class Preparation	\$ 1,400
1 <sup>st</sup> Day Training	No Charge
Additional Day Training	\$ 2,800
Additional Day Travel Expenses	\$ 700
<b>Total</b>	<b>Varies</b>

This quote provides services for software configuration, programming, testing, setup, and project management, and other tasks related to configuring the LAMA software to better meet the needs of the Ordinance Violation Bureau as described in scope of work in Attachment A.

This quote is respectfully submitted to the City of Goshen, IN, by The Davenport Group USA, Ltd. this 22<sup>nd</sup> day of September 2022 and shall remain valid for 60 days.

Benjamin K. Davenport

Chief Executive Officer

The Davenport Group USA, Ltd

(800) 640-0373 x113 ([ben@davengis.net](mailto:ben@davengis.net))



## Attachment A – Scope of Work

Davenport will implement workflows, forms, code sections, tiers, and fees in Lama to address the requirements illustrated below.

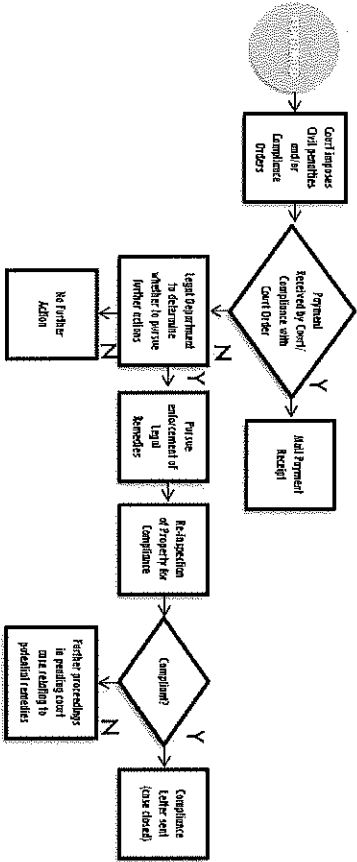
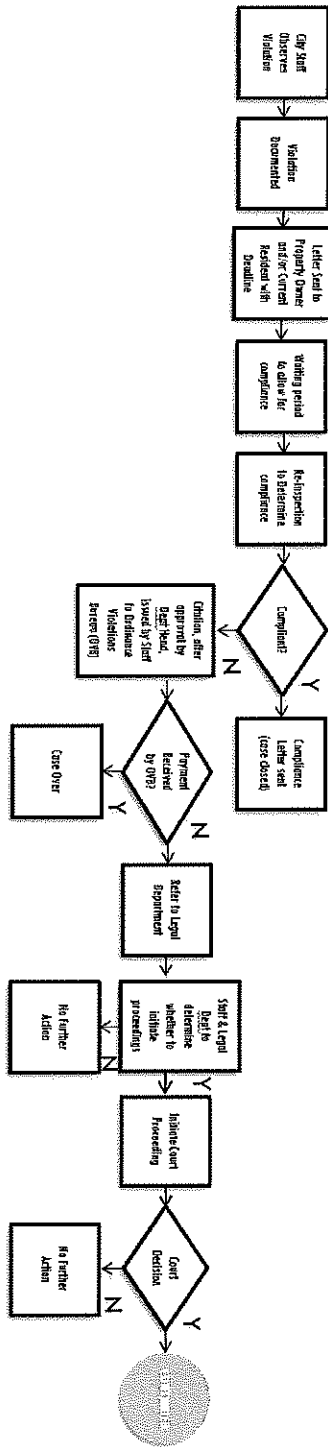
The City of Goshen currently has three code enforcement officers which are currently licensed users in Lama. Additional Lama user licenses may be required for users that do not currently use Lama.

1. Project Management Meetings (10h): Davenport anticipates the following 5 meetings (1hr/ea.) with 2 Davenport staff: Detailed Process Meeting, Configuration Review Meeting, 2nd Configuration Review Meeting, Final Configuration Review Meeting, Post-Go Live Follow-up meeting. (Remote Training meetings are itemized below.)
2. Workflows (8h): Implementation of workflows for code enforcement cases based on events listed in Attachment B. OVB requirements are not intended to track the case after the Court Hearing.
3. Forms (12h): Implement Forms, or Generated Documents, in Lama for Notices, Citations, Summons, etc. Attachment C itemizes the current list of forms to be implemented in Lama. It is envisioned that some or all the Forms in Attachment C will be generated in Lama. Code officers should have the ability to manually edit any generated documents.
4. Code Sections (8h): Ensure that code sections referenced in Attachment D are available for citation in Lama, both from the office and mobile inspection app. Code officers should have the ability to enter a Fact Pattern (or nature of violation) in addition to viewing the section number and ordinance description for the code being cited.
5. Tiers (12h): Assign code sections pertaining to the OVB sections a numeric Tier value to be used in the calculation of fees. The tiers are illustrated in Attachment D. The tiers have an incremental valuation if multiple infractions are cited within a 12-month period at the same address. Lama will be configured to populate code violations within the last 12 months at the same address and assign a tier value to the current case violations. Code officers should have the ability to override the system for calculation of fees based on these tiers.
6. Fees (4h): Implement the table of fees shown in Attachment E for fines related to OVB cases.
7. Remote Training: Davenport will include 3 (75m) training sessions at no additional costs. Though, it is recommended that the City substitute the onsite training listed in the Cost Proposal above which includes one-day onsite training free of charge in lieu of the Remote Training.

Attachment B – OVB Process Workflow

Ordinance Violations Bureau Process

6/8/2020



SCHEDULE OF CIVIL PENALTIES

	First Offense	Second Offense	Third Offense
Tier 4	\$25	\$50	\$75
Tier 3	\$50	\$75	\$100
Tier 2	\$75	\$125	\$200
Tier 1	\$175	\$225	\$250

The diagram above is generally understood to translate to the following event workflow in Lama. Not all the events listed below will apply to all OVB cases and will be at the discretion of the lead case officer to apply events as required.

- Initial Inspection and code section citation
- Initial Notice of Violation, Courtesy Notice or Door Hanger
- Notice of Violation
- Final Notice of Violation
- Department Head Review
- Citation and Tracking of Fees
- Legal Conference
- Summons and Complaint
- Civil Court (outside Counsel)